

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.09 OF 2024

**DISTRICT: Nashik
Subject: Selection**

Shri Lilesh Manikrao Khalane, Age 35 years,)
Occ : Pharmacist, R/o C/o Shantai, Plot No.6)
Sangameshwar Nagar, Chehdi Pumping Road,)
Nashik Road, Nashik 422101.)...Applicant

Versus

1. State of Maharashtra, through its Secretary)
Medical Education and Drugs Department,)
Mantralaya, Mumbai 400 032.)
2. The Commissioner of Medical Education and)
Ayush, 4th floor, Government Dental College)
Building, Sr. Georges Hospital Compound, near)
Chhatrapati Shivaji Maharaj Terminus,)
Mumbai 400 001.)
3. The Directorate of Medical Education &)
Research, Directorate of Ayush & Maharashtra)
Mental Health Centre, 4th floor, Government)
Dental College Building, Sr. Georges Hospital)
Compound, Near Chhatrapati Shivaji Maharaj)
Terminus, Mumbai 400 001.)....Respondents

Shri S. S. Dere, the Counsel for the Applicant.

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

CORAM : Justice Mridula Bhatkar, Chairperson
Shri Debashish Chakrabarty, Member (A)

DATE : 03.04.2024.

JUDGEMENT

1. Heard Shri S. S. Dere, learned Counsel for the Applicant and Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. Learned Counsel for Applicant stated that pursuant to Advertisement dated 10.05.2023 issued by Respondent No.3, the Applicant has appeared for Written Examination for post of Pharmacist. He further stated that Applicant had passed Written Examination. However, on 09.12.2023, when the Respondent No.3 published the Lists of 'Eligible Candidates and Non-Eligible Candidates', the Applicant was placed at Sr. No.58 in the list of 'Non-Eligible Candidates' because he had not produced 'Registration Certificate' as 'Pharmacist' with 'Maharashtra State Pharmacy Council'.

3. Learned Counsel for Applicant submits that on 04.01.2024, the Select List of recommended candidates was published and Appointment Orders were immediately given to selected candidates. The Applicant is at Sr. No.58 of the 'Merit List'.

4. Learned CPO informed that Total Posts of Pharmacist which were advertised by Respondent No.3 are 169. Out of which 130 candidates of Select List were recommended and Appointment Orders were issued to them on 04.01.2024. Learned C.P.O. submits that 10 posts for 'OBC (General) Category' are filled up. The Applicant has secured 149 marks out of 200 marks. 'Cut-of Marks' for 'OBC (General)' Category is 147 and for 'General (Open)' Category, the Cut-of Marks is 152. From the information of 'Cut-of Marks' provided, it appears that Applicant is at Sr. No.7 in the merit of 'OBC (General) Category' and there are Three Candidates below him.

5. Learned C.P.O. further submits that candidates in OBC (General) Category who are given Appointment Orders at Sr. Nos.8, 9 and 10 are from Reserved Categories of 'PWD' and 'Orphan' (PWD-2 and Orphan-1). Therefore, those Three Candidates cannot be disturbed. The Candidate at Sr. No.7 - Shri Vijay Sapkale has secured equal marks as the Applicant i.e. 149.95255.

6. Learned Counsel for Applicant points out 'Recruitment Rule' dated 08.10.1963 to the post of 'Pharmacist' framed by Respondent No.1. Learned Counsel states that initially the said Rule was framed by the 'Medical Department' which was common for 'DMER' and 'Public Health' but the said Rule has been continued in 'DMER' till today whereas 'Public Health Department' framed separate Rules. These Rules are known as 'Recruitment Rules' for the post of 'Pharmacist under 'Medical Department' and Rule 2(b) applies for appointment by way of nomination which reads as follows :-

"2(b) By nomination from amongst the candidate who :-

- (i) Are not less than 18 and not more than 25 years of age.
- (ii) Have passed SSC or any other equivalent exam recognized by Government.
- (iii) Possesses a Diploma or Degree in Pharmacy or recognized University or Institute or a Diploma in Pharmacy of a State Government and
- (iv) Are registered under the Pharmacy Act."

The Ratio of appointment by promotion and nomination shall be 1.

A person appointed to the post whether by promotion or nomination shall be required to pass the Exam in Hindi according to the prescribed Rules."

7. Learned Counsel for Applicant further points out Serial No.9 of Annexure 'B' of "Rules & Procedure for New Recruitment and Application Form & Information Brochure" of Respondent No.3 which reads as follows :-

Sr. No.	Name of the Post	Recruitment Rule/Education Qualification
9	औषधिनिर्माता Pharmacist	1. Have passed H.S.C. or any other equivalent examination recognized by Govt. AND 2. Possess a Diploma or Degree in Pharmacy or recognized University or Institute Statutory University or a Diploma in Pharmacy of a State Govt. AND 3. Have Valid registration under the Pharmacy Act 1948.

