

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.885 OF 2015

DISTRICT : THANE

Shri Dr. Santosh Gulabrao Chavhan.)
Age : 37 years, Occ.: Service,)
Residing at Manas Sarovar Complex No.)
13-B, Room No.302, Sector 34, Kamothe,)
Navi Mumbai 410 209.)...Applicant

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Department of Medical Education &)
Drug, Mantralaya, Mumbai - 32.)
2. Secretary.)
Maharashtra Public Service)
Commission, 7th & 8th Floor,)
Cooperage Telephone Nigam Building,)
M.K. Road, Cooperage, Mumbai -21.)
3. Dr. Dhanajay Vitthal Hange.)
Mathoshree Hospital, Ahead Satara)
Police Station, Behind Madhumangal)
Karyalaya, Aurangabad.)...Respondents



Shri C.T. Chandratre, Advocate for Applicant.

Ms. N.G. Gohad and Shri K.B. Bhise, Presenting Officers for Respondents 1 & 2.

Shri A.V. Sakolkar, Advocate for Respondent No.3.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 21.07.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. The proper placement in the select list for the post of Assistant Professor in Nidan Panchak being the Ayurvedic equivalent of pathology in Maharashtra Ayurvedic Services, Group 'B' (the said post) and the propriety of the short-listing criterion are the facts at issue that call for judicial determination in this Original Application (OA) under Section 19 of the Administrative Tribunals Act, 1985. Two posts were up for grab out of which one was for Open category and the other one was reserved for NT(B) category. The dispute is only with regard to the Open category.

2. We have perused the record and proceedings and heard Mr. C.T. Chandratre, the learned Advocate for the



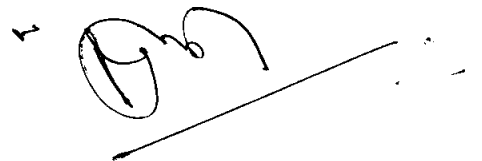
Applicant, Ms. N.G. Gohad and Mr. K.B. Bhise, the learned Presenting Officers for Respondent Nos. 1 & 2 and Shri A.V. Sakolkar, the learned Advocate for the Respondent No.3 who is the selected candidate (private Respondent).

3. The said post was advertised by the 2nd Respondent – MPSC as per the requisition sent by the 1st Respondent-State in the Department of Medical Education and Drugs. To repeat, the 3rd Respondent is the private Respondent.

4. The Applicant belongs to DT(A) category for which category, there was no reservation. One of the two posts was reserved for NT(B) category and the remaining one was unreserved. It was provided, however, in the Advertisement that if suitable candidates in NT(B) category were not available, then by interchangeability, the candidates from VJ(A) वि.जा. (अ), NT(C) (भ.ज.क) and NT(D)(भ.ज. ड) category could be considered. As far as the required educational qualification was concerned, let us reproduce Clause 4.6 of the Advertisement in Marathi.

“ ४.६ शैक्षणिक अहर्ता :-

(एक): महाराष्ट्र वैद्यक व्यवसायी अधिनियम, १९६९ (१९६९ चा महाराष्ट्र अधिनियम क्र.२८) या अधिनियमाच्या परिशिष्टाच्या भाग-अ, भाग-अ-१, भाग-ब किंवा



