

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 295 OF 2019
WITH
CONTEMPT PETITION NO. 03 OF 2021
WITH
MISC. APPLICATION NO. 141 OF 2021**

ORIGINAL APPLICATION NO. 295 OF 2019

DISTRICT : BEED

Maharashtra Rajya Hangami Hivtap)
Prayogashala Karmachari Sanghna, Through)
Its President, Bharat s/o Mulujirao Tangade,)
Age : 54 years, Occu.: Nil)
R/o : C/o: Apurva Kirana Stores, Ashok Nagar,)
Majalgaon, Dist. : Beed.).. **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through its Secretary,)
Department of Public Health,)
Mantralaya, Mumbai-32.)
2. The Director of Health Services,)
Arogya Bhavan, 4th Floor, St. George's)
Hospital, P.Demello Road, Mumbai.)
3. The Joint Director,)
Public Health Services (Malaria and)
Falaria & Water Borne Diseases))
Arogya Bhava, Alandi Road, in Front of)
Vishrantwadi Police Station, Yerwada,)
Pune-411006.)
4. Nishant Hemant Narkhede,)
Age 32 yrs. Occ. At present nil,)
r/o Jay Niwas, Plot no. 25, Gut no. 27,)
Nivrutti Nagar, Jalgaon, Dist. Jalgaon.)

5. Anil Dinkar Patil,)
Age 40 yrs. Occ. At present nil)
r/o Phulewadi, Kolhapur,)
Tq. Karvir, Dist. Kolhapur.)
6. Vaishali Vishwas Parkar,)
Age 38 yrs. Occ. At present nil,)
r/o near Chondeshawari Mandir,)
Phaujdarwadi, Tq Dist. Sindhudurga Kankavali,))
Dist. Sindhudurga.)
7. Avdhood Rajaram Tipugale,)
Age 37 yrs. Occ. At present nil,)
r/o at post Kolhapur, Tq. Karvir,)
Dist. Kolhapur.)
8. Rohini Suresh Khadse,)
Age 36 yrs. Occ. At present nil,)
r/o New Shende Layout, Hari Om Nagar,))
Naginbag, Chandrapur,)
Tq. and Dist. Chandrapur.)
9. Dhiraj Madhu Ingle,)
Age 27 yrs. Occ. At present nil,)
r/o Medical Colony, E-45, Complex)
Gadchiroli, Dist. Gadchiroli.)
10. Ashish Suresh Batte,)
Age 35 yrs. Occ. At present nil,)
r/o Ward No. 5, at post Godpimpri,)
Dist. Chandrapur.)
11. Yuvraj Kisan Katore,)
Age 41 yrs. Occ. At present nil,)
r/o c/o Raoji Rotke, 29 Ayodhyanagar,)
B/H, City bus stop, Nagpur, Dist. Nagpur.)
12. Rajesh Tanaji Gelye,)
Age 40 yrs. Occ. At present nil,)
r/o Yash Apartment, Bool, Rajapur,)
Dist. Ratnagiri.)

13. Swapnali Sakharam Manik,)
Age 39 yrs. Occ. At present nil,)
r/o Asim Plaza, 3002, Ist Floor,)
Plot no. 4, Gondeskal Road, Langa,)
Tq. Langa, Dist. Sindhudurga.)
14. Megha Mohan Pawar,)
Age 38 yrs. Occ. At present nil,)
r/o Up-Zilla Rugnalaya, Medical Officer) residence no. 5, Islampur, Dist. Sangli.)
15. Padmaja Ramesh Patankar,)
Age 43 yrs. Occ. At present nil,)
r/o 22, Avdhoot Chintan Colony,)
Shahapuri, Satara, Dist. Satara.)
16. Satish Rajaram Gunge,)
Age 45 yrs. Occ. At present nil,)
r/o Drongiri Niwas, Darghorad Bank)
colony, Parbhani, Dist. Parbhani.)
17. Surekha Fattru Dhudase,)
Age 33 yrs. Occ. At present nil,)
r/o Allapalli, Dist. Ghadchiroli.)
18. Praveen Shabbir Mujawar,)
Age 36 yrs. Occ. At present nil,)
r/o 2454, Juna Bhudwar Peth, Kolhapur,) Dist. Kolhapur.)
19. Manasi Sachin Dongarkar,)
Age 39 yrs. Occ. At present nil,)
r/o at post Kuwe Langa, Dongarwadi,)
Tq. Langa, Dist. Ratnagiri.)
20. Swapnil Dinkar Bavankar,)
Age 27 yrs. Occ. At present nil,)
r/o at post Desahingaga, (Wadasa))
Dist. Ghadchiroli.)
21. Ratnamala Lahu Nare,)
Age 39 yrs. Occ. At present nil,)
r/o at post Mitbhav (Narewadi))
Tq. Deoghad, Dist. Sindhudurga.)

