

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 813 OF 2017

DISTRICT : PARBHANI

Nagesh Mahadev Phad,)
Age : 25 years, Occu. : Nil,)
R/o : Khadgaon Kh. Tq. Gangakhed,)
Dist. Parbhani.) .. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through its Secretary, Health Dept.,)
Mantralaya, Mumbai,)
- 2) **Joint Director Health Service,**)
(Asansarg Dieses), Mumbai.)
- 3) **Directorate of Health Services,**)
Arogya Bhavan, Saint Georges)
Hospital Campus, Mumbai- 400001.)
- 4) **Prashant Chandrashekhar Patil,**)
Age : Major, Occu. : Service,)
C/o Medical Superintendent Rural)
Hospital, at post office Kasa,)
Tq. Dahanu, Dist. Parbhani -401607.).. **RESPONDENTS**

APPEARANCE : Shri Vivek Bhavthankar, Advocate for the
Applicant.

: Shri N.U. Yadav, Presenting Officer for
the Respondent Nos. 1 to 3.

: Shri Vijay B. Patil, Advocate for the respondent
No. 4

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

DATE : **25.08.2021.**

ORDER**(Pronounced on 25th August, 2021)****(Per : Shri Bijay Kumar, Member (A))**

1. The applicant has filed the original application on November 07, 2017 against the decision of the Directorate health services communicated to him by the Joint Director (Health Services, Non communicable diseases) Mumbai vide his letter no. क. संआसे/ अंनिका/ टे-१/ कक्ष८अ/ नेचिअ/ नेमनुक/ रद्द/ १३८४/ १३७८/१७, दिनांक १६/१०/२०१७, that the applicant had been determined to be ineligible for appointment on the post of Ophthalmic Officer, Grade-C against quota for project affected persons. The applicant subsequently filed miscellaneous application M.A. No. 292 of 2018 to amend the original application and add name of one Shri Prashant Chandrashekhar Patil, as respondent no. 4 in the O.A. which was allowed vide an oral order on August 14th 2018.

2. It is undisputed that original owner of a piece of land situated at village Dabi, Taluka- Parli, District- Beed was the project affected person within meaning of Section 2 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999. On application made by the said project affected person the District Collector, Beed had, in exercise of powers vested in him vide section 5 (c) of the Maharashtra Project Affected Persons

Rehabilitation Act, 1999, issued certificate dated November 21, 1997 to one Shri Shrinivas Mahadev Phad who is the elder brother of the applicant. A photo copy of the said certificate is enclosed as Exhibit A-2, at page No. 13 of the paper book.

3. It is also undisputed that the Jt. Director, Health Services, (Non-Communicable Diseases), Mumbai issued an advertisement dated July 01, 2016 inviting applications for appointment by nomination on the post of Ophthalmic Officer, Grade-C which included 2 posts under category of project affected persons (1 post under ST and 1 post in open category). In response to the said advertisement the applicant submitted his application for the post of Ophthalmic Officer, Grade-C by prescribed mode of online application. While submitting his application the applicant had declared himself to be under category of project affected persons by responding to question as follows - "तुम्ही प्रकल्पग्रस्त उमेदवार आहात काय - Yes". However, the factual position was that the applicant did not have any certificate as project affected person or nominee of a project affected person on the last date of submission of application for the said post i.e. July 18, 2016 and thereafter, till August 15, 2016.

4. As the Applicant was selected for document verification which was scheduled on August 19, 2017 but he did not have the Certificate of Nominee of the Project Affected Persons in his own name, he applied to the Collector, Beed for transfer of the said certificate in his name which was approved on August 16, 2017 which was later on presented by the applicant for document verification on August 19, 2017.

5. On revealing of above facts during document verification the applicant was declared to have furnished false information and he was not selected against quota for project affected person.

6. **The applicant has prayed for following reliefs -**

- “A) The order dated 16/10/2017 (exh-A-5) issued by the Respondent no 2/Joint Director of Health Services, Mumbai refusing to give appointment to the applicant on the post of Ophthalmic Officer Gr-C from project affected category may kindly be quashed;*
- B) It be held that the Applicant is eligible to be appointed as Ophthalmic Officer Gr C from open project affected category as per advertisement dated July 1, 2017.*
- C) The Respondent may kindly be directed to issue appointment order in favour of the Applicant on the post of Ophthalmic Officer Gr-C class III from open*

project affected category forthwith holding that the applicant is from project affected category;

D) Any suitable relief be granted to the applicant.”

Interim Relief Sought:

“A) Pending the final hearing and disposal of this original application, the Respondents may kindly be restrained by an order of injunction from appointing any person on the post of Ophthalmic Officer, Gr- C, Class-III.”

