

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO.1133 OF 2018**

**DISTRICT : MUMBAI**

1. Smt Kale Bhagyashree Ashok, )  
Working at Sub District Hospital, )  
Nilanga, Dist-Latur, )  
R/o: H. No. 3/28, Shraddna Nagar, )  
Behind Rudreshwar Temple, )  
LIC Colony, Ring Road, Latur. )
2. Kailas Manikrao Gandhare )  
Working as District General )  
Hospital, Buldhana. )
3. Asimsha S. Shah, )  
W/a SDH Kalwan, Dist. Nashik )
4. Vaishali Anant Zade, )  
W/a. RH Deolali, Wardha )
5. Pallavi Rajaram Barde, )  
W/a. GH Chandrapur )
6. Madhavi Ganpat Shinde )  
W/at. GH Satara )
7. Bairagi Prajakta Sudhir, )  
W/a. RRH Shalimar Nashik. )
8. Sau Shalini Dipak Chavhan (Rathod)  
W/a. R.H. Kamargaon, Washim )
9. Vaishali Devidas Sarode, )  
W/a. SDH Aarvi, Wardha )

10. Rajni Vilas Kale (Gabhane) )  
W/a. Govt. Karuna Womens Hostel, )  
Nagpur. )
11. Jaymala Arvind Kadam, )  
W/a. SDH Karad, Satara. )
12. Kranti Babruvan Biradar )  
W/a. Womens Hosp Latur, Latur )
13. Namrata Ratiram Humne, )  
W/a. DHW Akola, Akola )
14. Prabhvati Kashinath Shirsat )  
W/a. DHW Akola, Akola )
15. Najma Wahid Baig, )  
W/a. GH Gadchiroli, Gadchiroli )
16. Priya Gourihar Doiphode, )  
W/a. Civil Hospital Satara, Satara )
17. Smita Arvind Moon )  
W/a. SDH Hinganghat Dist.Wardha )
18. Sonal Sunil Mane )  
(Rupali Balasaheb Pagare) )  
W/a. Civil Hospital Sangali, Sangali )
19. Saroj Ramdas Chaware )  
W/a. Saibai Mote SDH Shegaon, )  
Dist. Buldhana. )
20. Rupali Santosh Baliwant )  
(Rupali Shivaji Mogal) )  
CPR General Hospital Kolhapur )  
Kolhapur. )
21. Gauri Siddhesh Kelshikar )  
(Gauri Suryakant Chavan) )  
W/a Aarey Hospital Goregaon, )  
Mumbai )
22. Jyoti Arvind Chaudhari )  
RH BIBI, Tal Lonar, Dist Buldhana )

23. Swati Maruti Pawar )  
W/a Civil Hospital Aundh Pune, )  
Pune. )
24. Shubhangi Rajaram Potdar, )  
W/a. Civil Hospital Satara, Satara )
25. Chaya Sitaram Gawade )  
(Chaya Mohan Jangle )  
W/a Civil Hosp Sindhudurg )
26. Rachawa Ramesh Tarkar )  
W/a GH Chandrapur, Chandrapur )
27. Savita Dnyeshwar Khuje )  
W/a GH Wardhar, Wardhar )
28. Nanada Mahadeo Ugale, )  
W/a. Super specialty hosp )  
Amaravati, Amaravati. )
29. Vaishali Devidas Mirase, )  
W/a. GH Wardha, Wardha )
30. Anita Shankarrao Raut )  
W/a GH Wardha, Wardha )
31. Kavita Dineshrao Berad )  
W/a. Daga Hospital Nagpur, Nagpur)
32. Rushali Keshvrao Nanote, )  
W/a. G.H.Chandrapur, Chandrapur )
33. Asmita Tanaji Raipure )  
W/a. G.H.Chandrapur, Chandrapur)
34. Jyoti Ashok Sajjanwar )  
(Jyoti Anil Sadan) )  
W/a Rural Hosp Deori Dist.Gondiya )  
Gondiya )
35. Yogita Vishnu Patil )  
R/a. C/o. 3/28, Shraddha Nagar, )  
B/h Rudreshwar Temple, )  
LIC Colony, Ring Road, Latur )

36. Vidyadevi Baburao Sahare, )  
W/a K.T.S. General Hosp Gondiya )  
Gondiya )
37. Ragini Padmakar Jaronde )  
W/a G.H. Chandrapur, Chandrapur )  
R/a Anudhan Plaza Tukum )  
Chandrapur )
38. Rajeshri Shreerang Dalvi )  
R/a. C/o. 3/28, Shraddha Nagar, )  
B/h Rudreshwar Temple, )  
LIC Colony, Ring Road, Latur )
39. Sujata Rudranath Wankhade )  
W/a Rh Pulgaon, Wardha )
40. Sarita Gajanan Deshmukh )  
W/a SDH Malkapur, Dist. Buldana )  
Buldana. )
41. Pushpa Pode )  
R/A C/O 3/28 Shraddha Nagar, )  
B/H Rudreshwar Temple, )  
LIC Colony, Ring Road, Latur )
42. Rajshri Bhaskarrao Bhadikar )  
W/a Central Hosp Ulhasnagar )  
3 Dist Thane, Thane )
43. Sulochana Padole )  
R/A C/O 3/28, Shraddha Nagar, )  
B/H Rudreshwar Temple, )  
LIC Colony, Ring Road, Latur )
44. Yogita Sandip Dethe (Latte) )  
W/a Nagapada Police Hosp Mumbai )  
Mumbai )
45. Rekha Madhusudan Meshram, )  
W/a Civil Hospital Jalgaon, Jalgaon )
46. Anjali Umakant Shide )  
W/a Civil Hospital Agarhosn, )  
Ahemad Nagar )

