



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4086 OF 2024

Babita Pokesh Patil (Original Babita
Raghunath Patil) and Ors.

...Petitioners

V/s.

The Associate Professor, Preventive and
Social Medicine, Medical Science, Incharge
Health Unit, Palghar

...Respondent

Ms. Divya Wadekar *for Petitioner.*
None for the Respondent.

CORAM: SANDEEP V. MARNE, J.

DATED: 11 JUNE 2026.

ORAL ORDER:

1) By this Petition, Petitioners have challenged the judgment and order dated 5 December 2022 passed by Member, Industrial Court, Thane, dismissing Revision Application (ULP) No. 86 of 2017 filed by the Petitioners and partly allowing Revision Application (ULP) No. 15 of 2019 filed by the Respondent. The Industrial Court has set aside the findings of the Labour Court on the issues of limitation and maintainability and has held that the Complaint to be barred by limitation and not maintainable. To this limited extent, the Revision Application of the Respondent is allowed. Otherwise, the Industrial Court has maintained the decision of the Labour Court on merits by dismissing the Revision filed by the Petitioners. The net result of the orders passed by

Labour and the Industrial Courts is that the prayer of the Petitioners for setting aside their terminations stands rejected.

2) Respondent is a branch of Grant Medical Hospital/College, Mumbai which is engaged in various activities in educating villagers in respect of various deceases and providing medical services in rural areas. An advertisement was published by the Respondent on 28 February 2004 for filling up the post of Health Superintendent, Health Visitor and Midwife. Petitioners applied in pursuance of the advertisement and were selected for appointments. They were issued appointment orders on 18 August 2004. Petitioner No. 1 was appointed as Midwife, Petitioner Nos. 2 and 3 were appointed as Health Visitors. However on 30 August 2004, Dean of Grant Medical College directed Respondent not to permit Petitioners to take charge of the posts. Petitioners filed original Application No. 920, 921 and 922 of 2004 before Maharashtra Administrative Tribunal, Mumbai (**MAT**). By order dated 9 September 2004, the order dated 30 August 2004 was set aside and the Dean, Grant Medical College was granted liberty to scrutinize the appointments. Respondent once again issued termination letter dated 26 August 2005, which was challenged by the Petitioners by filing Original Application No. 779 of 2005 before the MAT. By interim order dated 8 September 2005, the Tribunal directed reinstatement of the Petitioners since terminations were without following process of law.

3) Petitioners believed that filing of Original Application before the MAT was not a correct remedy and accordingly withdrew the Original Application. They filed Complaint (ULP) No. 48 of 2007 before Labour Court at Thane challenging the termination order dated 26 August 2005. Respondent raised preliminary objection about maintainability of the Complaint, which was rejected by the Labour Court by order dated 14 May 2008. Respondent challenged Labour Court's order dated 14 May 2008 by filing Revision before

Industrial Court which was disposed of by order dated 17 December 2005 directing Labour Court to frame preliminary issue of jurisdiction and to decide the same in an expeditious manner. By order dated 5 February 2010, the Labour Court dismissed the Complaint for want of jurisdiction. Petitioner challenged the Labour Court's order dated 5 February 2010 by filing Revision before the Industrial court. By order dated 22 April 2010, the Industrial Court set aside Labour Court's order dated 5 February 2010 and restored the Complaint directing Labour Court to decide the issue of jurisdiction afresh. The Labour Court once again dismissed the Complaint for want of jurisdiction by order dated 15 July 2010. Thereafter services of the Petitioners were terminated. Petitioners amended the Petition by incorporating the challenge to termination of orders of 2010. In the meantime, Labour Court's order dated 15 July 2010 was challenged by Petitioners by filing Revision Application (ULP) No. 51 of 2010 before the Industrial Court. The Revision was allowed and the order of the Labour Court dated 15 July 2010 was set aside, directing Labour Court to decide their Complaint in accordance with law. The Labour Court allowed the Complaint by judgment and order dated 17 February 2012 directing reinstatement of the Petitioners with full backwages and continuity with effect from 15 July 2010. The Labour Court also restrained Respondent from terminating the Petitioners on the basis of order dated 26 August 2005. The Respondent filed Revision Application ULP No. 28 of 2012 in the Industrial Court, which set aside Labour Court's order dated 17 February 2012 and remanded the Complaint to be decided afresh by its order dated 16 February 2013.

4) By judgment dated 1 August 2017, the Labour Court ultimately dismissed the Complaint of the Petitioners. However, it rejected the objections of Respondent about maintainability of the Complaint and the same being barred by limitation. Cross Revisions were filed against the order of the Labour

Court dated 1 August 2017. Respondent filed Revision Application (ULP) No. 15 of 2019 challenging the findings of the Labour Court on the issue of maintainability and the limitation. Petitioners filed Revision Application (ULP) No. 86 of 2017 challenging the dismissal of the Complaint on merits. By common judgment and order dated 5 December 2022, the Industrial Court has dismissed Revision Application (ULP) No. 86 of 2017 preferred by Petitioners and has partly allowed Revision Application (ULP) No. 15 of 2019 filed by the Respondent. The Industrial Court has held the Complaint to be barred by the limitation and not as maintainable in view of provisions of orders of Order XXIII Rule 3 and 4 of the Code of Civil Procedure, 1908 (**the Code**). Aggrieved by the common judgment and order dated 5 December 2022 passed by the Industrial Court, Petitioners have filed the present Petition.

