

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO. 480 OF 2015

DISTRICT :Solapur

Shri Nagnath Narayan Munga-Patil,)
Age 33 years, Occ: Nil,)
R/a. House No.454, Bharat Ratna)
Indira Nagar, Ashok Chowk,)
70 feet Road, Solapur – 413 006.)...**Applicant**

VERSUS

1. The State of Maharashtra,)
Through the Principal Secretary,)
Medical Education & Drugs)
Department, Mantralaya, Mumbai)

2. The Director,)
Medical Education & Research,)
Mumbai, near C.S.T. Station,)
Mumbai – 400 001.)....**Respondents**

Shri J.N. Kamble, learned Advocate for the Applicant.

Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri R.B. Malik, Member (J)

DATE : 22.07.2016

PER : Shri Rajiv Agarwal, Vice-Chairman

ORDER

1. Heard Shri J.N. Kamble, learned Advocate for the Applicant and Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the communication dated 20.4.2015 from the Respondent No.2, holding him ineligible for the post of X-ray Technician, though the Applicant claims that he was eligible to be selected that post on the basis of Written Examination marks in MEDSS-CWT-2012, and the fact that he has requisite experience.

3. Learned Counsel for the Applicant argued that the Applicant had applied for the post of X-ray Technician pursuant to MEDSS-CWT-2012 issued by the Respondent No.2. The Applicant was at Sr. No.16 from Open category in the merit list. He was eligible to be selected for the aforesaid post on the basis of his place in the merit list. However, the Applicant was informed that he didnot have experience of 5 years in a Government/ Semi Government Hospital as X-ray/ Dark Room Assistant. Learned Counsel for the Applicant argued that the Applicant had experience of working in a Cooperative Hospital, which is run by a Cooperative Society registered under the Maharashtra Cooperative Societies Act. The affairs of a Cooperative Society are run as per the directions of the Registrar, and, therefore, a Cooperative Hospital has to be treated as a Government/Semi


Government Hospital. Learned Counsel for the Applicant argued that even if it is held that the Applicant does not have 5 years experience of working in a Government/ Semi Government Hospital, he has to be treated at par with two other candidates, who didnot have experience of working in a Government Hospital viz. Shri A.A. Ugare and Shri Suraj A. Bhandi, but who were selected, while the Applicant was not selected. This is highly discriminatory. Learned Counsel for the Applicant argued that the decision of the Respondent No.2 declaring the Applicant ineligible for the post of X-ray Technician as per recruitment rules, may be quashed.

4. Learned Chief Presenting Officer (C.P.O.) argued on behalf of the Respondents that the Recruitment Rules dated 11.2.1999 for the post of X-ray Technician called the X-ray Technician, X-ray Assistant and Dark Room Assistant in the Directorate of the Medical Education and Research (Recruitment) Rules, provide in Rule 3(b) (ii) that a candidate must have either a degree in science with Physics, Chemistry or Biology or have passed Higher Secondary School Certificate Examination in vocational Education in vocation of X-ray Technician and posses five years experience as X-ray Assistant or Dark-Room Assistant in Government or Semi Government Hospital. Learned C.P.O. stated that semi Government Hospital would include Hospitals under the Zilla Parishads or Municipal Corporation/ Councils. However, a Cooperative Society registered under the Maharashtra Cooperative Societies Act is a private body. Sometimes, Government may subscribe to share capital of a Cooperative

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Society. However, that will not make that society a Semi Government body. Cooperative Society is owned by its members and is run by democratically elected Managing Committee. Learned C.P.O. stated that the Applicant does not possess requisite experience for the post of X-ray technician. Learned C.P.O. stated that Shri Ugare & Bhandi didnot have experience in Government/ Semi Government Hospital but were selected for the post of X-ray Technician in the same selection process. However, when this come to the notice of the Selection Committee, steps to cancel their appointment were taken. Shri Bhandi is no longer in service and Shri Ugare has challenged notice of termination of service in this Tribunal and has obtained a stay order. Learned C.P.O. argued that there is no merit in this O.A. and it may be dismissed.

5. It is an admitted fact that the Applicant has experience in Cooperative Hospitals and his claim is that a Cooperative Hospital is a Semi Government Hospital, as some share cafrital is subscribed to by the Government in that Cooperative Society and the Society's affairs are regulated by the Registrar of Cooperative Socieites. This argument is difficult to uphold as a Cooperative Society is owned by its members. Government may sometime hold some shares, but its position will be like any other shareholder. In a Cooperative Society, every shareholder has only one vote, regardless of number of shares held by him. Accordingly, Government has no special say in running the affairs of a Cooperative Society though it may held shares in



that society. A society can not be called a Semi- Government body, just because it is registered by the Registrar or regulated by it. There are many regulators/ registrars which register various bodies, like Registrar of Companies registers Public Limited Companies. There are societies registered under Societies Registration Act. Such registration or regulation does not make a body as Semi-Government. The claim of the Applicant in this regard has to be rejected.

6. The Applicant has claimed that two other candidates were appointed though they didnot have requisite experience in Government/ Semi Government Hospitals. The Respondents have admitted their mistakes and stated that steps to terminate services of S/Shri Ugare and Bhandi have already been taken. We are satisfied by the steps taken by the Respondents in this regard. The Applicant cannot claim that if two other persons have been given appointment illegally, he should also be given such appointment in violation of statutory Rules framed under Article 309 of the constitution of India.

7. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no ordr as to costs.

Sd/-
(R.B. MALIK)
MEMBER (J)

Sd/-
(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 22.07.2016

Place : Mumbai

Dictation taken by : SBA

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