

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

O.A.NO. 30/2018 WITH O.A.NO. 107/2019

**1. ORIGINAL APPLICATION NO.30 OF 2018
DISTRICT:- JALGAON**

Mrs. Rohini Sushilkumar Deokar,
Age : 42 years, Occ. Service
Presently working as Blood Bank Scientific Officer
at District Civil Hospital, Jalgaon,
R/o. Plot No.22, Kisanrao Nagar,
"Vrindavan" Girana Pumping Road,
Near M.S.E.B. Sub Station,
Jalgaon, District Jalgaon.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through the Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
2. The Director of Health Services,
Aarogya Bhavan, 1st Floor,
St. George Hospital Compound,
Near CST Station, Mumbai-400001.
3. The Deputy Director of Health Services,
Nashik Region, Nashik,
Regional Referral Hospital Compound,
Shalimar Chowk, Nashik-422001.
4. The Civil Surgeon,
Civil Hospital, Jalgaon,
District Jalgaon.

... RESPONDENTS

W I T H

2. ORIGINAL APPLICATION NO.107 OF 2019

DISTRICT:- AHMEDNAGAR

Manjusha d/o Eknath Kute (Khade),
Age : 30 years, Occ. Private Service,
R/o C/o Shri Eknath Murlidhar Kute,
Kute Mala, Near Bhairavnath Housing

Society, Maparwadi Road, Sinnar,
Dist. Nashik, presently residing at
C/o Anand Rushiji Netralaya,
Mahaveer Bhavan, Anand Rushi Marg,
Ahmednagar.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through : The Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
2. The Director of Health Services,
Aarogya Bhavan, 1st Floor,
St. Georges Hospital Compound,
Near CST Station, Mumbai-400001.
3. The Deputy Director of Health Services,
Nashik Region, Nashik,
Regional Referral Hospital Compound,
Shalimar Chowk, Nashik-422001.
4. The Civil Surgeon,
Civil Hospital, Jalgaon,
District Jalgaon.
5. Mrs. Rohini Sushilkumar Deokar,
Age : 42 years, Occ. Service
Presently working as Blood Bank
Scientific Officer / Technician
District Civil Hospital, Jalgaon,
R/o. Plot No.22, Kisanrao Nagar,
"Vrindavan" Girana Pumping Road,
Near M.S.E.B. Sub Station,
Jalgaon, District Jalgaon.

... RESPONDENTS

APPEARANCE : Shri V.B.Wagh, counsel for the
applicant in O.A. No. 30/2018 & for
respondent No. 5 in O.A. No.
107/2019.

: Shri S.D. Joshi, counsel for the
applicant in O.A. No. 107/2019.

: Shri M.S.Mahajan, Chief Presenting Officer for the respondent authorities in both these OAs.

CORAM : **JUSTICE SHRI P.R.BORA, MEMBER (J)**
AND
SHRI BIJAY KUMAR, MEMBER (A)

DATE : **11-03-2022**

COMMON ORAL ORDER

1. Heard Shri V.B.Wagh learned counsel appearing for the applicant in O.A. No. 30/2018 & for respondent No. 5 in O.A. No. 107/2019, Shri S.D. Joshi, learned counsel appearing for the applicant in O.A. No. 107/2019 and Shri M.S.Mahajan learned Chief Presenting Officer for the respondent authorities in both these OAs.

2. In O.A. No. 30/2018 the applicant has challenged the order of termination dated 2.12.2017 passed by respondent No. 3; whereas in O.A. No. 107/2019 the applicant therein has objected the order of appointment dated 19.8.2017 on the post of Blood Bank Technician in favour of Mrs. Rohini Sushilkumar Deokar, who is respondent No. 5 in the said application and who is applicant in O.A. No. 30/2018 and has sought cancellation of the said order. In view of the fact that appointment issued in favour of Mrs. Rohini Deokar is the subject matter of both these OAs we have

heard both these OAs together and we deem it appropriate to decide both these OAs by a common reasoning.

