

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 65 of 2016 (DB)

Kishore S/o Sahebrao Bagde,
Aged about 45 years, Occupation : Service,
R/o Shirala, Tah. and Dist. Amravati.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary Department of Public Health,
Mantralaya, Mumbai- 400 032.
- 2) District Malaria Officer,
Amravati.
Off : Duffrin Hospital Premises,
Shrikrushna Peth, Amravati.

Respondents

**S/Shri K.V. & S.V. Deshmukh, Nitin Munghate, Advocates for the
applicant.**

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

WITH

ORIGINAL APPLICATION No. 98/2016
With Civil Application No.461/2017 (DB)

- 1) Shri Bhujangrao S/o Somaji Dipake,
aged about 52 years, in front of Shivaji
Complex, Tah. and District Akola.
- 2) Shri Mahadeo S/o Kashirao Kadam,
aged about 47 years,
R/o at Kothari Vatikar, Post Gandhi Nagar,
Akola.

- 3) Shri Ganesh S/o Sukhdeo Patode,
Aged about 46 years, Occ. Spray Worker
Rupchandra Nagar, Washim Road, Akola.
- 4) Shri Najuk S/o Udhebhan Gavarguru,
aged about 44 years, Occ. Spray Worker,
Taluka : Telhara, District Akola.
- 5) Shri Rajesh Sheshrao Godachwar,
aged about 47 years,
R/o at Post Kinkhed, Tq. & Dist. Akola.
- 6) Shri Arun S/o Sukhdeo Ghanmode,
aged about 49 years, Occ. Occ. Spray Worker
R/o at Post Deoulgaon, Tq. Patur, Dist. Akola.
- 7) Shri Balu S/o Dauwat Warthe,
Aged about 49 years, Occ. Spray Worker
at post : Punoti, Tq. Takli, Dist. Akola.
- 8) Shri Santosh S/o Satwaram Bharaskar,
Aged about 47, Occ. Occ. Spray Worker
R/o at Post Barshi Takli, Dist. Akola.
- 9) Shri Manoj S/o Rameshwar Tiwari,
Aged about 39 years, r/o New Tapadia Nagar,
Akola.
- 10) Shri Ramrao Gourshing Chauhan,
Aged about 44 years, Occ. Occ. Spray Worker,
R/o Jam, Post Pangra, Tq. Takli, Dist. Akola.
- 11) Shri Kailas S/o Loduji Dange,
Aged about 46 years, at Kolgaon,
Tq. Malegaon, Dist. Akola.

Applicants.

Versus

- 1) State of Maharashtra,
through its Secretary,
Public Health Department,
Mantralaya, Mumbai.

- 2) Director of Health Services,
Arogya Bhavan, Saint George
Hospital Compound, Dental College Building,
CST Railway Station, Mumbai.
- 3) Joint Director, Health Services (Malaria & Fileria)
Vishrant Wadi, Alandi Road, Pune.
- 4) District Malaria Officer,
Akola, Tq. & Dist. Akola.
- 5) Chief Executive Officer,
Zilla Parishad, Akola,
Tq. & Dist. Akola.

Respondents

Shri S.R. Charpe, Advocate for the applicants.

Shri H.K. Pande, learned P.O. for the R-1 to 4.

None for respondent no.5.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J) and
Hon'ble Shri Shree Bhagwan, Member(A).**

COMMON JUDGMENT

PER : V.C. (J).

(Delivered on this 10th day of August,2018)

Heard Shri Nitin Munghate, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents (in O.A.No.65/2016) and Shri S.R. Charpe, learned counsel for the applicants and Shri H.K. Pande, learned P.O. for respondent nos.1

to 4. None for respondent no.5. (in O.A.98/2016 with C.A.146/2017).

2. Both these Petitions are being disposed of by this common order since the issues involved in both the O.As., are same.

3. The applicant in O.A.No.65/2016 initially claims for a direction to the respondents and more particularly to respondent no.2 to manually accept the application for the post of Multipurpose Health Worker (Male) in pursuance of the advertisement dated 21/01/2016 and thereby to allow the applicant to participate in the selection process. He further claims a direction that the respondents shall consider him as eligible for the post without insisting on upper age limit criteria. Subsequently the O.A. was amended and following relief was claimed:-

“(A-1) Strike down the upper age limit of 45 years provided and prescribed by Rule 3 (b) (i) of the “the Health Workers (Male) Group-C on the establishment of Directorate of Health services under the Public Health Department (Recruitment) Rules,2014”, as the same being unconstitutional, discriminatory and arbitrary and in violation of Article 14 & 16 of the Constitution of India and also the law laid down by Hon’ble Bombay High Court in the similar writ petitions.”

