
(2003) 08 BOM CK 0095

In the Bombay High Court

Case No : Writ Petition No's. 32, 1129, 1233, 1403, 1536, 1967, 2017, 2584, 2585 and 4147 of 2002 and 317, 318, 759, 935, 2289, 2499, 2705, 2708 and 2834 of 2003

Shobha M. Bhawe (Dr.) and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

Constitution of India, 1950 — Article 320

Citation : (2004) 1 ALLMR 303 : (2004) 4 BomCR 368 : (2004) 101 FLR 109 : (2004) 1 MhLj 97

Hon'ble Judges : R.J. Kochar, J;A.P. Deshpande, J

Bench : Division Bench

Advocate : Anand Parchure, Vyas, N.W. Sambre, Thakre, A.V. Khare, Marpakwar, Pathak, Mamdalwar, S.V. Naik, A.V. Bhide, N.R. Borkar and Khandekar, for the Appellant; A.G. Mujumdar, A.G.P., T.R. Kankale, A.G.P., N.S. Khubalkar, AGP, S.S. Wandile, AGP, Tayade and Anjali Joshi, T.D. Khade, AGP, A.S. Sonare, AGP, S.J. Jichkar, AGP, T.R. Kankale, AGP and A.S. Fulzele, AGP, for the Respondent

Final Decision : Partly Allowed

Judgement

A.P. Deshpande, J.—The petitioners are presently working as lecturers in the different faculties in Government Medical Colleges and Hospitals located in the State of Maharashtra. The posts held by the petitioners under the Rules are required to be filled in by following the selection procedure through Maharashtra Public Service Commission (hereinafter referred to as MPSC, for short), by advertising the posts and by calling applications from the eligible candidates. As various posts in the cadre of lecturers remained to be filled in for various reasons, the petitioners came to be appointed on an ad hoc basis by the State Government as a stop gap arrangement. All the petitioners are appointed under different appointment orders for a specified period, ranging from less than a month to about four months. After expiry of the periods specified in the appointment orders, they are reappointed by issuing fresh appointment orders

from time to time and are continued as ad hoc and temporary. Most of the petitioners have worked in the respective posts for about 2-3 years except in one petition where the petitioner has in all put in five years of service.

2. None of the petitioners are regularly selected candidates and are required to be replaced by a duly selected candidate by MPSC in accordance with the procedure prescribed. In some of the petitions the services of the petitioners were sought to be terminated with a view to appoint another set of ad hoc employees and in some of the cases, non-bonded candidates were sought to be replaced by bonded candidates, and as such, the petitions were filed before the Maharashtra Administrative Tribunal, seeking a declaration that one set of ad hoc employees cannot be replaced by another set of ad hoc employees and in the submission of the petitioners, as the non-bonded candidates and the bonded candidates are to be appointed on an ad hoc basis, one cannot replace the other. The Maharashtra Administrative Tribunal, did protect the services of the petitioners and it did declare that the services of the petitioners cannot be replaced by another ad hoc employee except the bonded candidates. Aggrieved by the exception made by the M.A.T., permitting the State Government to appoint bonded candidates in place of non-bonded candidates, the present petitions have been filed.

3. Insofar as the grievance made by the petitioners that they ought not to be replaced by bonded candidates does not really survive in view of the stand taken by the State Government, which is consistent with the policy decision contained in Government Resolution dated 10th April, 2003. By the said Govt. Resolution, a policy decision is taken that the earlier policy of replacing non-bonded candidates by bonded candidates, being inconsistent with the law laid down by the Apex Court "that one set of ad hoc employees should not be replaced by another set of ad hoc employees", the same is discontinued and it is then laid down that non-bonded candidates ought not to be replaced by bonded candidates as appointments of both the category of candidates are, in fact, on ad hoc basis. This being the position, there is no dispute that non-bonded candidates cannot, either be replaced by another non-bonded candidates or by bonded candidates and vice-verse. Having regard to the stand taken by the State Government, it is clear that in all the petitions relief claimed by the petitioners seeking quashing of that part of the order passed by the M.A.T. which permits replacement of ad hoc non-bonded candidates by appointment of bonded candidates on ad hoc basis, has to be granted.

4. The next question that arises for adjudication is as to whether the petitioners are entitled to claim regularisation in employment? It is not in dispute that there is absolutely no rule which permits such a regularisation. More so, the Rules oblige the State to make the appointments of lecturers by following a due procedure and by selection through MPSC. In the present petitions, the MPSC is not even joined as a party/respondent. The State is under an obligation to consult MPSC while filling in the posts concerned. The said obligation is cast by

Article 320 of the Constitution of India. This being the position in law, granting regularisation to the petitioners, would be illegal, besides being unjust and unfair to those candidates, who want to compete when substantive appointments are to be made in the concerned posts by following the selection process by MPSC, Perusal of the Judgment of the Apex Court reported in Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan, , it would be seen that the same clinches the issue. The Apex Court has held that mere continuance of incumbents in the office on an ad hoc basis, without concurrence of the authority, with whom consultation is a must, does not clothe the incumbents with a right to claim regularisation and no fault can be found with the termination of the service. The present case is squarely covered by the decision of the Apex Court.

5. The learned Counsel for the petitioners placed reliance on judgment of the Apex Court reported in State of Haryana and others Vs. Piara Singh and others etc. etc., . The said case is in regard to the regularisation of work charge/casual/daily wage workers, whose, services were governed by the Labour laws. The said Judgment does not advance the proposition put forth by the petitioner, seeking regularisation of the lecturers, whose appointments are regulated by statutory Rules and are to be made by the intervention of Public Service Commission. The next Judgment on which reliance is placed is reported in J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., . In the said Judgment, the Apex Court has held that ad hoc appointments cannot be treated to have been made under the Rules. The Court in para No. 7 of the said Judgment has observed that: "it is settled law that once statutory Rules have been made, the appointments shall be only in accordance with the rules." The Court further proceeded to observe that : "The rule prescribes direct recruitment/promotion by selection as the mode of recruitment which would be done only by PSC or promotion committee duly constituted and by no other body. Therefore, ad hoc employee should be replaced as expeditiously as possible by direct recruits. A little leeway to make ad hoc appointment due to emergent exigencies does not clothe the executive government with power to relax the recruitment or to regularise such appointment nor to claim such appointments to be regular or in accordance with rules. Back door ad hoc appointments at the behest of power source or otherwise and recruitment according to rules are mutually antagonistic and strange bed partners. They cannot be co-exist in the same sheath. The former is in negation of fair play. The latter are the products of order and regularity. Every eligible person not necessarily be fit to be appointed to a post or office under the State selection according to rules by a properly constituted Commission and fitment for appointment assures fairness in selection and inhibits arbitrariness in appointments." We fail to understand as to how this Judgment supports the case of the petitioners. On the contrary it concludes the case against the petitioners. In this view of the matter, we have no hesitation in rejecting the claim of the petitioners for regularisation.

In the result, writ petitions are partly allowed.

We declare that the petitioners, who are ad hoc appointees shall not be replaced by another set of ad hoc appointees, whether bonded or non-bonded.

To the extent the orders passed by the Maharashtra Administrative Tribunal are in conflict with the above declaration, they shall stand quashed and set aside,

We reject the claim of the petitioners who are ad hoc appointees, to regularisation. Rule is made absolute in the above terms. There shall be no orders as to costs.