3. The facts, which are relevant for deciding the present OAs, can be briefly stated thus: -

The Deputy Director of Health Services, Nashik Region, Nashik, had issued an advertisement for the recruitment of Class-C posts on 10.1.2016. The posts, which were advertised were of Junior Clerk, Staff Nurse, Pharmacist, Driver, X-ray Technician etc. The applications were also invited for recruitment on the post of 'Blood Bank Technician'. The post of Blood Bank Technician (70% for general candidates) was shown at Sr. No. 10 in the advertisement, whereas the identical posts were shown at Sr. No. 11 as Blood Bank Technician 30% from amongst those who have worked as seasonal employees for minimum 180 days under the 'National Program of Eradication of Malaria'. The applicants in both these applications have applied for the post of Blood Bank Technician at Sr. No. 10 i.e. 70% general candidates. In the written examination undergone by them, both the applicants were shown to have secured 126 marks. In the

merit list published, name of the applicant in O.A. No. 107/2019 was shown at Sr. No. 7, whereas the name of the applicant in O.A. No. 30/2018 was shown at Sr. No. 19. The selection committee however, selected the applicant in O.A. No. 30/2018 namely Mrs. Rohini Deokar and consequently the order of appointment was issued in her favour on 19.8.2017. Objection was raised to her appointment by Manjusha d/o Eknath Kute (Khade) the applicant in O.A. No. 107/2019 alleging that Mrs. Rohini Deokar was age barred. In the meanwhile one Writ Petition was filed before the Hon'ble Bombay High Court pertaining to the same selection process by one Smt. Kunda Shimpi and in the said petition she stated that Mrs. Rohini Deokar (applicant in O.A. No. 30/2018) though was over age, she has been given appointment. Objection so raised was enquired into by the respondent authorities and thereafter the show cause notice was issued to Mrs. Deokar why her services shall not be terminated. Mrs. Deokar submitted her explanation to the said show cause notice. However, it appears that the explanation was not accepted by the respondent authorities and ultimately vide order dated 2.12.2017 her appointment came to be cancelled and she was terminated from the services. She has, therefore, filed

O.A. No. 30/2018 taking exception to the said termination order. The record shows that this Tribunal vide order passed on 22.1.2018 granted interim relief in favour of the said applicant thereby staying the effect and operation of the order dated 2.12.2017.

4. In the order of termination dated 2.12.2017 following two grounds are stated: -

(i) that for the post for which Mrs. Deokar has applied, since work experience was not prescribed as eligibility criteria, she was not entitled for any age relaxation; and

(ii) that Mrs. Deokar being not in the regular employment of the State Government of Maharashtra, the experience claimed by her of the services rendered by her at Indian Red Cross Society and Maharashtra Aids Control Society were not liable to be considered.

5. In O.A. No. 107/2019 the applicant therein has challenged the appointment of Mrs. Deokar, on the ground that she has been illegally given benefit of age relaxation. It is the contention of this applicant that the age relaxation was made applicable only in respect of the appointments on the posts for which previous experience has been

prescribed as one of the eligibility criteria. It is the further contention of the said applicant that for filling in 70% posts of Blood Bank Technician (Sr. No. 10 in the advertisement), the educational qualification is the only eligibility criteria and 'experience' is not made the requirement as is there for 30% posts to be filled in from amongst the persons who had worked for more than 180 days under 'National Malaria Eradication Program'.

6. Shri V.B. Wagh, learned Counsel appearing for the applicant in O.A. No. 30/2018 vehemently assailed the order of termination alleging that it is wholly illegal and passed on the wrong interpretation of clause 3 in the advertisement dated 10.01.2016. He further submitted that in the meeting of the selection committee all these aspects were duly considered and only thereafter the unanimous decision was taken to give the benefit of age relaxation to the applicant and accordingly appointment order was issued in her favour. He further submitted that since the applicant had in past worked in Indian Red Cross Society, Jalgaon and also in the Maharashtra Aids Control Society, she has rightly filled in information in the application form that she is the employee of the Government of Maharashtra. He pointed out that at the

relevant time, the appointments were issued by the State Authorities directing the applicant to work in Indian Red Cross Society, Jalgaon as well as in the Maharashtra Aids Control Society. In the circumstances, according to him, applicant Mrs. Deokar, has to be held the employee of the State Government. He further submitted that in the advertisement concerned it is nowhere mentioned that the employee concerned shall be in the permanent or regular employment of the State. According to him, merely because the applicant worked as seasonal employee, she cannot be deprived of the status of the employee of the State Government. He further submitted that all these issues were considered by the Selection Committee and only thereafter the applicant was given an appointment. In the circumstances, he prayed for setting aside the order of termination.

7. Shri M.S. Mahajan, learned Chief Presenting Officer submitted that Mrs. Deokar had submitted a wrong information in the application form that she is the State Government employee. He submitted that Indian Red Cross Society is a voluntary social organization and Maharashtra Aids Control Society is also an independent organization, though funded by the State Government. He

submitted that the State Government does not have full control over the functioning of Indian Red Cross Society and Maharashtra Aids Control Society and in the circumstances the employees of the aforesaid Organizations in no case can be said to be State Government Employees. He submitted that the applicant, Mrs. Deokar, was not entitled for any age relaxation. According to him, State Authorities have not committed any mistake in terminating her services. He, therefore, prayed for dismissing the O.A. No. 30/2018.

