



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

WRIT PETITION NO.154 OF 2025

WITH

WRIT PETITION NO.151 OF 2025

WRIT PETITION NO.154 OF 2025

State of Maharashtra,

Through its Secretary,

Department of Medical Education and Drugs,

Mumbai, and others

... **Petitioners**

Versus

Dr. Pravin Uttamrao Shingade

and others.

... **Respondents**

Smt. S.S. Jachak, Additional Government Pleader for Petitioners.

Shri N.D. Thombre, Counsel for Respondents.

WRIT PETITION NO.151 OF 2025

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and others

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Smt. S.S. Jachak, Additional Government Pleader for Petitioners.

Shri N.D. Thombre, Counsel for Respondent Nos.1, 2, 5 to 7, 9 to 23 and 25 to 28.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : 9th MAY, 2025

ORAL ORDER (PER NITIN W. SAMBRE, J.) :

1. Both these petitions are preferred by the State Government and its authorities questioning the legality and validity of the judgment dated 23rd February, 2024 delivered by the Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur, in Original Applications No.818 and 1026 of 2019.
2. The facts as narrated in the petitions, which are necessary for deciding the points canvassed by Smt. Jachak, learned Additional Government Pleader for the petitioners, are as under :
3. The respondents, who are qualified doctors and teachers, were appointed on the posts of Assistant Professors on *ad hoc* basis till the selected candidates were available through the Maharashtra Public Service Commission. Such appointments were made by the Divisional Selection Board, which was headed by the Deans of the respective Colleges.
4. The details of each of the respondents, viz. their names, educational qualifications and the years of acquisition of such educational qualifications, particulars of their appointments, are narrated in detail in the Original Applications preferred before the Tribunal. It appears that each of the respondents are in the employment of the petitioner-State Government either from 1997-98 or 1998-99 onwards.

5. Since the Maharashtra Public Service Commission was unable to tackle the burden/load of selection so as to fill in the vacancies on temporary basis, as the requirement from various Departments of the Government was unable to meet with the deadline, it was decided by the petitioner-State Government after due deliberation to exclude the selection and appointment of the teachers, like the respondents, in the Medical Education Department, through the Maharashtra Public Service Commission.

6. Since all the respondents were holding the requisite qualifications prescribed by the then Medical Council of India and were appointed through the Divisional Selection Board, their services were regularized on 21st January, 2009. It appears that the respondents approached in earlier round of litigation before the Tribunal claiming benefit of annual increment. Through various Original Applications, which were disposed of by a common order dated 5th April, 2010, wherein the condonation of technical break was ordered and the annual increment, which was withdrawn by the State Government accordingly was directed to be released and paid.

7. The respondents accordingly started pursuing payment of the benefits to which they are entitled in compliance with the order of the Tribunal dated 5th April, 2010. As a sequel of above, the respondents sought fixation of pay in view of continuity of service after the condonation

of break ordered by the Tribunal vide order dated 5th April, 2010, which was confirmed up to the High Court, and claimed benefit pursuant to the Government Resolution dated 10th November, 2009.

8. The revision of pay-scale was sought from 1st January, 2006 in view of the aforesaid Government Resolution. As on the said date, all the respondents were occupying the respective posts of Assistant Professors. Accordingly, they calculated at Annexure A-34 of the Original Application their respective pay entitlements. However, the same was not accepted and the communication impugned before the Tribunal dated 2nd February, 2019 came to be issued wherein the restrictions were incorporated on the continuity of service of the respondents from the date of their initial appointment excluding the increment and earned leave.

9. Since such communication deprives the respondents of claim for revision of pay-scale as per the Government Resolution dated 10th November, 2009, which includes revised Pay Band plus Academic Grade Pay by not considering their service rendered prior to 21st January, 2009 and the entitlement of Sixth Pay Commission, the Original Applications came to be preferred questioning the said communication dated 2nd February, 2019.

10. The Original Applications preferred by the respondents were resisted by the petitioners by filing their reply, thereby claiming that the petitioners were justified in not considering the temporary service rendered by the

respondents, which was on *ad hoc* basis, and as such justified denial of the monetary benefits.

11. The Tribunal after considering the case of the respondents and after having noticed that the petitioner-State Government has issued a Government Resolution dated 8th November, 2023 by extending all the service benefits to one Dr. Rajesh Gaikwad and others, who were similarly placed and were successful before the Tribunal at Principal Seat, against whom Writ Petition No.2303 of 2019 was withdrawn by the petitioner-State proceeded to grant all the benefits to the respondents. The Tribunal having impressed with the decision of the State Government in regard to the similarly placed employees allowed the Original Applications vide impugned judgment. As such, these petitions.

12. Smt. Jachak, learned Additional Government Pleader appearing for the petitioners, has invited our attention to the Government Resolution dated 4th May, 2009 and the enclosures therewith so as to claim that the Tribunal committed an error in applying the principles which the Government adhered to in the matter of Dr. Rajesh Gaikwad with that of the case of the respondents. According to her, when the services of the respondents were made permanent, the conditions on which such permanency was conferred speaks of non-entitlement of any benefit for the period for which the respondents rendered service as a temporary employee. According to her, the Tribunal without looking into other

aspects of the matter has proceeded to pass an order impugned without dwelling on the issue as to whether the respondents are entitled for the benefit.

