

ORIGINAL APPLICATION NO. 690 OF 2021
(Dr. Arvindkumar N. Waghmare Vs. State of Maharashtra & Ors.)

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

DATE : 9.11.2021

ORAL ORDER :

Heard Shri Jayant S. Deshmukh, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.

2. Issue notice to respondents, returnable on 30.11.2021.

3. Tribunal may take the case for final disposal at once and separate notice for final disposal shall not be issued.

4. Applicant is authorized and directed to serve on respondent/s intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of the case. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

5. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

6. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and

produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

7. S.O. to 30.11.2021.
8. Steno copy and Hamdast is allowed to both parties.
9. The present case be placed on separate board.

MEMBER (J)

ORIGINAL APPLICATION NO. 175 OF 2021
(Ajay Ramesh More Vs. State of Maharashtra & Ors.)

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

DATE : 9.11.2021

ORAL ORDER :

Heard Shri Kiran G Salunke, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent Nos. 1 & 2. None appears for respondent No. 3 though duly served.

2. Learned Chief Presenting Officer seeks time for filing affidavit in reply on behalf of respondent Nos. 1 & 2. Time granted.

3. S.O. to 01.12.2021.

MEMBER (J)

ORIGINAL APPLICATION NO. 689 OF 2021
(Ajay Ramesh More Vs. State of Maharashtra & Ors.)

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

DATE : 9.11.2021

ORAL ORDER :

Heard Shri Kiran G Salunke, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.

2. The present Original Application has been filed by the applicant challenging the order dated 21.10.2021 (Annexure 'A-12', page-37 of paper book of O.A.), whereby the applicant is promoted and posted as Junior Architect, Squad No. 2, Public Works Regional Division, Mumbai on vacant post. The applicant thereby is seeking modification in the said impugned order seeking posting at Nanded on vacant post.

3. Admittedly, as of now the applicant is working as Assistant Architect under the control of respondent No.3 at Nanded. The applicant is seeking interim relief to the effect that no coercive action shall be taken against him in case he does not join on the transferred post on promotion at Mumbai within a stipulated period of one month from 21.10.2021.

4. Considering the pleadings of the O.A., it is *prima facie* seen that the applicant is seeking his posting at Nanded on

the contention that the post is vacant at Nanded and he is transferred on promotion and posted at Mumbai. Considering the nature of the proceedings, in my considered opinion, the applicant to join at the transferred post on promotion at Mumbai under protest within stipulated period. The impugned order will be subject to decision in this Original Application.

5. Issue notice to respondents, returnable on 30.11.2021.

6. Tribunal may take the case for final disposal at once and separate notice for final disposal shall not be issued.

7. Applicant is authorized and directed to serve on respondent/s intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of the case. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

8. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

9. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

10. S.O. to 30.11.2021.

11. Steno copy and Hamdast is allowed to both parties.

12. The present case be placed on separate board.

MEMBER (J)

ORIGINAL APPLICATION NO. 692/2021
(Sachin S. Kamble Vs. State of Maharashtra & Ors.)

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

DATE : 9.11.2021

ORAL ORDER :

Heard Shri C.V. Dharurkar, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.

2. Learned Advocate for the applicant seeks leave of the Tribunal to correct the designation of respondent no. 1 as 'the Directorate Health Services, Arogya Bhavan, St. George's Hospital Compound, P.D. Mello Road, Mumbai – 400 001 [through the Deputy Director (Nursing)]. Leave as prayed for is granted. Correction as prayed for be carried out in the O.A. forthwith.

3. The Original Application is filed seeking appropriate directions to the respondent nos. 1 & 2 to select the applicant for admission to M.Sc. (Nursing) course by quashing and setting aside the admission given to the respondent no. 4 – Smt. Sheetal Shrimant Ohol – for the said course as the applicant, who is belonging to the S.C. category, is higher in merit than the respondent no. 4, who has been given the admission.

4. It is the case of the applicant that the applicant secured B.Sc. (Nursing) degree in the year 2011. He was selected as a Staff Nurse in the year 2013 and joined at District Hospital, Gadchiroli on 24.5.2013. While he was working at Gadchiroli, he was selected as a Staff Nurse at District Rural Hospital, Osmanabad. On 1.9.2017 the applicant joined at Osmanabad after he was relieved from Gadchiroli on 31.8.2017. In view of the same, since 24.5.2013 when the applicant joined at Gadchiroli he has completed more than 8 years continuous and uninterrupted Government service.

5. In the first week of October, 2021 the respondent no. 3 issued advertisement (page 23 Annex. A-2) calling for the applications for admission to M.Sc. (Nursing) course. The applicant being eligible applied for issuance of 'No Objection' for applying to the M.Sc. (Nursing) course to the respondent no. 2. The respondent no. 2 was pleased to forward the proposal dated 14.10.2021 (page 27 Annex. A-3) to the respondent no. 1 for obtaining No Objection for admission to P.G. course of M.Sc. (Nursing). However, the respondent no. 1 did not forward the applicant's application to the respondent no. 3 for admission to

M.Sc. (Nursing) course. Thereafter on 22.10.2021 the respondent no. 3 – the Institute of Nursing Education, Mumbai – displayed the provisional merit list of eligible candidates for admission to M.Sc. (Nursing) course (page 39 Annex. A-4). The applicant's name was not in the said list. The proposal dated 14.10.2021 (Annex. A-3) was submitted by the respondent no. 2 to the respondent no. 1 stating that the applicant has not completed continuous service of 5 years as against the fact that he has completed continuous service of more than 8 years. In the circumstances, the applicant made representations dated 23.10.2021 (page 55 Annex. A-6), 25.10.2021 (page 62 Annex. A-8) and 30.10.2021 (page 63 Annex. A-9) to the respondent no. 1 seeking permission to make application in private Institute for getting admission to M.Sc. (Nursing) course.

