

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**BENCH AT AURANGABAD****ORIGINAL APPLICATION NO. 258/2012****DIST.: DHULE/NANDED**

1. Dr. Vishal s/o Ramesh Jusuja,
Age: 31 years, Occu. Service
As Adhoc Assistant Professor in Anatomy,
Shri Bhausahab Hire Government Medical
College, Dhule, Dist. Dhule.
R/o Bhavsar Colony,
Dhule, Tq. & Dist. Dhule.
2. Dr. Udhav s/o Wamanrao Mane,
Age: 29 years, Occu. Service
As Adhoc Assistant Professor in Anatomy,
Dr. Shankarrao Chavan Government Medical]
College, Nanded r/o Dnyaneshwar Nagar,
CIDCO, New Nanded
Tq & Dist. Nanded.

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APPLICANTS**VERSUS**

1. The State of Maharashtra,
(Copy to be served on C.P.O.
M.A.T., AURANGABAD)
2. The Secretary,
Medical Education &
Drugs Department,
Mantralaya, Mumbai-32.
3. The Maharashtra Public
Service Commission,
Bank of India, Building,
IIIrd Floor, Mahatma Gandhi Marg,
Hutatma Chowk, Mumbai,
Through its Secretary.

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RESPONDENTS

APPEARANCE : Shri K.G. Salunke, learned Advocate for
the Applicants.

: Smt. Resha S. Deshmukh, 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 16th day of December, 2016)**

The Applicants in this O.A. have claimed for direction to respondent no. 3 to call for interview in pursuance of the advertisement no. 100/2011 and if found eligible to select and appoint them to the post of Assistant Professor in Anatomy from Open Category.

2. The Applicant No. 1 Dr. Vishal s/o Ramesh Jusuja, was appointed and selected as Assistant Professor in Shri Bhausahab Hire Government Medical College, Dhule on ad-hoc basis on 17.08.2011. Whereas, the Applicant No. 2 Dr. Udhav s/o Wamanrao Mane, was appointed on the same post in Dr. Shankarrao Chavan Government Medical College, Nanded. Both the applicants applied for the post of Assistant

Professor/Lecturer in the subject “Anatomy” in pursuance of the advertisement issued by the respondent no. 3 on 26.08.2011. The advertisement was for 21 posts.

3. Both the applicants are well qualified for the post of Assistant Professor in Anatomy and they are possessing requisite qualification and experience as prescribed in the advertisement. Accordingly, the applicant no. 1 applied on 20.09.2011 and the applicant no. 2 applied on 13.09.2011. The respondent no. 3 issued hall tickets/call letters to both the applicants and both the applicants were asked to remain present for interview in the office of Respondent no. 3. The applicant no. 1 was given interview no. 52, whereas the applicant no. 2 given interview no. 57 and were asked to remain present at 9.45 a.m. in the office of Respondent no. 3 on 26.03.2012. They accordingly remained present but they were not allowed to participate in the interview process stating that they were not fulfilling the short listing criteria. It was orally stated that as per the short listing criteria prescribed, the cut off marks of final year examination of M.B.B.S. was fixed as 64% marks for Open Category. Since, the applicants were not allowed to appear for interview and therefore, they have filed this O.A. It is stated that one Anjali

Krishna Prasad, candidate at Sr. No. 56 in the list of eligible candidates was undergoing the post graduation i.e. M.D. in anatomy, still she was called for interview and hence, this O.A.

4. The respondent no. 3 the Maharashtra Public Service Commission (M.P.S.C.) has filed affidavit in reply and admitted fact that the applicants were called for interview. It is however, stated that only 34 candidates were found eligible against 4 posts of Open Category and therefore, it was necessary to apply short-listing criteria. It was therefore, decided that the persons possessing M.S. (Anatomy) and M.B.B.S. with 64% marks and above in the last year examination of M.B.B.S. shall be called for interview. It was noticed that the applicants did not fulfill that criteria and they were not allowed for interview.