22. Vrushali Shirish Shirasath,)
Age 41 yrs. Occ. At present nil,)
r/o 405-A, Om Sai Residency,)
Koyna Vasahat, Malkapur-Karad)
Dist. Satara.)
23. Harshada Santosh Shinde,)
Age 40 yrs. Occ. At present nil,)
r/o Muktanand Park, Plot no. 10,)
Krushna Chowk, New Sangvi, Pune, Dist. Pune.)
24. Sachin Tulshiram Mendekar,)
Age 41 yrs. Occ. At present nil,)
r/o Vilas Nagar, Bhanupeth Road,)
Chandrapur, Dist. Chandrapur.)
25. Gauri Suresh Joshi,)
Age 36 yrs. Occ. At present nil,)
r/o 16, Aadhar, Shashtri Nagar,)
near Bhagyanagar, Nanded, Dist. Nanded.)
26. Ranjeet Naiku Sankpal,)
Age 37 yrs. Occ. At present nil,)
r/o at post Shirod, Yadavnagar, Dist. Kolhapur.)
27. Sameena Abdul Rajjak Nulkar,)
Age 41 yrs. Occ. At present nil,)
r/o Metro Trading Company,)
Kacheri Road, Gadalinje, Dist. Kolhapur.)
28. Kalpna Someshwar Arerao,)
Age 27 yrs. Occ. At present nil,)
r/o Ramnagar, Lonwadi, at post Shindewadi,)
Dist. Chandrapur.)
29. Vidhya Appasaheb Kshirsagar,)
Age 37 yrs. Occ. At present nil,)
r/o at post Daund, Dist. Pune.)
30. Mukesh Bihari Meshram,)
Age 33 yrs. Occ. At present nil,)
r/o Vaishali Nagar, Armori, Dist. Gadchiroli.)

31. Bandu Ambadas Sorade,)
Age 39 yrs. Occ. At present nil,)
r/o Swalambinagar, Thakkar Colony Road,))
Naginbag, Dist. Chandrapur.)
32. Rashmi Anil Jadhav,)
Age 39 yrs. Occ. At present nil,)
r/o Galatage, F-1, Suvipram apartment,))
Patankar Colony, New Shahapuri Kolhapur,))
Dist. Kolhapur.)
33. Akshay Vijay Wakade,)
Age 27 yrs. Occ. At present nil,)
r/o Gaikwad Chowk, Armori, Tq. Armori,))
Dist. Gadchiroli.)
34. Pralhad Bhiku Jadhav,)
Age 31 yrs. Occ. At present nil,)
r/o at post Nadgaon Tanda, Tq.Kinwat,))
Dist. Nanded.)
35. Krushna Mangilal Jadhav,)
Age 32 yrs. Occ. At present nil,)
r/o Nadgad Tanda, Kinwat, Tq. Kinwat,))
Dist. Nanded.)

.. **RESPONDENTS**

WITH

CONTEMPT PETITION NO. 03 OF 2021

IN

ORIGINAL APPLICATION NO. 295 OF 2019

DISTRICT : BEED

Maharashtra Rajya Hangami Hivtap)
Prayogashala Karmachari Sangh, Through)
Its President, Bharat s/o Mulujirao Tangade,))
Age : 54 years,)
R/o : C/o: Apurva Kirana Stores, Ashok Nagar,))
Majalgaon, Dist. : Beed.)..