Learned Counsel for Applicant thus states that pursuant to eligibility prescribed in Sr. No.9 on 'Annexure B' of "Rules & Procedure for New Recruitment and Application Form & Information Brochure" of Respondent No.3 which reads as "Have valid registration under the Pharmacy Act 1948", the Applicant holds valid Registration Certificate which is to be taken into account for holding him eligible for appointment to post of 'Pharmacist'.

8. Learned Counsel for Applicant further submits that in Application Form there are certain 'Post-Wise Questions' asking about registration under Pharmacy Act and Registration Number, it reads as follows –

Do you have valid registration/Receipt No. under the Pharmacy Act?/तुमची फार्मसी ACT अंतर्गत वैध नोंदणी आहे का.	Registration/Licence Number
Yes	G84340

9. Learned Counsel for Applicant further relied on Section 29 of Chapter IV of 'Pharmacy Act 1948'. He submits that as per the requirement of this Section 29 of the Pharmacy Act 1948, it is not necessary that Applicant must be registered with 'Maharashtra State Pharmacy Council'. Section 29 of Chapter IV of Pharmacy Act 1948 reads as under :-

“29. Preparation and maintenance of register.-(1) As soon as may be after this chapter has taken effect in any State, the State Government shall cause to be prepared in the manner hereinafter provided a register of pharmacists for the State.
 (2) The State Council shall as soon as possible after it is constituted assume the duty of maintaining the register in accordance with the provisions of this Act.
 (3) The register shall include the following particulars, namely:
 (a) the full name and residential address of the registered person;
 (b) the date of his first admission to the register;
 (c) his qualifications for registration;
 (d) his professional address, and if he is employed by any person, the name of such person;
 (e) such further particulars as may be prescribed.”

10. Learned Counsel for the Applicant thus submits that Applicant cannot be declared as 'Non-Eligible Candidate' by Respondent No.3 on the ground that he was not registered as 'Pharmacist' with 'Maharashtra State Pharmacy Council' as Applicant was registered under Section 29 of the 'Pharmacy Act 1948' with 'Gujrat State Pharmacy Council'.

11. Learned Counsel for Applicant also relied on Para 29 and 32 of judgment of the Hon'ble Supreme Court in **Bedanga Talukdar V/s Saifudaullah & Ors (2011) 12 SCC 85.**

12. We rely on 'Recruitment Rules for the post of 'Pharmacist' dated 08.10.1963 then 'Medical 'Department' specifically 'Rule 2(b)(iv)' which shows that Candidate must be registered under 'Pharmacy Act 1948' anywhere then he will be eligible to apply for the post of 'Pharmacist'. However, the 'Rule 2(b)(iv)' of 'Recruitment Rules' is not worded as Candidate must be 'Registered Pharmacist'. If Rule 2(b)(iv) had been worded as Candidate must be 'Registered Pharmacist' then we would have interpreted in different manner as 'Registered Pharmacist' that is defined under 'Section 2(i)' of 'Chapter-I' of the 'Pharmacy Act, 1948' which reads as under :-

“ (ii) Registered pharmacist” means a person whose name is for the time being entered in the register of the State in which he is for the time being residing or carrying on his profession or business of pharmacy.”

13. Moreover, it was informed by learned Counsel for Applicant that Applicant had been registered on 28.12.2023 with 'Maharashtra State Pharmacy Council'. Further, we take note of provision of 'Section 32 (2)' of 'Pharmacy Act, 1948' which states that person is entitled to have his name entered on the register if he has attained the age of eighteen years, if he resides or carries on the business or profession of pharmacy in the State and if he has passed an approved examination or possesses a qualification approved under Section 14' (or is a registered pharmacist in another State).

14. In view of fact and circumstances of the case, we are of the considered view that Applicant had valid registration under the 'Pharmacy Act, 1948' as on the date of submission of Application Form dated 24.05.2023 because Applicant already held valid registration of 'Gujrat State Pharmacy Council' vide Registration No. G84340, dated 15.03.2023. Therefore, we allow the Original Application as issue is very clear. Hence, we direct Respondents to issue the order of appointment in respect of Applicant within 'Four Weeks'.

15. Accordingly, the Original Application is disposed of with no order as to costs.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai

Date : 03.04.2024

Dictation taken by : V.S. Mane

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