

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 360 OF 2019

DISTRICT:- AURANGABAD

Dr. Atul Ashokrao Deshmukh,
Age : 34 years, Occ: Nil,
R/o. C/o Shri Sachin Kawale,
Jagdamba Nagar, Behind Kulkarni
Hospital, Bidkin, Tq. Paithan,
Dist. Aurangabad.

.. APPLICANT

V E R S U S

1. The Principal Secretary,
Public Health Department,
Govt. of Maharashtra,
G.T. Hospital Complex,
Opp. Small Causes Court,
Mumbai 400 032.
2. The Commissioner of Health Services
AND Mission Director, National Health
Mission, Public Health Department,
Maharashtra State, Aarogya Bhavan,
3rd Floor, Saint George Hospital
Complex, V.T., Mumbai 400 001.
3. The Civil Surgeon,
Civil Hospital, Aurangabad.
4. The Medical Superintendent,
Rural Hospital, Bidkin, Tq. Paithan,
Dist. Aurangabad.
5. The Maharashtra Public Service
Commission, Through : Secretary,
Sector 11, Opp. Sarovar Vihar,
Belapur CBD,
Navi Mumbai 400 614.

.. RESPONDENTS

APPEARANCE : Shri Ajay Deshpande, learned counsel
for the applicant.
: Shri M.S. Mahajan, learned Chief
Presenting Officer for the respondent
authorities.

**CORAM : JUSTICE SHRI P.R. BORA, VICE CHAIRMAN
AND
: SHRI VINAY KARGAONKAR, MEMBER (A)**
DATE : 06.12.2023

ORDER

[Per : Justice Shri P.R. Bora, Vice Chairman]

Heard Shri Ajay S. Deshpande, learned counsel for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent authorities.

2. The present Original Application is filed by the applicant seeking quashment of the order dated 30.3.2019, whereby his services were terminated by respondent Nos. 3 & 4 and was relieved vide order dated 3.4.2019. The applicant has also sought direction against respondents to continue him in the service as before.

3. The applicant joined service as Dental Surgeon under respondent No. 2 w.e.f. 4.1.2014 on the basis of his selection by respondent No. 3. His appointment was on

contractual basis under National Rural Health Mission for the period up to 31.3.2014. His services however, continued even thereafter. On 30.3.2018 his services were terminated on the ground that in the financial year 2019-20, the Central Government had given approval for only 44 posts and declined to give such approval in cases of 177 other candidates. On receipt of such notice the applicant approached this Tribunal and filed the present Original Application.

4. On 16.5.2019 this Tribunal passed an interim order thereby directing the respondents not to terminate the applicant till admission of the Original Application. It has to be stated that in view of the developments which took place in the meanwhile period, the applicant sought leave of the Tribunal to take necessary additional pleadings in the Original Application. Such leave was granted to the applicant and accordingly the applicant took some additional pleas and additional prayer. It is necessary to note down the events and developments which took place in the meanwhile period, which are thus

(i) In pursuance of the advertisement issued by the Maharashtra Public Service Commission (for short 'the MPSC) for the recruitment of 189 posts of Dental Surgeon, Group-B on 31.7.2015 the recruitment process was carried out and against 189 posts advertised, the MPSC

recommended the names of 188 candidates according to the seats reserved for the different reserved classes.

(ii) Out of 188 candidates, whose names were recommended for their appointments, 67 candidates did not join. In the meanwhile period some of the candidates approached this Tribunal at Principal Seat at Mumbai raising objection to the short-listing criteria adopted by the MPSC, as well as, in relation to counting of the experience of work done by the candidates in private hospitals besides Government Hospitals. Several such OAs were filed before the Tribunal and all these OAs were decided by the Tribunal at Mumbai by its common judgment and order delivered on 18.6.2019. The Tribunal disapproved shortlisting criteria adopted by the MPSC and gave further directions in the said order.

(iii) Aggrieved by the order passed by this Tribunal at Mumbai, as well as, some of the applicants before this Tribunal, approached the Hon'ble Bombay High Court by filing WPs. After having considered the issue involved in the matter, Hon'ble High Court disposed of W.P. St. No. 9195/2021 with connected WPs. While deciding the said WPs by common judgment and order, the Hon'ble High Court though set aside the findings recorded by the Tribunal in regard to the shortlisting criteria adopted by the MPSC, did not disturb the directions issued by the Tribunal in paragraph 30 of its judgment. The Hon'ble High Court has passed the following order: -

"52. As observed by the Tribunal, out of 188 names recommended by the MPSC, only 122

candidates joined the service, thereby leaving 67 vacancies of Dental Surgeon vacant. In the event we accept the contentions of the original applicants that experience in private hospitals/clinics cannot be taken into consideration, the action of MPSC in resorting to shortlisting would be rendered meaningless as the number of eligible candidates with experience on the post of clinical assistant would be less than 567. Thus, we have a unique situation where MPSC has already adopted shortlisting criteria and have recommended names of candidates having experience in private hospitals/clinics. The State Government has opined vide its letter dated 17th November 2016 that experience in private hospitals/clinics cannot be considered. The Recruitment Rules provide some degree of jurisdiction on the State Government to determine the exact nature of experience which can be taken into consideration as the words used in the Recruitment Rules are "which in the opinion of the Government is equivalent or higher than the post of clinical assistant". 67 posts of Dental Surgeon still continue to remain vacant, despite issuance of appointment orders to all 188 recommended candidates. The advertised vacancies were 189. In these circumstances, in our view, though the Tribunal has erred in criticizing the action of MPSC in resorting to shortlisting, the ultimate direction issued by the Tribunal to send the names of the original applicants for being appointed need not be disturbed. The original applicants have already been interviewed by MPSC in pursuance of the interim orders passed by the Tribunal. In these circumstances, we are of the considered view that the ends of justice would meet if the MPSC is directed to recommend the names of only those original applicants who are already interviewed against 67 unfilled vacancies of Dental Surgeon, based on their performance in the interview. We are conscious of the fact that there are several other candidates who may possess the experience on the post of clinical assistant but did not approach the Tribunal and who are similarly situated to the original applicants. However,

