

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD****ORIGINAL APPLICATION NO. 42 OF 2014
WITH
MISC. APPLICATION NO. 116 OF 2021
WITH
MISC. APPLICATION NO. 237 OF 2019****DISTRICT : AHMEDNAGAR**

1. Surekha D/o Bhujangrao Andhale,)
Age : 38 years, Occu. : Service,)
R/o : Bachat Sarita, A/3. Civil-HUDCO,))
In front of MAHADA office, Ahmednagar,))
Taluka and District Ahmednagar.)
2. Anjali D/o Umakant Shinde,)
Age : 31 years, Occu. : Service,)
R/o : Plot No. 146, Baijabai Society,)
Pipeline Road, Ahmednagar.)
3. Swati D/o Bhausahab Karhale,)
Age : 29 years, Occu. : Service,)
R/o : Tapdiya Pride, Near)
Mahanubhav Ashram Police Chowky,))
Aurangabad.) ..

APPLICANTS**V E R S U S**

- 1) **The State of Maharashtra,**)
Through it's Secretary,)
Department of Public Health,)
Mantralaya, Mumbai-32)
2. **The Director of Health Services,**)
Arogya Bhawan, 4th Floor,)
St. George Hospital, P. Dimelo Road,)
Mumbai.)..

RESPONDENTS

APPEARANCE : Shri S.S. Jadhavar, Advocate for the
Applicants.

: Shri M.S. Mahajan, Chief Presenting Officer for
the Respondents.

CORAM : Shri V.D. Dongre, Member (J)
AND
Shri Bijay Kumar, Member (A)
DATE : 06.07.2021.

O R D E R
(Pronounced on 6th July, 2021)
(Per : Shri Bijay Kumar, Member (A))

1. By the O.A. No. 42/2014, filed on December 07, 2013
the applicants prayed for following reliefs:-

- “A) *By issuing appropriate order or direction, the Recruitment Rules for Nursing Personnel in Maharashtra Nursing Service, Class-III to the extent of appointment on the post of sister/tutor /master tutor may kindly be quashed and set aside.*
- B) *By issuing appropriate order or direction, the respondent No. 1 may kindly be directed to amend the Recruitment Rules for Nursing Personnel in Maharashtra Nursing Service, Class-III to the extent of appointment on the post of sister/tutor/master tutor with further direction to provide promotional channel in the appointment of sister/tutor/master tutor;*
- C) *By issuing appropriate order or direction, advertisement dated 07.10.2013 issued by respondent No. 2 may kindly be quashed and set*

aside to the extent of post of tutor and respondent No. 2 may kindly be restrained from proceeding further in the selection process for the post of tutor, in view of advertisement dated 07.10.2013;

D) Any other suitable, just and equitable relief may kindly be granted in favour of the applicants.”

2. On February 26, 2014 the Applicants had been directed to place on record a copy of Recruitment Rules for qualification for the post asked for by them and also to place on record that the Applicants were holding such qualification. As per the recorded proceedings of the matter, the applicant could not comply with the directions of the Tribunal given on February 26, 2014 till the date October 01, 2015. However, it is seen that the Applicants had annexed a document referred to by the Applicants as the “Recruitment Rules for Nursing Personnel in Maharashtra Nursing Services, Class-III” as Exhibit-D at page 23-24 of the OA No. 42/2014.

3. On examination of the document at Exhibit D of the O.A. No. 42/2014 it is found that the said document is a Draft Recruitment Rules for Nursing Personnel in Maharashtra Nursing Services, Class-III which has been notified by Urban Development and Public Health Department, Government of

Maharashtra on January 10, 1964, relevant parts of which relating to recruitment of Sister/ Tutor/ Master Tutor is reproduced below-

“Appointment to the post shall be made by Surgeon-General by nomination from amongst candidates who-

- (i) unless already in service of the Government of Maharashtra are not more than 40 years of age;
- (ii) are qualified nurse-midwives or qualified nurses, who are registered with the Maharashtra Nursing Council or are eligible for such registration; and
- (iii) hold the Tutor’s certificate;
- (iv) have adequate knowledge of English:

Provided that candidates possessing B.Sc. degree in Nursing recognized by Indian Nursing Council shall be eligible if they possess experience for not less than one year after graduation and are registered by the Maharashtra Nursing Council or are eligible for such registration.

2. The selected candidates shall be on probation for one year and shall have to pass languages examinations according to the prescribed rules.”

