

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 171 OF 2019**

**DISTRICT : AURANGABAD**

Dr. Vaishali D/o Rangnath Jadhav, )  
Age : 39 years, Occu. : Medical officer Group-A)  
(Anaesthetist), Presenting working at District )  
Civil Hospital, Chikalthana, Aurangabad. )

.. **APPLICANT**

**V E R S U S**

1. The State of Maharashtra, )  
Through, Principal Secretary, )  
Public Health Department, Mantralaya, )  
10<sup>th</sup> Floor, G.T. Hospital Building, New )  
Mantralaya, Mumbai. )
2. The Secretary, )  
Maharashtra Public Service Commission,) )  
5-8 floor, M.T.N.L. Building, Maharshi )  
Karve Road, Cooperage, Mumbai -21. )
3. The Director of Health Services, )  
5<sup>th</sup> Floor, Arogya Bhavan, St. Georges )  
Hospital, Campus, near CST, Mumbai-1.)
4. Dr. Sunil Gangadhar Pallegad, )  
Age-Major, Occ- Medical Officer Group-A)  
(Anaesthetist) District Civil Hospital, Buldhana.)

.. **RESPONDENTS**

-----  
**APPEARANCE** : Shri J.S. Deshmukh, Advocate for the  
Applicant.

: Shri I.S. Thorat, P.O. for the Respondent Nos.  
1 to 3.

: Shri B.N. Gadegaonkar, Advocate for  
respondent No. 4  
-----

-----  
**CORAM** : **Shri V.D. Dongre, Member (J)**  
**and**  
**Shri Bijay Kumar, Member (A)**  
**Reserved on** : **12.01.2023**  
**Pronounced on** : **03.02.2023**  
-----

**O R D E R**

**(Per : Shri V.D. Dongre, Member (J))**

1. The present Original Application is filed challenging the impugned order of appointment dated 15.12.2018 (Annexure A-9) of the respondent No. 4 to the post of Anaesthetist from S.T. category and for considering the claim of the applicant for the said post from S.T. category.

2. The facts in brief giving rise to this application can be stated as follows :-

(a) The applicant belongs to S.T. category by caste Koli-Malhar as reflected in caste certificate and caste validity certificate Annexure A-1 collectively. She passed MBBS examination and completed her inter-ship in 2004 as reflected in degree certificate conferred in May 2005 (part of Annexure A-2 collectively). She completed her post graduate diploma in Anaesthesia from Poona University in June, 2007 as reflected in diploma certificate and

additional medical qualification registration certificate (part of Annexure A-2 collectively). Therefore, she possessed necessary qualification for the post of Medical Officer with specialist in Anaesthesia.

(b) The applicant was initially selected and appointed as Medical officer (Anaesthetist) at Sub-District Hospital, Sillod Dist. Aurangabad w.e.f. 25.08.2007 for 11 months. As stated she worked in the said hospital for period from 25.08.2007 to 24.07.2008, 30.07.2008 to 29.06.2009 and 02.07.2009 to 14.03.2010 as reflected in certification dated 25.05.2018 (part of Annexure A-3 collectively). Thereafter, from time to time she was appointed on the post of Medical Officer till the candidate from MPSC is made available by giving one or two days technical break during the period of 10.05.2010 to 14.07.2014 as reflected in experience certificate dated 01.06.2018 (part of Annexure A-3 collectively) by the Superintendent, Regional Mental Hospital, Yerwada, Pune. She also worked as Medical officer (Anaesthetist) from 18.07.2014 to 01.01.2018 as per experience certificate dated 24.05.2018 (part of Annexure A-3 collectively) issued by the Medical Superintendent, Rural Hospital, Phulambri, Dist. Aurangabad and from

01.01.2018 onwards till issuance of experience certificate dated 26.05.2018 (part of Annexure A-3 collectively) issued by the Civil Surgeon, Civil Hospital, Aurangabad.

(c) Meanwhile the respondent No. 2 i.e. the Maharashtra Public Service Commission (in short, 'MPSC') issued advertisement No. 37/2017 dated 17.05.2017 (Annexure A-5) for filling up 10 posts of Anaesthetist, Maharashtra Medical and Health Services Group-A, thereby inviting online applications from the interested candidates. This is regular appointment on the post of Anaesthetist Group-A, Class-I post in the pay scale of Rs. 15,600-39,100/-+G.P. Rs. 6600/-, thereby out of 10 posts, one post was reserved for ST general category. The eligibility/qualification/experience prescribed for this post was also provided in the said advertisement in terms of clause Nos. 4.7 and 4.8 as follows :-

*“४.७ शैक्षणिक अर्हता - Candidate must Possess*

*4.7.1 M.B.B.S. degree of a statutory University or any other qualification specified in the First Schedule or Second Schedule to the Indian Medical Council Act, 1956; AND*

*4.7.2 Post-graduate degree in Anaesthesia or M.D. (General Medicine) with D.A. or post-graduate*

*Diploma in Anaesthesia (D.A.) or a qualification accepted as equivalent by the Medical Council of India, AND.*

*४.८ अनुभव -Experience as Anaesthetist in a big hospital for not less than 5 years in the case of those holding post-graduate degree and for not less than 7 years in the case of those holding post graduate diploma gained after acquiring the MBBS degree.”*

(d) Accordingly the applicant made online application from S.T. (General), as well as, from Open category thereby mentioning the experience sought in view of clause 4.8 of the advertisement with requisite fees of Rs. 523/- for Open, as well as, S.T. category on 06.06.2017 (Annexure A-6). Vide call letter dated 21.05.2018 (Annexure A-7), she was called for interview on 04.06.2018. Thereafter, the respondent No. 2 published merit list of 15 candidates (part of Annexure A-8 collectively, page No. 40 of paper book), out of which 6 candidates were recommended for appointment on the post of Anaesthetist on 18.06.2018 (part of Annexure A-8 collectively, page No. 39 of paper book).

(e) The applicant secured 44 marks in interview and was placed at Sr. No. 12, whereas the respondent No. 4 i.e.

Pallewad Sunil Gangadharrao, who secured 45 marks' was placed at Sr. No. 11 in the said merit list (page No. 40 of the paper book). Both of them belong to S.T. category. The respondent No. 4 as per merit list (part of Annexure A-8 collectively, page No. 39 of paper book) was recommended from S.T. category.

(f) It is contended that the applicant was shocked after perusal of some of the names of recommended candidates for the post of Anaesthetist. As per her knowledge and information gathered by her some of the candidates, who do not possess requisite experience of five years after post graduate degree in Anaesthesia and 7 years after post graduate diploma in Anaesthesia (D.A.) were selected and were recommended for the post of Anaesthetist. She therefore, made two separate representations dated 20.06.2018 (Annexure A-9 collectively) addressed to the MPSC and respondent No. 1 State of Maharashtra respectively requesting them to verify the experience of recommended candidates after completion of their respective degree and diploma in Anaesthesia. Upon repeated persuasion made by the applicant, the respondent No. 2 by communication dated 02.08.2018 (Annexure A-10)

addressed to the respondent No. 1 requested the respondent No. 1 to take appropriate action or to take proper enquiry pursuant to the objection made by the applicant and to communicate outcome of the enquiry to the applicant under copy to the respondent No. 2. But the applicant was not communicated in respect of his objection. However, thereafter, the respondent No. 1 issued appointment order dated 15.12.2018 (Annexure A-11), thereby appointed six candidates on the post of Anaesthetist and the name of the respondent No. 4 is at Sr. No. 6 in the said order. The respondent No. 4 was posted at District Hospital, Buldhana on vacant post.

(g) In the circumstances as above, it is the contention of the applicant that the appointment of respondent No. 4 to the post of Anaesthetist as per the order dated 15.12.2018 (Annexure A-11) is illegal, as her appointment is without requisite experience. According to the applicant, in the merit list eligible candidates having experience of five years as Anaesthetist and therefore, he was only entitled for appointment in place of respondent No. 4. She therefore, made two separate representations dated 12.02.2019 (Annexure A-12 collectively) to the respondent Nos. 1 and 2

respectively ventilating his grievance and for taking corrective steps.

(h) It is further submitted that the applicant searched online information about the admissions of candidates from CPS course in Mumbai and Thane Medical College for last 5-6 years. She came across the vital fact that the respondent No. 4 was selected to CPS D.A. course for August-2013 batch as reflected in document dated 23.07.2013 (Annexure A-13). Even if the respondent No. 4 had completed the said course in regular academic period of two years, same is completed after August-2015. In view that the respondent No. 4 did not possess the requisite experience i.e. of 7 years of the post of Anaesthetist for regular appointment of Anaesthetist as per Clause 408 of the advertisement. Hence, the present Original Application.

3. The affidavit in reply on behalf of respondent Nos. 1 and 3 is filed by one Shri Dr. Sunita Vijay Golhait, working as In-charge Chief Administrative Officer, in the office of Deputy Director of Health Services, Aurangabad Circle, Aurangabad (page Nos. 86 to 92 of the paper book), thereby she denied all the adverse contentions raised in the Original Application.



(i) The contentions raised by the applicant regarding advertisement for filling up the post of Anaesthetist and educational qualification and experience mentioned therein are not disputed. However, so far as appointment of respondent No. 4 to the post of Anaesthetist is concerned, it is submitted that the MPSC informed the Government that there was no mention of Anaesthetist as Nature of Post in the experience certificate produced by Dr. Pallewad at the time of interview for the said post and that the appointment to Dr. Pallewad be given only after verifying that he is having experience as Anaesthetist.

(ii) Accordingly, the Government called information regarding nature of post of Dr. Pallewad from the Director of Health Services. In response to this, the Civil Surgeon, Nanded vide letter dated 20.10.2018 informed that Dr. Pallewad is giving service as Anaesthetist at Trauma Care Unit Bhokar, Dist. Nanded.

(iii) Thereafter accordingly, the Government vide impugned communication/order dated 15.12.2018 issued appointment to the respondent No. 4 i.e. Dr. Pallewad.

Hence, there is no merit in the present Original Application and the same is liable to be dismissed.

4. The affidavit in reply is separately filed on behalf of respondent No. 2 i.e. the MPSC by one Sukhada Sanjay Amrite, working as Deputy Secretary in the office of respondent No. 2 (page Nos. 67 to 85). Thereby the contention raised by the applicant regarding issuance of advertisement to the post of Anaesthetist, educational qualification and experience mentioned therein and preparation of select list and recommendation of candidates are admitted.

(i) It is submitted that the said respondent No. 4 Dr. Sunil Gangadhar Pallewad claimed the total experience of 8 years, 2 months and 9 days in his application form for the said post, which was more than the cut-off experience required as per the shortlisting criteria. Therefore, the respondent No. 4 Dr. Pallewad was rightly interviewed for the said post. The respondent No. 4 had produced the experience certificate accordingly and as per his experience certificate, the respondent No. 4 had experience of 7 years, 4 months and 19 days, which was more than the experience required as per the shortlisting criteria for the said post.

(ii) However, it was found that there was no mention of Anaesthetist as nature of post in experience certificate produced by Dr. Pallewad. Hence, the respondent No. 2 in recommendation letter dated 22.06.2018 (Annexure R-1) requested the Government to verify the nature of post of respondent No. 4 as Anaesthesia as claimed in experience certificate before giving appointment letter.

(iii) Lastly it is admitted that the applicant and respondent No. 4 both belong to S.T. category. The respondent No. 4 Dr. Palleward however secured 45 marks as against the applicant, who secured 44 marks. In view of that the respondent No. 4 was being finally selected after interview and was recommended accordingly from S.T. category, but subject to verification of experience certificate.