considering the peculiar facts and circumstances of the present case, we are restricting the relief only to the original applicants who had approached the Tribunal and who have been litigating since the year 2015 and pursuant to the order of Tribunal are interfered. In these peculiar circumstances, the benefit of the present judgment cannot be extended to those similarly situated candidates who did not move the Tribunal.”

(v) It has to be further stated that the applicant had also applied for the advertised post in pursuance of the advertisement bearing No. 87/2015 issued on 31.7.2015. In the interview the applicant scored 49 marks, however, since benchmark was fixed at 58 marks for the candidates coming from Open Category, MPSC did not recommend the name of the applicant. As noted above MPSC recommended the names of 188 candidates in order of their merit. In view of the developments which thereafter took place and which we have recorded hereinabove the possibility was created in favour of the applicant to claim selection/ appointment against unfilled seats. Accordingly, the applicant raised all those additional pleas and the additional prayer.

(vi) To the additional pleadings taken by the applicant and the prayer made therein the respondents have filed the affidavit in reply.

5. In the affidavit in reply, the respondents have come out with the only defense that the case of the present applicant is not covered under the orders of the Hon'ble High Court. It is contended that the Hon'ble High Court has expressly observed in its order that the candidates who have approached this

Tribunal and who were interviewed under the orders of the Tribunal are only liable to be considered and in the circumstances it is the contention of the respondents that the applicant is not liable for any relief as has been prayed by him.

6. We have duly considered the submissions made on behalf of the applicant, as well as, the respondents. As noted hereinabove at the time of filing the present Original Application the prayer of the applicant was to quash and set aside the order of termination dated 30.3.2019 as well as the order of relieving dated 3.4.2019. In premise of the developments which took place during the pendency of the Original Application the applicant under leave of the Tribunal raised some additional pleas, as well as, prayer. We have noted down all those facts hereinabove. The facts which have been subsequently brought on record reveal that out of 188 candidates recommended by the MPSC against 189 posts advertised, 67 candidates did not join. The Hon'ble Division Bench of the Bombay High Court Bench at Aurangabad while deciding W.P.St. No. 9195/2021 with the connected WPs directed MPSC to recommend the names of applicants, who are already interviewed against the said 67 unfilled vacancies, based on their performance in the interview. As has come on record MPSC recommended the

names of only 51 candidates against 67 unfilled vacancies. 16 posts are thus still vacant out of 189 posts advertised. In the additional pleas raised by the applicant it is his contention that MPSC shall recommend his name against the said 16 unfilled seats. The applicant has asserted that he is eligible to be so recommended.

7. As noted hereinabove MPSC has opposed the request of the applicant on the ground that the case of the applicant is not covered under the orders of the Hon'ble High Court. According to the MPSC the name of the applicant cannot be recommended for the reason that he has not been interviewed under the orders of the Tribunal as directed by the Hon'ble High Court. The ground so raised by the MPSC to oppose the prayer made by the applicant is difficult to be accepted. It is true that initially the name of the applicant was not recommended by the MPSC, since the applicant had received only 49 marks, whereas the benchmark was fixed at 58 marks for the Open Category to which the applicant belongs. However, it has come on record that the MPSC has recommended the candidates falling in the Open Category, who have received less number of marks than the applicant. It was brought to our notice that in the list of 51 candidates recommended by the MPSC, the candidates who are

recommended from Open Category, are having less number of marks than secured by the applicant. The last two candidates recommended from Open Category have secured 42 marks. Having regard to the aforesaid fact, it appears to us that there may not be any impediment in recommending name of the present applicant by MPSC since he has earned more meritorious position than the candidates recommended by the MPSC. It has been clarified by the learned counsel appearing for the applicant that the applicant is not seeking deletion or removal of the name of any candidate of Open Category, who has been already recommended by the MPSC. Learned counsel submitted that the applicant is praying for his recommendation against 16 unfilled seats.

8. After having considered the entire facts and circumstances involved in the matter, we see substance in the contention raised and prayer made by the applicant. Oppose of MPSC on the ground that the applicant has not been interviewed under the orders of the Tribunal as recommended by the Hon'ble Bombay High Court is unconscionable. It is undisputed that that the applicant was earlier interviewed by the MPSC and has scored 49 marks. It is true that the Hon'ble High Court has restricted the relief only to the extent of the original applicants,

who had approached the Tribunal and who have litigating since the year 2015 and the applicants who have been interviewed in view of the directions of the Tribunal. The order passed by the Hon'ble High Court however, cannot be interpreted to mean that the MPSC is restrained to consider the candidature of the applicant, who has been already interviewed by it and is possessing more meritorious position than the recommended candidates.

9. For the reasons elaborated hereinabove the following order is passed: -

ORDER

[i] MPSC is directed to recommend the name of the applicant for his appointment on the post of Dental Surgeon against 16 unfilled vacancies within 8 weeks from the date of this order.

[ii] Respondent no.1 shall in turn issue the order of appointment in favour of applicant within 3 weeks after receiving recommendation from MPSC.

[iii] O.A. stands allowed in the aforesaid terms, however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN