

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 366 OF 2014

DIST.: DHULE

Smt. Anita d/o Ramdhan Rathod,
Age: 35 years, Occu: Service Medical Officer,
Class II, Dental Surgeon,
R/o Sub District Hospital Shirpur,
Tq. And Dist. Dhule.

- APPLICANT

V E R S U S

1. State of Maharashtra,
Through its Secretary,
Public Health Department,
Mantralaya, Mumbai.
(Copy to be served on the Chief Presenting
Officer, M.A.T. Aurangabad.)
2. The Director of Medical
Education and Research,
Mumbai.
3. The Director of Health Services,
Mumbai.
4. The Maharashtra Public Service Commission,
3rd Floor, Bank of India Building,
M.G. Road, Fort, Mumbai - 400 001.
Through its Deputy Secretary.
5. Nishma Uttamrao Ade,
Age :Major, Occu. :
R/o C/o Maharashtra Public Service Commission,
3rd Floor, Bank of India Building,
M.G. Road, Fort, Mumbai - 400 001.

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RESPONDENTS

APPEARANCE : Shri V.B. Wagh, learned Advocate
holding for Shri S.B. Kakde, for the
Applicant.

: Shri D.R. Patil, learned Presenting
Officer for the Respondents.

**CORAM : HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)
AND
HON'BLE SHRI J.D. KULKARNI, MEMBER (J)**

J U D G M E N T

[Per- Hon'ble Shri J.D. Kulkarni, Member (J)]

(Delivered on this 30th day of January, 2017)

The Applicant, Dr. Anita Ramdhan Rathod, has challenged the selection list dated 5.7.2014 for the post of Dental Surgeon, General States Services, Group B to the extent of reserved post from the category of Denotified Tribes (A) (ladies) issued by the Maharashtra Public Service Commission (M.P.S.C.). It is the claim of the applicant that the said list be quashed and set aside and the applicant be selected for the post of Dental Surgeon in response to the advertisement dated 31.07.2008.

2. The applicant is graduate in B.D.S. and belongs to "Lamani" VJ-7(1) cast, which is referred as denotified

tribes category. The applicant has been appointed as Medical Officer Class II, by the respondent no. 2 vide orders dated 30.08.2004 and 19.08.2005 and posted at Sub District Hospital, Shirur, Dist. Dhule.

3. The applicant was initially appointed as Medical Officer, Class II Grade "A", however, during the course of the time, the said service was confirmed as Medical Officer Class II, Grade B in respect of Medical Officers, who have completed degree course. Vide order dated 3.2.2009, all the Medical Officers Class II, graduated in M.B.B.S., B.A.M.S. and B.D.S. were absorbed by the respondent no. 2. The applicant's case was also considered as per the directions of the Tribunal in O.A. No. 237/2010 dated 6.4.2010 and accordingly applicant was absorbed on 12.07.2012.

4. The applicant in response to the advertisement dated 31.07.2008 applied for the post of Dental Surgeon. She was called for interview vide letter dated 5.7.2011 on 21.07.2011. Even though the applicant was having more experience and the respondent no. 5 was having no

experience of the Dental Surgeon, the respondent no. 4 selected the respondent no. 5 without following proper criteria of selection. The final list was published on 5.7.2014. The applicant was denied her right and hence, this Original Application.

5. The respondent no. 4 the Maharashtra Public Service Commission has filed affidavit in reply and submitted that the final selection was made out on merits on the basis of marks obtained in the interview and not on the length of the experience. The applicant got 42 marks, whereas the respondent no. 5 secured 43 marks and therefore, the respondent no. 5 was selected on merits.

6. We have heard Shri V.B. Wagh, learned Advocate holding for Shri S.B. Kakde, learned Advocate for the applicant and Shri D.R. Patil, learned Presenting Officer for the respondents. We have also perused the affidavit, affidavit in reply and various documents placed on record by the respective parties.

7. The learned Advocate for the applicant submits that the applicant is having more experience than the respondent no. 5 and therefore, she should have been selected for the post. We have perused the advertisement for the post of Dental Surgeon. Copy of the said advertisement is placed on record at paper book page no. 44 and the said advertisement states about the minimum qualification required for the post. As per the advertisement's Clause No. 5 (5.1) and (5.2) the following qualification is prescribed.

“5. QUALIFICATIONS : *candidates must possess -*

*5.1 A degree in Bachelor of Dental Surgery as included in Part – I or Part- III of the Schedule to the Dentists Act, 1948 (16 of 1948) **and thereafter***

5.2 Have experience of not less than 1 year as a Clinical Assistant or in any post which in the opinion of the Government is equivalent to or higher than, the post of Clinical Assistant.

Preference may be given to candidate possessing postgraduate qualification in Dental Science.”

From the aforesaid cause, it will be clear that the minimum experience required was of not less than one year as a Clinical Assistant or in any post which in the opinion of the Government is equivalent to or higher than the post of Clinical Assistant. It is further stated that the preference given to the candidates possessing post graduate qualification in Dental Science. In other words, merely because some candidate has more experience that cannot be a ground to prefer him over the meritorious student.