47. Jeetendra Bebbhishan Raut )  
W/a Rural Hospital Near Tal )  
Dist. Jalna. )
48. Kuldip Anantrao Chaudhari )  
W/a. Rh Nandgaon, Dist Nashik )
49. Sneha Mestry )  
R/A C/O 3/28, Shraddha Nagar, )  
B/H Rudreshwar Temple, )  
LIC Colony, Ring Road, Latur )
50. Sujata Baban Chougule )  
W/a Civil Hosp Thane, Thane. )
51. Prashant Maloji Sontakke )  
W/a SDH Selu Dist Parbhani, )  
Parbhani )
52. Sapna Sureshrao Ainchwar )  
W/a Civil Hospital Gadchiroli, )  
Gadchiroli )
53. Sarika Sewakram Ukey )  
W/a GH Gadchiroli, Gadchiroli )
54. Gayatri Chiranjivlal Sindhi )  
W/a RRH Nashik )
55. Sunita Bhagwanji Siram )  
W/a GH Wardha, Wardha )
56. Trupti Vinod Raje )  
(Nee Kumbhark. R) )  
W/a RH Mendha, Dist. Satara, )  
Satara. )
57. Jyoti Supda Gaikwad, )  
W/a. Dist. General, Hosp. Buldhana, )  
Buldhana. )
58. Sanjivani Shyam Adatkar )  
(Sanjivani R. Sakhare) )  
W/a G.H. Amravati, Amravati )

59. Manisha Gajanan Band (Talpate) )  
W/a R.H. Wavat Bakal, Sangrampur )  
Dist. Buldhana. )
60. Pradnya Madhukar Sukhadeve )  
W/a Daga Hospital Nagpur, Nagpur )
61. Sheetal Shivaji Kumbhar )  
W/a Civil Hosp Sindhudurg, )  
Sindhudurg )
62. Pranaya Dattatray Tandel )  
W/a Civil Hosp Sindhudurg, )  
Sindhudurg )
63. Zarina Ramzan Patel )  
W/a General Hospital Malegaon, )  
Nashik. )
64. Indira Kwarji Kodape, )  
W/a GH Chandrapur, Chandrapur )
65. Savita Bhagawanrao Sarkate, )  
W/a Civil Hospital Beed, Beed. )
66. Sangita Ratandas Vaishnav )  
W/a Civil Hospital Malegaon, )  
District Nashik, Nashik )
67. Supriya Eknath Bhise )  
(Nikita Nitin Shirsath) )  
W/a Civil Hospital Sindhudurg, )  
Sindhudurg. )
68. Padma Natthuji Khandate, )  
W/a GH Wardha, Wardha )
69. Varsha Khushal Ramteke, )  
W/a GH Chandrapur, Chandrapur )
70. Jyoti Gangadharrao Pakhare, )  
W/aRH Lakhawada Dist.Buldhana )  
Buldhana. )

71. Chavn Shobha Deepak )  
(Jadhav Shobha Dadasaheb) )  
W/a RH Medha Tal Javali, )  
Dist. Satara. Satara. )
72. Mansi Sudhir Ojale )  
W/a. Police Hospital, Nagpada, )  
Mumbai. )
73. Karuna Sukhnandan Ingale (Kamble) )  
W/a RH Jalgaonjamod, )  
Dist Buldhana, Buldhana )
74. Vanita Vishvasrao Dhakde, )  
W/a Civil Hospital (Irvin) )  
Amravati, Amravati. )
75. Nanda Govindrao (Ikhar) Tetu )  
Dist. Gen Hosp. Buldhana, )  
Buldhana. )
76. Sonali Pankaj Gurba, )  
W/a SDH Shahapur, Dist. Thane )  
Thane. )
77. Sara Mahmad Yusuf, )  
W/a. GH Amravati, Amravati )
78. Rajshree Mahendra Shrivias (Sonare) )  
W/a RH Chilkhali, Dist. Buldhana )  
Buldhana. )
79. Krupa Anil Ghodvinde (Nichite) )  
W/a Civil Hosp. Thane, Thane )
80. Sharmila Hiranman Pathare )  
(Sharmila N.Gharat) )  
W/a Civil HOsp.Thane, Thane. )
81. Sunita Nagnath Gadekar )  
(Sunita Shivaji Raut) )  
W/a. RH Palghar Dist Palghar, )  
Palghar )
82. Madhuri Vikram More, )  
W/a Dis Gen Hosp Khamgaon, )  
Buldhana. )