भाग-क मध्ये नमूद केलेल्या अर्हतापैकी एक अथवा भारतीय वैद्यक केंद्रीय परिषद अधिनियम, १९७० (१९७० वर ४८) या अधिनियमाखालील भारतीय केंद्रीय वैद्यक परिषदेने वेळोवेळी निर्देशित केलेली समतुल्य अर्हता, आणि (दोन): सांविधिक विद्यापीठाची अथवा मान्यताप्राप्त संस्थेची संबंधित आयुर्वेदिक विषयातील पदव्युत्तर पदवी आणि (तीन): वरील क्रमांक (एक) येथे दर्शवलेली अर्हता प्राप्त करून घेतल्यानंतरचा मान्यताप्राप्त संस्थेतील संबंधित विषयाच्या प्रयोग निर्देशक अथवा कनिष्ठ अधिव्याख्याता या पदाचा तीन वर्षांहून कमी नसेल इतका अनुभव. पदव्युत्तर पदवीधारकांना अनुभवाची अट लागू नाही. (चार): कोणत्याही पदावर नियुक्तीसाठी आवश्यक पदव्युत्तर अर्हताप्राप्त उमेदवार उपलब्ध नसतील तर, अनुक्रमांक (एक) वर नमूद केलेली अर्हता असलेल्या उमेदवारांची नियुक्ती करता येईल. मात्र अशा प्रकरणी अशा रीतीने नियुक्त झालेल्या उमेदवारांना त्यांच्या नियुक्तीच्या दिनांकापासून पाच वर्षांच्या आत आवश्यक ती पदव्युत्तर अर्हता प्राप्त करून घ्यावी लागेल. (पाच): ज्या उमेदवारांचे आयुर्वेद विषयीचे मुलभूत संशोधनाचे निबंध अथवा पुस्तके प्रसिध्द झालेली आहेत अशा उमेदवारांना प्राधान्य देण्यात येईल. (सहा): इंग्रजी, मराठी, संस्कृत आणि हिंदी या भाषांचे पुरेसे ज्ञान असावे म्हणजे त्यानुसार तो त्या भाषा सहजपणे लिहिण्यास, वाचण्यास बोलण्यास समर्थ असला पाहिजे.’’

5. Be it noted here itself that the Applicant did his graduation (BAMS) in January, 2000 and he did his post graduation (M.D. Nidan Panchak (Pathology) in 2005. He then worked as Assistant Professor in Ayurvedic College at Sangamner, Navi Mumbai, etc. At present, he was an Assistant Professor in D.Y. Patil Ayurved College, Navi Mumbai. On the anvil of qualification, therefore, the Applicant answered the requirement. This fact is not disputed by MPSC. The 3rd Respondent has put the Applicant to strict proof. We hold that the Applicant comes true to the test in this behalf.


6. 57 applications were received. Five including the Applicant and 3rd Respondent were short-listed. The performance details of those five are there on Page 12 of the P.B. (in Marathi). Let us reproduce it.

“पदाचे नाव- सहायक प्राध्यापक- निदानपंचक, शासकीय आयुर्वेद महाविद्यालय, महाराष्ट्र आयुर्वेदीक सेवा, गट -ब

उमेदवारांचे मुलाखतीचे गुण

अ.क.	उमेदवाराचे नाव	वर्गवारी	ज्या वर्गवारीसाठी उमेदवाराचा विचार झाला ती वर्गवारी	शिफारस	मुलाखतीचे गुण	मु.क.
1	CHAVHAN SANTOSH GULABRAO	DT(A)	NT(B)*	No Post Available	60	2
2	KALE SANDEEP DHANAJI	NT(B)	NT(B)	NT(B)-1	58	6
3	HANGE DHANANJAY VITHAL	NT(D)	Open/NT(B)*	Open-1	57	3
4	LAHOTI VIJAYALAXMI	Open	Open	No Post Available	41	5
5	KHANDARE SUNIL RAMCHANDRA	Open	Open	No Post Available	41	1

7. The Applicant secured highest marks 60. Dr. Kaley was recommended from NT(B) category. We are concerned with Open category. The Applicant was not considered from unreserved category. The 3rd Respondent made it to the select list (Ex. 'A-2', Page 11 of the P.B.). Dr. Kaley (NT(B) and the 3rd Respondent (Open) were the two successful candidates.



8. The Respondent No.2 has annexed to his Affidavit-in-reply the short-listing criterion. It is at Exh. 'R-1', Page 27 of the P.B. Let us reproduce it (in Marathi).

