

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**MISCELLANEOUS APPLICATION NO.453/2023  
WITH  
ORIGINAL APPLICATION NO.312/2019**

**DISTRICT:- BEED**

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Dr. Ashok Panditrao Misal,  
Age : 43 years, Occ. Dental Surgeon  
(Private Practitioner),  
R/o. Flat No.12, Shrikrishna Building,  
Sarda Residency, Savta Mali Chowk,  
Beed, Dist. Beed.

**...APPLICANT**

**V E R S U S**

1. Secretary,  
Maharashtra Public Service Commission,  
Trishul Gold Field, Plot No.34,  
Opp. Sarowar Vihar, Sector 11,  
C.B.D. Belapur, Navi Mumbai-400614.
2. The State of Maharashtra,  
Through Principal Secretary,  
Public Health Department,  
8<sup>th</sup> Floor, G.T. Hospital Building,  
New Mantralaya, Mumbai.

**...RESPONDENTS**

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APPEARANCE : Shri J.S.Deshmukh, Counsel for the  
Applicant.  
: Shri M.S.Mahajan, Chief Presenting  
Officer for the respondents.

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

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**Decided on: 02-11-2023**  
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**ORAL ORDER**

1. Heard Shri J.S.Deshmukh, learned Counsel for the Applicant and Shri M.S.Mahajan, learned Chief Presenting Officer for the respondents.

2. Present applicant is a Dental Surgeon. He had applied for the post of Dental Surgeon (Group-B) in pursuance of the Advertisement No.87/2015 issued by Maharashtra Public Service Commission (MPSC) on 31-07-2015. The advertisement was published for filling in total 189 posts. Out of the said 189 posts, 3 posts were shown to be reserved for the candidates coming from NT(D) (General) category. Applicant claims to be belonging to said category and also possesses validity certificate. The applicant applied for the said post claiming reservation meant for NT(D) candidates. MPSC, however, did not call the applicant for interview on the ground that he does not possess the requisite experience.

3. Against the said decision of MPSC, applicant approached the Tribunal by filing O.A.No.1071/2015 before the Principal Seat of the Tribunal at Mumbai. In the said O.A., MPSC filed M.A.No.503/2016 seeking declaration that

the applicant is not eligible for want of requisite experience. The Tribunal heard and decided the O.A. as well as the M.A. on 20-12-2016 and thereby directed the MPSC to include the name of the applicant in the list of candidates being held eligible for the said post. M.A.No.503/2016 filed by the MPSC was rejected by the Tribunal. Thereafter, on 17-01-2017 the applicant preferred an application to MPSC for declaration of his result and to hold him qualified for the post of Dental Surgeon. MPSC responded vide its letter dated 26-04-2017, thereby informing the applicant that he has received 50 points in the interview and further that the marks received were inadequate for recommending his name for interview. The applicant thereafter filed one more application before the MPSC on 28-06-2017 and sought information regarding rank in the merit list. Accordingly, merit list was provided to the applicant. In the said merit list, the name of applicant though was not shown, name of one Dr. Rajendra Awhad was included at Sr.No.248, who had also earned 50 marks and was also belonging to NT(D) category. On 27-07-2017, Dr. Rajendra Awhad informed the respondents that he is not willing to accept the appointment. There was one more candidate from NT(D) category, namely, Dr. Mahesh Sanap, who had also

received 50 marks and was not willing to join and in fact did not join. Applicant, therefore, moved an application on 09-01-2018 and thereafter again on 24-08-2018 requested for his appointment in view of the fact that neither Dr. Rajendra Awhad nor Dr. Mahesh Sanap had joined. However, since there was no response from the respondents, the applicant has approached this Tribunal by filing the present O.A. praying for his recommendation for the post of Dental Surgeon (Group-B) in pursuance of the Advertisement No.87/2015 dated 31-07-2015.

4. Respondent no.1 MPSC has filed affidavit in reply in the matter and has resisted the contentions raised and prayers made in the O.A. Main contention of the MPSC is that the applicant being lower in rank could not get recommended. In so far as the fact that Dr. Rajendra Awhad and Dr. Mahesh Sanap did not join and therefore the post has remained unfilled is concerned, it is the contention of MPSC that unless the Government sends a requisition to MPSC for forwarding the names of candidates, MPSC on its own accord cannot recommend the name of any candidate. On these two grounds the O.A. is opposed by MPSC. Respondent no.2 has not filed the affidavit in reply in the matter.

5. It has to be noted that some of the candidates had approached the Maharashtra Administrative Tribunal Principal Seat at Mumbai challenging the action of shortlisting adopted by the MPSC. The Tribunal decided all those applications by a common judgment. O.A.No.1091/2015 was the lead application with connected other applications. The action of shortlisting adopted by MPSC is interpreted by the Tribunal as en bloc elimination of candidates holding lower qualification of bachelor's degree in dental surgery (BDS). The Tribunal has also held that candidates having experience in private hospitals/clinics could also be considered for determining eligibility. The Tribunal has directed MPSC to revise the list of selected candidates and send additional names by including therein names of the Original Applicants possessing the minimum prescribed qualifications.