5. The respondent no. 3 also filed additional affidavit in reply and reiterated the fact that the respondent no. 3 applied short listing criteria of 64% marks in the last year of M.B.B.S. degree. It is stated that one Shri Anjali Krishna Prasad, who was not qualified and was not having M.D.

degree was called for interview but she was not interviewed as she did not appear.

6. We have heard Shri Kiran G. Salunke, learned Advocate for the applicants and Shri Resha S. Deshmukh, learned Presenting Officer for the respondents. We have also perused application, affidavits, affidavit in replies and various documents placed on record by the respective parties.

7. The learned Presenting Officer submits that the M.P.S.C. has every right to short list candidate for oral interview, in case the candidates appeared for particular post are vast in number and therefore, it has applied short listing criteria. It was decided to call for oral interview, those candidates only, who have obtained 64% or more marks in the M.B.B.S. There is no dispute that none of the applicants has acquired 64% or more marks in the last year of M.B.B.S.

8. The only material point to be considered in this case is whether applying short listing criteria by the respondents is legal and proper?

9. The learned Presenting Officer has placed reliance on the judgment delivered in the case of **Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another** reported in **AIR 1995 SUPREME COURT PAGE 77.** In the said case, the Hon'ble Supreme Court has observed in paragraph no. 6 as under :-

“6. The question which is to be answered is as to whether in the process of short-listing, the Commission has altered or substituted the criteria or the eligibility of a candidate to be considered for being appointed against the post of Presiding Officer, Labour Court. It may be mentioned at the outset that whenever applications are invited for recruitment to the different posts, certain basic qualifications and criteria are fixed and the applicants must possess those basic qualifications and criteria before their applications can be entertained for consideration. The Selection Board or the Commission has to decide as to what procedure is to be followed for selecting the best candidates amongst the applicants. In most of the services screening tests or written test have been introduced to limit the numbers of the candidates who have to be called for interview. Such screening tests or written tests have been provided in the concerned statutes or prospectus which govern the selection of the candidates. But where the selection is to be made only on basis of interview, the Commission or the Selection Board can adopt any

rational procedure to fix the number of candidates who should be called for interview. It has been impressed by the courts from time to time that where selections are to be made only on the basis of interview, then such interviews/viva voce tests must be carried out in a thorough and scientific manner in order to arrive at a fair and satisfactory evaluation of the personality of the candidate. ”

10. The learned Presenting Officer also invited our attention to the Maharashtra Public Service Commission Rules of Procedure, 2005 and particularly to Rule 9(i) as regards direct recruitment which reads as under:-

“9(i) In case, the response to advertisement exceeds the proportion laid down in Rule 9(i) above, the Commission may apply criteria for shortlisting of candidates. The criteria may pertain to preferential academic qualification or preferential experience as prescribed in the notification issued by the Commission in this regard. If however, no such criteria is prescribed in the notification, the Commission may depending upon the response have to adopt any other suitable criteria for shortlisting the candidates for interview.”

11. From the aforesaid Rule it is clear that the Commission may depending upon the response have to adopt

any other suitable criteria for short-listing the candidate for interview. In the present case, the respondents have decided to call those candidates only who have secured 64% or more marks in the final year examination of M.B.B.S. It may be disputed as to why the final year marks are only considered and why aggregate marks were not considered, but no mala-fides are alleged against the M.P.S.C. In the absence of any mala-fide, criteria adopted by the respondent no. 3 for short listing candidates called for interview cannot be doubted. In view of the observations as above, we are satisfied that there was no special reason for not calling applicants for interview as such there were no mala-fides on the part of respondent no. 3. If considering number of candidates who responded to the advertisement, the M.P.S.C. thought it proper to call those candidates who have scored 64% or more marks in the final year examination of M.B.B.S. for interview, it cannot be said that such procedure is illegal or such procedure has been adopted with some ulterior motive. The advertisement is of the year 2011, the candidates have already been appointed in view of said procedure adopted by the M.P.S.C. and therefore, it may not be proper to interfere in the decision taken by the M.P.S.C. Hence, following order:-

ORDER

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

MEMBER (J)

Kpb/DB OA No 258 of 2012 jkd 2016

VICE CHAIRMAN (A)