



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 1470/2024

(MOHD. ISHAQUE MD. YUSUF & OTHERS **VERSUS** STATE OF MAHARASHTRA & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri R.L. Khapre, Senior Advocate with Shri R.G. Kavimandan, Counsel for the petitioners.

Ms K.P. Marpakwar, Assistant Government Pleader for the respondent nos.1 to 3.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : MARCH 08, 2024

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Heard Shri R.L. Khapre, learned Senior Advocate for the petitioners and Learned Assistant Government Pleader Ms K.P. Marpakwar on behalf of the respondent nos.1 to 3.

2. The petitioners, who were appointed by the respondent no.4-Municipal Council, Karanja (Lad) (for short, 'the Municipal Council') in the respondent no.5-Mulji Jetha Municipal Council Urdu High School (for short, 'the School') on clock hour basis, are seeking regularization of their services as Assistant Teacher by granting permanency from the date of their initial appointments with a further prayer to release their salary with full back wages payable to the Assistant Teachers working in the respondent no.5-School. The petitioners have sought quashing of the advertisement dated January 25, 2024 issued by the Municipal Council for filling in the vacancies of Assistant Teachers in the School.

3. The facts necessary for deciding the present writ petition are as under:-

The petitioners are holding the following qualifications:-

Petitioner no.1	B.A., M.A. in Political Science, Persian, Urdu Language & B.Ed.
Petitioner no.2	B.A., M.A. in English, History, Persian, Urdu Language & B.Ed.
Petitioner no.3	B.A. & B.Ed.
Petitioner no.4	B.Sc. (Maths) & B.Ed.
Petitioner no.5	B.A. & B.Ed.
Petitioner no.6	B.A. & B.Ed.
Petitioner no.7	B.Sc. (Maths) & B.Ed.

Pursuant to the aforesaid, the petitioners were appointed in the respective academic sessions *vide* appointment orders reflected against their name in the following tabular form:-

Petitioner Number	Initial appointment (Academic Session)	Order Date	Repeated appointments
Petitioner no.1	2016-17; 30.08.2016 to 30.04.2017	30.08.2016	2017-18 (21.08.2017) 2018-19 (31.08.2018) 2019-20 (26.11.2019) 2020-21 (01.12.2022) 2022-23 (20.09.2022) 2023-24 (11.08.2023)
Petitioner no.2	2016-17; 30.08.2016 to 30.04.2017	30.08.2016	2017-18 (21.08.2017) 2018-19 (31.08.2018) 2020-21 (01.12.2020) 2022-23 (20.09.2022) 2023-24 (11.08.2023)
Petitioner no.3	2017-18; 16.10.2017 to 30.04.2018	16.10.2017	2018-19 (26.09.2018) 2020-21 (01.12.2020) 2022-23 (20.09.2022) 2023-24 (11.08.2023)
Petitioner no.4	2017-18; 16.10.2017 to 30.04.2018	16.10.2017	2018-19 (31.08.2018) 2019-20 (26.11.2019) Communicated no letter 2020-21 (01.12.2020) 2022-23 (20.09.2022) 2023-24 (11.08.2023)
Petitioner no.5	2017-18 28.08.2017 to 30.04.2018	28.08.2017	2018-19 (31.08.2018) 2019-20 (26.11.2019) Communicated no letter 2020-21 (01.12.2020)

			2022-23 (20.09.2022) 2023-24 (11.08.2023)
Petitioner no.6	2016-17; 30.08.2016 to 30.04.2017	30.08.2016	2017-18 (21.08.2017) 2018-19 (31.08.2018) 2020-21 (01.12.2020) 2022-23 (20.09.2022) 2023-24 (11.08.2023)
Petitioner no.7	2016-17, 30.08.2016 to 30.04.2017	30.08.2016	2017-18 (21.08.2017) 2018-19 (31.08.2018) 2020-21 (01.12.2020) 2022-23 (20.09.2022) 2023-24 (11.08.2023)

4. The Municipal Council in its General Body Meeting held on July 19, 2023 has resolved to appoint ten teachers on purely temporary Clock-Hour basis.

5. The Municipal Council thereafter took recourse to the 'Pavitra Portal' and issued an advertisement allegedly in daily 'Lokmat' thereby inviting applications for the posts of 'Under-Graduate', 'Graduate' and 'Post-Graduate' teachers.

6. It is the case of the petitioners that since they were holding appropriate qualifications and were entitled to get appointed against the posts which were advertised, they had approached the respondents with a request to grant permanency to them. Since the respondents have failed to consider the same, the petitioners are before this Court.

7. Shri R.L. Khapre, learned Senior Advocate for the petitioners would claim that the initial appointment of the petitioners was in response to the advertisement dated July 26, 2016. Only after judging their qualification, merit and competency, the petitioners were respectively appointed in the year 2016-17. He would invite attention

