

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**MISCELLANEOUS APPLICATION NO.452/2023
WITH
ORIGINAL APPLICATION NO.67/2018**

DISTRICT:- PARBHANI

Dr. Mohd. Feroz Iqbal,
Age : 41 years, Occ. Service (ad-hoc),
R/o. On Ad-hoc basis Sub-District Hospital,
Sailu, Tq. Sailu, Dist. Parbhani.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
2. The Maharashtra Public Service Commission,
Through its Secretary,
Kuprez, Telephone Exchange Building,
Maharshi Karve Road, Mumbai.
3. The Civil Surgeon,
Civil Hospital, Parbhani,
Tq. & Dist. Parbhani.

...RESPONDENTS

APPEARANCE : Shri K.G.Salunke, Counsel for the
Applicant.
: Shri M.S.Mahajan, Chief Presenting
Officer for the respondents.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

Decided on: 22-11-2023

ORAL ORDER

1. Heard Shri K.G.Salunke, learned Counsel for the Applicant and Shri M.S.Mahajan, learned Chief Presenting Officer for the respondent authorities.

2. Respondent no.2 i.e. Maharashtra Public Service Commission ("MPSC" for short) had issued an advertisement bearing No.87/2015 on 31-07-2015 thereby inviting applications from the eligible candidates for the recruitment to the post of Dental Surgeon Group-B for filling in 189 posts. 23 posts were reserved for OBC (General) category to which the applicant belongs. Applicant is possessing bachelor's degree in dental surgery (BDS) and at the relevant time he was working under National Rural Health Mission ("NRHM" for short) on the post of Dental Surgeon. Since the year 2008 the applicant was working on the said post. The applicant since was fulfilling criteria of educational qualification as well as experience, he was called for interview and was also interviewed. In the interview applicant secured 50 marks. In the list of recommended candidates published on 18-11-2016 the applicant, however, did not find place.

3. It is the contention of the applicant that on 20-09-2017 the Study Group recommended absorption of the Medical Officers/Dental Surgeons working on contract basis under the NRHM with priority and also recommended that such candidates shall be given 3% bonus marks for every year of the services rendered by them under the NRHM (maximum limit of 30%). Since the applicant was working under NRHM from the year 2008, according to him he was entitled to claim 21 marks as the bonus marks. It is the further contention that had the applicant been given such incentive applicant would have been selected. Respondent, however, did not give the said marks to the applicant. The applicant, therefore, approached this Tribunal by filing the present O.A.

4. In the meanwhile certain developments went on occurring in relation to the appointment on the post Dental Surgeon. Some of the candidates who were not considered for their appointment approached the Tribunal at the Principal Seat at Mumbai raising objection to the shortlisting criteria adopted by MPSC as well as in relation to counting of the experience of work done by the candidates in private hospitals vis-à-vis in Government hospitals. Several such petitions were filed before the

Tribunal at Mumbai and the Principal Seat decided all those O.As. by its common judgment and order delivered on 18-06-2019. The Tribunal disapproved the shortlisting criteria adopted by the MPSC and gave certain directions in the said order. Aggrieved by the order so passed in the said matters, MPSC as well as some of the applicants before the Tribunal approached the Hon'ble High Court by filing Writ Petitions.

5. After having considered the issues involved in the matter, Hon'ble High Court disposed of the bunch of said Writ Petitions (St. Nos.9195/2021 with connected Writ Petitions). While deciding the said Writ Petitions by a common judgment, the Hon'ble High Court though set aside the finding recorded by the Tribunal in regard to the shortlisting criteria adopted by the MPSC, did not disturb the directions issued by the Tribunal in paragraph 30 of the judgment. The Hon'ble High Court has passed the following order:

“(iii) Writ Petition St. Nos. 9195/2021 and Writ Petition No.7201/2019 filed by the original applicants are disposed of with a direction to MPSC to consider the names of original applicants who are already interviewed in pursuance of interim order of the Tribunal for being recommended to the

State Government based on their performance in the interview against 67 unfilled vacancies of Dental Surgeon. This exercise be carried out by MPSC within a period of six weeks from today. In the event of such original applicants being recommended by the MPSC, the State Government shall consider their names for being appointed against 67 unfilled posts of Dental Surgeon prospectively. They shall not be entitled to any benefits from an earlier date. The State Government to complete this exercise within a period of four weeks from the date of receipt of recommendations from the MPSC.

