

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

PUBLIC INTEREST LITIGATION NO.47 OF 2021

SYED IMTIAZ JALEEL

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Shri Syed Imtiaz Jaleel, petitioner in person.

Shri Ashutosh Kumbhakoni, Advocate General a/w Shri S.G. Karlekar, AGP,
for respondent Nos.1 to 11/ State.

Shri Shrimant Mundhe, Advocate for respondent No.12.

Shri A.G. Talhar, ASGI, for respondent Nos.13 and 14.

Shri S.G. Chapalgaonkar, Advocate for respondent Nos.15 and 16.

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CORAM : RAVINDRA V. GHUGE

&

S.G. MEHARE, JJ.

DATE :- 08th July, 2021

Per Court :-

Recruitment in Class I to Class IV categories

1. The learned Advocate General of the State of Maharashtra has pointed out an additional affidavit filed on behalf of respondent No.2 by Dr.Sadhana Tayade, Director, Health Services, Public Health Department, Government of Maharashtra, Mumbai dated 03.07.2021. He specifically points out paragraphs 3, 4 and 5 of the said affidavit, which read thus:-

“3. It appears from the perusal of the aforesaid file that a meeting in the office of the Hon’ble Governor was held wherein the Chairman of MPSC and the Secretary, Public Health Department were present. In the said meeting the Chairman, MPSC appraised that the MPSC can complete

the recruitment process within time. In view of the aforesaid statement by chairman, MPSC, the office of the Hon'ble Governor has returned the file to the Public Health Department.

4. *In any case, it is also pertinent to note that the Government Resolution dated 10th October, 2018, by which the posts of Civil Surgeon Cadre, District Health Officer cadre and Specialty cadre were decided to be taken out from the purview of MPSC, was to remain effective only till 30.09.2021.*
5. *In that view of the matter, now the only option available with the Department is to send appropriate requisition to the MPSC to fill in the vacancies of the posts of Civil Surgeon, District Health Officer and Speciality cadre, in accordance with the extant Recruitment Rules. I say that a proposal is already moved by the Department in the aforesaid direction and a decision in the aforesaid regard is likely to be taken immediately and the Department will request the Chairman, MPSC to make an endeavour to complete the recruitment process at the earliest, as assured to the Hon'ble Governor."*

2. The learned Advocate General further submits that the only option available with the Government is to send a requisition to respondent No.17/ MPSC so as to initiate the selection process for filling up the vacancies in the Public Health Department, especially in the Civil Surgeon cadre, District Health Officers cadre and Specialty cadre. He graciously submits that he would make an endeavour to ensure that the requisition is forwarded to respondent No.17/ MPSC in less than two weeks.

3. The learned advocate appearing for respondent No.17/ MPSC submits that he would require one week thereafter, to collect instructions

as regards the follow-up action post receipt of requisition and the steps that the MPSC would initiate in order to commence the selection process.

4. The petitioner-in-person, who is the Member of Parliament for Aurangabad constituency, submits that as the Parliament would be in session, he would not be available from 19th July, 2021 till 13th August, 2021.

5. As regards the issue of vacancies in the Health Department at the rural levels in the State of Maharashtra, which recruitment would be under the Rural Development Department and the recruitment process is to be performed by the respective Zilla Parishads, the learned Advocate General submits that since this Public Interest Litigation is not an adversarial litigation and the recruitment in the Health Department is bound to strengthen the health services that would be made available to the people from all strata of the society, he would volunteer to collect instructions as regards the vacancies in the Civil Hospitals, Primary Health Centres and all such medical centres, which are under the aegis of the Zilla Parishads within the scope of the Rural Development Department. As such, this issue would be taken up in the next hearing on this PIL.