83. Angha Vijay Bagave, )  
W/a. Rural Hosp Vaibhavwadi, )  
Sindhudurg. )
84. Priti Prashant Saitwal, )  
W/a SDH Murtizapur, Dist. Akola )  
Akola )
85. Vijaya Sadanana Sanglekar, )  
W/a Civil Hosp Oras-Depu-Kankavli )  
Sindhudurg. )
86. Megha Jalindar Jadhav )  
W/a Trauma Care Unit Talegaon, )  
Dharur, Dist. Beed. )
87. Kalpana Shashikumar Rode )  
(Bawankar), Dist. Gen Hosp. )  
Chandrapur, Chandrapur. )
88. Bharati Keshvrao Ramteke, )  
W/a. RH Chandrapur, Chandrapur )
89. Sapna Davin Ward, )  
W/a. SDH Murtizapur, Dist. Akola, )  
Akola )
90. Shivani Chandrashekhar Gavandi )  
R/A C/0 3/28, Shraddha Nagar, )  
B/H Rudreshwar Temple, LIC )  
Colony, Ring Road, Latur. )
91. Najma Abdul Rehman Sheikh, )  
R/A C/0 3/28 Shraddha Nagar, )  
B/H Rudreshwar Temple, LIC )  
Colony, Ring Road, Latur. )
92. . Sunita D. Landge, )  
R/A C/0 3/28 Shraddha Nagar, )  
B/H Rudreshwar Temple, LIC )  
Colony, Ring Road, Latur. )
93. Deepa Achutan Nair, )  
W/a Civil Hospital Thane, Thane. )
94. Anuradha Pandurang Sasane )  
W/a Regional Mental Hosp Thane, )  
Thane. )



95. Savita Sudhakar Mankar, )  
W/a Dist Gen Hosp. Chandrapur, )  
Chandrapur. )
96. Raut Shubhangi Vitthalrao, )  
W/a Sub Dist Hosp Ambad, )  
Dist Jalna, Jalna )
97. Saranga Baburao Gangurde )  
W/a RH Sanganer Dist Ahmednagar )  
Ahmednagar )
98. Savita Amit Pol )  
W/a Civil Hospital, Thane. )...**Applicants**

**Versus**

1. The Chief Secretary Health )  
Department, Mantralaya, Mumbai )
2. The Commissioner of Health )  
Services, Public Health Department, )  
Government of Maharashtra, )  
Aarogya Bhavan, St. George Hospital )  
Campus, Fort, Mumbai 400 001 )
3. The Director of Health Services, )  
Public Health Department, )  
Government of Maharashtra, )  
Aarogya Bhavan, St. Geroge )  
Hospital Campus, Fort, )  
Mumbai 400 001. )
4. Sharad Dhondinram Kendre, )  
R/o. Chopanwadi, Post Salunkwadi )  
Tal. Ambajogai, Dist. Beed )
5. Sushilkumar Bharat Jadhav )  
Staff Nurse, R/o. Uttam Nagar, )  
Canal Road, Beed, Tal & Dist. Beed )

6. Balasaheb Bhausahab Vadak, )  
Public Health Nurse, R/o. Loni Bk. )  
Tal. Rahata, Dist. Ahmednagar )
7. Bhagyashree Balaji Kendre, )  
Service as Staff Nurse, R/o. Yashoda )  
Niwas, Daithana, Tal. Kandhar, )  
Dist. Nanded. )
8. Ramesh Bhika Pande, )  
Service as Staff Nurse, R/o. Jawale )  
Baleshwar, Tal & Dist. Ahmednagar )
9. Ravindra Maharudra Suwase, )  
Service as Staff Nurse, R/o. Near )  
District Hospital, Osmanabad, )  
Dist. Osmanabad )
10. Yogesh Gajanan Nawle, )  
Service as Staff Nurse, R/o. Behind )  
Hedgewar Hospital, Aurangabad, )  
Dist. Aurangabad. )
11. Pritam Sanjeev Kuntewad, )  
Service as Staff Nurse, Opp. Shivaji )  
College, Trimurti Niwas, Sane Guruji )  
Nagar, Renapur, Tal. Renapur, )  
Dist. Latur. )
12. Govind Vitthal Mundhe, )  
Service as Staff Nurse, R/o. Zola, )  
Tal. Gangakhed, Dist. Parbhani )
13. Sonali Yeshwant Munde )  
Service as Staff Nurse, R/o. )  
Chopanwadi, Tal. Ambajogai, )  
Dist. Beed. )
14. Dipali Raju Pawar, )  
Service as Assistant Professor, )  
R/o. Prithviraj Nagar, Aurangabad )  
Dist. Aurangabad. )
15. Raosahab Baban Jagtap, )  
Service as Assistant Professor, )  
R/o. Loni Kd, Tal. Rahata, )  
Dist. Ahmednagar. )