APPLICANT

V E R S U S

1. **Dr. Pradeepkumar Vyas,**)
Through Principal Secretary,)

Public Health Department,)
G.T. Hospital, B. Wing, 10th Floor,)
Complex Building, New Mantralaya,)
Mumbai 400 001.)

2. **Dr. Sadhana Tayade,**)
The Director,)
Public Health Department, Arogya Bhavan,)
St. George's Hospital Compound,)
P.Demello Road, Mumbai-400001.)

3. **Dr. Nandkumar Deshmukh,**)
The Joint Director,)
Public Health Services (Malaria and)
Falaria & Water Borne Diseases))
Survey No. 14/1-A, Arogya Bhava,)
Alandi Road, in Front of Vishrantwadi)
Police Station, Yerwada, Pune.)

.. **RESPONDENTS**

W I T H

MISC. APPLICATION NO. 141 OF 2021

IN

ORIGINAL APPLICATION NO. 295 OF 2019

DISTRICT : BEED

1. The State of Maharashtra,)
Through its Secretary,)
Department of Public Health,)
Mantralaya, Mumbai-32.)

2. The Director of Health Services,)
Arogya Bhavan, 4th Floor, St. George's)
Hospital, P.Demello Road, Mumbai.)

3. The Joint Director,)
Public Health Services (Malaria and)
Falaria & Water Borne Diseases))
Arogya Bhava, Alandi Road, in Front of)
Vishrantwadi Police Station, Yerwada,)
Pune-411006.)

).. **APPLICANTS**

V E R S U S

Maharashtra Rajya Hangami Hivtap)
 Prayogashala Karmachari Sanghtna, Through)
 Its President, Bharat s/o Mulujirao Tangade,))
 Age : 54 years,)
 R/o : C/o: Apurva Kirana Stores, Ashok Nagar,))
 Majalgaon, Dist. : Beed.).. **RESPONDENTS**

APPEARANCE : Ms. Preeti Wankhade, Advocate for the
 Applicant in O.A. & C.P. (respondent in M.A.).

: Shri V.R. Bhumkar, P.O. for the Respondent
 authorities in O.A. & C.P. (applicants in M.A.).

: Shri Vinod Patil, Advocate for private
 respondent Nos. 4 to 35 / intervenors in O.A.

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

Reserved on : **02.01.2023**

Pronounced on : **03.02.2023**

ORDER

(Per : Shri Bijay Kumar, Member (A))

1. An Original Application (Stamp) No. 649 of 2019 was filed on 27.03.2019 by the applicant namely, 'Maharashtra Rajya Hangami Hivtap Prayogashala Karmachari Sanghtna' (Karmachari Sangathana) in representative capacity on behalf of 45 Members whose list was appended to the application. The applicant is association of temporary/seasonal Laboratory Technician and Senior Field Workers. A Miscellaneous Application No. 151/2019 was also filed by the applicant on

27.03.2019 to sue-jointly which was allowed by this Tribunal vide oral order of even date and the Original Application was registered with No. 295/2019. Later, the applicant submitted list of 51 member by a short affidavit dated 28.09.2022 i.e., after 2 ½ years of filing the Original Application which was taken on record.

2. Earlier too, in the year 2013 the same applicant had filed another O.A. No. 674/2013, which was withdrawn with Tribunal's permission granted vide an oral order dated- 09.10.2015, which is reproduced in toto for ready reference due to its relevance for analysis of certain basic facts: -

“ORIGINAL APPLICATION NO. 674/2013

**CORAM :- Shri Justice Shrihari P. Davare,
Vice Chairman
(This matter is placed before the Single Bench
due to non-availability of Division Bench.)**

DATE :- 9th October, 2015

Oral Order :-

*Shri K.D. Khade, learned Counsel for the applicant and
Shri Sham Patil, learned Presenting Officer for the respondents.*

2. *Heard respective learned Counsel for respective parties.*

3. *The learned Counsel for the applicant, on instructions, stated that, during the pendency of the present O.A, the applicant has submitted a proposal to the res. Nos. 1 & 2 on 18.10.2013 and the same is under consideration of the concerned authority, and hence, seeks leave to withdraw the present O.A., with liberty to file fresh O.A., if order on the said proposal goes against the applicant.*

4. In view of the said submission, leave granted and present O.A. stands disposed of as withdrawn with the liberty as prayed for. No order as to costs.

