

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI, BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 04 OF 2015

DISTRICT : AURANGABAD

Dr Prithviraj s/o Ganeshram Rathod)
R/o: ESI Hospital, Waluj, Mahaveer)
Bldg, Maharana Pratap Chowk, Waluj,)
Tal-Gangapur, Dist-Aurangabad.)...**APPLICANT**

VERSUS

1. The State of Maharashtra,)
Through Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai 400 032.)
1A. The Addl. Secretary,)
Public Health Department,)
Mantralaya, Mumbai 400 032.)
[Copy to be served on C.P.O, M.A.T)
Aurangabad].)
2. The Commissioner,)
Employee State Insurance Scheme)
Panchdeep Bhavan, N.M Joshi Marg,)
Lower Parel, Mumbai – 12.)..**RESPONDENTS**

Shri R.P Bhumkar, learned Advocate for the Applicant.

Shri M.S Mahajan, learned Chief Presenting Officer for the Respondents

CORAM : Shri Rajiv Agarwal, (Vice-Chairman) & Shri B.P Patil, (Member) (J)

DATE : 08.03. 2017

PER : Shri Rajiv Agarwal, (Vice-Chairman)

ORDER

1. Heard Shri R.P Bhumkar, learned Advocate for the Applicant and Shri M.S Mahajan, learned Chief Presenting Officer (P.O) for the Respondents.

2. The Applicant in this Original Application has challenged Rule 3(A) of the Maharashtra Medical Insurance Scheme, Class-I (Administrative) (Recruitment) Rules, 1986, as arbitrary and discriminatory.

3. Learned Counsel for the Applicant argued that the Applicant is a Class-II Medical Officer in the Maharashtra Medical Insurance Scheme, Class-II and is eligible to be promoted to the next higher post viz. Hospital Superintendent in the Maharashtra Medical Insurance Scheme Class-I (Administrative) as he has completed three

years of experience. The Applicant holds a post graduate Degree viz. Doctor of Medicine (M.D) and Post Graduate Diploma in Health Service Management. He belongs to VJ-A category. Learned Counsel for the Applicant stated that Directorate (Commissionerate) of Employees State Insurance Scheme (ESIS) was under the control of the Department of Medical Education and Drugs. However, this scheme has been transferred to the Public Health Department of the State Government from 1995-96, who is the Respondent no. 1 in this Original Application. There are equivalent posts of Hospital Superintendent (equivalent to Civil Surgeon) under the Directorate of Public Health under the Respondent no. 1. For promotion (as well as for appointment by nomination) to the post of Civil Surgeon, under the Maharashtra Medical and Health Services, Class-I (Recruitment) Rules as revised on 1st August 1981 have been notified. Schedule to these rules have the following qualifications required for appointment to the post of Civil Surgeon or Superintendent of Hospital or Deputy Superintendents Teaching Hospital either by promotion or nomination:

“Post-graduate degree in any clinical subject or a qualification accepted by the Medical Council of India, with experience in a big hospital for not less than 5 years, gained after acquiring the M.B.B.S degree.”

Learned Counsel for the Applicant argued that the recruitment rules for the post of Hospital Superintendent

under ESIS provide different qualifications for appointment by promotion and nomination. For appointment by promotion of persons belonging to Maharashtra Medical Insurance Service, Class-II, only M.B.B.S degree along with three years' experience is required, while for appointment by nomination, a post-graduate degree or diploma in any medical subject is required. There is no rationale to have such different provisions for appointment to the same post under the same department (Department of Public Health). The posts are admittedly under different Directorates but the posts are identical and for appointment by promotion and nomination there cannot be different criteria. Learned Counsel for the Applicant argued that Rule 3(A) of the Maharashtra Medical Insurance Scheme, Class-I (Administrative) may be held to be invalid as it is arbitrary and discriminatory and treats persons holding M.B.B.S & M.D degrees at par.

4. Learned Chief Presenting Officer (C.P.O) argued on behalf of the Respondents that the present Original Application is misconceived. The Applicant is working under the Directorate of ESIS and he is comparing Recruitment Rules for the post of Maharashtra Medical Insurance Scheme, Class-I with those of the Maharashtra Medical and Health Services, Class-I, which are under the Directorate of Health Services. These are two different services and have separate recruitment rules, which are not comparable. As

such, there is no question of the rules under ESIS being arbitrary or discriminatory.

5. We find that that the Applicant's claim is that the posts included in the schedule to the Maharashtra Medical Insurance Scheme, Class-I (Administrative) Recruitment Rules, 1986 are equivalent to that post in schedule to the Maharashtra Medical and Health Services, Class-I (Recruitment) Rules, as amended on 1.8.1981. This fact has not been denied by the Respondents. In the affidavit in reply dated 18.1.2017, the Respondents have stated that:-

“2. I say and submit that the Commissioner, ESIS vide their letter dated 26 April 2013 submitted proposal to amend existing recruitment rules of the various Class-I posts of ESIS. In that proposal it is proposed to amend the existing rules of post of Medical Superintendent (Higher Grade) and Medical Superintendent (Lower Grade) on the lines of recruitment rules of similar posts under D.H.S.”

It is, thus clear, that the Respondent no. 2 is of the opinion that the Recruitment Rules for the post of Class-I in ESIS should be at par with rules for recruitment to class-I posts under the Directorate of Health Services. In para 5(v) of the affidavit in reply of the Respondent no. 1, it is stated that:-

“(v) In reply to para no. 5, I say and submit that recruitment rules for the post of Maharashtra Medical and Health Services Class-I by way of nomination as well as promotion are made which are accepted by the Medical Council of India. But those rules for recruitment the post of Superintendent of Hospital. Maharashtra Medical Health Service Class-I Annexure as A-3 is not applicable for the ESI Scheme as the recruitment rules for ESI Scheme were separately framed and are still in force. Therefore the contents of para no.5 are denied by the answering Respondent.”

6. From the Recruitment Rules for ESIS, it is clear that the same have not been approved or are as per guidelines of the Medical Council of India. The Recruitment Rules for Maharashtra Medical and Health Services, Class-I, have the same requirement for appointment by promotion as well as nomination, while under Rule 3 of the Maharashtra Medical Insurance Service, Class-I (Administrative) (Recruitment) Rules, 1986, for promotion, there is no requirement of having a post graduate degree while for appointment by nomination there is requirement of a post graduate degree/diploma. It is quite clear that for the posts under the same department, for posts having identical pay scale and responsibilities, requirement of educational qualifications are different for appointment by promotion to one of the posts. The Respondents has already recommended that Rules should be brought at par under both the

Directorates. When both the posts are of Hospital Superintendent or equivalent, different requirement for promotion does appear to be discriminatory and arbitrary, and in contravention of Article 14 and 16 of the Constitution of India. Rule 3(A) of the Maharashtra Medical Insurance Service, Class-I (Administrative) (Recruitment) Rules, 1986 is accordingly declared ultra-virus the Articles 14 & 16 of the Constitution of India.

7. The Respondent no. 1 is considering the proposal of the Respondent no. 2 to bring the Recruitment Rules for Class-I posts in ESIS on the lines of similar posts under the Directorate of Health Services. The process must be expedited. Till the rules are finalized, the Respondent no. 1 may decide promotion cases also under 3(2), *ibid*, which is applicable for appointment by nomination. This Original Application is allowed in these terms with no order as to costs.

**B.P. PATIL
(MEMBER. J)**

**RAJIV AGARWAL
(VICE-CHAIRMAN)**

**Date : 08.03.2017
Place : Aurangabad
Dictation taken by : A.K Nair**