16. Balasaheb Prakash Dange, )  
Service as Assistant Professor, )  
R/o. Maulana Azad Chowk, )  
Chandanzira, Jalna, Dist. & Tal )  
Jalna. )
17. Amit Vasant Kadu, )  
R/o. Rathare Bk. Tal. Rahata, )  
Dist. Ahmednagar. )
18. Rohidas Suresh Bire, )  
Service as Lecturer, )  
R/at Dadh Kd. Tal Sangamner, )  
Dist. Ahmednagar, )
19. Somnath Macchindra Gopale, )  
Service as Community Health Officer )  
R/o. Lohogaon, Tal. Rahata, )  
Dist. Ahmednagar )
20. Swapnil Shivaji Aher )  
Service as Community Health Officer )  
R/o. Pravaranagar, Tal. Rahata )  
Dist. Ahmednagar )
21. Divyam Sunil Nikam )  
Service as Tutor, R/at. 21, Nainisha )  
Smruti, Nehru Nagar, Deopur, Dhule )  
Dist. Dhule )
22. Allwina Philic George, )  
R/at. Old Civil Hospital, Chitale )  
Road, Ahmednagar, Dist. )  
Ahmednagar. )
23. Abhinav Haribhau Solanke, )  
Service as Staff Nurse, R/o. )  
Yogeshwari Nagari, Ring Road, )  
Ambajogai, Tal. Ambajogai, )  
Dist. Beed. )
24. Meena Prabhakar Sanap )  
R/o. Khadakwadi, Tal. & Dist. Beed )

25. Avinash Chandrabhan Shinde, )  
Service as Clinical Instructor, )  
R/o. Rahimpur, Tal. Sangamner, )  
Dist. Ahmednagar. )
26. Nilesh Raosaheb Mhaske, )  
Service as Community Health Officer )  
R/o. Loni Bk. Tal. Rahata, )  
Dist. Ahmednagar. )
27. Sayali Vidhyashar Shriramwar )  
Service as Clinical Instructor, )  
R/o Loni Ld., Tal. Rahata, )  
Dist. Ahmednagar. )
28. Nitin Gokul Gadekar, )  
Service as Assistant Professor, )  
R/o. Dadh Bk. Tal. Rahata, )  
Dist. Ahmednagar. )
29. Vaibhav Manohar Bhosale, )  
Service as Assistant Professor, )  
R/o. PMT Quarters, 525/1/7 Tal. )  
Rahata, Dist. Ahmednagar )
30. Pradeep Vitthal Dokhe, )  
Service as Community Health Officer )  
R/o. Mali Nagar, Pan Mala, Shirdi )  
Tal. Sangamner, Dist. Ahmednagar )
31. Yuvraj Shivaji Pawar, )  
Service as Community Health Officer )  
R/o. Nimgaonjali, Tal. Sangamner )  
Dist. Ahmednagar. )
32. Meghasham Dinkar Gholap, )  
Service as Lecturer, )  
R/o. Hanumantgaon, Tal. Rahata )  
Dist. Ahmednagar. )
33. Pandurang Laxman Tonde, )  
Service as Nursing Tutor, )  
R/o. Chopanwadi, Tal. Ambajogai )  
Dist. Beed. )
34. Suraj Diliprao Mase, )  
Service as Lecturer, )  
R/o. Near Bus Stop, Osmanabad )

- Tal & dist. Osmanabad. )
35. Vishal Vikas Thokal )  
Service as Principal, )  
R/o. Govindpura, G-6, Tal-Ahmedpur )  
District Latur )
36. Samson Eliah Kedari )  
Service as Community Health Officer, )  
R/o. Nandgaon Shingave, Tal. Nagar) )  
Dist. Ahmednagar. )
37. Tushar Shivaji Kedar, )  
Service as Tutor, )  
R/o. Raiwadi, Post. Mahalangi )  
Tal Chakur, Dist.Latur )
38. Amol Dattatray Shelke, )  
Service as Lecturer, R/o. Adgaon, )  
Tal. Rahata, Dist. Ahmednagar. )
39. Shri Anupam Dnyaneshwar Wele )  
R/at. Ganesh Arcade, Sundar Bag, )  
Dapoli, Pune. )
40. Shri Kiran Suresh Markut )  
R/at. Plot No.111, Sai Baba Mandir,) )  
Dighori, Nagpur 440 009 )
41. Shri Pratik Siddeshwar Joshi )  
R/at. 7<sup>th</sup> floor, Girl's Hostel, )  
Institute of Nursing Education, )  
Sir JJ Hospital Campus, Byculla )  
Mumbai 08 )
42. Shri Jivan Subhashrao Tapare, )  
R/at. Ghanshyam Nagar, )  
Old Umarsara, Yawatmal )
43. Shri Yogesh Gajanan Navale, )  
R/at. Behind Mauli Building, )  
Gajanan Nagar, Chikhali, )  
Dist. Buldhana )
44. Shri Devendra Tulshidas Chirwatkar, )  
R/at. Kachewani, Taluka, Tirora, )  
Dist. Gondhia. )

45. Shri Shankar Sanjaykumar Rejapure) )  
R/at. Renapure, Wadhora, Talukar )  
Udgir, Dist. Latur )
46. Smt. Jyoti Vijay Madane ) )  
R/at. 2X6, Star Key Town, )  
PWD Quarters, Mangawari Bazar )  
Road, Nagpur )
47. Shri Ramprasad Gajanan Tathe ) )  
R/at. Near Hanuman Mandir, )  
Bothra Layout, Khangaon Road, )  
Sundarkhed, Buldhana. )
48. Shri Vedraj Kanhu Rathod, ) )  
R/at. Bham, Tal. Yavatmal, )  
Dist. Yavatmal )
49. Shri Ravindra Maharudra Survase ) )  
R/at. Antarwali, Taluka Bham, )  
Dist. Osmanabad. )
50. Shri Sopan Tukaram Dahekar ) )  
R/at. Pishor, Dist. Aurangabad. )
51. Smt. Trupti Madhukarrao Maind ) )  
R/at. Gajanan Nagar, Near Wireless )  
Office, Chikhali, Dist. Buldhana. )

**...Respondents**

Ms. Punam Mahajan, learned Advocate for the Applicant.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

Mr. S.B. Solanke, learned Advocate for the Respondents No.1 to 38.