6. As such, we would be taking up this issue in a hearing which we post on 20.08.2021 at 02:30 PM.

Allegations against Dr.Ashish Bhivapurkar

7. On 16.06.2021, the petitioner in person, had taken up the issue with regard to Dr.Ashish Bhivapurkar, Cardio Vascular Thoracic Surgeon, alleging that despite being deputed to serve the Government Medical College and Hospital, Aurangabad (GMCH) more than two years ago, he had not joined his place of transfer at Aurangabad and was drawing salary without serving the hospital. This Court (Coram : Honourable the Chief Justice and Ravindra V. Ghuge, J.), therefore, granted liberty to the petitioner to file an additional affidavit within 24 hours, vide our order dated 16.06.2021.

8. The petitioner, accordingly, has entered an affidavit dated 17.06.2021. In paragraph 11 of the said affidavit, the petitioner stated that Dr.Bhivapurkar was appointed in April, 2018 at GMCH, Aurangabad and has earned his salaries without working at the hospital and without treating any patient. This Court (Coram : Honourable the Chief Justice and Ravindra V. Ghuge, J.), therefore, observed in paragraph 7 of the order dated 18.06.2021 that the Court would like the Director of Health Services to deal with paragraph 11, in an affidavit to be filed by her in terms of the said order. Dr.Kananbala Avinash Yelikar, Dean, GMCH, Aurangabad filed an affidavit on 30.06.2021 stating in paragraph 4 that Dr.Bhivapurkar joined duties on 19.04.2018 as the Professor and Head of Department of the Cardio Vascular Thoracic Surgery (CVTS) at

Aurangabad. Since then he has been working in the institute till date on the said post, regularly. He has been paid for his duties and work. From the face of the departmental and other records, it is evident that Dr.Bhivapurkar had worked as the Professor and Head in the CVTS Department.

9. We found that the above stated affidavit, on the one hand, gave a clean chit to Dr.Bhivapurkar and on the other hand, no details of the duties that he has discharged in the hospital, were brought on record so as to contradict the statement made by the petitioner in his affidavit. Hence, on 30.06.2021, as the hearing in this PIL commenced to the extent of Dr.Bhivapurkar, we had directed the learned AGP to place before us the attendance record of the said Professor from April, 2018 to May, 2021, Operation Register and the Register of monthly Medical College Council meetings. Post lunch, these documents were placed before us by the learned AGP and since we found certain deficiencies, noticed even at a cursory glance at these documents, we adjourned the matter so as to enable us to have a close look at these documents before we could deal with the allegations made by the petitioner. While adjourning the matter to 05.07.2021, we requested the learned AGP to ensure that the bio-metric attendance record of all professors and teachers of the CVTS Department from April, 2018 to March, 2020 were produced before us, keeping in view that the bio-metric attendance was prohibited after the

national lock-down from 24.03.2020 in view of the Covid-19 pandemic.

10. After we commenced the hearing on this PIL on the issue of Dr.Bhivapurkar today, the petitioner placed before us the copy of the judgment dated 11.07.2018 delivered by the learned Maharashtra Administrative Tribunal, Mumbai (MAT) on Original Application No.535/2017 filed by Dr.Bhivapurkar for challenging his transfer order dated 07.06.2017 from Mumbai to the GMCH at Aurangabad. Vide the said judgment, the Original Application filed by Dr.Bhivapurkar was dismissed thereby, upholding his transfer at Aurangabad.

11. Before we advert to the contents of the judgment dated 11.07.2018 delivered by the learned MAT, we need to make observations as regards the bio-metric attendance mandated by the Indian Medical Council. In paragraphs 2 and 3 of our order dated 06.07.2021, we had noted as under :-

- “2. *The petitioner in person has tendered a decision by the Indian Medical Council, Board of Governors dated 19.05.2020 which is in continuation of an earlier communication to all the Deans, Principals of Medical Colleges in India, dated 13.09.2019, to indicate that it was mandatory for all Medical Colleges/ Institutions to implement “Online Faculty Attendance Monitoring System” (OFAMOS). These 2 documents are taken on record and are collectively marked as Exhibit X-1 for identification.*
3. *The learned AGP has placed before us a Government Resolution dated 23.06.2016 which mandates implementation of “Aadhar Enabled Bio-metric Attendance System” (AEBAS) in all Government Health Institutions in Maharashtra. The said Government*

Resolution is marked as Exhibit X-2 for identification.”

12. Today, the learned AGP has stated, on instructions, that the OFAMOS was not implemented in the GMCH at Aurangabad as most of the bio-metric machines supplied by the MCI were defective. A letter dated 21.05.2020 is cited before us, which is addressed by the Dean, GMCH, Aurangabad to Dr.Reena Nayyar, In-charge Secretary, MCI, New Delhi, which is taken on record and marked as “X-3” for identification. The learned AGP submits that the said communication would evidence the grievance voiced by the Dean as regards the defective 14 bio-metric machines and 05 machines, which were yet to be installed. On instructions, he candidly submits that neither was any response received from the Secretary, MCI, nor did the Dean thereafter, pursue the matter.

13. We have carefully perused the records shown to us by the learned AGP, which are as follows :-

(a) Attendance Register No.1 (Class 1 Class 2). From 2016 upto June, 2021.

(b) Attendance Register of College Council meetings. From 19.07.2016 to 04.12.2018.

(c) Attendance Register of College Council meetings. From 01.01.2019 to 01.01.2020.

(d) CVTS OT Procedure Book, 2019.

14. From perusal of these records, we noticed the following aspects :-

(a) Insofar as the surgeries performed by Dr.Bhivapurkar in between 19.04.2018 till 03.12.2019 are concerned, he has performed only 08 surgeries between 02.01.2019 till 03.12.2019.

(b) Insofar as 62 meetings of the College Council that were held in between 24.05.2018 to 22.06.2021, Dr.Bhivapurkar attended only one meeting on 22.06.2021 and rest of the meetings were attended by a person by name Smt.Suchita Joshi, who was the OSD of the said Department.

(c) It cannot be ignored that during this entire period, Dr.Bhivapurkar was shown to be present in the GMCH, Aurangabad (going by the physical attendance records), though only 8 surgeries were performed on the dates mentioned above.

(d) The manual attendance register indicates that Dr.Bhivapurkar joined on 19.04.2018, but did not sign the attendance register for that month.

(e) The manual attendance register reflects the following facts:-

a.	He joined on 19 th of April 2018	But did not sign attendance register of the said month.
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b.	May 2018	Shows Dr. More was on leave on 9, 10, 11 & 28, but he put his signatures.
c.	Till October 2018 except single holiday in June 2018	No holiday columns were shown in the register, however, Dr.Bhivapurkar put signatures on Sunday and other holidays. Dr. Bhivapurkar signed even on 15 th August, 2018.
d.	October 2018	Signed even on Sunday.
e.	January 2019	4 th and 26 th day left blank.
f.	February 2019 onwards	Signed on all days of month.
g.	June and July 2019	He signed, but then scored it entirely.
h.	August to September 2019	Some corrections are made applying whitener.
i.	July 2020	Tried to sign on 19 th the Sunday.
j.	August 2020 to April 2021	Bears his sole name and signatures.

(f) It is, therefore, apparent that the attendance register raises a serious doubt about its genuineness. The fact that Dr.Bhivapurkar appears to have signed on all days even in the months when he was on leave and later on noticing the mistake has scored out the attendance, makes things more serious.

15. Referring to the judgment dated 11.07.2018 delivered by the learned MAT would be a fruitful exercise. Following factors came up before the learned MAT :-

(a) Dr.Bhivapurkar, as an applicant before the learned MAT, was said to have been posted as Professor at GMCH, Aurangabad vide the Government order dated 15.09.2014 on the recommendation letter of the

Maharashtra Public Service Commission (MPSC) dated 28.05.2014. He was relieved from the J.J. Medical College, Mumbai on 09.10.2014 (Afternoon) to join the GMCH, Aurangabad, but he never joined the post and remained absence from 10.10.2014 to 07.11.2014 (Before noon).

(b) From 09.10.2014 to 07.11.2014, when Dr.Bhivapurkar did not report for duties at Aurangabad, he succeeded in getting this period sanctioned as extraordinary leave.