13. According to Smt. Jachak, learned Additional Government Pleader, the Government Resolution of the Public Health Department cannot be made applicable to the Medical Education Department. As such, according to her, the said Government Resolution dated 8th November, 2023 is not applicable to the case of the respondents, as the service conditions are different.

14. According to Smt. Jachak, when the order dated 21st January, 2009 regularizing the services was passed and even prior thereto, it was a fact within the knowledge of the respondents that their earlier service either from 1997-98 or 1998-99 was temporary/*ad hoc* in nature and as such the same was not to be considered for grant of financial benefit. As such, it is claimed the impugned order passed by the Tribunal without offering a proper opportunity of hearing on the Government Resolution dated 8th November, 2023 is liable to be quashed and set aside.

15. As against above, Shri Thombre, learned counsel appearing for the respondents, would urge that the Tribunal was justified in relying on the Government Resolution dated 8th November, 2023, as the same was issued by the State Government in regard to the similarly-placed candidates, even from the Department of Public Health. According to him, whether the

duties discharged by the respondents on clinical and surgical sides are similar or in addition to the said duties, the respondents are imparting medical education to the students needs to be appreciated. As such, according to him, the Tribunal was justified in extending the benefit of the Government Resolution dated 8th November, 2023, since the respondents were similarly-placed.

16. Shri Thombre would claim that in view of the constitutional mandate, the petitioner-State is required to conduct itself in accordance with Articles 14 and 16 of the Constitution of India by not causing discrimination on the basis of the Department segregation when the duties discharged are similar. As such, he has prayed for dismissal of the petitions.

17. We have considered the rival claims. The admitted position on facts is that till the services of the respondents are regularized or made permanent as an Assistant Professor, all the respondents were working on the said post on *ad hoc* basis pursuant to their selection by the Divisional Selection Board. As such, there is a reason to believe that the initial entry of the respondents was after undergoing the selection process and the same cannot be in any case termed as a back-door entry.

18. The fact remains that the posts which were occupied by the respondents were to be filled in through the State Public Service Commission and it is the failure of the State Public Service Commission to

fill in the posts timely, as the respondents were continued for years together, for more than a decade or so on *ad hoc* basis, wherein they were not only discharging clinical and surgical duties but also that of imparting medical education to the students. The petitioner-State having realized its failure, decided to absorb the services of the respondents on permanent basis on its establishment.

19. It is also not in dispute that in view of the order of the Tribunal dated 5th April, 2010, the technical breaks granted by the petitioners were ordered to be duly condoned by the Tribunal and as such there is a reason to hold that the respondents are in continuous service from the date of their initial appointment on the establishment of the petitioners. The grant of continuity of service pursuant to the order dated 5th April, 2010 passed in the Original Application was though questioned by the State Government before the High Court, however, such proceedings were withdrawn by the State Government thereby condoning the artificial breaks which were granted by the petitioners.

20. The petitioner-State Government is only banking on the conditions which are incorporated in the order of granting permanency, viz. non-attachment of financial benefits of the earlier continuous service rendered by the respondents.

21. We are required to be sensitive to the judgment of the Hon'ble Apex Court in the matter of **State of Uttar Pradesh and others Vs. Arvind Kumar**

Srivastava and others, reported in **(2015) 1 SCC 347**, wherein the Hon'ble Apex Court had an occasion to consider and laid down the legal principles in the matter of service jurisprudence as under :

“22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.”

“22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

“22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India). On the other hand, if the judgment of the court was a personam holding that benefit of the said judgment shall

accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

22. The fact remains that the petitioner-State in a similarly-placed circumstances has withdrawn a Writ Petition No.2303 of 2019 (The State of Maharashtra and Ors. Vs. Dr. Rajesh Gaikwad) and extended all the financial benefits including that of pay fixation from the date of their initial entry on *ad hoc* basis in service. The aforesaid authoritative pronouncement in the matter of **State of Uttar Pradesh and others Vs. Arvind Kumar Srivastava and others** (supra) squarely covers the case in hand, particularly when the State has extended the benefits by withdrawing Writ Petition No.2303 of 2019 from the High Court in the similar set of facts.

23. When confronted, the learned Additional Government Pleader is unable to explain the Court as to how the case of the respondents can be differentiated on facts and also service rules from that of the case of Dr. Rajesh Gaikwad. Rather in the Government Resolution dated 8th November, 2023, it is mentioned that the State has withdrawn its writ petition bearing No.2303 of 2019 thereby accepting the verdict of the Tribunal. The only explanation coming forward from the learned Additional Government Pleader is the Administrative Department being

different than the one to which the respondents belong. We are required to be sensitive to the fact that the State Government has created different Departments for its administrative convenience and not for conducting itself contrary to the constitutional mandate guaranteed under Articles 14 and 16 of the Constitution of India. The petitioner-State is bound to give equality of opportunity in the matter of public employment. Just because it has an authority to incorporate unreasonable condition in the order granting permanency cannot by itself do so contrary to the constitutional rights guaranteed under Article 16 of the Constitution of India and then bank on such condition for justifying the discriminatory approach.

24. In that view of the matter, we see no reason to cause interference in the extra ordinary jurisdiction with the judgment of the Tribunal passed on 23rd February, 2024, which is questioned in both these petitions.

25. That being so, we deem it appropriate to dismiss both these petitions and we accordingly do so.

26. We direct the petitioner-State to release all the benefits to the respondents to which they are entitled, as has been provided in the judgment impugned passed by the Tribunal within a period of three months from today. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)