Mr. L.S. Deshmukh, learned Advocate for the Respondents No.39 to 51.

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

**RESERVED ON** : **05.05.2022**

**PRONOUNCED ON** : **06.06.2022**

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

**J U D G M E N T**

1. The applicants are appointed as Staff Nurses by the Respondents and they are working in various Sub District Hospitals all over in Maharashtra. They all want promotions to the earlier posts as Pediatric Nurses, Psychiatric Nurses and Public Health Nurses and so also some of the Applicants want to be promoted as Tutors. The appointments to the post of Staff Nurse, Senior Nurse and Tutors are regulated as per the Recruitment Rules dated 10<sup>th</sup> January, 1964. The Staff Nurses who have completed higher education were promoted to the higher posts based on the seniority and the educational qualification of the Nurses. As per the facts of the case there are various courses for higher education in the field of Nursing and the most important courses are Diploma in Pediatric, Diploma in Psychiatric, Diploma in Public Health Nurses, Post Basic B. Sc. and M. Sc Nursing. The Staff Nurses in the State of Maharashtra have worked in two wings, i.e. one under the Director of Medical Education, Drugs and Research and another under the Director of Public Health Services.

2. In this matter, by way of amendment the applicants have challenged the new Recruitment Rules dated 27.2.2021, mainly on the ground that the candidates who are going to be appointed by nomination. i.e., by Direct Recruitment for the post of Tutors should hold the qualification of B. Sc. However, Nurses are required to be M. Sc for promotion to the post of Tutor. So this

disparity in the educational qualification of these two channels is challenged.

3. Learned C.P.O has submitted that the Respondent-State has considered this issue as raised in this Original Application and the proposal to modify the educational qualification from M. Sc to B. Sc for In-service Nurses is under consideration and is mooted. In this matter, the only question is required to be answered whether the erstwhile Recruitment Rules 1964 are applicable for the recruitment process of 2019 advertisement. The process of drafting of the new Recruitment Rules dated 27.2.2021 was going on since 2015.

4. Before dealing with the relief prayed by the Applicants, the facts of the matter, amendments made in the application and the orders passed thereby, similarly the interim decision given in the Misc. Application No.63/2021 are required to be placed on record to narrow down the compass of the matter.

5. The present Applicants are working in Public Health Department. They are from different hierarchy but they all challenge the advertisement dated 18.01.2021. At the time of filling of the Original Application on 20.12.2018 they sought relief that the Respondents be directed to appoint or promote the Applicants to the vacant posts of Matron, Assistant Matron/ Sister/ Tutor/ Master Tutor, Pediatric Nurses, Psychiatric Nurses and Public Health Nurses as per the qualifications, seniority in the services and as per the Recruitment Rules laid down by the



Maharashtra Civil Medical Code. They also pray for the order of injunction from publishing the advertisement for appointment of fresh candidates to existing vacant posts of Matron, Assistant Matron/ Tutor and specialized Nurses. However, no interim relief was granted at that time and thereafter the Respondent-State issued advertisement on 21.02.2019 for filling up the vacancies of these posts. By way of amendment further prayer of challenging the advertisement dated 21.02.2019 was allowed by order dated 04.04.2019. However, interim relief was not granted at that time also. The Rules of the recruitment of Nursing Personnel in Maharashtra Nursing Services, Class-III dated 10.01.1964 were in existence. The process of amendment of the said Rules was initiated by the Respondent-State in the year 2014-15 and when this process was on going the applications were submitted by the candidates aspiring to be appointed to the posts as advertised in 2019. However the examination could not be conducted till March, 2020 and thereafter unfortunately due to COVID-19 pandemic the examination could not be conducted till February 2021. In between there were certain developments in the reservation policy of the State of Maharashtra and the Mahaportal was cancelled and so the said advertisement dated 21.02.2019 was released again on 18.01.2021 by way of corrigendum. The Rules at the time of 2<sup>nd</sup> advertisement i.e. 18.01.2021 were nascent. Therefore no further fresh applications were called and the examination of the candidates those who have applied in response to the advertisement dated 21.02.2019 was conducted. Thereafter on 27.02.2021 the State of Maharashtra notified fresh Rules of the

recruitment for Nursing Personnel in supersession of the existing Rules of 10.01.1964. The Applicants being aggrieved by the conditions have moved for interim by filing Miscellaneous Application No.63 of 2021 in O.A.No.1133/2018 on 30.01.2021 and so also along with fresh amendment was moved. Similarly separate O.A.No.339/2021 was filed on 27.02.2021 thereby challenging Recruitment Rules wherein conditions of the educational qualification were challenged.