7. Respondent no. 1 to 3 had submitted affidavit in reply to the O.A. June 12, 2018 and reiterated above mentioned reasons for not selecting the applicant for the said post of Ophthalmic Officer, Grade-C and has informed that instead of the applicant, appointment order had been issued to respondent No. 4 on March 09, 2018 and in turn, the respondent no. 4 has joined on the post on March 13, 2018. This makes the prayer for interim relief infructuous. Respondent no. 4 has submitted similar facts in affidavit in reply submitted on April 24, 2019. The matter was closed for final hearing on November 15, 2019 which took place on July 05, 2021 and August 02, 2021.

8. During the final hearing the learned advocate for the Applicant asserted that each member of the family of the project affected person is eligible for getting employment under quota for

project affected category irrespective of the fact whether his / her name appears as nominee on the certificate issued to the project affected person or not. It was argued that any child of the project affected person may be named as a nominee but this does not bar other dependent family members from getting benefit for the purpose of employment as a project-affected person. As per the learned advocate for the applicant, there is only one condition that must be adhered to is that only one dependent of the project-affected person can avail the benefit of employment. He has relied on judgment of the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in writ petition no. 10843 of 2014, dated October 19, 2015.

9. Respondent No. 1 to 3 reiterated points of argument already covered by them in affidavit in reply filed on behalf of the respondents. The learned Presenting Officer submitted copies of following documents marked as 'X' collectively, which comprise of following documents :-

- "i) Letter dated 03.08.2018 received to the C.P.O. office from the Joint Director Health Services (Asansarg Disease), Mumbai.
- ii) Appointment order dated 09.03.2018 of respondent No. 4.

- iii) Letter dated 16.08.2018 received to the C.P.O. office from the Joint Director Health Services (Asansarg Disease), Mumbai.
- iv) Letter dated 09.08.2019 written by the Under Secretary, Maharashtra State.”

10. The learned Advocate for respondent No. 4 argued that selection and appointment of respondent no. 4 was as per provisions of law. He also submitted copies of case laws as listed below :-

- a) 2007 DGLS (SC) 214 (Supreme Court), Ashok Kumar Sonkar Vs. Union of India & Ors.
- b) 2008 DGLS (SC) 1377 (Supreme Court), Dipitimayee Parida Vs State of Orissa & Ors.
- c) 2013 DGLS (SC) 595 (Supreme Court), Rakesh Kumar Sharma & Ors. Vs. Govt. of NCT of Delhi & Ors.

The case was closed for orders on August 09, 2021.

11. **Analysis of facts-**

Section 5(c) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 is reproduced below:

*‘5. It shall be the duty of the Collector –
(c) to issue a certificate to a person who is nominated by the project affected person for being employed against the quota reserved for nominees of the affected persons.’*

12. A plain reading of Section 5(c) shows that it is imperative for the Collector to issue a certificate to the nominee of the project affected person and till such time that the name of the nominee is formally changed upon such certificate issued by the Collector; no other dependent can claim benefits as a project-affected person. The case-laws relied upon by the Applicant are not relevant in this regard as they deal with the right of married daughters as a nominee of project affected person. Further, the arguments advanced by the Learned Advocate for the Applicant are inconsistent with Section 5(c) as reproduced above.

13. The candidature of the Applicant is found to be invalid as on the reference date i.e. the last date for submission of application, therefore the appointing authority was justified in giving appointment to the next person in the merit list i.e. Respondent no. 4. The judgments of the Hon'ble Supreme Court in **Ashok Kumar Sonkar vs Union of India and Diptimayee Parida Vs. State of Orissa** reported in 2007 DGLS (SC) 214 (Supreme Court) and 2008 DGLS (SC) 1377 (Supreme Court), **Dipitimayee Parida Vs State of Orissa & Ors.** has upheld that requirement of eligibility has to be taken on cut-off date and in the absence of any cut-off date specified in the advertisement or

rules, the last date for filing of an application shall be considered as such. In the instant case, the Applicant did not have his name on the certificate as a 'Nominee' until the last date of Application i.e. July 18, 2017 and thereafter till August 15, 2017 and hence, cannot be considered to qualify as a 'nominee' of the project affected person for the purpose of employment.

14. Hence, in light of the facts of the case, arguments advanced and case laws cited, we find no merit in the claim of the Applicant. Hence, we pass following order:-

ORDER

The Original Application stands dismissed. No order as to costs.

MEMBER (A)
(Bijay Kumar)

MEMBER (J)
(V.D. Dongre)

Kpb/D.B. O.A. 813/2017 VDD & BK Appointment from PAP category