Sd/-
Vice Chairman”

3. The applicants have been working as seasonal laboratory technicians called as ‘temporary laboratory technicians / senior field workers every year during season of higher incidence of water borne diseases. As per recruitment Rules, 2011, all seasonal /temporary laboratory technicians and Senior Field Workers appointed by Joint Director, Health Services (Malaria, Filaria and Water-borne Diseases), who have worked as such for not less than 180 days, are eligible for getting appointment by nomination as Laboratory Technicians under 30% quota reserved for them. Cause of action of filing Original Application No. 674/2013 was, obviously, to get absorbed in the next higher cadre of ‘Laboratory Technicians’ without written examination for selection of meritorious candidates. On the other hand, cause of action for filing the present Original Application No. 295/2019 was, in addition to getting permanency benefits without undergoing competitive examination and also to get a stay order on the examination being conducted to fill up the post of Lab Technician in

accordance with recruitment rules for the post of Lab Technicians referred to as *Laboratory Technicians (Group-C)*, in the *directorate of Health Services, Maharashtra State (Recruitment) Rules, 2011* (in short, "*Recruitment Rules, 2011*").

4. For appreciating the cause of action and O.A. No. 295/2019, at first, we refer to the relief prayed for and then peruse the Recruitment Rules, 2011 as follows: -

(a) Relief prayed for in terms of para No. 12 of the O.A. No. 295/20019 :-

(A) The Original Application may kindly be allowed by quashing and setting aside the advertisement dated 22.02.2019 to the extent of 30% posts reserved for temporary employees.

(B) This Original Application may kindly be allowed thereby directing the respondent No.1 to regularize applicant's services on the post of Laboratory Technician and Senior field Workers under respondent No. 3 by confirming the benefits of permanency upon the member of the association.

(C) This Original Application may kindly be allowed thereby directing the respondent No. 1 to extend to the applicant all the consequential service benefits to which he would become entitle in view of regularization of the services.

(D) Costs of this Original Application may kindly be awarded to the applicants.

(E) *Any other appropriate relief as may be deemed fit by this Hon'ble Tribunal may kindly be granted.*