4. In the background of facts elaborated above, vide an order of the Tribunal (Coram- Hon’ble Justice A. H. Joshi) dated October 19, 2015, the OA No. 42/2014 was admitted and P.O. was directed to communicate the order of the Tribunal to the Respondents and submit affidavit in reply. The relevant parts of Oral Orders passed by the Tribunal (Coram- Hon’ble Justice A.

H. Joshi, Chairman) on June 24, 2016 is reproduced below for ready reference-

“ 2. Learned Advocate for the Applicants states that after realizing the limitations of issue on mandatory relief for amending recruitment rules, now the Applicant wants to submit an appropriate representation seeking action on the proposal for amendment in rules which is pending before the Government.

3. Learned Advocate further states that, after furnishing such a representation, applicant would opt for proper course of action.

4. In the meantime, learned P.O. is directed to secure instructions as to whether the proposal for amendment of Recruitment Rules for Nursing Personnel in Maharashtra Nursing Services, Class -III is pending before the Government and also whether statement can be made as to how much time will be required to decide the proposal.”

5. Thereafter, upon the learned advocate for Applicants informing the Tribunal (Coram- Hon'ble Justice A. H. Joshi) during hearing on July 28, 2016 that the representation which applicants were expected to submit seeking that proportion in certain vacancies for 'in-service candidates' by way of promotion, is not made so far, the Tribunal gave ten days' time to applicants to submit such representation, if they were serious in making representation. During the hearing on the day, the learned P.O. requested for more time to take instructions as to

whether consideration of amendment of Rules is within the contemplation of the Govt. for the purpose of creating a quota for promotion.

6. As the respondents could not give any firm response to the directions given by the Tribunal regarding creating promotion avenue by amendment in recruitment rules the Tribunal passed observations on December 06, 2018 of '*Respondents being non cooperative with the Tribunal*' and, on January 24, 2019 of '*respondents are playing tricks with the present Tribunal for which some action is required to be taken*'.

7. It is on February 04, 2019 that the Respondents were given last chance for finalization of amended recruitment rules i.e. with provision for Promotion Avenue. Subsequently, a new development took place that the Public Health Department published an advertisement dated February 21, 2019 inviting applications to fill up vacant posts of Tutor and three other posts. At this stage the Applicant filed M.A. No. 125/2019 in O.A. No. 42/ 2014 seeking permission for carry out amendment in O.A. No. 42/2014 which was allowed during the course of hearing by the Tribunal (Coram: Atul Raj Chadha, Member-A) on March 18, 2019. Accordingly, the applicant amended prayer

clauses and prayed for the said advertisement for direct recruitment to be quashed and set aside, restraining the Respondents from operating and acting upon the provisional select list prepared for the post of Tutor. The amended prayer clauses after allowing M.A. No. 125/2019 are as under:-

“A) By issuing appropriate order or direction, the Recruitment Rules for Nursing Personnel in Maharashtra Nursing Service, Class-III to the extent of appointment on the post of sister/tutor /master tutor may kindly be quashed and set aside.

*A-1) Pending hearing and final disposal of this Original Application, the respondent No. 2 may kindly be restrained from operating and acting upon the provisional select list prepared by it (**EXHIBIT-E**) for the post of Tutor;*

A-2) Pending hearing and final disposal of this Original Application, the respondents may kindly be restrained from acting upon advertisement dated 21.02.2019 issued by the Public Health Department and they may be restrained from proceeding with the selection process on the basis of advertisement dated 21.02.2019 issued by the Public Health Department.

B) By issuing appropriate order or direction, the respondent No. 1 may kindly be directed to amend the Recruitment Rules for Nursing Personnel in

Maharashtra Nursing Service, Class-III to the extent of appointment on the post of sister/tutor/master tutor with further direction to provide promotional channel in the appointment of sister/tutor/master tutor;

C) By issuing appropriate order or direction, advertisement dated 07.10.2013 issued by respondent No. 2 may kindly be quashed and set aside to the extent of post of tutor and respondent No. 2 may kindly be restrained from proceeding further in the selection process for the post of tutor, in view of advertisement dated 07.10.2013;

*C-1) By issuing appropriate order or direction, the respondent No. 2 may kindly be restrained from operating and acting upon the provisional select list prepared by it (**EXHIBIT-E**) for the post of Tutor;*

C-2) By issuing appropriate order or direction, the advertisement dated 21.02.2019 issued by the Public Health Department, Mumbai for direct recruitment for the post of Tutor and some other posts may kindly be quashed and set aside.