(c) Dr.Bhivapurkar was relieved from Mumbai on 09.06.2017 and the record at GMCH, Aurangabad indicates that he purportedly reported on 19.04.2018 and did not sign the register in that month.

16. In view of the above, the petitioner contends that the case of Dr.Bhivapurkar may appear to be a solitary case before this Court. However, similar such cases in the medical department in the State of Maharashtra cannot be ruled out. Hence, he prays for a judicial enquiry into this matter.

17. Insofar as the bio-metric attendance is concerned, the Government Resolution dated 23.06.2016 issued by the Government of Maharashtra, Public Health Department (Exhibit-X-2) before us, indicates the purpose for which the bio-metric attendance Aadhar Enabled Bio-metric Attendance System (AEBAS) was made compulsory in paragraph 3 of the Government Resolution which reads as under :-

“3. *In addition, Hon’ble Chief Minister, Government of Maharashtra (GoM), has directed Public Health Department vide its letter dated 25th February, 2016, to review Biometric system in all the public health care facilities, so that the Aadhaar of the staff and salary can be linked. The letter advises, to replicate the experience of Government of India wherein Hon. Prime Minister has effectively used the biometric system with Aadhaar for increasing the efficiency and accountability in the functioning of officers. In this regard Govt. Resolution, Govt. Addendum and Govt. Circular mentioned at Ref. 1 to 3, has been issued.”*

18. In the resolution at page 3, clause 3 mandates the concerned employee to register himself and the responsibility of entering correct information on the portal was with such personnel. The learned AGP submits, on instructions from the Dean, GMCH, Aurangabad, that Dr.Bhivapurkar did not get himself registered on the central portal and never recorded his attendance through AEBAS. This conduct of Dr.Bhivapurkar further strengthens the suspicion expressed by the petitioner that on the one hand, he avoided AEBAS and on the other hand, he has hurriedly marked his presence in the attendance register after noticing that his issue is being taken up in this PIL, which further indicates that he was relying on the physical attendance register so as to manipulate his attendance. In his hurriedness in signing for all months for almost three years after purportedly joining at Aurangabad, he has also marked his attendance in the months in which he was on leave and even on Sundays and national holidays.

19. We make it clear that we have not formed any opinion about whether, Dr.Bhivapurkar has committed any misconduct or not since it is not within our jurisdiction to draw such conclusion. It is based on the material before us and as this serious issue has been raised by the petitioner in this PIL, that we deem it appropriate to direct the appropriate authority to initiate a departmental enquiry in the light of the allegations made against Dr.Bhivapurkar and the material that we have noticed as reproduced above. The Dean, GMCH, Aurangabad, present in the Court, informs the learned AGP to state that it would be the Director of Medical Education, State of Maharashtra, who would be the competent authority to initiate the disciplinary proceedings against Dr.Bhivapurkar.

20. We, therefore, direct the Director of Medical Education, Maharashtra State, to initiate such disciplinary proceedings so as to investigate as to whether, the allegations against Dr.Bhivapurkar could turn out to be true and in the event of the said allegations being true, appropriate action would then have to be initiated by the Director of Medical Education strictly in accordance with the service rules applicable.

21. We direct the learned Registrar (Judicial) of this Court as well as the Dean, GMCH, Aurangabad to place a copy of this order before Dr.Dilip Mhaiskar, in-charge Director of Medical Education, State of Maharashtra, within one week so as to enable the said authority to follow the due process of law and initiate disciplinary proceedings with reference

to the attendance issue of Dr.Bhivapurkar.

22. We expect the learned AGP to place a compliance report of our directions, on the next date.

23. We also direct the learned Registrar (Judicial) of this Court to draw photostat copies of the original documents that have been supplied to us as noted above and preserve them in a sealed envelope in his custody and thereafter, return the original documents to the learned AGP under due acknowledgment.

24. Stand over to 20.08.2021 at 02:30 PM.

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(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)