of this Court to the appointment of the petitioner nos.1, 2, 6 and 7 on the temporary clock-hour basis with effect from August 30, 2016 with last appointment order being issued on August 11, 2023. As far as the petitioner no.5 is concerned, his initial appointment is on August 28, 2017 with last appointment being of August 11, 2023. Similarly, the petitioner nos.3 and 4 were initially appointed on October 16, 2017 with last appointment order being issued on August 11, 2023. According to him, the petitioners have put into on an average 5½ years of service with notional breaks. As such, it is claimed that the petitioners are legitimately entitled for the permanent appointment – regularization of their services on the posts which are advertised by the respondents *vide* advertisement at Annexure 59. According to him, all the petitioners are duly qualified and their merit is equally judged by the Municipal Council while repeatedly granting them appointment. So as to substantiate the aforesaid contentions, the learned Senior Advocate would urge that the continuous services of the petitioners for almost about eight years, that too, to the satisfaction of the respondents invites the legitimate expectation of the petitioners that their services are likely to be regularized particularly when all the petitioners are educationally qualified to hold such posts. According to him, if there are permanent vacancies on which the petitioners are working on purely temporary clock-hour basis for years together, the least that was expected of the respondents was to regularize their services by conferring permanency. He would further claim that the initial appointment of the petitioners was never under Shikshan Sevak scheme and the petitioners in such an eventuality ought to have been granted permanency by accommodating them on clear vacancies which were advertised. According to him,

since the petitioners have entered services of the respondents after contesting the selection process and the fact that the petitioners were continued in service with notional breaks for years together, the petitioners are required to be appointed on clear vacancies with all the benefits including that of continuity and back wages. So as to substantiate the aforesaid submissions, he has placed reliance on the Apex Court judgments in *State of Haryana & Another Versus Mohinder Singh & Others* [(2017) 4 SCC 587] and *Union of India & Others Versus Central Administrative Tribunal & Others* [(2019) 4 SCC 290] and the Division Bench judgments of this Court in *Sachin Ambadas Dawale & Others Versus State of Maharashtra & Another* [2014(2) Mh.L.J. 36] and *Mahesh Madhukar Wagh & Others Versus State of Maharashtra & Others* [2019(6) Mh.L.J. 8].

In view of the aforesaid submissions, the learned Senior Advocate has prayed for allowing the writ petition.

8. As against above, the learned Assistant Government Pleader would oppose the prayers made in the writ petition. Our attention is invited to the fact that even if the initial entry of the petitioners was pursuant to the advertisement, the same was for a fixed period and that too on clock-hour basis. Our attention is invited to the fact that the petitioners were never granted continuity viz. the petitioner nos.1, 4, 5 and 7 were given break in 2021-22 and the petitioner nos.2, 3 and 6 were given break in 2019-20- and 2021-22. As such, it is urged that the petitioners cannot draw benefit of their continuation in services on temporary basis since they were knowing that their services are continued purely on temporary clock-hour basis and that they have

never worked continuously. She further submitted that if the petitioners opt to compete with other similarly placed candidates in response to the advertisement, they would be given due weightage of their experience and qualification in the matter of selection and appointment. As such, it is claimed that there is no absolute right in the petitioners, much less, the legal right to claim continuation with permanency and back wages. In view of the aforesaid, the Assistant Government Pleader has prayed for the dismissal of the writ petition.

9. We have considered the rival claims.

10. The fact that the petitioners were continued in service for years together and in some cases for more than about five years cannot be said to have been substantiated in the wake of the breaks given to them. They are deemed to have been continued in services had there been no breaks in their service. From the factual matrix, their qualifications and their initial appointments in 2016 and 2017 on purely temporary basis are not in dispute. It is borne out of record that the services of the petitioners were not continuous since each petitioner was not given appointment order for one or the other year. If we consider the contentions canvassed by the petitioners that even if the petitioners were never appointed on probation and that they were working for more than two years continuously, the Court is required to be sensitive to the fact that the initial entry of the petitioners was on purely temporary clock-hour basis. The reliance placed by the petitioners so as to substantiate their case on the judgments in *Mohinder Singh & Others, Central Administrative Tribunal & Others, Sachin Ambadas Dawale & Others* and *Mahesh Madhukar Wagh &*

Others (supra) will hardly be of any assistance to them. Merely because the petitioners have put into continuous service for two or more years, that by itself will not confer right in the petitioners to claim permanency in service particularly when their appointment was for the temporary period in different academic years and there was no continuity till this date. Rather in our opinion the petitioners have failed to demonstrate that their initial appointment was on a clear vacancy since their appointment order clearly speaks of appointment on clock-hour basis. In our opinion, the respondents have rightly claimed that in case if the petitioners desire to compete with other candidates pursuant to the advertisement issued by the respondents, their claims can be considered on priority basis having regard to their qualification and experience. In this background, the claim put forth by the petitioners that they are entitled to be continued in services on permanent basis and that too with release of entire back wages as that of applicable to the post of Assistant Teacher of the School cannot be accepted.

11. Though the learned Senior Advocate for the petitioners has placed reliance on the Division Bench judgment of this Court in *Sachin Ambadas Dawale & Others* (supra), the same cannot be made applicable to the case of the petitioners. The Division Bench has held that the candidates in the said case were holding the posts continuously and it was failure of the respondents to advertise the posts which fact is not aligning with the factual matrix in the case in hand. As such, the contention that the judgment in *Sachin Ambadas Dawale & Others* (supra) supports the case of the petitioner, cannot be accepted.

Apart from above, the fact remains that it was within the knowledge of the petitioners that their initial appointment was on purely temporary clock-hour basis. The petitioners in such an eventuality cannot be said to be entitled for the continuation and grant of permanency on the posts on which they were appointed on purely temporary clock-hour basis.

12. That being so, in our opinion, no case for causing interference is made out. As such, the writ petition fails and is dismissed with no order as to costs. Pending civil applications, if any, shall also stand disposed of.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)