C-3) By issuing appropriate order or direction, the respondents may kindly be directed to firstly frame service rules providing for promotional avenues to the staff nurses in the appointment of Sister/Tutor/Master Tutor and then to proceed with

the process of appointment on the post of Sister/Tutor/Master Tutor.

D) Any other suitable, just and equitable relief may kindly be granted in favour of the applicants.”

8. It is on April 03, 2019 that the Tribunal Coram: (Shri Atul Raj Chadha, Member-A) granted interim relief in terms of prayer clause A-2 of amended OA No. 42/2014 (amendment carried out on March 20, 2019), which is as under:

“A-2 Pending hearing and final disposal of this Original Application, the respondents may kindly be restrained from acting upon advertisement dated 21-02-2019 issued by the Public Health Department and they may be restrained from proceeding with the selection process on the basis of advertisement dated 21-02-2019 issued by the Public Health Department.”

9. **M.A. No. 237/2019** : The Respondents in O.A. No. 42/2019 filed M.A. No. 237/2019 on May 14, 2019 for vacation of interim relief granted by this Tribunal on April 03, 2019 in O.A. No. 42/2019. The Tribunal (Coram: Justice A. H. Joshi, Chairman) hearing the said M.A. No. 237/2019 considered it appropriate to hear the O.A. No. 42/2014 itself and observed that the representations submitted by the Applicants in O.A. No 42/2014 reveal that the text thereof do not adequately represent / disclose exact grievance now orally represented by the learned Advocate for the Applicant (in O.A. No 42/2014) and therefore,

they were directed to submit a fresh representation to authorities in Public Health Department expressing their grievance in eloquent language. The Tribunal also observed that- *“This Tribunal has noted the urge of the State in proceeding with the recruitment of the higher cadre since educational institutions imparting training ought not be left without adequate staff. However, at the same time due steps for protecting interest of the aspirants should essentially be taken. Therefore, it shall be proper to permit the Government to complete the process of selection of candidate, but hold the hands at the time of issuing appointment order.”* (para 11 of Oral Orders passed by the Tribunal on June 04, 2019).

10. **M.A. No. 116/2021** : The Applicants in M.A. No. 116 /2021 (Respondents in O.A. No. 42/2014) filed the M.A. No. 116/2021 on May 14, 2021 praying for vacating interim relief order dated June 04, 2019 passed in M.A. 237/2019 in OA No. 42/2014 to the extent of Para No. 11 and for that purpose issue necessary orders.

11. As the pleading from the two side were complete, affidavit in reply had been filed by the Respondents in O.A. No. 42/2014 and the applicant was not willing to file rejoinder, the

O.A. No. 42/2014 was taken up for final hearing on June 29, 2021 along with final hearing of the M.A. No. 116/2021 in O.A. No. 42/2014 with M.A. No. 237/2019 in O.A. No. 42/2014 along with O.A. No. 42/2014. Leading the argument, Advocate S. S. Jadhavar, for the Original Applicants advanced arguments that even though the Public Health Department had only draft recruitment rules, 1964, which prescribed recruitment for the post of Tutor/ Master Tutor only by Nomination, in practice, the candidates possessing Post Basic B. Sc. (Nursing) were being appointed by interview which, for all practical purposes, operated as Promotion. However, since year 2007 promotions were not given to the staff nurses on the post of Tutor, therefore, some of the nurses made four numbers of representations during period from February 2012 to June 2012 to the Respondent No. 1 as well as Respondent No. 2 in the Original Application. In the meantime, the Department issued advertisement dated October 07, 2013 inviting applications for filling up all the 43 vacant post of Tutor by nomination. It was learnt that the Public Health Department was interpreting the Draft Recruitment Rules of year 1964 in stricter terms of phrase "Nomination". The learned Advocate Shri S. S. Jadhavar cited following judgments / case laws-

- a) *Apex Court Judgment in case of Dr. Ms. O.Z. Hussain Vs Union of India and others [AIR 1990 S.C. 311] and*
- b) *Food Corporation of India and Ors vs. Parashotam Das Bansal & Ors [Case No. Appeal (civil) 991 of 2008]*

12. Learned Advocate Shri S.S. Jadhavar has also argued that though the new recruitment rules notified on February 27, 2021 provide for Promotion Avenue, the qualifications for promotion has been raised from Bachelor of Science (Nursing) to Master of Science Nursing, which is restrictive in nature and thereby, large number of staff nurses including the Applicants, who possess post basic B.Sc. (Nursing) may not qualify for promotion without acquiring Post Graduate Qualification.