5. The respondent No. 4 filed his affidavit in reply separately (page Nos. 93 to 96 of the paper book). Thereby he denied all the adverse contentions raised in the O.A. It is specifically submitted that the Government vide order dated 15.12.2018 issued appointment order for 6 candidates for the post of Anaesthetist, in which the name of respondent No. 4 was included from S.T.

category. He secured 45 marks in interview, which marks were more than the marks secured by applicant. He has fulfilled all the eligibility criteria in respect of educational qualification and necessary experience for the post of Anaesthetist as prescribed in the advertisement. Hence, he was given appointment rightly. Therefore, there is no merit in the present Original Application and the same is liable to be dismissed.

6. We have heard the arguments advanced by Shri J.S. Deshmukh, learned Advocate for the applicant on one hand, Shri I.S. Thorat, learned Presenting Officer for respondent Nos. 1 to 3 and Shri B.N. Gadegaonkar, learned Advocate for respondent No. 4 on the other hand.

7. Undisputedly, the respondent No. 2 issued advertisement No. 37/2017 dated 17.05.2017 (Annexure A-5) for filling up in all 10 posts of Anaesthetist. Amongst those 10 vacancies, one post was reserved for S.T. category. The applicant and respondent No. 4 both belong to S.T. category. As per the said advertisement as per clause 4.7 educational qualification and as per clause 4.8 experience were prescribed for the post of Anaesthetist, which are already reproduced in earlier para No. 2 (c) of the judgment.

8. Further undisputedly after conducting interview, the respondent No. 2 i.e. MPSC issued merit list (part of Annexure A-8 collectively at page Nos. 40 and 41 of the paper book), which was of 15 candidates. The said list shows the applicant and the respondent No. 4 belong to S.T. category. The respondent No. 4, who is shown at Sr. No. 11 in the said merit list secured 45 marks, whereas the applicant, who is shown at Sr. No. 12 in the said list secured 44 marks.

9. Ultimately, the MPSC issued recommended list of six candidates on 18.06.2018 (part of Annexure A-8 collectively at page No. 39 of paper book), wherein name of respondent No. 4 appears at Sr. No. 6 being selected on the post of Anaesthetist from the category of ST.

10. Further the MPSC issued letter dated 22.06.2018 (Annexure R-1 at page Nos. 82 and 83 of paper book) addressed to the respondent No. 1 again recommending six names as reflected in recommended list dated 18.06.2018 (part of Annexure A-8 collectively), but having rider to the effect of Clause-10 as regards recommendation of respondent No. 4 Dr. Pallewad, which is as follows :-

“१०. परिच्छेद १ मध्ये नमूद केलेल्या अनु.क्र. २ वरील डॉ. शिलेदार विक्रमसिंह विजयसिंह (मु. क्र. ६) तसेच अनु. क्र. ६ वरील डॉ. पल्लेवाड सुनिल गंगाधरराव (मु.क्र. ३) यांनी online अर्जात अनुभवामध्ये Nature of Post चा दावा Anaesthetist असा केला आहे. परंतु, मुलाखतीच्यावेळी सादर केलेल्या अनुभव प्रमाणपत्रात Anaesthetist असा Nature of Post चा उल्लेख केलेला दिसून येत नाही. तरी सदर दोन उमेदवारांची नियुक्ती करण्यापूर्वी त्यांच्या अनुभव प्रमाणपत्रान्वये त्यांना बंधिरीकरण तज्ञाचा अनुभव असल्याची पडताळणी करून त्यानंतरच त्यांच्या नियुक्तीबाबत निर्णय घेण्यात यावा. अशी आयोगाची सूचना आहे.”

11. Perusal of the record further shows that the applicant raised objection to the list of recommended candidates stating that some candidates were not having requisite experience by making two separate representations dated 20.06.2018 (Annexure A-9 collectively) addressed to the respondent Nos. 2 and 1 respectively. The respondent No. 2 in turn forwarded copy of said representation to the respondent No. 1 vide communication dated 02.08.2018 (annexure A-10) inviting attention of para No. 2 of it's letter dated 22.06.2018 (Annexure R-1). In view of the same, before issuance of impugned order/ letter dated 15.12.2018 (Annexure A-11) to the extent of the respondent No. 4, it was incumbent upon the respondent No. 1 to verify the experience certificate, also in terms of clause 10 of the letter dated 18.06.2018 (part of Annexure A-8 collectively) sent by MPSC.

