

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.395 OF 2014**

DISTRICT : MUMBAI

Dr. Sunanda Dharmaraj Dhivare,)
Age 54 years, occ. Service, Dental Surgeon)
with Additional Charge of Associate Professor)
at Grant Medical College)
R/at E-324, New Air India Colony, Kalina,)
Santacruz (East), Mumbai 400029)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Medical Education & Drugs Department,)
Mantralaya, Mumbai 400032)
2. Joint Director, Dental,)
Directorate of Medical Education and)
Research, St. Georges Hospital Compound,)
Mumbai 400001)

3. Dean,)
Government Dental College,)
St. Georges Hospital Compound,)
Mumbai 400001)
4. Dean, Grant Medical College,)
Sir J.J. Group of Hospitals, Mumbai-8)
5. Shri Subodh Arun Sontakke,)
Associate Professor, Dept. of Dentistry,)
Government Grant Medical,)
Sir J.J. Group of Hospital, Mumbai-8)..Respondents

Shri A.R. Pitale – Advocate for the Applicant

Shri N.K. Rajpurohit – Chief Presenting Officer for Respondents

No.1 to 4

Shri K.R. Jagdale – Advocate for Respondent No.5

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri R.B. Malik, Member (J)

DATE : 3rd May, 2016

PER : Shri Rajiv Agarwal, Vice-Chairman

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J U D G M E N T

1. Heard Shri A.R. Pitale, the learned Advocate for the Applicant, Shri N.K. Rajpurohit, the learned Chief Presenting Officer for Respondents No.1 to 4 and Shri K.R. Jagdale, the learned Advocate for Respondent No.5.

2. This OA has been filed by the Applicant challenging the communication dated March, 2014 from the Respondent no.1 rejecting the representation dated 5.6.2013 seeking promotion to the post of Associate Professor (Dentistry). The Applicant is seeking declaration that she is entitled to be absorbed as Associate Professor in Dentistry at Grant Medical College, Mumbai. She has sought several other reliefs.

3. Learned counsel for the Applicant argued that the Applicant was selected by the Maharashtra Public Service Commission (MPSC) on 29.8.1990 for the post of Dental Surgeon. The Applicant passed MDS degree, while in service. Learned counsel for the Applicant argued that after passing MDS degree, the Applicant became eligible for the post of Lecturer in Dentistry. The Applicant applied to the Government to appoint her as Lecturer in Dentistry till the post was filled by MPSC. However, there was no response. There is no promotional avenue for the post of Dental Surgeon. Learned counsel for the Applicant stated that by GR dated 22.1.2009,

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160 temporary Lecturers were absorbed in Government service and their services were regularized. If the Applicant was allowed to work as Lecturer, her services also would have been regularized.

4. Learned counsel for the Applicant contended that under the Recruitment Rules for appointment to the post of Lecturer in Andhra Pradesh and Karnataka, the experience while pursuing MDS degree is treated as teaching experience. These recruitment rules have approval of Medical Council of India and Dental Council of India. The Respondent no.1 has refused to treat post graduate degree of MDS as promotional criteria from the post of Dental Surgeon to that of Lecturer and Associate Professor in violation of guidelines of the Medical/Dental Council of India.

5. Learned counsel for the Applicant stated that the Applicant was holding additional charge of the post of Associate Professor in Dentistry in Grant Medical College (GMC), Mumbai for more than six years. She has been treated as full fledged faculty of GMC. The Applicant made a representation on 30.4.2011 for her absorption on the post of Associate Professor by relaxing the Recruitment Rules. In view of the exigency, it is necessary to amend the Recruitment Rules and absorb the Applicant as Associate Professor.

6. Learned Chief Presenting Officer (CPO) argued on behalf of the Respondents no.1 to 4 that this OA is totally misconceived. The Applicant is seeking amendment/relaxation in Recruitment Rules, which is beyond the purview of this Tribunal. The Applicant is also seeking benefit under GR dated 22.1.2009, which regularized services of Lecturers in Govt. Medical/Dental Colleges, who were appointed on ad hoc basis. As the Applicant was regularly appointed as Dental Surgeon, there was no question of her being considered for regularization as Lecturer. Learned CPO argued that the post of Dental Surgeon is not in the chain of promotion to the post of Lecturer, Associate Professor etc. As such, if the Applicant wanted to work as Lecturer, she should have applied for the post when advertisement to fill the posts was issued. Learned CPO argued that the Applicant wants Recruitment Rules for appointment to the post of Lecturer/Associate Professor in Govt. Medical/Dental College in Maharashtra on the lines of rules in Andhra Pradesh and Karnataka. However, it is not obligatory that Recruitment Rules for such posts in various States should be identical. There is nothing on record to show that State Recruitment Rules are contrary to the guidelines issued by the Indian Medical Council/Indian Dental Council. Learned CPO contended that the Applicant has applied for appointment to the post of Associate Professor (Dentistry) pursuant to advertisement No.324/2012 dated 12.12.2012 issued by MPSC. She was not selected for the post and the Respondent no.5 was