6. In the said Misc. Application No.63/2021 filed for interim relief the advertisement dated 18.01.2021 for filling up the vacant posts of Sister Tutor, Pediatric Nurses, Psychiatric Nurses and Public Health Nurses was prayed to be stayed and the Staff Nurses are to be promoted to the various posts as per their prayer. The Applicants mainly voiced their grievance that the Respondent-State has not promoted the Applicants (Nurses) as it was done earlier till 2007. From 2007 till today i.e. since last 15 years the promotions of these applicants were stopped. In the year 2014 the Respondents issued advertisement for filling up the vacancies of these posts by way of nomination. The State in fact in 2014 filled up the vacancies by nomination and these applicants were not promoted as per the seniority on account of the decision of the State to fill-up the vacancies by Direct Recruitments. Therefore the learned Advocate for the Applicant Ms. Mahajan has pressed the application for filling-up all these vacancies on the basis of the earlier practice of giving regular promotions to the Staff Nurses from 1964 till 2006. It was submitted that 100% posts of Sister

Tutor, Pediatric Nurses, Psychiatric Nurses and Public Health Nurses were filled by promotions. These avenues of promotions of these nurses were completely closed in absence of necessary rules and that has caused great injustice to the qualified nurses. It is found that they have decided to fill-up the 50 % posts by promotion and 50% by nomination. Thus this is going to curtail the promotional chances of the Applicants to a large extent. Therefore it was prayed that the advertisement dated 18.01.2021 be stayed. As per the advertisement the Government decided to fill up 50% by nomination i.e. Direct Recruitment and no fresh rules were framed at that time and therefore all promotional chances of the Staff Nurses to the vacant posts were curtailed and adversely effected and so it was prayed that the said advertisement be stayed.

7. At the stage of interim application the State had filed the affidavit-in-reply through Ms. Archana Walzade, Under Secretary, Public Health Department and learned C.P.O. has submitted that the Department has issued advertisement in the year 2019 based on 1964 Rules for the total sanctioned vacant posts of 799 as per the roster. Thereafter the Government took the policy decision to fill-up only 50% of the total revised vacant posts i.e. 681 posts out of total sanctioned posts of 1028. Therefore, Government calculated and decided to fill up 50% posts of the total vacant number of posts as per sanctioned roster which was 350 posts with following break up:-

Tutor	151 posts
Public Health Nurses	77 posts
Psychiatric Nurses	49 posts
Pediatric Nurses,	73 posts

Only those who had applied earlier were allowed to participate in the selection process vide revised advertisement. At that time learned C.P.O. has informed that though at the relevant time i.e. when the application was decided on 26.02.2021 the new rules were submitted to His Excellency, the assent of the Hon'ble Governor, was not received till then. However, she pointed out that as per those new rules, 75% vacancies out of total vacant posts were to be filled up by promotion and 25% out of total vacant posts were to be filled up by nomination for the post of Pediatric Nurses, Psychiatric Nurses and Public Health Nurses.

However for the posts of Tutor, 50% vacancies were to be filled by promotion, 25% vacancies were to be filled by Limited Departmental Competitive Examination and 25% vacancies were to be filled by Nomination.

Thus, in view of the earlier advertisement dated 18.01.2021 more posts were made available through promotional channel. It was not possible for us to stay the examination and the advertisement especially on the background of pandemic where more and more Nurses on the clinical side were very much required. Therefore after balancing the pros and cons of the erstwhile situation and the rules by way of golden mean the following order was passed on 26.02.2021.

*“(a) The Respondents are permitted to go with the process of recruitment as per their advertisement dated 18.1.2021 with following rider:-*

- (i) The Respondents shall consider these applicants for their respective higher posts as per their educational qualification and seniority within a period of 3 months in accordance with law and as per the Revised Rules, which states specifically 75% of the total vacancy to be filled up by promotion for Psychiatric Nurses, Pediatric Nurses and Public Health Nurses.*
- (ii) The seniority of the eligible applicants for promotion is to be maintained from the date of the publication of the rules above, qua the candidates who are going to be selected pursuant to the advertisement dated 18.1.2021.*
- (iii) The promotion of the applicants if they are found eligible to be issued before the appointment of the candidates who are going to be selected pursuant to advertisement dated 18.1.2021.*

*11. On the point of promotion to the post of Tutors and work experience, the learned counsel for the applicants want to argue the matter. Hence only on this limited point, the matter can be heard on 19.3.2021.”*

8. Accordingly the examination was conducted and the posts of Pediatric Nurses, Psychiatric Nurses and Public Health Nurses were filled up till July-August 2021 and they started working in the field since then. So also promotions were given. However, as per the said order in the said interim application (M.A.No.63/2021) promotion to the post of tutor and in respect of their work experience as requested by learned Advocate Ms. Mahajan the said issue in the application was kept pending. Thus by order dated 26.02.2021 the issue of promotion of these Pediatric Nurses, Psychiatric Nurses and Public Health Nurses was sorted out and was accepted by both the sides. At this stage we need not deal with that. Now in the O.A. the arguments were advanced only on the point of promotion and educational qualifications of the Tutors.

9. Learned counsel for the applicants has submitted that the Recruitment Rules of 1964 which are made applicable to the recruitment and promotion of the Nurses, were never notified, and therefore, they are not to be treated as regular Recruitment Rules under Article 309 of the Constitution of India. On the other hand, though the new Recruitment Rules are notified in the Government Gazette on 27.2.2021, the proposal was mooted in the year 2014-15. Learned counsel for the applicants submitted that the draft Recruitment Rules were ready in the year 2019 when the first advertisement for the said post was published on 21.2.2019. Hence, that is to be relied.