“सहायक प्राध्यापक- निदान पंचक,
शासकीय आयुर्वेद महाविद्यालय, महाराष्ट्र आयुर्वेदिक सेवा, गट (ब)

जा.क.११४/२०१३

अमागास सर्वसाधारणकरिता मान्य झालेला निकष-

शैक्षणिक अर्हता:- (एक) महाराष्ट्र वैद्यक व्यवसायी अधिनियम, १९६९ (१९६९ चा महा. २८) या अधिनियमाच्या परिशिष्टाच्या भाग- अ, अ-१, भाग-ब किंवा भाग - क यामध्ये नमूद केलेली अर्हता किंवा भारतीय चिकीत्सा केंद्रीय परीषद अधिनियम, १९७० (१९७० चा ४८) या अन्वये भारतीय चिकीत्सा केंद्रीय वैद्यक परीषद नवी दिल्ली यांनी वेळोवेळी विनिर्दिष्टित केलेली समतुल्य अर्हता धारण केली असेल आणि मान्यताप्राप्त संस्थेतून प्राप्त केलेली आयुर्वेदाच्या संबंधित विषयातील पदव्युत्तर पदवी आवश्यक धारण केली असेल.
(दोन) ज्याच्याकडे इंग्रजी, मराठी, संस्कृत व हिंदी भाषेचे पुरेसे ज्ञान असेल.

आणि तदनंतर

अनुभव:- निदान पंचक या विषयातील अधिव्याख्याता आणि अथवा सहयोगी प्राध्यापक या पदाचा १० वर्षे यापेक्षा कमी नसेल इतका अनुभव आवश्यक आहे.

किंवा

Ph.D. पदवी +९ वर्षे अधिव्याख्यात आणि सहयोगी प्राध्यापक पदावरील ९वर्षे यापेक्षा कमी नसेल इतका अनुभव आवश्यक आहे.

भ.ज. (ब) वर्गवारीच्या एका पदाकरीता जाहिरातीत नमूद केलेली शैक्षणिक अर्हता व अनुभव आवश्यक आहे.”

It may be recalled that as per Clause 4.6 of the Advertisement “पदवीतर पदवीधारकांना अनुभवाची अट लागू नाही.” (see Para 4

above). Let us proceed on the basis of accepting the case of MPSC that the Applicant fell a little short of ten years while the 3rd Respondent had a few months more than ten years experience. The point remains that the Applicant could not have been placed at a disadvantage vis-à-vis the 3rd Respondent. On his behalf, we were referred to **Madya Pradesh Public Service Commission Vs. Navnit Kumar Poddar (1994) 6 SCC 293**. It holds undoubtedly that if enormous number of candidates were there in the contest and the selection was based only on interview, the selection agency could adopt a short-listing criterion on some reasonable basis (emphasis supplied).

9. Now, in this OA, the candidates vying for two posts were 57 which in the context could not be termed as enormous. In fact, a surer test by way of a written test could easily have been put in place. We have to work on hard facts. The course of action just noted stares us on our face and it is not as if we are "teaching" the MPSC. On these facts, it could have been done. May be in some other case, it might not work. We do not lay down as eternal and immutable principle that written test is a must. We only say in this OA, it was a better and surer option. But here also, no mandate is being given. A better option has been spoken of. But more importantly, the test



of reasonableness nevertheless is there. On that count, in our view, the 2nd Respondent is found wanting. A further elaboration is still in store.

10. The Applicant having top scored and that is in disputable is aggrieved by the fact that he was not allowed to compete from Open category. What the Respondent No.2 actually did can best be put up in their own words. Let us reproduce without paraphrasing Paras 12 to 15 of their reply.

“12. With reference to para 6.6, I say that the applicant had applied alongwith other candidates in response to the advertisement in question. He belongs to D.T.(A) category for which no post is reserved. There is one post available for N.T.(B) category for which no sufficient candidates were available to be called for interview. The Commission had considered the applicant against the post of NT (B) category, as per interchangeability Rules and called him for interview. In all, only two candidates were held eligible for the posts reserved for N.T.(B) category including applicant who belongs to D.T.(A) category.