Interim Relief

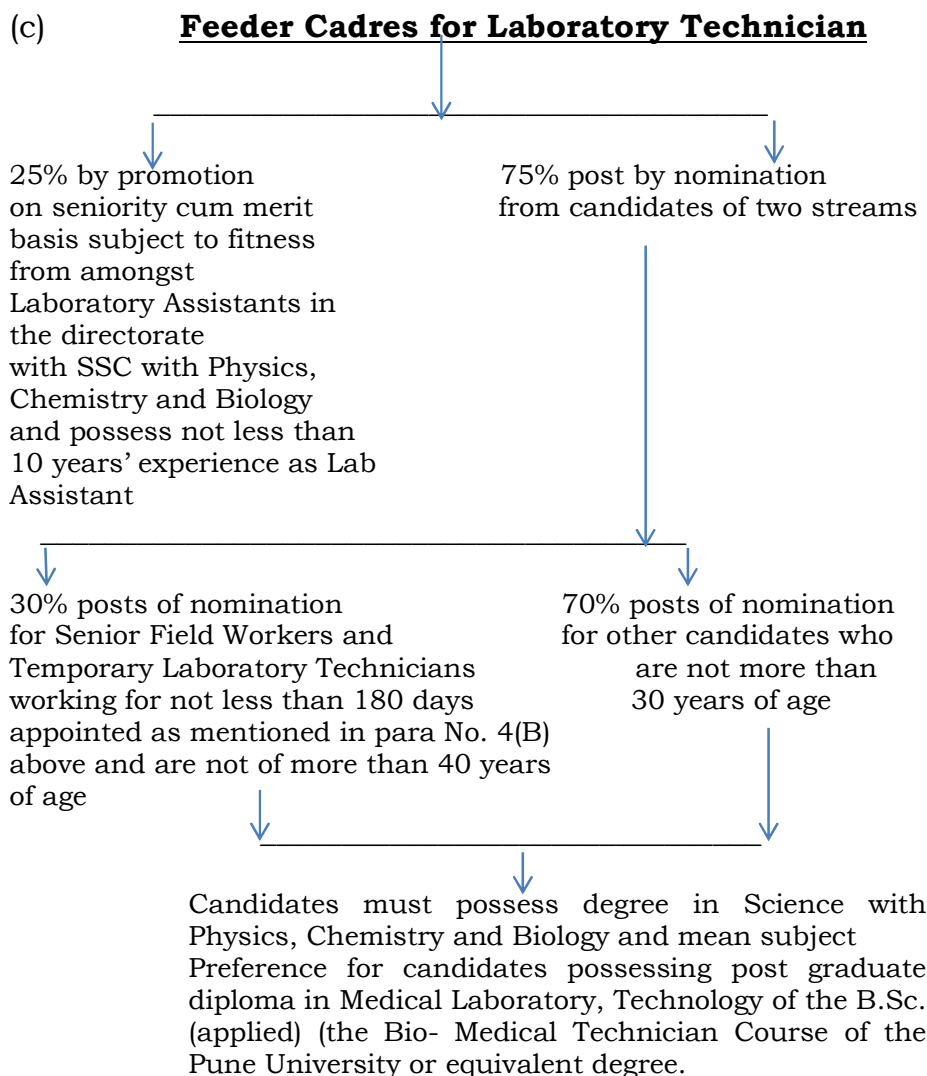
(F) *Pending the admission, hearing, and final disposal of this Original Application the further proceedings in pursuance to the advertisement dtd 22/02/2019 may kindly be stayed.*

(G) *Pending the admission, hearing, and final disposal of this Original Application Resps. No. 1 to 3 may kindly be directed to continue applicant's services on the present post of Laboratory Technician and senior field worker under the Resp. No. 3."*

(b) As has been mentioned earlier too, the applicant is an association of temporary Laboratory Technician and Senior Field Worker. As per Rule 2 of the Recruitments Rules 2011 of "Temporary Laboratory Technician and Senior Field Worker" have been defined as quoted below:-

"2 (e) *"Senior Field Worker" means a worker who is appointed by the Joint Director of Health Services (Malaria, Filariasis and Water Born Diseases), Pune on purely temporary basis and who is meant for Blood Smear Examination under the National Anti-Malaria Programme.*

2(f). *"Temporary Laboratory Technician" means a Laboratory Technician who is appointed by the Joint Director of Health Services (Malaria, Filariasis and Water Born Diseases), Pune on purely temporary basis and who is meant for Blood Smear Examination under the National Anti-Malaria Programme."*



5. From the perusal of prayer clause in O.A. No. 295/2019 and the provisions of Recruitment Rules, 2011, for the post of Laboratory Technician it may be said that the applicant had filed this application for getting appointed as 'Laboratory Technician' under 30% quota out of 75% nomination quota without appearing in the process of nomination. This demand of the applicant is based mainly on two counts as can be

inferred from the grounds for filing the present O.A. No. 295/2019 gist of which may be summed up as follows:

(i) The applicant seek parity with other cited cases of Teacher and Professor who had been appointed on ad-hoc basis against sanctioned posts and were reappointed with technical breaks on the same post. For this purpose, the applicants have cited judgments.

(a) *Writ Petition No. 2046/2010 judgment delivered on 19.10.2013, by Hon'ble High Court of Judicature at Bombay, Bench at Nagpur* by which polytechnic Lecturers working on ad-hoc basis with technical breaks were regularized on the same posts.

(b) *Writ Petition No. 8118/2015, Vaidya Mayur s/o Ramesh Deshmukh Vs. State of Maharashtra and Anr., judgment delivered on 25.02.2016, by Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad* by which it was Assistant Professors in Government Ayurved Collage appointed on ad-hoc basis but continued with technical breaks were allowed to be regularized on the same post.