12. In this Original Application, the applicant has specifically challenged the impugned order of appointment order dated 15.12.2018 (Annexure A-11) to the extent of respondent No. 4 contending that the same is liable to be quash and set aside, as the respondent No. 4 is not having requisite experience of 7 years as Anaesthetist after acquiring diploma in Anaesthesia (D.A.) in terms of clause No. 4.8 of the advertisement dated 17.05.2017 (Annexure A-5). As per Clause 4.8 experience of 7 years as Anaesthesia was must as on the date of advertisement dated 17.05.2017.

13. The applicant has produced on record evidence showing that as on advertisement he was having more than 7 years' experience as Anaesthetist. To substantiate that he has placed on record copies of educational qualification certificates Annexure A-2 collectively and copies of experience certificates Annexure A-3 collectively. Perusal of these documents would show that the applicant completed degree course in MBBS in May 2004, as the MBBS certificate was issued in May-2005. She completed Diploma in Anaesthesia in June-2007, as the certificate in that regard is dated 20.12.2007. The experience certificates produced on record at Annexure A-3 collectively by the applicant would show that she had worked as Anaesthetist

from 25.08.2007 onwards till 01.01.2018 and from 01.01.2018 onwards she is working as Anaesthetist. Hence, her experience as Anaesthetist as on the date of advertisement is about 10 years.

14. As against that, if the educational qualification and experience certificates of the respondent No. 4 are taken into consideration, the respondent No. 4 after acquiring degree course of MBBS in the year 2004, he got admission to the course of Diploma in Anaesthesia as per list published on 23.07.2013 (Annexure A-13). In this regard, the applicant produced on record appointment order dated 18.11.2015 (Annexure A-11). In the said appointment letter, the respondent No. 4 appears at Sr. No. 81 and in educational qualification/specialist, only MBBS degree is mentioned. In view of that, as on 18.11.2015 respondent No. 4 was not having specialized post graduate degree or Diploma in Anaesthesia. In that regard, the respondent No. 4 in his affidavit in reply has not stated anything as to when he completed diploma in Anaesthesia. The respondent No. 4 however claims that he was having requisite educational qualification and experience.



15. During the course of arguments, in farad sheet order dated 24.11.2022, the following order was passed :-

*“ORIGINAL APPLICATION NO. 171 OF 2019  
(Dr. Vaishali R. Jadhav Vs. State of Maharashtra & Ors.)*

*CORAM : Hon'ble Shri V.D. Dongre, Member (J)  
and*

*Hon'ble Shri Bijay Kumar, Member (A)*

*DATE : 24.11.2022*

*ORAL ORDER :*

*Heard Shri J.S. Deshmukh, learned Advocate for the applicant, Shri I.S. Thorat, learned Presenting Officer for the respondent authorities and Shri B.N. Gadegaonkar, learned Advocate for respondent No. 4.*

*2. During the course of arguments, it transpires that the experience certificate of the respondent No. 4 under Clause 4.8 of the Advertisement dated 17.05.2017 (Annexure A-5) would be necessary to adjudicate this matter. Such certificate is not produced on record.*

*3. In view of the same, the respondents are directed to produce on record such document/s by the next date of hearing, which was considered for giving appointment to the respondent No. 4.*

*4. S.O. to 05.12.2022.*

*5. The present matter is to be treated as part heard.*

*Sd/-  
MEMBER (A)*

*sd/-  
MEMBER (J)”*

As per the above-said directions given by this Tribunal, the learned Presenting Officer produced on record bunch of documents document 'X' collectively for the purpose of

identification as regards the respondent No. 4. This is recorded in farad sheet dated 08.12.2022, which is as follows :-

*“ORIGINAL APPLICATION NO. 171 OF 2019  
(Dr. Vaishali R. Jadhav Vs. State of Maharashtra & Ors.)*

*CORAM : Hon'ble Shri V.D. Dongre, Member (J)  
and  
Hon'ble Shri Bijay Kumar, Member (A)*