10. Learned counsel for the applicants Ms. Punam Mahajan has relied on the following judgments:-

- 1) **Abraham Jacob & Ors Vs. Union of India & Ors reported in (1998) 4 SCC 65.**
- 2) **The State of Maharashtra Vs. Vasant Anant Balel & Ors, Writ Petition No. 2260 of 2018.**
- 3) **Union of India, through Govt of Pondicherry and Another Versus V. Ramakrishnan and Others, reported in (2005) 8 SCC 394.**
- 4) **O.A.No.335, 384 to 389 & 524 of 2013, Shri Subhash Kashiram Marsale & Ors. Versus The Joint Director of Vocational Education & Training & Ors. dated 29.07.2016.**
- 5) **K. Ajit Babu and Others Versus Union of India and Others reported in (1997) 6 SCC 473.**
- 6) **Union of India and Another Versus Hemraj Singh Chauhan and Others reported in (2010) 4 SCC 290.**

11. In the case of **Abraham Jacob (supra)**, the issue of application of the Rules for inter-se seniority between the direct recruits and promotees for the period 1969 to 1976 was involved. After 1969 a set of draft recruitment rules was formulated and the promotions were given to the Junior Engineers to the post of Assistant Engineers on the basis of the draft Recruitment Rules. The draft rules were subsequently approved by the Government authorities and they became the statutory Rules. The ratio laid down in the said Judgment is not at all applicable in the present case where the Recruitment Rules of Nurses were in existence since 1964. Assuming that they were not notified and they may not have a status of statutory rules under Article 309, however, even if they are the rules made by the Executives under the name, seal and signature of His Excellency The Governor, then they get the status of the Rules made by the Executive by invoking the legislative powers under Article 162 of the Constitution of India. Thus, the said rules undoubtedly stand on a higher pedestal than mere draft Rules which in the present case were under consideration till 27.2.2021.

12. In **Vasant Anant Balel & Ors** (supra), the order of this Tribunal was challenged before the Division Bench of the Hon'ble Bombay High Court. It was the case of the promotion. Certain observations were made by this Tribunal while dismissing the Original Application of the Petitioner in terms of Recruitment Rules of 1983 that the Workshop Assistants were not entitled to promotion as Instructors. The observations made by this Tribunal

were confirmed by the Division Bench of the Hon'ble Bombay High Court when the Recruitment Rules of 1993 were not gazetted and the same were not operative. In the said case, though the Recruitment Rules were gazetted, they were made effective and Respondents were wrongly granted the promotions. In the said matter, the Recruitment Rules of 1983 were never published in the official gazette. In the present case, the applicants were also promoted when the Rules of 1964 were in force. The Hon'ble Division Bench has not given a direct finding that under no circumstances the Rules if not notified are not to be implemented. It is held that upon the cumulative consideration of all factors the Division Bench found no good ground to interfere with the judgment of this Tribunal where the orders were set aside. Hence, this case is not useful to the applicants.

13. The case of **V. Ramakrishnan (supra)** is again on the point of applicability of the draft rules. In the said matter there was issue of the appointment by promotion to the post of Chief Engineer, P.W.D. The candidate was earlier appointed on adhoc basis on the post of Chief Engineer. The Government of Pondicheery had challenged the appointment of the candidate on the ground that he did not fulfill the eligibility criterion and the appointment of the respondents was made on the basis of eligibility criterion based on the draft rules which was reduced from 5 years to 3 years. In the said judgment the Hon'ble Supreme Court has discussed the ratio laid down in the case of **Abraham Jacob (supra)** and also the judgment of Hon'ble Supreme Court in



the case of **Hon'ble High Court in Gujarat & Anr Vs. Kishan Mazdoor Panchayat reported in (2003) 4 SCC 712**. The Hon'ble Supreme Court held that the rule which is validly made and in existence even if it becomes unworkable it continues to be in force unless it is repealed or replaced by another rule or amendment. It held that,

*“28. Valid rules made under proviso appended to Article 309 of the Constitution operate so long the said rules are not repealed and replaced. The draft rules, therefore, could not form the basis for grant of promotion, when Rules to the contrary are holding the field.”*

14. In the case of **Subhash Kashiram Marsale (supra)** learned Advocate has relied on the point of precedence wherein the issue of reversion and withdrawal of monetary benefits was involved. In paragraph 15 of the said judgment there is reference that 1983 Rules were not notified and therefore those rules have not become effective. This finding cannot be applied to the present set of facts because there is no discussion in the said judgment about the hierarchy and how much weightage to be given to the Rules which is the executive action of legislative power under Article 162 of the Constitution. The ratio is not applicable. On the same point learned Advocate has relied on the ratio laid down in the case of **K. Ajit Babu (supra)**. The Hon'ble Supreme Court while considering the judgment of Central Administrative Tribunal (C.A.T.) and its power of review of the Tribunal held that,

*“The precedent sets a pattern upon which a future conduct may be based. One of the basic principles of administration of justice is, that the cases should be decided alike. Thus the doctrine of precedent is applicable to the Central Administrative Tribunal also.”*

This cannot be disputed. In the present case the 1964 Rules are neither Gazetted Rules nor codified Rules under Article 309 of

the Constitution of India. However, it was in the form of G.R. So no question of notification arose. This G.R was published in Maharashtra Civil Hospital Code Part I & Part II. Thus, Rules under this G.R have been considered and were in force throughout from 1964 till 27.2.2021. However learned Advocate for the Applicant cannot satisfy us that the judgment of the Tribunal in the earlier matter in **Subhash Kashiram Marsale (supra)** is binding on us as discussed above.