(ii) The applicant has advanced second main ground for being entitled to be absorb under 30% quota out of 75% nomination quota that several of its members have

crossed the upper age limit and were overage for appearing in examination for recruitment.

6. On the other hand, we observe that :-

(a) it is apparent on face of record that all its members were not overage for the impugned advertisement dated 22.02.2019.

(b) the applicants have not mentioned in O.A. No. 295/2019 that they were getting salary under pay band - 1, level -2, 5200-20200, G.P. 1900/- whereas they were seeking absorption on the post in pay band P.B.-3, level - 2, 9300-34800, G.P. 4200/. From this we infer that the members of the applicant '*Karmachari Sanghatana*' are seeking absorption on the post of higher pay band and grade pay.

(c) Further, no evidence has been produced by the applicant to establish that the applicant had withdrawn the O.A. No. 674/2013 based on assurance given by the respondent authorities to absorb them on the post of Laboratory Technician. Even the order passed by the Tribunal allowing withdrawal of O.A. No. 674/2013 dated 09.10.2015 does not have any such observation. It

is not clear as to how this impression was created based on which interim relief was granted by this Tribunal in the present O.A. on 27.03.2019. Therefore, in our considered opinion, the observation made by this Tribunal in para No. 6 of its oral order dated 27.03.2019 deserves to be recalled which is quoted below for ready reference: -

*“6. It is surprising to note that the members for whom proposal for absorption was under consideration in 2013 and on the assurance, the O.A. No. 674/2013 was withdrawn. And now after a lapse of six years advertisement has been issued in which 30% reservation is made for the temporary workers. As the prescribed age limit is 40 years of age in the meantime members of applicant association have become age bar. The respondent may consider to relax the age limit for this category of workers.” **(Emphasis supplied)***

7. (a) After directed by this Tribunal to consider age relaxation for the applicants, Hon'ble Minister, Public Health Department, Government of Maharashtra had held a meeting in his chamber on 19.06.2019 and directed to place a proposal for increase upper age limit for nomination to the post of Laboratory Technician from

30% quota of 'Senior Field Worker/Temporary Laboratory Technicians' before a 3 members committee.

(b) This Tribunal directed Learned Presenting Officer vide oral order dated 22.07.2019 to submit a report about proposal to be submitted to the Government within two days' time and as the Learned Presenting Officer failed to submit any such report within given time limit of 2 days, this Tribunal passed order on 24.07.2019, relevant part of which is quoted below for ready reference:

"3. Learned Presenting Officer has not filed a copy of terms of reference of the committee constituted pursuant to the directions given by the concerned Minister in the meeting dated 19.06.2019 despite the order of this Tribunal dated 22.07.2019.

4. In view of the above, the respondents are directed that no examination will be held till copy of reference of the committee is filed before the Tribunal. Examination may be conducted with the prior permission of this Tribunal."

(c) With above decision of this Tribunal, recruitment process of the post of Laboratory Technician which was renamed as Laboratory Scientific Officer by nomination from 30% quota for Senior Field Officer/Temporary Lab Technicians, who had worked as such for not less than

180 days and who possessed other eligibility criteria, came to a halt and remained under stay.

8. As the following years of 2020 remained of Covid-19 upsurge with clear signs of continuing the trend, the Directorate Public Health Department proposed during early January 2021 to initiate process of filling up vacant position in Class 'C' services in view of COVID-19 upsurge, undertaking that recruitment drive would be undertaken as per the guidelines issued by the General Administration Department in view of SLP No. 15737/2019 pending before the Hon'ble Apex Court. With permission of State Government advertisement was issued in the month of January 2021 for a number of posts including posts under 30% quota for Senior Field Worker/Temporary Lab Technician out of 75% quota for nomination for the post of Laboratory Scientific Officer. Examination for the said posts was conducted on 28.02.2021. Several candidates who had experience of minimum 180 days working as Senior Field Worker/Temporary Lab Assistants too have appeared in the examination.

9. As the applicants in the present O.A.No. 295/2019 had filed Contempt Petition No. 3/2021 in Original Application No.

295/2019 on 11.02.2021, result for the exam held on 28.02.2021 in pursuance to the advertisement dated 18.01.2021 has not been declared.