6. Aggrieved by the said order, MPSC approached the Hon'ble High Court by filing Writ Petitions. The judgment of the Tribunal was objected by the MPSC to the limited extent of setting aside the shortlisting criteria as well as the observations made by the Tribunal in that regard to the effect that shortlisting as en bloc elimination

of candidates holding lower qualification of bachelor's degree in dental surgery (BDS). After having considered the issues involved in the matter, the Hon'ble High Court disposed of the bunch of said Writ Petition 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.”*

For bringing on record the aforesaid facts the applicant has filed M.A.No.453/2023. 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) in the judgment of the Hon'ble High Court.

7. After the directions from the Hon'ble High Court MPSC has recommended the names of 51 candidates vide its communication dated 18-09-2023. Said list is placed on record by the applicant. It is the grievance of the applicant that though he possesses more meritorious position than the candidates who are recommended by the MPSC vide the said list, his name has not been recommended by the MPSC. In the circumstances, by way of amended prayer the applicant has sought direction against MPSC for recommending his name and against the Government for issuance of appointment to him.

8. In compliance of the directions issued by the Hon'ble Bombay High Court to fill in the remaining 67 posts, the MPSC has forwarded the list of 51 candidates on 18-09-2023. It is thus evident that the vacancies still subsist. Since the applicant is complying with all the requirements and has been held eligible to be appointed as Dental Surgeon, the request of the applicant is worth considering. It has come on record that some of the NT(D) candidates having 45 and 41 marks in the interview have also been recommended by MPSC for their appointment. Even some of the Open General candidates recommended for their appointment have received marks less than the applicant. For all these reasons we find substance in the prayer so made by the applicant.

9. The facts which have come on record demonstrate reluctance on part of MPSC in recommending the name of the applicant for his appointment on the post of Dental Surgeon. Firstly, MPSC raised objection in regard to the experience of the applicant and the applicant was required to approach the Tribunal by filing O.A.No.1071/2015 before the Principal Seat at Mumbai. In the said matter, MPSC filed M.A.No.503/2016 seeking declaration that the applicant is not eligible for want of



requisite experience. As has been noted by us hereinabove, the Tribunal turned down the objection raised by MPSC and directed it to consider the candidature of the applicant for the post of Dental Surgeon. It is the matter of record that thereafter also MPSC did not recommend the name of the applicant stating that the applicant being lower in rank cannot be recommended. As has been discussed by us hereinabove, the Division Bench of the Hon'ble Bombay High Court while deciding the Writ Petition St. No.9195/2021 with connected Writ Petitions directed the MPSC to recommend the names of the candidates against 67 unfilled vacancies of Dental Surgeon based on their performance in the interview. Accordingly, MPSC did forward list on 18-09-2023 thereby recommending names of 51 candidates. In the said list also MPSC has not included the name of the present applicant.

10. In the said list MPSC has recommended 3 candidates from NT(D) category. One Sonune Satish Nivrutti is recommended against the Open General seat. He is shown to have received 51 marks in the interview. Chate Sanjay Digambar is another NT(D) candidate who is recommended against NT(D) (General-1). Said candidate is shown to have earned 45 marks in the interview. As has

been pointed out by the learned Counsel for the applicant, a candidate by name Gophane Sandip Pundlikrao who belongs to NT(C) category is recommended against NT(D) (General-1). He is shown to have received 41 marks. As has been submitted on behalf of the applicant in the list of 51 candidates when MPSC has recommended 2 candidates from NT(D) category of which one has received 45 marks and the another has received 41 marks, it ought to have recommended the name of the applicant since he has received 50 marks in the interview. In the list of 51 candidates why the name of the applicant has not been included, is not explained by MPSC. The applicant has now come out with the case that without disturbing the candidates coming from NT(D) category whose names have been recommended by MPSC despite having less number of marks than the applicant, still the name of the applicant can be recommended by MPSC having regard to the fact that out of 67 posts directed to be filled in by the Hon'ble High Court 16 seats are vacant.

11. The Hon'ble High Court while deciding the Writ Petition St.No.9195/2021 with connected Writ Petitions has directed the MPSC to recommend the names of the original applicants who are interviewed against the said 67 unfilled

vacancies. We deem it appropriate to reproduce the observations made by the Hon'ble High Court in paragraph 52 of its judgment in the case of Writ Petition St.No.9195/2021 with connected Writ Petitions 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.”*

12. In the earlier O.A.No.1071/2015, this Tribunal has held the applicant eligible for his appointment to the post of Dental Surgeon. He has also been interviewed by the Committee and has secured 50 marks in the interview. He belongs to NT(D) category and the NT(D) candidates whose names are included in the list of 51 candidates have admittedly received less marks than the applicant. Applicant, however, is not seeking their deletion. Request of the applicant is that his name be recommended by MPSC against 16 unfilled vacant posts.

13. We find that the prayer made by the applicant is just and *bona fide*. Applicant has proved his eligibility for the subject post. We have noticed that some of the Open General candidates whose names have been recommended by MPSC on 18-09-2023 have received less marks than the applicant. As such, the applicant has certainly made out a case for recommendation of his name against 16 unfilled vacancies. In the result 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 the 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.453/2023 stands disposed of accordingly.

**(VINAY KARGAONKAR)**  
**MEMBER (A)**

**(P.R.BORA)**  
**VICE CHAIRMAN**

**Place : Aurangabad**  
**Date : 02-11-2023.**