Insofar as O.A. No. 107/2019 is concerned, learned C.P.O. submitted that when the appointment of Mrs. Deokar has been cancelled by the State Government, nothing has remained to be decided in O.A. No. 107/2019 and the said application has become infructuous.

8. Shri Sujeet D. Joshi, learned Counsel appearing for the applicant in O.A. No. 107/2019 submitted that Mrs. Deokar respondent no. 5 was not entitled for any age relaxation. He invited our attention to the relevant clauses in the advertisement published on 10.01.2016 more particularly in regard to the 'Educational Qualification and Experience' prescribed for the posts advertised and 'Lower

and Upper Age Limit' prescribed for such appointments. He submitted that the post of Blood Bank Technician (70%) as advertised at Item No. 10 in the advertisement, the educational qualification was the only prescribed eligibility criteria and work experience was not the requirement. He further submitted that, experience was the requirement for the posts under item No. 11. He further submitted that for the posts advertised vide the subject advertisement the upper age limit prescribed for the candidates in the Open category was 33 years and for the reserved class candidates the upper age limit was prescribed as 38 years. The lower age limit prescribed for all was 18 years of age. He further submitted that age relaxation was provided only for such posts for which work experience was prescribed as one of the eligibility criteria. According to the learned counsel, for the post advertised at Item No. 10 i.e. Blood Bank Technician (70%) since experience was not prescribed as the eligibility criteria, respondent no. 5 namely Mrs. Deokar, was not entitled for any age relaxation. He submitted that the Selection Committee was not having any right or authority to grant such relaxation, which was not provided in the advertisement. According to him, Selection Committee had thus exceeded its authority and in the

circumstances, the order of appointment issued in favour of Mrs. Deokar has been rightly cancelled by the respondent authority. He further submitted that the applicant in O.A. No. 107/2019 viz. Smt. Manjusha Eknath Kute (Khade), was in fact fulfilling the criteria and as such, the respondents must have issued appointment in her favour. Learned counsel further submitted that by misleading respondent authorities Mrs. Deokar (respondent No. 5) secured the appointment and deprived the applicant, Smt. Manjusha Kute (O.A. No. 107/2019) from getting the said appointment. Relying upon the judgment in the case of **District Collector and Chairman Vizianagaram (Social Welfare) VS. M. Tripura Sundari Devi (1990 SCC (3) 655)**, the learned counsel submitted that when any qualification is mentioned in the advertisement then the same is required to be adhered to strictly. As further argued by the learned counsel that no experience was prescribed as eligibility criteria for the subject post and, as such, even if it is assumed that Mrs. Deokar (respondent No. 5) was having some experience the same was not liable to be taken into account. He further submitted that respondent no. 5 since was above the age of 40 years at the time of filing application, could not have submitted an

application for the subject post and even if she had submitted the said application, the Selection Committee could not have selected her. As was further submitted by learned counsel, whether respondent No. 5 was in the employment of the State or not, was immaterial. He, therefore, prayed for allowing the O.A. No. 107/2019 in toto.

9. We have carefully considered the submissions advanced by the learned counsel appearing for the parties and the learned Chief Presenting Officer appearing for the State authorities and have perused the documents filed on record.

10. The controversy in these OAs revolves around two clauses in the subject advertisement, first whereby the Educational Qualification and the Experience is prescribed for the posts advertised and the other whereby the Minimum and Maximum Age limit is prescribed. It is not in dispute that applicants in both the OAs had applied for the post at Sr. No. 10 in the subject advertisement. It is the post of Blood Bank Technician (70%). We deem it appropriate to reproduce herein below the relevant clause,

which prescribes the eligibility criteria for the said post. It reads thus: -

“२) शैक्षणिक अर्हता व अनुभव :-

अ.क्र.	पदाचे नांव	शैक्षणिक अर्हता व अनुभव
१०/ २०१६	रक्तपेढी तंत्रज्ञ	अ) ७०% पदांकरीता :- उमेदवाराने मुख्य विषय म्हणून भौतिकशास्त्र किंवा रसायनशास्त्र अथवा जीवशास्त्र किंवा वनस्पतीशास्त्र अथवा प्राणीशास्त्र किंवा सुक्ष्मजीवशास्त्र या सह विज्ञान विषयामध्ये पदवी धारण केली असेल; परंतु हाफकिन संस्था किंवा मान्यता प्राप्त संस्थेची वैद्यकीय प्रयोगशाळा तंत्रज्ञानामधील पदव्युत्तर पदविका किंवा बी.एस.सी. (उपयोजित) (पुणे विद्यापीठाचा जैव वैद्यकीय तंत्रज्ञान अभ्यासक्रम) मधील पदवी किंवा सांविधिक विद्यापीठाची समतुल्य पदवी धारण करित असलेल्या उमेदवारांना प्राधान्य देण्यात येईल.