15. On the point of lethargy learned Advocate Ms. Mahajan has relied on the judgment of **Hemraj Singh Chauhan (supra)**. The Hon'ble Supreme Court has held that for want of review of cadre for two years there was delay in promotion and therefore has held that the Civil servants has right to be considered in time and due to inaction on the part of the State this right cannot be defeated. In the present case as per the Rules of 1964 there is no provision to recruit the in-service Nurses. By way of promotion to the post of Tutor everywhere in the rules it is mentioned that,

*“Sister/Tutor/Master Tutor  
Appointment to the post shall be made by the Surgeon-  
General by nomination from amongst candidates who-*

- (i) unless already in service of the Government of Maharashtra, are not more than 40 years of age;*
- (ii) are qualified nurse-midwives or qualified nurses, who are registered with the Maharashtra Nursing Council or are eligible for such registration; and*
- (iii) hold the Tutor's Certificate;*
- (iv) have adequate knowledge of English ;*

*Provided that candidates possessing B.sc degree in Nursing recognized by the Indian Nursing Council, shall be eligible if they possess experience for not less than one years after graduation and are registered by the Maharashtra Nursing Council or are eligible for such registration.”*

16. As per the Rules earlier appointment was to be made by Surgeon-General. However, the post of Surgeon-General is not available since last many years and they are appointed by the Director. As per the Rules the candidates are appointed by nomination from amongst the candidates. Thus, they are not appointed by promotion. Though learned C.P.O. has submitted that as per the general conditions when any post is to be filled up If no specific channel is mentioned then the quota of 50% is required to be maintained in appointment by nomination and appointment by promotion. Thus the arrangement of 50% quota divided equally in two channels i.e. nomination and promotion can be accepted if at all such channel is made available in the rules itself. The Rule states that appointment to be made by nomination and nothing is mentioned about promotion. Had it been by promotion then mention the feeder cadre and period of experience in feeder cadre ought to have been mentioned. However, it is not so.

17. Learned Advocate Mr. L.S. Deshmukh appearing for Respondents No.39 to 51 has adopted the submissions of learned C.P.O. He argued that the Respondents have appeared for the examination. They are selected and have been waiting for the

appointment. He submitted that the recruitment Rules of 1964, at the time of issuance of the advertisement were in force hence are applicable for their appointments. In support of his submissions he relied on the following judgments :

- 1) **Arjun Singh Rathore and others Versus B.N. Chaturvedi and Other reported in (2007) 11 SCC 605.**
- 2) **L. Chandrakishore Singh Versus State of Manipur and others reported in (1999) 8 SCC 287.**
- 3) **Shankarsan Dash Versus Union of India reported in (1991) 3 SCC 47.**

18. In the case of **Arjun Singh Rathore (supra)** it is held by the Hon'ble Supreme Court that the vacancies to be filled up according to old rules even though the new rules have been notified at the time of interview. The judgment of **L. Chandrakishore Singh (supra)** is not found relevant as it is on the point of seniority as per the rules. The judgment of **Shankarsan Dash (supra)** is on the point of filling up all the posts wherein the applicant was selected in Combined Civil Services examination of UPSC. There were several vacancies in general category of IPS and so he claimed for appointment on the said post. The Hon'ble Supreme Court held that even the candidate is successful he does not have indefeasible right to claim appointment. However it is held that it does not mean that the State has license of acting in arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons and no discrimination is permitted. It is necessary for the applicants to demonstrate such arbitrariness

that the State has malafide not filled up the vacancies. Such fact is not demonstrated in the present matter.

19. Moreover the State is in the process of filling up the vacancies. Earlier it was not filled for a long period due to confusion in interpreting Rules of 1964 which of course was not correct and not justified. Thus, we held that pursuant to the advertisement of 2019 and subsequently corrigendum of 18.01.2021 appointments made cannot be cancelled as prayed for by the Applicants. The new rules cannot be made applicable qua recruitment and promotion for the post of Tutor which is the subject matter of this O.A. We further express that earlier as per the State Policy only 50% posts were filled up by promotion and accordingly the advertisement was issued. Thus as on today, remaining 50% posts are available to the applicants who aspire to become Tutor and they can be appointed under new rules of 27.02.2022.

20. Much was argued about non availability of the promotional channels for the appointment of Tutors. These submissions are correct and hence not convincing. The Applicants are working under the clinical branch and they want to promotion by entering the branch, i.e. teaching. The promotional post for Clinical branch is Matron which is equivalent to Tutor, which is always available. Secondly, as per the advertisement there was no bar for the applicants to appear for examination pursuant to the

advertisement of 2019-2021 and compete openly. Thus two avenues for promotion are open and available.

21. Under such circumstances, we find no merit in the Original Application and the same stands dismissed.

**Sd/-**  
**(Medha Gadgil)**  
**Member (A)**

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**

akn/prk

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