

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**MISC APPLICATION NO 629 OF 2022
IN
ORIGINAL APPLICATION NO 677 OF 2020**

DISTRICT : MUMBAI

The Secretary,)
Maharashtra Public Service Commission)
Having office at 5 1/2th, 7th and 8th floor,)
Cooperage Telephone Exchange Bldg,)
M.K Road, Cooperage, Mumbai 400021)...**Applicant**
(Ori Respondent)

Versus

1. Smt Nishigandha K. Pashte,)
Drugs Inspector, Food and Drugs)
Administration, Greater Mumbai.)
Bandra Kurla Complex, Bandra [E],)
Mumbai 400 051.)
R/o: 1502, Highland Heaven,)
Balkum Pada No. 3, Thane.)
2. Shri Nitin P. Aher,)
Drugs Inspector, office of the Joint)
Commissioner, [Konkan Division],)
Food and Drugs Administration,)
MIDC Bldg, Wagle Estate,)
Thane.)
R/o: C-202, Sairaj Apartment,)
Plot no. 44, Sector-19, Airoli,)
Navi Mumbai 400 708.)...**Respondents**
(Ori Applicants)

1. The State of Maharashtra,)
Through the Secretary,)
Medical Education & Drugs Dept,)
9th floor, G.T Hospital Bldg,)
Lokmanya Tilak Marg, Mantralaya,)
Mumbai 400 001.)...**Formal Respondent**
(Ori Respondent no. 2)

Smt K.S Gaikwad, learned P.O for the Applicants (Ori Respondents).

Shri U.V Bhosle, learned advocate for the Respondents (Ori Applicants).

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Mrs Medha Gadgil (Member) (A)

DATE : **09.12.2022**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. Misc Application is moved by the applicants (Ori Respondent no. 1) to recall the order passed by this Tribunal dated 28.9.2022 in O.A 677/2022. By order dated 28.9.2022, this Tribunal has quashed and set aside the advertisement No. 20/2022 dated 19.3.2022 and also quashed and set aside the selection process for the post of Assistant Commissioner (Drugs). In the said order it is observed that the educational qualifications mentioned in the Recruitment Rules dated 27.9.2002 and the educational qualifications mentioned in clause 8 of the advertisement were different. Therefore, the order of quashing and setting aside the process of selection for the post of Assistant Commissioner (Drugs) was passed.

2. Learned P.O for the applicants (Ori Respondents) submits that the applicant-M.P.S.C wants to issue the Corrigendum wherein the impugned educational qualification mentioned therein earlier in the advertisement can be corrected by specifying that the candidates who have educational qualification of **'Degree in Medicine with specialization in Clinical Pharmacology'** can also

apply. Learned P.O submits that by way of Corrigendum the error committed in the advertisement can be rectified. Learned P.O further submits that in fact the advertisement was issued and the educational qualifications mentioned therein in clause no. 8 are on the basis of the Recruitment Rules in Marathi for the said post and it is found that the educational qualification mentioned in the Marathi Rules and the English Rules are different. She has further submitted that in all M.P.S.C has received 814 applications and M.P.S.C wants to conduct the screening test for the said advertisement. Learned P.O submits that in the application which are received by M.P.S.C, no candidate has mentioned the educational qualification as '**Degree in Medicine**'. Therefore, instead of setting aside the advertisement, it will be proper if the Tribunal allows M.P.S.C to issue the Corrigendum in Advt. no. 20/2022 in respect of requisite educational qualification and continue the selection process, by the words '**Degree in Pharmacology**' shall be mentioned as '**Degree in Medicine with specialization in Clinical Pharmacology**'. Learned P.O further submitted that the observations made by this Tribunal in para 4 is also to be deleted in view of the facts mentioned above.

3. Learned counsel Shri Bhosle for the Respondents (Ori Applicants) opposed the Misc Application mainly on the ground of legality. Learned counsel has submitted that the Government either should have filed the Writ Petition before the Hon'ble High Court challenging the order of this Tribunal or filed a review application. Learned counsel further submitted that there is no provision for recalling or modifying the order once it is passed by this Tribunal. In support of his submission, he relied on the judgment of this Tribunal dated 1.12.2020, M.A 536 /2019 in O.A 136/2018, Shri Kiran V. Patil Vs. The Commissioner of Police, Navi Mumbai & Ors.

4. M.P.S.C, Respondent no. 1, does not want to challenge the order of this Tribunal dated 28.9.2022, passed against them as they have realized their mistake. M.P.S.C wants to rectify the mistake by keeping the process of selection whatever has taken place intact. Hence, they have found via-media by way of Corrigendum so that whatever injustice has occurred to the applicants or other persons who are similarly situated like the applicants can be done away. In view of the requirements laid down for review under Section 114 and Order 47 of the Civil Procedure Code which is a statutory provision, such kind of a prayer which is made by the applicant cannot fall in the ambit of review. Under such circumstances, the submissions of Shri Bhosle that the applicants (Ori Respondents) should file either Writ Petition before the Hon'ble High Court challenging the order of this Tribunal or review, are not accepted.

5. However, the remedy under Section 151 of the C.P.C can be invoked to modify or recall the order to meet the ends of justice. We place reliance in respect of the powers of the Civil Court under Section 151 of C.P.C, which is reproduced below:-

“151. Saving of inherent powers of Court- Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court.’

We also rely on para 20 of the said judgment dated 1.12.2020, M.A 536/2019 in O.A 136/2018, Shri Kiran V. Patil Vs. The Commissioner of Police, Navi Mumbai & Ors which is reproduced below:-

“20. Section 151 of CPC does not confer any powers but indicates that there is power to make such orders as may be necessary for the ends of justice and to prevent an abuse of the process of the Court. It is well settled that if ordinary rules of procedure result in injustice and there is no other remedy then recourse of Section 151 can be taken. The remedy or review available to the applicant was not availed and even if it was availed, it would not have assisted to him as it does not fall within the scope of review. The order passed on 6 .11.2018 in O.A 136/2018 has attained finality and now it cannot be reopened in the principle of *fait accompli*.

6. Thus, considering that 814 candidates have applied for the post of Assistant Commissioner (Drugs), and M.P.S.C has initiated the process to fill up the posts which are to be filled in for the purpose of smooth administration, M.P.S.C wants to issue the Corrigendum and M.P.S.C is ready to allow the persons who are left out due to this advertisement, we do not find any legal obstacle in recalling our order. However, we make it clear that we do not want to take back our observations in paragraph 4 of our order.

7. In view of the above, we pass the following order:-

- (a) Misc Application is partly allowed.
- (b) We allow M.P.S.C to issue the Corrigendum in Advt. No. 20/2022 by giving the correct educational qualification **‘Degree in Pharmacology’** shall be mentioned as **‘Degree in Medicine with specialization in Clinical Pharmacology’** for the post of Assistant Commissioner (Drugs) and the said selection process to continue.

- (c) However, M.P.S.C is directed to allow the fresh applicants clear eight working days to apply after the Corrigendum is issued if at all the candidates wants to apply for the same.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 09.12.2022
Dictation taken by : A.K. Nair.