”

On reading the aforesaid clause it becomes clear that except the educational qualification mentioned therein nothing more was required to become eligible for making application for the post under item i.e. of Blood Bank Technician (70%). To state more specifically, work experience was not the requirement for making application for the said post.

11. We also deem it appropriate to reproduce the relevant portion of clause 3, which prescribes the minimum and maximum age limit. It reads thus: -

“३) कमाल व किमान वयोमर्यादा :-

उमेदवाराचे वय जाहिरात प्रसिध्द झाल्याच्या दिवशी किमान १८ वर्षे पुर्ण असावे. खुल्या संवर्गातील उमेदवारांसाठी कमाल वयोमर्यादा ३३ वर्षे आणि मागासवर्गीय उमेदवारांसाठी

कमाल वयोमर्यादा ३८ वर्षे राहिल. अगोदरच शासन सेवेत असणा-यांना नामनिर्देशनाने नियुक्तीसाठी ज्या पदांकरीता काही वर्षांचा अनुभव आवश्यक आहे अशा पदांकरीता सेवा प्रवेश नियमात कमाल वयोमर्यादा + अनुभवाचा कालावधी इतपत किंवा पदाच्या विशेषज्ञतेनुसार व आवश्यकतेनुसार कमाल वयोमर्यादा ४५ वर्षे राहिल.”

12. Clause 3 clearly spells that age relaxation was to be given to the candidates applying for such posts in the advertisement for which experience of certain years is prescribed as eligibility criteria. Clause Nos. 2 and 3 read conjointly there remains no doubt that the age relaxation could not have been given to the candidates applying for the post of Blood Bank Technician (70%). It is not in dispute that Mrs. Deokar, had applied for the post of Blood Bank Technician (70%). It is further not in dispute that for the appointment on the said post age limit was 33 years for the Open Class Candidates and 38 years for the candidates belonging to Reserved Class. It is not in dispute that at the relevant time Mrs. Deokar, was aged more than 40 years. It is thus evident that Mrs. Deokar, was age barred on the date of filing application and hence could not have applied for the subject post. From the provisions discussed hereinabove, there remains no doubt that for the post for which the applicant, Mrs. Rohini Sushilkumar Deokar, had applied, the past experience was not prescribed as the eligibility criteria. As such, she was not entitled for any

age relaxation, even if for the sake of arguments it is assumed that she was State Government employee at the relevant time. The Selection Committee therefore could not have selected applicant, Mrs. Rohini Sushilkumar Deokar, for the subject post. Her appointment has been rightly cancelled by the respondent authorities.

13. As is revealing from the documents on record in the petition filed by Smt. Kunda Shimpi before the Hon'ble Bombay High Court an objection was raised that in spite of being age barred appointment has been given to Mrs. Deokar. In view of the said objection further enquiry was carried out by the Director of Health Services and the Deputy Director of Health Services. It is a matter of record that the Deputy Director of Health Services issued a show cause notice dated 18.11.2017 to Mrs. Deokar. Mrs. Deokar has submitted an explanation to the said notice on 23.11.2017.

14. We have perused the contents of the show cause notice dated 18.11.2017. In the show cause notice dated 18.11.2017 two grounds have been raised, first that for the post for which Mrs. Deokar had applied that of Blood Bank Technician (70%), the educational qualification as mentioned against Item No. 10 only was required and the 'experience' was not the requirement and, as such, age relaxation was not applicable for the said post; the other ground was that, services rendered by her at Indian

Red cross Society at Jalgaon and thereafter at Maharashtra Aids Control Society since were as contract employee, she cannot be held to be an employee of the State Government of Maharashtra and, as such, was not entitled for age relaxation.

15. In the reply dated 23.11.2017 given by Mrs. Deokar to the said show cause notice though she has provided a detailed explanation as to how she has to be held as the employee of the State Government of Maharashtra, has not touched to the first objection that experience was not the requirement or the eligibility criteria for appointment to the post of Blood Bank Technician (70%) and, as such, age relaxation was not liable to be given to her.