(iv) Until the exercise in direction (iii) above is completed, services of the original applicants, who are already in service, shall not be disturbed.”

6. For bringing on record the aforesaid facts the applicant has filed M.A.No.452/2023. Said M.A. is also heard along with the present O.A. Learned Counsel submitted that the case of the applicant is squarely covered by the direction given in clause (iii) of the judgment of the Hon'ble High Court. Thereafter, applicant also amended his O.A. and came out with a prayer that his candidature shall also be considered against the 67 unfilled vacancies since he is complying with the criteria as laid down and in view of the fact that the candidates having less marks than

the applicant coming from OBC category were given appointment by respondent no.2 MPSC.

7. Respondent nos.2 and 3 have filed their separate affidavits in reply. Respondent no.2 also filed its additional affidavit in reply. Applicant has filed affidavit in rejoinder. In the reply filed to the O.A. it is the contention on behalf of the respondents that since the applicant could not satisfy the criteria of cut-off marks his name was not recommended by the MPSC. Respondents also filed reply to the M.A. on the basis of which the amendment was carried out by the applicant in the O.A. In the said reply, respondents have taken a plea that case of the applicant is not covered by the order passed by the Hon'ble High Court. Respondents have contended that the Hon'ble High Court has directed to consider the candidates who have been interviewed under the orders passed by the Tribunal. According to the respondents, the applicant was already interviewed and was not found eligible to be recommended and he was never interviewed under the orders of the Tribunal.

8. As has come on record at the relevant time applicant had approached the Tribunal claiming that he is

entitled for incentive or bonus marks for his services rendered under the NRHM. However, in light of the subsequent events occurred applicant has now not pressed the said prayer. Otherwise also, we are afraid any such prayer could have been entertained since reliance to support that prayer is placed on the proposal and nothing is shown to demonstrate that the said proposal or recommendation is accepted by the Government.

9. We have considered the submissions made on behalf of the applicant as well as the respondents. We have also perused the documents placed on record by the parties. Most of the facts are undisputed. Admittedly, against 189 posts advertised, MPSC recommended names of 188 candidates. There is further no dispute that out of those 188 candidates 67 candidates did not join and the said posts remained unfilled. In the meanwhile, some O.As. were preferred by the candidates who have participated in the said recruitment process and interim orders were passed in their favour for taking their interviews and accordingly said candidates were interviewed by MPSC. There is further no dispute that in view of the directions given by the Hon'ble High Court, MPSC recommended names of 51 candidates for their

appointment. It is, thus, evident that 16 posts are still unfilled. In the list of 51 candidates who have been subsequently recommended by MPSC under the orders of Hon'ble High Court, last person recommended from the category of OBC has secured 43 marks. In view of the events which have subsequently occurred and in light of the recommendations made by MPSC of the candidates securing less marks than the applicant, now the applicant has come out with a prayer that he is entitled to be recommended from the OBC category against 67 unfilled posts. Learned Counsel for the applicant submitted that the applicant is not praying for deleting the names of already recommended OBC candidates though they have secured less marks than the applicant; but is praying for his appointment against the 16 unfilled posts.

10. Aforementioned request has been opposed by MPSC on the ground that interview of the applicant has not been taken as per order of the Tribunal as directed by the Hon'ble High Court in its order dated 30-03-2023. In view of the stand so taken by the MPSC it would be necessary to see the order passed by the Hon'ble High Court. Discussion made by the Hon'ble High Court in paragraph

52 is material in this context. We deem it appropriate to reproduce the entire said paragraph 52, which reads thus:

“52. As observed by the Tribunal, out of 188 names recommended by the MPSC, only 122 candidates joined the service, thereby leaving 67 vacancies of Dental Surgeon vacant. In the event we accept the contentions of the original applicants that experience in private hospitals/clinics cannot be taken into consideration, the action of MPSC in resorting to shortlisting would be rendered meaningless as the number of eligible candidates with experience on the post of clinical assistant would be less than 567. Thus, we have a unique situation where MPSC has already adopted shortlisting criteria and have recommended names of candidates having experience in private hospitals/clinics. The State Government has opined vide its letter dated 17th November 2016 that experience in private hospitals/clinics cannot be considered. The Recruitment Rules provide some degree of jurisdiction on the State Government to determine the exact nature of experience which can be taken into consideration as the words used in the Recruitment Rules are “which in the opinion of the Government is equivalent or higher than the post of clinical assistant”. 67 posts of Dental Surgeon still continue to remain vacant, despite issuance of appointment orders to all 188 recommended candidates. The advertised vacancies were 189. In these circumstances, in our view, though the Tribunal has erred in criticizing the action of MPSC in resorting to shortlisting, the ultimate direction issued by the Tribunal to send the names of the original applicants for being appointed need not be disturbed. The original applicants have already been interviewed by MPSC in pursuance of the interim orders passed by the Tribunal. In these circumstances, we are of the considered view that the ends of justice would meet if the MPSC is directed to recommend the names of only those original applicants who are already interviewed against 67 unfilled vacancies of Dental Surgeon, based on their performance in the

interview. We are conscious of the fact that there are several other candidates who may possess the experience on the post of clinical assistant but did not approach the Tribunal and who are similarly situated to the original applicants. However, considering the peculiar facts and circumstances of the present case, we are restricting the relief only to the original applicants who had approached the Tribunal and who have been litigating since the year 2015 and pursuant to the order of Tribunal are interfered. In these peculiar circumstances, the benefit of the present judgment cannot be extended to those similarly situated candidates who did not move the Tribunal.”

Highlighted portion in the aforesaid judgment is referred to by the learned P.O. to canvass that only those candidates can now be considered for their recommendation who have been interviewed by the MPSC in pursuance of the interim orders passed by the Tribunal against 67 unfilled vacancies of Dental Surgeon, based on their performance in the interview.

11. According to us the observations made as above by the Hon’ble High Court cannot be interpreted to mean that the applicant who has been already interviewed by MPSC shall also not be considered on the ground that his interview has not been taken under the orders of the Tribunal, more particularly, when the MPSC has recommended OBC candidates against the OBC General seats who have received less marks than the present

applicant. The observations as have been made by the Hon'ble High Court are to be interpreted in a purposive manner. It is true that the Hon'ble High Court has restricted the relief only to the original applicants who had approached the Tribunal and who have been litigating since the year 2015 and persons who have been interviewed in view of the directions of the Tribunal; it however does not mean that the MPSC is restrained to consider the candidature of the applicant who has been already interviewed by it and is possessing more meritorious position than the recommended candidates.

12. At the relevant time, name of the applicant could not be recommended by MPSC for the reason that the applicant did not receive the requisite minimum marks. In the list of 188 candidates who were earlier recommended by MPSC, the last OBC candidate had received 55 marks whereas applicant had received 50 marks. As has come on record the applicant was not having any objection at the relevant time for not recommending his name for the reason that MPSC has not recommended any OBC candidate who has secured less number of marks than the applicant. However, it is a matter of record that in the list of candidates now recommended by MPSC the candidate

who has been recommended against the OBC General seat, namely, Deshmukh Prashant Mandanrao has received 43 marks in the interview. The list of the said 51 candidates published by MPSC on 18-09-2023 further demonstrates that one another candidate by name Deshmukh Siddharth Bhalchandra who had received 50 marks in the interview is also recommended. The candidate by name Kakad Amol Bhaskar who also falls in OBC category has been recommended as OBC General candidate at Sr.No.36. Another OBC candidate by name Dapurkar Shyam Mohan who has 48 marks in the interview has also been recommended and his name is included in the said list at Sr.No.35. In premise of the fact that OBC candidates who received less marks than the applicant have been recommended by MPSC, there appears no rationale in not recommending the name of the applicant when he had received 50 marks in the interview.

13. For the reasons elaborated hereinabove, following order is passed:

ORDER

[i] MPSC is directed to recommend the name of the applicant for his appointment on the post of Dental Surgeon against 16 unfilled vacancies within 4 weeks from the date of this order.

[ii] Respondent no.1 shall in turn issue the order of appointment in favour of applicant within 2 weeks after receiving recommendation from MPSC.

[iii] O.A. stands allowed in the aforesaid terms, however, without any order as to costs.

[iv] M.A.No.452/2023 stands disposed of accordingly.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 22-11-2023.