

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 384 of 2017 (D.B.)**

Dr. Dhiraj Ashokrao Zade,  
Aged 35 years, Occ : Service,  
R/o HB Nagar, Duplex No.31,  
Near Vinoba Bhave Nagar,  
Nagpur 0 440 017.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Medical Education and Drugs Department,  
Mantralaya, Mumbai.
- 2) Maharashtra Public Service Commission,  
through its Secretary having its Office,  
Koparsamarg, Mumbai.

**Respondents**

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**Shri S.P. Palshikar, Advocate for the applicant.**

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

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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**JUDGEMENT**

**(Delivered on this 28<sup>th</sup> day of September,2017)**

Heard Shri S.P. Palshikar, Id. Counsel for the applicant and Shri M.I. Khan, Id. P.O. for the respondents. The O.A. is heard finally with consent of Id. counsel for parties.

2. The applicant in this case has challenged amendment to the rule of procedure dated 28/12/2016 issued by the Maharashtra Public Service Commission and has claimed a declaration that the amended sub rules (b) (ii) of Rules of Procedure extending the period of wait list from one year to two years be declared wholly erroneous and is null and void. The said amended rules are called "Maharashtra Public Service Commission Rules of Procedure (Amendment),2016".

The relevant sub rule (b) (ii) is as under :-

*"(2) for clause (b) of sub-rule (8), the following shall be substituted, namely :—*

*"(b)(i) In case of Direct Recruitment, the reserve list (waiting list) shall be operative for the period of one year from the date of declaration of the result or till the declaration of result of the subsequent recruitment process for the same post, whichever is earlier :*

*Provided that, the reserve list (waiting list), for the teaching posts such as Assistant Professor, Associate Professor and Professor under the Medical Education and Drugs Department of the Government shall be operative for the period of two years from the date of declaration of result or till declaration of result of the subsequent recruitment process for that post, whichever is earlier.*

*(ii) In case of Limited Departmental Competitive Examination, the reserve list (waiting list) shall be operative for the period of one year from the date of declaration of the result or till declaration of the result of the subsequent Examination for the same post whichever is earlier”.*

3. The applicant has only challenged sub rule (ii) of rule-2 (b).

4. According to the applicant he is qualified of BAMS and MD in Dravyaguna and is eligible for appointment of the post of Assistant Professor. He was initially appointed on 1/9/2014 and was posted in the Podar Ayurvedic Government College, Mumbai and continued thereafter. Lastly he was appointed vide order dated 20/1/2017 for a period of 360 days.

5. As per the condition in the order dated 20/1/2017 the services of the applicant would automatically come to an end if the candidate from MPSC is made available. The respondent no.2 has published an advertisement in February, 2013 inviting the applications from eligible candidate for appointment of Assistant Professor in Dravyaguna. The applications were called for five posts and it is learnt that two persons are kept on wait list.

6. As per earlier rules of procedure a wait list was valid for a period of one year. However, the MPSC has amended the said rules

as aforesaid whereby the wait list period has been amended as valid for a period of two years. Because of this there is likelihood of a person from wait list prepared by the MPSC being appointed in place of applicant. The applicant has therefore challenged the amendment to the Rules of Procedure as already stated.

7. In the reply affidavit filed by respondent no.2, i.e., MPSC, the respondent no.2 submitted that the amendment has been made by the MPSC as per the statutory rules and regulations. Earlier the operative period of wait list for teaching posts in Medical Education and Drugs Department was one year which was modified to two years and the applicant has no locus standi to challenge such procedural amendment. The span of one year was very less and therefore it was decided to modify the same in the interest of administration. The applicant is not entitled to regularisation of service nor he has locus standi to claim regularisation and therefore the application deserves to be dismissed being not tenable.

8. The learned counsel for the applicant Shri S.P. Palshikar submits that the amendment is with retrospective effect and earlier the wait list period was one year which has now been extended to two years and therefore the regular candidates on wait list will be available whereby the services of the applicant may come to an end at any time. It is not known as to how the applicant can challenge the

amendment to the procedural rules as admittedly the applicant is not regularly appointed by MPSC. The appointment order of the applicant clearly shows that it is ad-hoc appointment for a temporary period such as for 120 days also and from time to time separate appointment orders have been issued for different period. It is specifically stated that the applicant's appointment will be temporary and he will not be entitled to claim any benefits of permanent services and it will automatically come to an end after specific period mentioned in the order. It was further stated that whenever the regular candidate from MPSC will be available, the applicant's services come to an end automatically. Even otherwise the services of the applicant is terminable at any time. In such circumstances, the applicant has no locus standi at all to challenge the rules of procedural (amendment), 2016. He is nominated for a particular period on particular conditions and therefore the applicant cannot say that the person from wait list shall not be sent in his place. It is also material to note that the applicant is not challenging his appointment and terms and conditions therein nor he is claiming regularisation of the services and therefore he cannot claim that the MPSC shall not extend the period of wait list.

9. The learned P.O. has invited my attention to Judgment delivered by the Hon'ble High Court of Judicature at Bombay reported in **2017 (2) Mh.L.J., 622 in the case of Girjamata Labour Co-**

**Operative Society Ltd. Vs. State of Maharashtra & Ors.**, whereby it has been held that framing a policy is within competency of State in its executive authority. Court cannot sit in Judgment of policy of Legislature or Executive nor can struck down a policy decision taken by Government, merely, because it feels that another decision would have been more logical or wiser. It is further observed that Court can only interfere if policy framed is irrational, arbitrary, unreasonable and thereby offend Article 14 of the Constitution of India. In my opinion changing the validity period of wait list by framing rules as per constitutional powers cannot in any way cause prejudice to the applicant nor the same can be said to be arbitrary or unreasonable and there is absolutely no reason to interfere in the policy decision taken by the MPSC in modifying the validity period of the wait list from one year to two years. I, therefore, do not find any substance in the O.A. Hence, the following order :-

**ORDER**

The O.A. stands dismissed with no order as to costs.

**(J.D. Kulkarni)**  
**Vice-Chairman (J).**