4. The applicants in O.A.98 of 2016 also claim direction to the respondents to grant age relaxation to the applicant nos. 1 to 3,5 to 8&11 in the said O.A. in respect of age criteria as stipulated in the advertisement dated 21/01/2016 and to accept their applications and to consider their claims for appointments without requiring them to appear and clear written test as per the condition nos. 8 & 9 of the advertisement and further to declare that the condition nos. 8&9 stipulated in the advertisement dated 21/01/2016 requiring the candidates also from seasonal workers category to pass a written examination be void and not applicable to the applicants. By way of amendment in the said O.A. the following reliefs were claimed :-

“b(i) declare that the entire exercise of conducting examination dated 8/1/2017 as per selection process in pursuance of the advertisement dated 21/01/2016 (Annex-VI) is illegal and set aside the same by directing the holding of examinations of fresh, if necessary.

b (ii) Restrain the respondents from making any selection or appointment in pursuance of the advertisement dated 21/01/2016 (Annex-VI) in favour of any candidate so also from proceeding ahead with the recruitment process in pursuance of advertisement dated 21/01/2016 (Annex-VI) in any manner whatsoever till the disposal of the present O.A.”

5. From the facts on record, it seems that the applicants are Seasonal Spray Workers in the Health Department and are working for very long period. The recruitment rules for filling up the posts of Multipurpose Health Workers were amended in 2014 and accordingly an advertisement was issued on 21/01/2016. As per the said advertisement in case of Seasonal Spray Workers the age limit will be 45 years and the same is in conformation with Rule 3 (b) of the Recruitment Rules. The applicants' applications were rejected on the ground that they were over age and therefore the applicants have filed these O.As.

6. Vide order dated 10/02/2016, this Tribunal relied on the Judgment of the Hon'ble High Court in W.P. Nos.6215/2009, 8070/2009, 8067/2013 and 8271/2014, wherein it was held that the condition of age limit is not applicable to Seasonal Spray Worker who have been working over a long period and the advertisement was contrary to the Recruitment Rules. In para-6 of the said order, this Tribunal observed as under :-

"We find that in the above writ petitions, Hon'ble the High Court had held that the condition of age limit for purpose of appointment by nomination cannot apply to Seasonal Spray Workers who have been in service for a long period. In the light of this judgment, prima facie, we find that both the advertisement as well as 2014

Recruitment Rules specifying age limit of 45 years for Seasonal Malaria Workers is not sustainable. Hence, by way of interim relief, we direct the respondents to permit the applicants to apply for the post of Multipurpose Health Workers in terms of the advertisement dated 21/01/2016 without applying the condition of age limit. We further direct that the applicants will be permitted to submit the applications forms by 18/2/2016.”

7. The interim protection granted to the applicants by allowing them to appear for the examination was challenged by the State before the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur in Writ Petition no. 1717/2017. In the said Writ Petition the Hon'ble High Court was pleased to direct the Tribunal to expeditiously decide O.A.No. 98/2016 and therefore the matter is before us for deciding the issue on merits.

8. The respondent no.4, the District Malaria Officer, Akola has filed the reply- affidavit (in O.A.98/2016). It is stated that as per the advertisement dated 21/01/2016 the age limit for the post of Multipurpose Health Worker who are in service was 45 years of age and the said advertisement has been issued strictly in accordance with the amended Recruitment Rules and therefore without challenging the Recruitment Rules, the applicants have no locus standi to challenge the condition nos.8&9 stipulated in the

advertisement. So far as the applicant nos. 1,5 & 11 are concerned, it is stated that these applicants have not shown their correct date of birth in the online application forms and the correct court fee has not been paid. The O.As., were accordingly amended whereby the condition nos. 8&9 of the advertisement as well as the recruitment rules were also challenged.

9. In reply-affidavit to the amended O.A., the respondent no.4 submitted that relying on various Judgments of the Hon'ble High Court such as Writ Petition Nos. 6215/2009, 8070/2009, 8067/2013 and 8271/2014 the rules were amended and the upper age limit for candidates like applicants who are serving on the posts of Multipurpose Health Worker was extended to 45 years of age and the advertisement has been issued strictly as per the amended Recruitment Rules. It is stated that the applicant nos. 1,2,3,5,6,7,8 & 11 in O.A.No.98/2016 have already crossed the upper age limit of 45 years and they also did not pay the requisite examination fees and therefore they were not eligible to appear in the examination. So far as the applicant nos.1,5&11 are concerned, though they submitted online application forms and paid the requisite examination fees through challan and their hall tickets were also generated, but for the best reasons known to them, they failed to appear in the examination.