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selected. The Applicant is relying on Appendix II of Rule 52 of the Maharashtra Civil Services (Leave) Rules, 1981. However, there is no nexus of this Rule with entitlement for promotion to any post. If a Government servant is holding additional charge of a particular post, it does not make him entitled to be appointed to that post on regular basis.

7. Learned Advocate Shri K.R. Jagdale argued on behalf of the respondent no.5 that the respondent no.5 was duly selected for the post of Associate Professor in Dentistry by MPSC. On his selection, he was posted to Grant Medical College, and as a result, additional charge of the post of Associate Professor, Dentistry is no longer with the Applicant. In fact, the Applicant cannot challenge his selection, as the Applicant herself had participated in the same selection process and was unsuccessful. In any case, even if the Applicant succeeds, it is not necessary that she would be posted only at Grant Medical College.

8. We find that the Applicant, by her own admission, was appointed as Dental Surgeon on the recommendations of MPSC on 29.8.1990. She was appointed in Government Dental College and Hospital, Mumbai as Dental Surgeon on 6.9.1991. She was posted to Sir. J.J. Group of Hospitals as Dental Surgeon from 5.8.2003. The applicant claims in Para 6.5 of the OA that:

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“..... The Applicant states that Applicant made representation through proper channel addressed to Government requesting to allow Applicant to work as Lecturer on vacant post of Lecturer till MPSC advertises, to enable Applicant to gain teaching experience, however, no such opportunity was given to Applicant.”

The Applicant has, however, not annexed the copy of the aforesaid representation in the OA. As per the recruitment rules called ‘the Lecturers in Dental subjects and Dentistry in the Maharashtra Medical Education and Research Services, Class II under the Directorate of Medical Education and Research (Recruitment) Rules, 1986’, the post of Lecturer can be filled only by nomination. Rule 3(iii) deals with experience required for the post and reads:

“(iii) possess experience for at least one year as a Clinical Assistant, House Surgeon (Dental) or Dental Surgeon or in any higher post in Government or Semi-Government Dental Hospital or in a Hospital attached to a Medical College, gained after acquired the degree of Bachelor of Dental Surgery.”

From this, it is clear that a Dental Surgeon, having BDS degree, having one year's experience is eligible to be considered for

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appointment to the post of Lecturer. However, these recruitment rules, cannot be interpreted to mean that a Dental Surgeon, is eligible to be appointed as Lecturer on promotion or by transfer. The representation of the Applicant that she should be posted as Lecturer, even if she had made it, would not have been in accordance with the Recruitment Rules for the post Lecturer; and could not have been entertained.

9. The Applicant claims that if she was given opportunity to work as Lecturer, her services would have been regularized by GR dated 22.1.2009. This claim is based on 'ifs' and 'buts'. When the Applicant was not working as ad hoc Lecturer, she was not covered by the aforesaid GR. We do not understand as to, how she can make any grievance about it. The Applicant, if she was so inclined, and if she was found eligible, could have been applied for ad hoc appointment as Lecturer before appropriate authority. The services could have been regularised. We are unable to grant any hypothetical or imaginary reliefs to her on this count.

10. The Applicant claims that she has requisite teaching experience for appointment to the post of Associate Professor, as she had passed MDS examination. The rules under reference are called 'the Reader in Dental subjects in Government Dental Colleges and in Dentistry in Government Medical Colleges in the Maharashtra Medical Education and

Research Service, Class I (Recruitment) Rules, 1989'. The appointment to the post of Reader (now called Associate Professor) is by promotion from the post of Lecturer (50%) and by nomination (50%). Rule 3(a) reads: (regarding appointment).

