

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1034 OF 2016

Shri Prakash Baburao Suryavanshi,)
Aged 41 years, Occ. Nil,)
R/o. Room No.2, Gurukrupa Chawl,)
Opp. Excel Company, Ganpati Pada,)
Kalwa, Thane.) **....Applicant**

Versus

1. The Commissioner of Health,)
Services cum Mission Director,)
National Health Mission,)
M.S. Mumbai, (the then Director of)
Health Services) having office at)
Aarogya Bhavan, in the campus of)
Saint Georges Hospital, P.D. Mello)
Road, Mumbai 400 001)
2. Shri Girish Vithoba Samjiskar,)
Aged Adult, Occ. Government,)
Service as Vehicle Driver, working)
in the office of the Director of Health)
Service, Aarogya Bhavan, Saint)
Georges Hospital, P.D. Mello Road,)
Mumbai 1) **....Respondents.**

Mr. Bhushan A. Bandiwadekar, learned Advocate for the Applicant.

Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Ms. Medha Gadgil (Member) (A)

DATE : **10.08.2023.**

J U D G M E N T

1. Heard submissions of the learned Advocate for the Applicant Mr. Bandiwadekar and learned Presenting Officer for the Respondents, Ms. Gaikwad.

2. At the outset we do not find any merit in this Original Application. The facts in brief are as under :

Applicant challenges order dated 08.07.2016 passed by the Respondent No.1, the Commissioner of Health, Services cum Mission Director, National Health Mission, informing the Applicant that the Private Respondent No.2, Shri Girish Vithoba Samjiskar is appointed as Vehicle Driver in the office of Director of Health Service, Aarogya Bhavan which is meant for Open Category though he is Schedule Caste.

3. Respondent No.1 issued the advertisement on 24.08.2013 for the total 5 vacant posts of vehicle driver. The Applicant filled up the online application form. The Applicant and Respondent No.2 both appeared for the examination and when the final merit list was published the name of the Applicant was shown at Serial No.7 with 88 marks and Respondent No.2 stood at Serial No.1 as he secured 94 marks.

4. Learned Advocate for the Applicant has submitted that the Respondent No.1 has issued advertisement of 5 vacant posts and filled up only two posts. Learned Advocate has submitted that the Applicant is claiming his right because only two posts are filled up by the Respondent when 5 posts were advertised. He has further challenged the appointment of Respondent No.2 that his appointment is illegal because when he was appointed he was not having the NOC from the earlier employer.

5. Learned Presenting Officer for the Respondents, while opposing the averments of learned Advocate, has relied on the affidavit-in-reply dated 29.11.2016 filed on behalf of Respondent No.1, through Mr. Mahesh Satyavan Botale, Chief Administrative Officer, in the office of Director of Health Services. Learned P.O. has submitted that in paragraph No.9 of the said affidavit the Respondent No.1 has made clear that on account of typographical mistake the 5 posts were advertised though only two posts were vacant. She admits that the Government has not issued any corrigendum to that effect. She has further submitted that the Respondent No.2 though has not secured the NOC he has submitted letter of his previous employer of giving him permission to appear for the examination and subsequently the Respondent No.2 resigned from his previous job. Learned P.O. has further submitted that the Respondent No.2 was from the reserved category, but he was meritorious than the Applicant and therefore he was selected and appointed.

6. We have considered the submissions made by learned Advocate for the Applicant and learned Presenting Officer for the Respondents. There is no substance in the submissions and the relief claimed in the case of the Applicant as the appointment of Respondent No.2 is on merit and the Applicant has no right in this process of appointment.

7. In view of above, O.A. stands dismissed.

Sd/-
**(Medha Gadgil
Member (A))**

Sd/-
**(Mridula Bhatkar, J.)
Chairperson**

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