13. Learned C.P.O. Shri M.S. Mahajan, for the respondents advanced his argument by stating that the Applicants had prayed for amendment in recruitment rules providing for Promotion Avenue. As directed by the Tribunal, the Government has provided for 50 % of the vacant posts to be filled by promotion. He further stated that the qualifications have been fixed as per recommendations of Indian Nursing Council vide its letter dated March 14, 2019. The learned C.P.O. further cited the order passed by Division Bench of Maharashtra Administrative Tribunal, Principal Bench in M.A. 63/2021 in

O.A. No. 1133/2018 by which recruitment as per Revised Recruitment Rules of 2021 has been allowed on several posts of Nursing Service. He also said that qualification prescribed by draft recruitment rules of 1964 has been justifiably enhanced as the same cannot be kept stagnating even after over five decades when sufficient number of candidates of prescribed qualifications may be available in the feeder cadre.

14. It is observed that the citation of the Apex Court Judgment in case of **Dr. Ms. O.Z. Hussain Vs Union of India and others [AIR 1990 S.C. 311]** is relevant in the present context to the extent of importance of promotion in increasing efficiency of public service. Rest of the issues in the cited case relate to parity in Promotion Avenue between similarly situated two cadres in the same organization. Similarly, in **Food Corporation of India and Ors. Vs. Parashotam Das Bansal and Ors. [AIR 2008 SC (Supp) 1469]**, the Hon'ble Supreme Court has directed the appellant, the Food Corporation of India to have promotion policy for all the cadres. However, there is nothing in the two cited judgments which restricts enhancement of qualification for recruitment to a post including by mode of promotion. A promotion policy may incorporate one or more of components such as facilitation for skill development /

qualification upgradation by acquisition of higher skill or degree for which the organization may sponsor employees for higher education supported by study leave so that an employee becomes eligible for promotion, Assured Promotion Scheme, exemption from passing qualifying departmental examinations after attaining certain age etc. are some other commonly adopted components of promotion policy. In the instant case, staff nurses have been acquiring post basic B.SC (Nursing) for being eligible for nomination to higher posts of Tutor/ Master Tutor. As per new Recruitment Rules of 2021, they are required to be Post Graduate in Science (Nursing) for getting promotion. The learned advocate Shri S. S. Jadhavar has not provided any rational ground for expanding scope of prayer clause by raising the issue of educational qualification in the instant O.A. No. 42/2014 as allowing the prayer clause to expand in a hydra-headed manner may prejudice the respondents, which is the organ of state in the instant matter.

15. On the other hand, it is observed that the Respondents in Original Application have come out with a new set of Recruitment Rules, 2021 as per directions of the Tribunal, incorporating avenue for promotion for staff nurses. To have a policy in a public organization is a transparent but a time

consuming process, stopping recruitment in civil services until a recruitment policy which meets aspirations of all, only harms interest of common public, especially the poor and low and medium income groups, who depend solely on public services of essential nature such as Health, Education etc. Moreover, the prayer in the O.A. No. 42/2014 was to have Promotion Avenue which has been complied with, therefore, in our opinion it is a fit case to recall the interim orders and adverse observations / comments made against Respondents as mentioned above in para No. 6. In view of the above, we pass following order:-

ORDER

1. Interim relief granted vide Tribunal's order dated June 04, 2019 passed in M.A. No. 237/2019 in O.A. No. 42/2014 is vacated.
2. M.A. No. 116 /2021 in O.A. No. 42/2014 thus stands disposed off.
3. As a new Recruitment Policy 2021 has been notified as per directions of the Tribunal in this O.A. No. 42/2014, therefore, its application on impugned advertisements for recruitment dated, February 21, 2019, which is the subject matter of O.A. No. 42/2014, is hereby, allowed. As nothing remains to be decided in the OA No. 42/2014, the same stands disposed of.

4. Adverse observations made against the respondents in para No. 6 above stand recalled.

No orders as to cost.

MEMBER (A)
(Bijay Kumar)

MEMBER (J)
(V.D. Dongre)

Kpb/D.B. O.A. 42/2014 with M.A. 116/2021 with M.A. 237/2019VDD & BK