*DATE : 08.12.2022*

*ORAL ORDER :*

*Heard Shri J.S. Deshmukh, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondent authorities and Shri B. N. Gadegaonkar, learned Advocate for respondent No. 4.*

*2. Learned Presenting Officer produced on record bunch of documents stating to be in compliance of the direction of this Tribunal by order dated 24.11.2022. Said documents are taken on record and marked as document 'X' collectively for the purpose of identification.*

*3. The present matter has already been treated as part heard.*

*4. S.O. to 22.12.2022.*

*MEMBER (A)*

*MEMBER (J)”*

Amongst those documents there is communication dated 20.10.2018 issued by the District Civil Surgeon, Nanded to the respondent No. 3. This letter is referred by the respondent Nos. 1 and 3 in para No. 13 of the affidavit in reply filed on behalf of

respondent Nos. 1 and 3 (page Nos. 86 to 92 of paper book).

Contents of the said letter are as follows :-

“जा.क्र.जिशेचि/आस्था-१,२/ /१८. १६६४६-४७ दिनांक : २०/१०/२०१८

प्रति,

मा. संचालक,

आरोग्य सेवा मुंबई

**विषय :-** बधिरीकरणतज्ञ यांच्या कामकाजाची माहिती सादर करणे बाबत.

**संदर्भ :-** आपल्या कार्यालयाचा दुरध्वनी सुचना दि. १९/१०/२०१८.

**महोदय,**

उपरोक्त संदर्भीय विषयानुसार प्राप्त सुचनेनुसार या कार्यालयाच्या अधिपत्याखालील आरोग्य संस्थेत खालील प्रमाणे अधिकारी गट-अ कार्यरत असून ते ट्रमाकेअर युनिट भोकर व स्त्री रुग्णालय नांदेड येथे बधिरीकरणतज्ञ म्हणुन सेवा उपलब्ध करून देतात व त्यांचे काम चांगले आहे.

१) डॉ. पल्लेवाड सुनिल गंगाधर वैद्यकीय अधिकारी ट्रमाकेअर युनिट भोकर

२) डॉ. शिलेदार विक्रम विजयसिंह वैद्यकीय अधिकारी स्त्री रुग्णालय नांदेड

सही/-

(डॉ. कदम बी.पी.)

जिल्हा शल्य चिकित्सक,

नांदेड”

Perusal of all these experience certificates would not show that the respondent No. 4 had worked as an Anaesthetist for more than 7 years as on the date of advertisement dated 17.05.2017 (Annexure A-5). In this bunch of documents, there is copy of online application made by the respondent No. 4. In the said application form as regards qualification details, it is mentioned that the respondent No. 4 completed MBBS degree on 24.12.2004 and secured PG Diploma in Anaesthesia on 27.11.2015. In experience column however, it is mentioned that

he has worked as Anaesthetist from 05.11.2007 onwards till 2015. In this bunch of certificates, there are various experience certificates, which are (i) dated 27.12.2011 stating experience from 22.10.2008 to 28.02.2009, (ii) dated 19.12.2011 stating experience from 22.03.2009 to 10.06.2011, (iii) dated 17.12.2011 stating experience from 30.07.2011 to 12.06.2012, (iv) undated certificate stating experience from 01.08.2013 to 31.01.2014, (v) dated 31.01.2014 stating experience from 01.02.2014 to 31.07.2014 and (vi) dated 11.02.2015 stating experience from 01.08.2014 to 31.01.2015. Amongst all these certificates, first three certificates mentioned nature of appointment as Medical Officer (Ad-hoc) and in last three certificates mentioned that the respondent No. 4 has completed the recognized Resident Medical Officer / House Surgeon post in Anaesthesia under the Unit Head at Rajiv Gandhi Medical College and Chatrapati Shivaji Maharaj Hospital Kalwa, Thane.