10. The applicants in O.A.No. 98/2016 have challenged the condition nos. 8&9 of the advertisement dated 21/01/2016 which reads as under :-

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11. It is however not clear as to why the said procedure for selection has been challenged. The said selection process is applicable to each and every participant in the recruitment process

and it cannot be said that the same is anyway discriminatory or unjustified. There is no question of different scale being applied to the applicants and other candidates participating in the recruitment process.

12. The learned counsel for the applicants submits that so far as the applicants are concerned, they are serving since numbers of years and therefore application of upper age limit of 45 years is illegal. In support of the claim, the learned counsel for the applicants has placed reliance number of Judgments such as a group of Writ Petition nos. 8070/2011 in the case of **Madhav Vyanketrao Kadam & Ors. Vs. the Stae of Maharashtra & Ors.**, with Writ Petition 8072/2011 in the case of **Sheshrao Raghunath Bhalge & Ors. Vs. the State of Maharashtra & Ors.**, delivered on 22/11/2011 by the Hon'ble High Court, Bench at Aurangabad, the Writ Petition No.8067/2013 in the case of **Dinesh Gunwantrao Fale Vs. State of Maharashtra & Ors.**, delivered on 01/10/2011 by the Hon'ble High Court, Bench at Aurangabad, the Writ Petition No.8371/ 2014 in the case of **Ramesh Sitaram Ade Vs. State of Maharashtra & Ors.**, delivered on 25th Sept.,2014 by the Hon'ble High Court of Bombay and also a group of Writ Petition Nos. 6215/2009 in the case of **Shri Sandip D. Borse Vs. State of Maharashtra & Ors.**, with Writ Petition No. 5568/2009 in

the case of **Ramesh L. Borse & Ors. Vs. State of Maharashtra & Ors.**, with Writ Petition No. 5958/2009 in the case of **Yogesh S. Mulay Vs. State of Maharashtra & Ors.**, delivered on 05/11/2009 by the High Court of Bombay. It seems that except in group Writ Petition nos.6215/2009 with 5568/2009 and 5958/2009 and aforesaid by way of interim relief the Hon'ble High Court was pleased to direct the respondent authorities to consider the then Petitioners eligible for selection as Health Worker by not insisting upon the upper age limit criteria, if the petitioners were otherwise eligible. It was also because the computer system was not accepting the application and therefore the respondents were directed to accept the application forms manually.

13. The Judgment in Writ Petition Nos. 6215/2009 with 5568/2009, 5958/2009 delivered by the Hon'ble High Court of Bombay on 5/11/2009, however considered the aspect as regards the age limit for the Seasonal Spraying workers who were working for number of years and the Hon'ble High Court has observed in para nos.3 and 4 as under :-

“(3) Grievance of the petitioners is that though they meet the eligibility criteria considering the fact that they were put in longer years of service and the Rules were notified only on 19th Marcy,2003 and the recruitment process of filling posts was started much later in 2005, many of them are treated as

age barred and not considered against the posts reserved for the Seasonal Spraying Workers. Petitioners herein have not challenged the condition of age.

(4) In our opinion, the case of the petitioners and other like situated Seasonal Spraying candidates has to be considered sympathetically. If the question of age is to be considered then Seasonal Workers who have put in more service because of the age bar would be disqualified whereas new entrants who have put lesser service because of meeting the age requirements will alone be considered. This will result in inequality amongst Seasonal Spraying Workers. Most of the workers have put in several years of service. The Rules came into force in 2003. The recruitment itself commenced in 2005. Considering the above, in our opinion, these petitions will be disposed off by issuing the following directions :

(i) In respect of those Zilla Parishads where recruitment process is completed though letters of appointment may not have been issued, no interference is called for.

(ii) In case of those Zilla Parishads where the recruitment process has not been completed for the Seasonal Spraying Workers, who are more than 30 years of age have applied, their applications will be considered treating them as in-service candidates and not applying the bar of 30 years as a one-time measurement.

(iii) In respect of vacancies, which may be notified for recruitment such as of the Zilla Parishads workers who may have crossed 30 years of age but otherwise eligible as a

onetime exception be considered for recruitment by relaxing age bar of 30 years treating them as in house candidates.

(iv) The Government to consider if they can amend the rules providing for relaxation of age and for recruitment of Seasonal Spraying Workers for direct recruitment considering the quota reserved for them.”

14. From the aforesaid observations of the Hon'ble High Court, it seems that the State was directed to consider the cases sympathetically in respect of the Seasonal workers serving for long period and to relax the age limit and to amend the rules providing for relaxation of age and for recruitment of Seasonal Spraying Workers for direct recruitment considering the quota reserved for them.