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13. With reference to para 6.7, I say that since a large no. of Prima-facie eligible candidates were available for the Open category post, the Commission had to fix criteria to shortlist the candidates to a permissible ratio. A copy of criteria fixed for Open category is annexed hereto and marked as EXHIBIT "R-1". The applicant possesses an experience of 8 years and 10 months which is less than the prescribed period of experience for Open category i.e. of 10 years. Therefore he was not called for the interview for Open category post. He could be considered only for the post available to N.T. (B) category and that too if N. T. (B) category candidates was found not suitable for recommendation. On the contrary as the Respondent No.3 has experience of more than 10 years, he was considered for both the Open and the N.T.(B) category posts.

Thereafter final result was drawn and declared on 17th October, 2015. It was found that the applicant has scored the highest marks. However for N.T.(B) category post a suitable

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candidate from NT(|B) category itself was available and was found suitable for recommendation and hence, the Commission recommended him for appointment. Since suitable candidate from N.T.(B) category itself was available; the Applicant could not get recommended on the basis of interchangeability and due to of non availability of the post for N.T.(A) category.

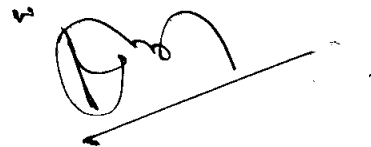
14. With reference to para 6.8, I say that though the applicant secured highest marks in the interview he could not be recommended for the Open category post. It is made clear that the applicant was not eligible to be called for interview as per the criteria fixed for Open category. He does not fulfill the condition of 10 years of experience. The applicant possesses experience of 8 years 10 months which is less than that fixed for Open category. On the other hand the Respondent No.3 i.e. Mr.Hange Dhananjay Vitthal has an experience of 10 years 10 months. Obviously, the applicant cannot be considered for Open posts. Therefore, the



contentions raised herein are baseless and hence are denied.

15. With reference to para 6.9, I say that the applicant as well as the Respondent No.3 were considered for Open category post. However only Respondent No. 3 was found eligible to be called for interview for the post available for the Open category as per the short listing criteria, where as the applicant was considered for the post available for N.T.(B) category as per the interchangeability rules. From amongst the open category posts the Respondent No.3 had secured highest marks and was rightly recommended for the Open post. The allegations raised herein are baseless and hence denied.”

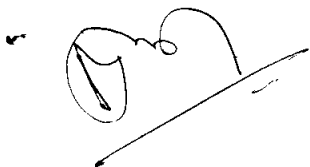
11. The methodology and the approach adopted by the MPSC as reflected by the above quote was clearly erroneous. The Applicant is a born DT(A). But here there was no reservation for that category. The Applicant, therefore, could not have been prevented from claiming from Open category. Two documents titled 'घोषणा' and 'पुर्नघोषणा' of MPSC are to be found at Pages 19 and 20 respectively. They provide *inter-alia* that any candidate



shall not be allowed to be considered from Open category, if he took benefits of Reserved category. Now, to us, it seems, it is just a point of view of MPSC, may be based on UPSC's point of view. But, we have to enforce the principles emanating from the Constitution, law and case law and not the 'घोषणा' etc.

12. We do not feel called upon to enter the academics of vertical or horizontal reservation, etc. which even the Applicant has harped on. It is quite clear to us that a member from any Reserved category cannot be forcibly confined to the category that he is drawn from, if he can make it on merit in unreserved category. The difference in the matter of merit between the Applicant and the 3rd Respondent is 60 and 57. The so called short-listing criterion invoked quite unnecessarily and without there being an occasion for it subordinates merit to the lack of it and is unreasonable.

13. A possibility of other vacancy/vacancies was spoken of. We refuse to get drawn into that aspect. We clarify that here, in this OA, we have adjudicated basically the rights of the Applicant to which inextricably linked up is the 3rd Respondent. But that is in respect of that one

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post which is involved herein. Beyond that, we say nothing more.

14. The upshot is that the Applicant succeeds. We hold that he has to be recommended for appointment to the said post and he has to be appointed also. The Respondent Nos. 2 & 1 respectively are directed to comply within six weeks from today. This Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
21.07.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
21.07.2016

Mumbai

Date : 21.07.2016

Dictation taken by :

S.K. Wamanse.

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