10. A Public Interest Litigation No. 47/2021 was filed by the Hon'ble Member of parliament, Shri Imtiyaz Jaliel before Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in respect of a large number of vacancies in Public Health Department in spite of COVID-19 upsurge, Hon'ble High Court passed order on 04.05.2021, para 7 of which is reproduced for ready reference as the same sets out way forward:-

“7. We feel that three (03) months' time as suggested by the learned A.G.P. on the basis of instructions received from the Director of Medical Department for filling in the vacancies, ought to be curtailed. We expect the Government to start process of filling in the vacancies of the employees in the Health Department preferably within a week from today and take emergent steps to fill in the vacancies expeditiously. We hope and trust that within 6 to 8 weeks such vacancies would be filled in. The Government may not treat the present PIL as adversarial litigation and take emergent steps for filling the vacancies and ramping the infrastructure. The Respondents shall file the detail reply with regard to the averments made in the PIL on the number of vacancies because we find that there is disparity in the information submitted by the petitioner and details given by the respondents so also clarify of the steps to be undertaken for ramping the infrastructure.”

11. As the PIL No. 47/2021 was filed in respect of vacancies in Medical Education and Drugs Department, Public Health Department and Health Department of Urban and Rural Local Bodies altogether, perhaps therefore, respondent authorities may not have brought to notice of Hon'ble High Court about the particular case of stay order granted by this Tribunal in O.A. No. 295/2019. The respondents have gone ahead with examination under recruitment drive without seeking permission of this Tribunal. Respondent Authorities have stated in their internal communication addressed by the Director Public Health Department to the Commissioner, Public Health, dated 28.01.2021, page no.15-16 of paper book of C.P. No. 03/2021 in O.A.No. 295/2021, the process initiated earlier vide advertisement dated 22.02.2019 was abandoned and a fresh advertisement was issued by which upper age limit for candidates under 30% quota for Senior Field Worker/Temporary Technician was raised from 40 years to 45 years. This may not justify respondents' act of overlooking stay order issued by this Tribunal on conducting examination under advertisement dated 22.02.2019.

12. Respondent authorities have filed M.A.No. 141/2021 on 18.06.2021 for recalling/review of Tribunal's orders dated 27.03.2019 and 24.07.2019 passed in O.A. No. 295/2019.

13. The candidates who have appeared for nomination under 30% quota out of 75% quota for nomination too have filed M.A. No. 121/2021 dated 20.05.2021 for joining as intervenor which was allowed by this Tribunal vide oral order dated 03.08.2022. The applicant, with permission of the Tribunal, added the intervenors in the array of respondents.

14. The respondent authorities submitted affidavit in reply in O.A. No. 295/2019 and C.P. No. 03/2021 in O.A. No. 295/2019. After pleadings were complete, the matter was finally heard on 02.01.2023, thereafter, the same has been reserved for orders on 02.01.2023.

15. Learned P.O. has also brought to our notice that the Public Health Department has amended "Recruitment Rules" for vacancies class-'C' cadres, including Recruitment Rules for the post of Laboratory Scientific Officer vide Gazette notification dated 01.10.2021 wherein upper age limit for Senior Field Officer/ Seasonal Laboratory Technicians has been raised to 45 years.

16. **Analysis of Facts: -**

(a) This Tribunal vide para-Nos. 8 and 9 of the oral order dated 03.08.2022 directed as follows: -

“8. According to us, the more worrying factor is whether the results are declared or not and whether the recruitment process has been proceeded further or not. We reiterate that in absence of any concrete and authentic information, we are unable to pass any specific order. However, having regard to the contentions made before us, we direct the respondents to declare the result of the examinations of all the candidates including those who have applied through the quota of Seasonal employees, if the same are not yet declared, and prepare select list in order of merit having regard to the social reservation and the special reservation prescribed in each of the said categories.

9. It would be open for the respondents to issue appointment orders to the candidates, other than the Seasonal employees who have applied through the quota for Seasonal employees, securing merit in the respective categories by ascertaining that the said candidates are otherwise entitled and fulfilling the eligibility criteria in all respects by keeping 30% posts vacant in each of the said categories which are reserved for Seasonal employees. Compliance be reported on the next date.”