8. From Clause No. 7.6 it is clear that the written test was conducted and marks obtained in the oral interview were to be added. The said clause 7.6 reads as under:-

“7.6 Written objective type test (multiple choice question) will be conducted and followed by interview for selection of candidates to the posts. Marks obtained in the written test will be added to the marks obtained in the interview. However, the Commission at it’s discretion, may shortlist the applicants for interview based on reasonable criteria i.e. higher qualification and/or experience in place of written test. In case of the written test, the syllabus

and medium of question paper and other details for the test shall be displayed on the Commission's website. Accordingly, the weigh-age of written test and interview shall also be displayed."

9. Reply affidavit shows a chart of qualification acquired by the applicant as well as respondent no. 5. In paragraph no. 6 of the affidavit in reply, the respondents have stated that the applicant Smt. Anita Ramdhan Rathod applied under D.T. (A) category and her educational qualification is B.D.S. and that she is having experience of 2 years, 11 months and 22 days and it is as under:-

| Sr. No. | Post held | Organization | Period |
|-------------------------|---------------------------|---|---|
| 1 | Clinical Assistant | Sub District Hospital, Shirpur, Taluka- Shirpur, Dist. Dhule | 1 Y (Not considered as exp. is stipendiary.) |
| 2 | Dental Surgeon | | 4 M |
| 3 | Dental Surgeon | | 11 M |
| 4 | Dental Surgeon | | 11 M |
| 5 | Dental Surgeon | | 9 M, 22 D |
| Total experience | | | 2 Y, 11 M, 22 D |

As against this, the respondent no.5 is also having qualification i.e. B.D.S. and is having experience as under:-

| Sr. No. | Post held | Organization | Period |
|-------------------------|-------------------|---|--|
| 1 | Lecturer | NMDCRI Sakri, Bilaspur (C.G.) | 1 Y, 10 M, 20 D |
| 2 | Internship | Government Dental College and Hospital, Nagpur | 1 Y (Not considered as exp. is stipendiary) |
| Total experience | | | 1 Y, 10 M, 20 D |

10. Thus, admittedly the applicant is having more experience i.e. of 2 years 11 months and 22 days as against the experience acquired by the respondent No. 5 which is 1 year, 10 months and 20 days. However, as already stated there was no clause that experience will be given more weightage. Even otherwise, the question of weightage comes into operation only when two candidates obtained equal marks on merits.

11. In the present case as seems from the reply affidavit that the applicant has secured 42 marks, whereas respondent no. 5 has secured 43 marks. It is stated in paragraph no. 7 of the reply affidavit as under:-

“ Applicant Smt. Rathod and Smt. Ade, both candidates were called for interview as they

had the basic requirements for the post. Final selection was made on merits on the basis of the marks obtained in the interview and not on the basis of length of experience. Smt. Ade secured '43' marks and Smt. Rathod secured '42' marks. Therefore Smt. Ade Nishma Uttamrao was recommended for one post reserved for D.T. (A)- Female category."

From the aforesaid discussion it will be clear that the respondent no. 5 secured one more mark than the applicant on merits and therefore, she was considered fit for selection.

12. The learned Advocate for the applicant has placed reliance on the judgment delivered in **(1985) 4SCC 417** in the case of **Ashok Kumar Yadav and Ors. Vs. State of Paryana and Ors. (Civil Appeal Nos. 10160 and 10162 of 1983)** and particularly paragraph no. 14 of the said judgment, which reads as under:-

"14..... We may reasonably assume that a person who write such an article would never be a party to any manipulations in the selection of

candidates nor would he debase or demean himself by indulging in or even leading his support to, any acts of nepotism or favouritism. It would be quite legitimate to infer that if there had been any attempt to manipulate the marks at the viva voce examination with a view to favouring the undeserving or pushing down the meritorious, Shri D.R. Chaudhari would have protested against such improper and unholy attempt. The very fact that Shri D.R. Chaudhari not only did not register any dissent in regard to the marks awarded at the viva voce examination but actually agreed with the evaluation made by his colleagues shows that there was nothing wrong with the marking nor was there any manipulation of marks indicating nepotism or favouritism. In fact Shri D.R. Chaudhari filed an affidavit in these proceedings where he candidly said that this article written by him was based on his direct experience of working in the Haryana Public Service Commission and he proceeded to add boldly and courageously.”

13. The learned Advocate for the applicant has also placed reliance on (1991)1 SCC 662 in the case of

Mohinder Sain Garg Ors. Vs. State of Punjab and Ors.
(C.A. No. 5329, 5330, 5332 of 1990 with W.P. (Civil) Nos.
719 and 824/1990).

14. We have carefully gone through both these citations on which the learned Advocate for the applicant has placed reliance and we are satisfied that the facts of the present case and those in the citations are not analogues and therefore, the said citations are not applicable to the present set of facts.

15. On a conspectus of discussions in foregoing paragraphs we are therefore, satisfied that the respondent no. 5 though may have less experience than the applicant, admittedly she was having requisite experience as per advertisement for the post of Dental Surgeon and on merits she has been preferred against the applicant. There are no allegations of mala-fides against the selection committee and therefore, in such circumstances, there is absolutely no reason to interfere in decision taken by the competent authority (M.P.S.C.) to select the respondent no. 5 on merits

against the applicant. We are therefore, of the opinion that there is no merit in the O.A. and hence, the following order:-

ORDER

The Original Application stands dismissed with no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)

Kpb/DB OA No 366 of 2014 JDK