5) I have heard Ms. Wadekar the learned counsel appearing for the Petitioner and have considered the submissions canvassed by her.

6) It appears that Petitioners were engaged merely on temporary basis vide order dated 18 August 2004 by the Respondent as Midwife and Health Visitor. The appointments were not made on permanent basis nor the Petitioners were placed on probation. No doubt, the appointment order dated 18 August 2004 was issued after holding selection process vide advertisement dated 18 April 2004 published in daily Lokmat. However, the Labour Court has arrived at a conclusion that the eligibility criteria indicated in the advertisement was different than the one required for the post of Midwife and Health Visitor. Allegations of irregularities in the recruitment process were also made, which led to conduct of inquiry. The Enquiry Officer pointed out discrepancies in eligibility criteria reflected in the advertisement, which are as under:

Post	Eligibility criteria required	Eligibility criteria advertised
Midwife	Are qualified midwives or qualified Auxiliary Nurse Midwives and registered with Maharashtra Nursing Council or are eligible for such registration	Prasavika Course (As per Government norms)
Health Visitor	Are qualified Health Visitors and are registered with the Maharashtra Nursing Council or are eligible for such registration or hold the B.Sc. Degree in Nursing recognised by the Indian Nursing Council and registered with Maharashtra Nursing Council or are eligible for such registration. Hold the certificate of having passed the Tuberculosis Head visitors course from the T.B. Control and Training Centre, Nagpur	12 th pass, Arogya Prasarak Course (As per Government norms)

7) It appears that since temporary appointments were sought to be made, Respondent prescribed lesser qualifications in the advertisement than the one required for filling of the post of Midwife and Health Visitor.

8) After noticing the discrepancies in the selection process, the Dean of Grant Medical College directed that Petitioners shall not be permitted to take charge of posts in pursuance of appointment order dated 18 August 2004. Thus, though temporary appointments were issued in favour of the Petitioners on 18 August 2004, stay to the same was granted within 12 days on 30 August 2004. The appointments were subsequently terminated on 26 August 2005. In my view, the Labour and the Industrial Courts have rightly refused to set aside terminations of the Petitioners, who did not hold qualifications required for regular appointments.

9) Ms. Wadekar has strongly sought to contend that the Petitioners cannot be held responsible if Respondent committed the mistake by prescribing lesser qualifications. However, what she misses is the point that Petitioners were never appointed on regular basis. They were sought to be engaged mere temporarily and acquired no right to hold the post on permanent basis. The moment it was detected that there were irregularities in the selection process, the appointing authority had every right to set at naught the irregularly made temporary appointments.

10) Ms. Wadekar has also sought to suggest that the Petitioners continued in service for considerable period of time up to 2010, which factor ought to have been kept in mind while deciding the Complaint on merits. However, continuation of Petitioners in service was owing to the interim stay granted by Maharashtra Administrative Tribunal. No right was created in favour of the Petitioners to remain in service once the Original Application was withdrawn. Thereafter, no interim order was passed in favour of the Petitioners. If initial appointment orders are irregular, Petitioners cannot insist that they must be continued in service merely because interim orders were passed in their favour by the MAT resulting in continuation of their services for some time.

11) So far as the aspect of limitation is concerned, the Labour Court had held the Complaint to be within limitation by its order dated 1 August 2017. Upon Revision preferred by Respondent, the Industrial Court has set aside the said finding of the Labour Court and has held that the Complaint itself was not within limitation. In their Complaint, Petitioners had challenged termination order dated 26 August 2005. Though the said termination orders was earlier subject matter of Original Application No. 779 of 2005 filed before MAT, the same was withdrawn on 16 January 2007 without seeking any liberty

to adopt alternate remedies. It is on this count that the Industrial Court has held the Complaint to be barred by limitation since the same was not filed within a period of 90 days of termination dated 26 August 2005. On the other hand Petitioners also challenged termination order dated 17 April 2007. I do not wish to delve deeper in the issue of limitation since the termination in otherwise found to be in order on merits.

12) So far as the issue of maintainability is concerned, the Industrial Court has referred to provisions of Order XXIII Rules 3 and 4 for holding that the Original Application before MAT was withdrawn without seeking liberty to adopt alternate remedies and that therefore, the Complaint was barred by principles of *res judicata*. Here again, I do not wish to delve deeper into the aspect of the maintainability of Complaint since termination in otherwise found to be valid on merits.

13) Considering the overall conspectus of the case, I am of the view that services of the Petitioners were rightly terminated after noticing irregularities in the selection process, and particularly absence of eligibility criteria by the Petitioners to hold the post of Midwife and Health Visitors on regular basis. Concurrent findings are recorded by the Labour and the Industrial Courts on the issues of validity of termination. I do not find any valid reason to interfere in the said concurrent findings. Petitioners were otherwise engaged temporarily and within 12 days of their engagements, discrepancies were found in the selection process. Petitioners have been terminated in the year 2010 and it is too optimistic to expect reinstatement on temporary basis in the year 2026. I therefore do not find any valid reason to interfere in the impugned order passed by the Industrial Court.

14) Writ Petition is devoid on merits. It is accordingly dismissed with no order as to costs.

[SANDEEP V. MARNE, J.]