

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO. 281/2016.**

Ms. Meghna Prakash Lule,  
Aged about 39 years,  
Occ\_ Service,  
R/o C/o Manish Mangalmurti Soinde,  
17, Balaji Nagar, Manewada Road,  
Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of Medical Education & Research,  
Mantralaya, Mumbai-440 032.
- 2) The Director of Medical Education & Research,  
Mumbai.
- 3) The Dean,  
Indira Gandhi Govt. Medical College & Hospital,  
Nagpur.

**Respondents**

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Shri A.C. Dharmadhikari, Advocate for the applicant.

Shri M.I. Khan, P.O. for the respondents.

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**Coram:- B. Majumdar, Vice Chairman and**  
**S.S. Hingne, Member (J).**

**Dated: - 7<sup>th</sup> July 2016.**

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**ORDER**

**PER : VICE-CHAIRMAN**

Heard Shri A.C. Dharmadhikari, learned counsel for  
the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The matter is heard and decided at the admission stage with the consent of the parties.

3. The applicant is a Laboratory Assistant in the Directorate of Medical Education & Research. Her date of birth is 2.5.1977. She was appointed to the post from the category of Open (Part Time) on 3.12.2015. On 11.4.2016, the Director of Medical Education & Research, Mumbai (R.2) issued a notice of termination to the applicant for the reason that she was appointed wrongly by granting age relaxation for being a Part Time Worker in terms of G.R. dated 19.3.1998, but she had failed to produce <sup>a</sup> relevant certificate from the concerned office of Tehsildar. The above notice was stayed by this Tribunal on 6.5.2016.

4. The applicant submits that respondent No.2 has wrongly treated her as unfit for appointment from the category of Part Time employees as she has been working in the establishment of respondent No.2 against the post of Laboratory Assistant since 2002. The scheme of 'Part Time Employment of Graduates' was closed down in 2003. Hence she is not in a position to produce relevant certificate as per the impugned notice of termination. She further submits that she is entitled to age relaxation as an in-service candidate.

5. The respondents in the reply submit that the applicant had applied from the category of Open (Part Time) by getting age relaxation vide G.R. dated 19.3.1998. Vide the same G.R., age relaxation was subject to production of relevant certificate of participation in the scheme for 'Part Time Employment of Graduates.' As she failed to do so and she was over age, having applied from the category of Open, her appointment was required to be treated as irregular.

6. Shri A.C. Dharmadhikari, learned senior counsel fairly conceded that the applicant was not entitled to age relaxation applicable to the beneficiaries of the scheme for 'Part Time Employment of Graduates'. She is however entitled to age relaxation as she has been continuously in Government service from 2004. For this, he relied on the Recruitment Rules for the post of Laboratory Assistant in the Directorate of Medical Education and Research notified under Article 309 of the Constitution on 22.12.1989. As per Rule 3 (b) (appointment by nomination), the age limit is prescribed as 28 years except in case of a candidate who is in Government service. With regard to the issue whether the applicant being a contractual employee is deemed to be a Government servant for the purpose of age relaxation, relied on the order of Hon'ble the High Court in Dr.

**Rajesaheb Dasrao Maradkar V/s State and others** (W.P. No. 5084/2011 unreported, dated 7.8.2012) in which it was held that an *ad hoc* employee who has been in continuous service of the Government was entitled to age relaxation available to a regular Government servant.

7. Shri M.I. Khan, learned P.O. reiterated the submission of the respondents in their reply. The applicant was appointed on the condition that she will produce a certificate of Part Time Employment in terms of the G.R. dated 19.3.1998. As she failed to do so, her services are rightly held to be liable for termination. For this, he relied upon the **District Collector and Chairman, Vizianagaram Social Welfare Residential School Society V/s M. Tripura Sunderidevi [1990(3) SCC 655]**.

8. We find that undisputedly the applicant, as on the cut off date for receiving applications for the post, was more than 36 years in age whereas the age limit for the Open category was 33 years. The impugned notice of termination states that the applicant was granted age relaxation on the basis of her application from the category of Open (Part Time), as the Government vide its G.R. dated 19.3.1998 had granted Part Time employees the age relaxation upto 46 years.

As the applicant could not produce such a certificate, she was not entitled to any age relaxation.

9. On perusal of the G.R. dated 19.3.1998 (Annexure R.1, P.106 of P.B), we find that it states that unemployed graduates who had participated in the scheme of 'Part Time Employment' were entitled to various facilities / relaxation for appointment to Group-C, including that of age relaxation upto 35 years for Backward Class and 33 years for others. Thus as the applicant had applied from the Open category, in terms of this G.R., as she was 37 years of age, she was not entitled to any age relaxation.

10. However, Rule 3 (b) of the Laboratory Assistant in the Directorate of Medical Education and Research (Recruitment)s Rules, 1989 states that appointment by nomination will be from amongst candidates, who, unless already in service of Government, are not more than 28 years of age. Thus as per the Recruitment Rules, age limit will not apply to those who are in Government service. Hence, the applicant is entitled to age relaxation, if she fulfils the above condition. The applicant has been working as a Laboratory Assistant in the Indira Gandhi Govt. Medical College & Hospital, Nagpur on a contract basis from 6.10.2004 till date (Annexure A.19). Thus her services have been continued form 2004 except for technical breaks each of not more

than two days. As regards the issue whether an *ad hoc* / contract employee in a Government service is entitled to age relaxation available to a regular Government servant, Shri A.C. Dharmadhikari, learned counsel for the applicant has rightly relied on **Dr. Rajesaheb Dasrao Maradkar** (supra). The applicant in the writ petition was appointed as an *ad hoc* Lecturer in Government college and as per orders of this Tribunal he was to be continued in service till a duly selected candidate is appointed by MPSC, and he was also not to be replaced by another *ad hoc* Lecturer. Hon'ble the High Court decided the writ petition in favour of the petitioner by holding that the period during which he was under *ad hoc* appointment entitled him to age relaxation as applicable to a regular Government servant. As the case of the present applicant is very similar to that of the petitioner, so far as his contract employment from 2004 onwards is concerned, we find that in view of the above order of Hon'ble the High Court, she is entitled to age relaxation applicable to a Government servant in terms of Rule 3 (b) (i) of the Recruitment Rules, 1989. Hence, the O.A. is allowed in terms of the following order:

- (a) The impugned notice of termination dated 11.4.2016 is quashed and set aside.

(b) It is held that the applicant is entitled to the benefits of age relaxation in terms of Rule 3 (b) (i) of the Recruitment Rules, 1989.

(c) No order as to costs.

sd/-

(S.S. Hingne)  
Member (J)

sd/-

(B.Majumdar)  
Vice-Chairman

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