15. The learned P.O. has invited our attention to the amended rules in accordance with the said Judgments and it seems that as per the amended rules dated 6th June,2014, the Health Workers (Male), group-C on the establishment of the Directorate of Health Services under Public Health Department (Recruitment) Rules,2014 were amended vide Notification dated 02/06/2015 and the age limit in service for the Seasonal Workers were raised from 33 to 45 years and the Rule was accordingly amended as per the Health workers (Male) group-C on the establishment of the Directorate of Health Services under Public

Health Department (Recruitment) Rules,2014 on 02/06/2015. The advertisement in the present case has been issued in view of the amended rules and the said rules have been amended as per the direction of the Hon'ble High Court in a group of Writ Petition no. 6215/2009. Thus the Government has considered sympathetically that the age limit for the candidates appearing from Seasonal Health Workers category should be enhanced and accordingly the age limit has been enhanced and the impugned advertisement which has been challenged in these O.As., is as per the amended rules. There is nothing on record to show that such amendment is discriminatory or arbitrary. On the contrary, the amendment has taken care to safe guard the interest of Seasonal Workers who are already serving for a long period by extending the age limit from 33 to 45 years.

16. The learned P.O. has placed reliance on the Judgment in O.A.310/2014 delivered by this Tribunal, Bench at Nagpur on 16/07/2015 in the case of **Rajendra Bhaurao Kathalkar Vs. State of Maharashtra & Ors.**, and in the said Judgment the points raised in these O.As., have been considered. This Tribunal in para nos.5 to 7 has observed as under :-

“(5) Vide G.R. dated 17th August,2004, the Government of Maharashtra has increased age limit of the candidates

seeking public employment. For general category candidate, age limit has been increased from 30 to 33 years and for backward category candidate, it has been increased from 35 to 38 years. The learned counsel for the applicant could not point out that he is entitled for special treatment on account of the fact that he had worked as Seasonal Spraying Worker for 189 days during the span of six years. He has placed on record the proposal dated 20/02/2015 sent by the respondent no.2 to the respondent no.1. In that, it is proposed that age limit for Seasonal Spraying Workers may be increased to 45 years. Fact remains that till date this proposal has not been accepted. What is relevant is the condition in the advertisement based on G.R. dated 17th August,2004. Advertisement is at Annexure-A-7. It clearly spells out that maximum age limit for backward category candidate shall be 38 years. There has been no relaxation in age limit for Seasonal Spraying Worker.

(6) *The learned counsel for the applicant relied upon the decision in **Sandip D. Borse Vs. State of Maharashtra and others in W.P.No.6215/2009 decided on 5.11.2009.** In that case, alike the applicant, petitioners were Seasonal Spraying Workers under the National Anti Malaria Programme. They were treated as age barred and were disqualified for appointment to the post of Health Worker (male). The High Court ruled thus :*

“ In case of Zilla Parishads where the recruitment process has not completed, the Seasonal Spraying Workers, who are more than 30 years of age have applied, their applications will be considered treating them as in-service

candidates and not applying the bar of 30 years as a onetime measurement. In respect of vacancies, which may be notified for recruitment, such of the Zilla Parishad workers who may have crossed 30 years of age but otherwise eligible as a onetime exception be considered for recruitment by relaxing age bar of 30 years treating them as in house candidates. The Government to consider if they can amend the rules providing for relaxation of age and for recruitment of Seasonal Spraying Workers for direct recruitment considering the quota reserved for them.”

(7) Before the High Court, the recruitment rules notified on 19th March,2003 were placed. In that, maximum age limit was 30 years. Similar is not the case here. For general category candidate, age limit prescribed is 35 years and for backward category candidate, age limit prescribed is 38 years. So long as the Government in its wisdom does not consider it to relax the age limit even more than 38 years, the candidate like the applicant cannot get any advantage.”

17. Thus from the aforesaid discussion, it will be clear that the advertisement dated 21/01/2016 (Annex-A-6 in O.A.98/2016) whereby the applications were called for the posts of Multipurpose Health Worker was perfectly as per the recruitment rules and we do not find any illegality in rejecting the applications filed by the respective applicants. There is nothing on record to show that the rules were discriminatory or arbitrary and on the contrary the rules

were amended as per the directions given by the Hon'ble High Court and the advertisement has been issued in consonance with the said amended rules. We, therefore, do not find any merits in the O.As. and hence the following order :-

ORDER

- (i) The O.A. No.65 of 2016 and O.A. No.98 of 2016 stand dismissed.
- (ii) The C.A. No.461/2017 (in O.A.No.98/2016) also stands disposed of accordingly.
- (iii) No order as to costs.

**(Shree Bhagwan)
Member(A).**

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

Dated :- 10/08/2018.

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