6. In the circumstances, the learned Advocate for the applicant presses the alternative interim relief in terms of prayer clause 10(E) of O.A., which reads as under :-

“10. Interim Relief/s Sought –

(E) During pendency and final disposal of the present O.A. the R.1 and R.2 may kindly be directed to decide the applicant’s representations dated 23.10.2021 (Annex. A-6) and 25.10.2021 (Annex. A-8) and permit the applicant to pursue his M.Sc. Nursing Post Graduation from any of the Private Institution of his choice and for that purpose the R.1 and R.2 may kindly be directed to issue necessary orders.”

7. Learned C.P.O. submits that he would seek necessary instructions from the respondents.

8. Considering the pleadings of the applicant as above, it appears that, the contention of the applicant that he has completed continuous service of more than 8 years is disputed by the respondent no. 2 stating that the applicant has not completed the requisite period of service of 5 years.

9. In this regard the learned Advocate for the applicant has relied upon the case law of Hon’ble High Court of Judicature at Bombay in the case of

Vishwajit Panchakshari Mathpati & Ors. Vs. State of Maharashtra & Ors. reported at **AIR 2013 (NOC) (SUPP) 380 (BOM.)** In the said citation head note (A) reads as follows :-

“(A) Nursing Council Act (48 of 1947) S. 16 – Admission to M.Sc. (Nursing) Course – Eligibility prescribed by Indian Nursing Council constituted under Act (48 of 1947)- It would not be open to State Government to prescribe conditions at variance with those prescribed by authority under said Central legislation enacted with reference to Entry 66 of Union List to Seventh Schedule of Constitution of India, Seventh Schedule, List 1 Entry 66.”

10. In this regard the applicant has referred to rule 80(5)(a) of Maharashtra Civil Services (Leave) Rules, 1981, which mandates completion of more than 5 years of service for availing ‘Study Leave’. According to the applicant, this rule is directly in contravention of eligibility criteria for seeking admission to P.G. course as set out by the Indian Nursing Council, which is as under :-

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“The candidate should be a Registered Nurse and Registered midwife or equivalent with any State Nursing Registration Council.

The Minimum education requirements shall be the passing of B.Sc. Nursing / B.Sc. Hons. Nursing / Post Basic B.Sc. Nursing with minimum of 55% aggregate marks.

The candidate should have undergone in B.Sc. Nursing/ B.Sc. Hons. Nursing/ Post Basic B.Sc. Nursing.

Minimum one year of work experience after Basic B.Sc. Nursing.

Minimum one year of work experience prior or after post Basic B.Sc. Nursing.”

11. Further in this regard the learned Advocate has placed reliance on the order dated 15.2.2019 passed by the Hon'ble Vice Chairman of this Bench in O.A. NO. 21/2019, whereby the State Government was directed to go through the Circular dated 3.5.2018 of Medical Education and Drugs Department and to take corrective steps. The said Circular dated 3.5.2018 is

at page 100 of paper book. Thereby the admission in private Institute to the Government servant is made applicable by the D.M.E.R., however, said correction is not carried out by the respondent nos. 1 & 2 as yet.

12. In the circumstances as above, in my considered opinion, in order to protect the interest of the applicant, it would be just and necessary to grant interim relief in terms of prayer clause 10(E) of the O.A. thereby the respondent nos. 1 & 2 are directed to decide the representations of the applicant dated 23.10.2021 (page 55 Annex. A-6), 25.10.2021 (page 62 Annex. A-8) and 30.10.2021 (page 63 Annex. A-9) within the period of 2 weeks from the date of this order on its own merit and communicate the decision thereon to the applicant in writing within one week thereafter.

13. Issue notices to the respondents, returnable on 3.12.2021.

14. Tribunal may take the case for final disposal at once and separate notice for final disposal shall not be issued.

15. Applicant is authorized and directed to serve on respondent/s intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of the case. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

16. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

17. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

18. S.O. to 3.12.2021.

19. Steno copy and Hamdast is allowed to both parties.

MEMBER (J)

**ORIGINAL APPLICATION NO. 693/2021
(Shreyas P. Varule Vs. State of Maharashtra & Ors.)**

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

DATE : 9.11.2021

ORAL ORDER :

Heard Smt. Vaishali Suryawanshi, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.

2. Learned Advocate for the applicant submits that there is certain minor lack of pleadings and corrections in the O.A. as it is prepared hurriedly. In view of the same she seeks leave of the Tribunal to carry out corrections in the O.A. Applicant is allowed to carry out necessary corrections in the pleadings of the O.A. without changing the nature thereof. The said corrections be carried out in the O.A. within a period of one week and corrected copy be supplied to other side.

3. After carrying out necessary corrections in the O.A., issue notices to the respondents, returnable on 8.12.2021.

4. Tribunal may take the case for final disposal at once and separate notice for final disposal shall not be issued.

5. Applicant is authorized and directed to serve on respondent/s intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of the case. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

6. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

7. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

8. S.O. to 3.12.2021.

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9. Steno copy and Hamdast is allowed to both parties.

MEMBER (J)

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