16. For availing the benefit of age relaxation the following were the requirements as per the advertisement dated 10.1.2016: -

(i) that the candidate must be already in services of the State Government; and

(ii) that the candidate concerned must have applied for such a post for which 'work experience' is prescribed as the eligibility criteria.

17. The applicant had undisputedly applied for the post of Blood Bank Technician (70%) at Item no. 10 in the advertisement. As discussed earlier, for the aforesaid post

'experience' has not been prescribed as a precondition or eligibility criteria for making an application for the said post. Mrs. Deokar was, therefore, not entitled for age relaxation. When age relaxation was not at all applicable for the said post, it is immaterial whether Mrs. Deokar was the Government employee or not. According to us, respondent nos. 2 & 3 have unnecessarily indulged in the said controversy. It is crystal clear from the wordings of Clause 3 in the advertisement that age relaxation was liable to be given to the candidates, who had applied for the post for which in the advertisement 'experience' is prescribed as eligibility criteria.

18. In a query made by us with learned Chief Presenting Officer he confirmed that as per the averments in clause No. 3 of the advertisement, for the post of Blood Bank Technician (70%) since the experience was not prescribed as the requirement, no age relaxation was liable to be granted in favour of Mrs. Deokar, who had applied for the said post.

19. After having considered the facts as aforesaid, in our opinion, the selection committee has grossly erred in giving the benefit of age relaxation to Mrs. Deokar. It appears that without properly understanding the import of clause Nos. 2 & 3 of the subject advertisement the selection committee extended the said benefit in favour of Mrs. Deokar and selected her for to be

appointed on the subject post though she has crossed the upper age limit prescribed for the appointment on the said post.

20. Now we revert back to the order dated 2.12.2017, whereby the services of Mrs. Deokar came to be terminated. As mentioned hereinabove two grounds are cited for terminating the services of Mrs. Deokar. The first ground, which we have elaborately discussed hereinabove, has to be sustained. The another ground, which has remained only academic issue, that age relaxation could not have been granted in the case of Mrs. Deokar since she was not complying the condition of being in the regular services of the State Government, however may not sustain. We do not wish to indulge in making any more discussion on the said issue. Ultimately, the fact remains that the age relaxation was illegally given to Mrs. Deokar. The order of termination, therefore, has to be upheld on that count.

21. In O.A. No. 107/2019 it is the precise objection of the applicant therein that the age relaxation was wrongly and illegally given in the case of Mrs. Deokar ignoring the fact that for the post for which she had applied, experience was not prescribed as the eligibility criteria and, as such, there was no reason for giving any relaxation in the age to Mrs.

Deokar. It is the further contention of the applicant that had the selection committee not committed the mistake or illegally of giving age relaxation to Mrs. Deokar, probably she would have been selected for the said post as both have received equal marks. In the circumstances, the case is made out in favour of the applicant in O.A. No. 107/2019 for giving direction to the respondents to consider the case of the applicant for appointment to the subject post, if she is otherwise eligible for to be appointed on the said post. The prayer for setting aside the order of appointment issued in favour of Mrs. Deokar has however become redundant.

22. For the reasons stated above, the following order is passed: -

ORDER

- (i) O.A. No. 30/2018 is dismissed.
- (ii) O.A. No. 107/2019 is allowed in terms of prayer clause 'C' therein.

There shall be no order as to costs.

(BIJAY KUMAR)
MEMBER (A)

(P.R.BORA)
MEMBER (J)

After pronouncement of this order Shri V.B. Wagh, learned counsel appearing for the applicant in O.A. No. 30/2018,

on instructions, submitted that the applicant intends to challenge the order passed by this Tribunal today before the Hon'ble High Court. He, therefore, prayed for staying the effect and operation of this order for next four weeks. He submits that *ad interim* relief is operating in favour of the applicant till today. The request so made is strongly opposed by learned Chief Presenting Officer, as well as, Shri S.D. Joshi, learned counsel appearing for the applicant in O.A. No. 107/2019. In view of the fact that interim relief is operating in favour of the applicant till date and further having regard to the right of the applicant to approach the Hon'ble High Court, we deem it appropriate to accept the request so made on behalf of the applicant Mrs. Deokar and stay the implementation of the order passed by us today for next four weeks from the date on which the present order will be uploaded on the website.

(BIJAY KUMAR)
MEMBER (A)

(P.R.BORA)
MEMBER (J)

Place : Aurangabad
Date : 11-03-2022.