16. In view of above facts, it can be seen that the respondent No. 4 has completed Diploma course in Anaesthesia only on 27.10.2015. Letter dated 20.11.2018 issued by the District Civil Surgeon, Nanded would only show that as on that date the respondent No. 4 was working as an Anaesthetist and is giving good services. In this letter, it is not mentioned as to since when

the respondent No. 4 is working there as Anaesthetist. The respondent Nos. 1 and 3 have heavily relied upon the said letter for establishing their claim that the respondent No. 4 is having requisite educational qualification together with experience.

17. In order to work as specialist in Anaesthesia, the Medical Officer should have either held the Post Graduate Degree or Post Graduate Diploma in Anaesthesia. In case of Post Graduate Degree in Anaesthetist, requisite minimum experience was of five years and in case of post graduate Diploma in Anaesthesia, minimum requisite experience was of 7 years. The language about experience in column No. 4.8 in the advertisement dated 17.05.2017 (Annexure A-5) is not satisfactorily worded, which says such experience gained after acquiring the MBBS degree.

18. The applicant, as well as, the respondent No. 4 completed MBBS degree in 2004. Thereafter, the applicant acquired post graduate Diploma in Anaesthesia in 2007, whereas the respondent No. 4 completed it in 2015. The applicant was having experience as Anaesthetist for more than 7 years as on the date of advertisement on 17.05.2017, as he completed PG Diploma in Anaesthesia in the year 2007. However, the respondent No. 4 completed PG diploma in Anaesthesia only on 27.11.2015 and

therefore, as on the date of advertisement dated 17.05.2017 he could have had the experience in the vicinity of experience of 1 and half year as an Anaesthetist.

19. The respondent No. 4 however said to have represented that he worked as an Anaesthetist right from 2007 onwards. From 2007 to November, 2015, the respondent No. 4 was not having Post Graduate Diploma in Anaesthesia. In the circumstances, from any angle if the case of the respondent No. 4 is considered, it cannot be said that he was meeting with the requisite criteria of minimum experience as mentioned in column No. 4.8 of the Advertisement dated 17.05.2017 (Annexure A-5).

20. No doubt, the respondent No. 4 secured 45 marks in oral interview, which is more than marks obtained by the applicant as 44, but selection and appointment to the post of Anaesthetist ought to have been done by taking into consideration the educational qualification, as well as, experience as laid down or as mentioned in clause Nos. 4.7 and 4.8 of the advertisement.

21. The respondent No. 4 was not having requisite experience as an Anaesthetist. In view of the same, it appears that the respondent Nos. 1 and 3 have not taken due care while issuing the appointment order to the respondent No. 4 in spite of

cautioning by the respondent No. 2 to the respondent No. 1 by addressing letter dated 22.06.2018 (Annexure R-1) of document verification.

22. It is surprising to note here that the respondent Nos. 1 and 3 even in affidavit in reply are justifying their alleged action thereby relying upon the communication dated 20.10.2018 addressed by the District Civil Surgeon, Nanded to the respondent No. 3, which letter does not specify the experience of 7 years as an Anaesthetist. In view of the same, next eligible candidate on the post of Anaesthetist from S.T. category seems to be the applicant. In view of the same, the Original Application succeeds. We therefore, proceed to pass the following order :-

**ORDER**

(A) The Original Application No. 171 of 2019 is allowed in terms of prayer clause 24(b), (d) & (e), which are as follows:-

- “b) The Impugned order dated 15.12.2018, by which Respondent No. 4 is appointed on the post of Anaesthetist from S.T. category, may kindly be quashed and set aside to the extent of respondent No. 4.*
- d) The Respondents be directed to consider the claim of the applicant, for the post of Anaesthetist from S.T. category, being suitable candidate from S.T. category.*

e) *The respondents be directed to give appointment to the applicant, on the post of Anaesthetist from S.T. category, being suitable candidate from S.T. category.”*

(B) The respondent Nos. 1 and 3 are directed to complete the whole process within a period of two months from the date of receipt of certified copy of this order.

(C) There shall be no order as to costs.

**MEMBER (A)**

**MEMBER (J)**

**Kpb**/D.B. O.A. No. 171/2019 VDD & BK 2023 Appointment