(b) No further progress has been made in respect of preparation of select list for 30% quota out of 75% nomination quota for Senior Field Worker/Temporary/Seasonal Laboratory Technicians and the matter was argued by parties concerned and stage has been reached to pass final order. As has been elaborated earlier the applicants lump-sum honorarium has been fixed by treating them under pay band P.B.-1, Level -2 (as per 6th Pay Commission) Rs.5200-20200-G.P. 1900/- and therefore, they cannot be absorbed in pay band P.B.-2, Level -2, Rs. 9300-34800+ G.P. 4200/-.

(c) The fact cannot be overlooked that the requirement of seasonal spraying workers, seasonal Lab Technician/Senior Field Worker is going to be manifold higher during rainy season or during period of higher incidents of Malaria, Filariasis, Dengue etc. water borne diseases as compared to number of Laboratory Technicians or Laboratory Scientific Officers during normal part of the year. Therefore, granting permanency to all seasonal workers who have worked for minimum of 180 days may be detrimental to disease management and also defeat the underlying principles of public

administration against norm of good governance. Doing so will not be sustainable either. Any such worker who has completed not less than 180 days of working as seasonal Lab Technician etc. will be eligible for participation in nomination process for the post of Laboratory Scientific Officer. Therefore, system of selection through exam is the most suitable process. This takes care of skill and knowledge level of candidates, facilities arranging their names as per merit and vertical and horizontal reservation category. Therefore, in our considered opinion stay granted to the process of recruitment, which has been initiated with advertisement dated 18.01.2021 deserves to be vacated and the process of recruitment initiated in the year 2019 deserves to be allowed to be completed as per Recruitment Rules, 2011.

(d) As the action taken by the respondent authorities of starting process of recruitment afresh was in respect Covid-19 upsurge, in our considered opinion, there was no willful disobedience to the order of Tribunal dated 27.03.2019 and 24.07.2019.

(e) The respondent authorities must prepare seniority list of all temporary/ seasonal laboratory technicians and

senior field workers as on 01.01.2023 within 4 weeks' time and ensure that they are engaged as per their seniority whenever man-power requirement of Temporary/Seasonal Lab Technicians and Senior Field Workers increases and disengaged as per principle of 'last cum, first to go' when man-power requirement reduces.

(f) Notice is taken of the provisions of Recruitment Rules, 2011 by which upper age limit for temporary lab. Technicians and senior field workers has already been raised from 40 years to 45 years and quota for nomination has been raised from 75% to 95% for circle level posts of lab technicians which will enhance chances of appointment of temporary lab technicians and senior field workers as Laboratory Scientific Officers. Hence, following order:-

ORDER

Original Application No. 295 of 2019 is partly allowed in following terms :-

(A) The respondent authorities must prepare seniority list of all temporary / seasonal laboratory technicians and senior field workers as on 01.01.2023 within 4 weeks' time and ensure that they are engaged as per their seniority whenever

man-power requirement of Temporary /Seasonal Lab Technicians and Senior Field Workers increases and disengage them as per principles of '*last come, first to go*' when man-power requirement reduces.

- (B) Stay Order granted by this Tribunal on conduct of examination dated 27.03.2019 and 24.07.2019 is hereby vacated.
- (C) This Tribunal's Oral Order dated 03.08.2022 vide para-Nos. 9 of the said Oral Order requiring respondent authorities to keep the 30% reserved posts for seasonal / temporary lab. Technicians and Senior Field Workers out of 75% posts to be filled up by nomination vacant, is hereby, vacated. Respondent Authorities are directed to complete the process of recruitment under advertisement dated 18.01.2019 within a period of 6 weeks.
- (D) Contempt Petition No. 03/2021 in O.A. No. 295/2019 is hereby, dismissed.
- (E) Miscellaneous Application No. 141 of 2021 stands disposed of.
- (F) Observation made by this Tribunal in para No. 6 of its oral order dated 27.03.2019 is hereby recalled.
- (G) No order as to cost.

MEMBER (A)

MEMBER (J)