“(a) by nomination of a suitable person on the basis of seniority subject to fitness from amongst the persons from common cadre of Lecturers holding the posts of Lecturer in relevant subject who possess Masters Degree in Dental Surgery in the relevant subject and have not less than three years continuous service as Lecturer in that subject:”

11. The Applicant claims that she has Masters' Degree in Dental Surgery. Her period of study in MDS has to be treated as teaching experience as per guidelines of Dental/Medical Council of India. As the post of Dental surgeon is equivalent to the post of Lecturer, she is eligible for promotion to the post of Associate Professor. She has relied on the affidavit filed by the Dean, Government Dental College, Mumbai on 9.1.2009 before Hon'ble Bombay High Court in W.P. No.2605 of 2008 in support of her claim that the post of Dental Surgeon is equivalent to the post of Lecturer. On perusal of the affidavit, it is seen that the Petitioner in Writ Petition was seeking appointment as Lecturer as a bonded candidate (bond for MDS course), while he was given appointment as Dental Surgeon. It

was stated that pay scales of the post of Lecturer and Dental Surgeon were identical. The Applicant is relying on an affidavit filed by the Dean of Govt. Dental College, Mumbai in the context of a candidate who got admission in MDS degree and was required to serve the Govt. for two years, as a condition of the bond executed by him. The affidavit cannot supersede or modify the express provision of statutory rules. We have no hesitation in rejecting this claim of the Applicant that the post of Dental Surgeon is equivalent to the post of Lecturer for promotion to the post of Associate Professor. In fact, there are separate and distinct recruitment rules for the post of Dental Surgeon and Lecturer. Both are Class II posts. Beyond the equivalence in salary, it cannot be said that these posts are equivalent for the purpose of promotion to the post of Associate Professor.

12. The Applicant has stated that Recruitment Rules of Andhra Pradesh and Karnataka have sanction and approval of Medical/Dental Council of India (Para 6.8 of the OA). The Applicant has sought that qualification of MDS for promotion from the post of Dental Surgeon to that of Lecturer or Associate Professor should be recognized. On perusal of Recruitment Rules applicable in A.P. and Karnataka, we do not find any mention of the post of Dental Surgeon. The claim of the Applicant appears to be that she holds MDS degree and she is working as Dental Surgeon she should be held eligible for

promotion to the post of Associate Professor. We are afraid that this claim of the Applicant is not sustainable.

13. The Applicant claims that she has been holding additional charge of the post of Associate Professor of Dentistry at GMC, Mumbai and has been treated as Full Fledged Faculty. Even if the claim of the Applicant is accepted, she was not posted as Associate Professor in accordance with Recruitment Rules. She was not appointed as Associate Professor on regular basis. Mere holding of additional charge of a post, will not entitle a Govt. servant to be given regular appointment in that post. The claim of the Applicant has to be rejected.

14. The Respondent No.5 has already been selected by MPSC as Associate Professor of Dentistry and he is posted at GMC, Mumbai. He has been made a party respondent by the Applicant in this OA. In his affidavit in reply dated 16.9.2015, in Para 2(e) he has stated as follows:

“The applicant also attended the same interview for the post of Associate Professor in Dentistry conducted on 15 and 16 November, 2013 by Maharashtra Public Service Commission. The Respondent no.5 was selected and applicant was rejected for the post of Associate Professor in Dentistry hence the post of Associate Professor in Dentistry at Grant Government Medical College

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legitimately awarded to respondent no.5. And the applicant's claim of promotion/absorption in the post of Associate Professor is illegitimate."

15. In her affidavit in rejoinder dated 22.2.2016 (to the affidavit in reply of the respondent no.5), the applicant has the following to state in paragraph 5:

"5. I say that the averments made in the Affidavit in reply of respondent no.5 which are not dealt in by me in the present affidavit in rejoinder, shall not be construed as admitted. The present rejoinder is filed to place on record as to how I am entitle to be considered for promotion/absorption in the post of Associate Professor which was vacant on the date of filing of this Original Application and, subsequently, filled in by appointment of Respondent No.5. Without prejudice to above and assuming without admitting that Respondent no.5 is eligible and entitled to be appointed on the post of Associate Professor which I was holding, the present Rejoinder is filed to further place on record, as to how I am entitled to be considered for the post of Professor as I being Head of the Department, the charge of Professor was also with me which was vacant and still vacant."

From this, it is clear that the Applicant has not denied that she applied to MPSC for the post of Associate Professor and was not selected.

16. The applicant has quoted Appendix II of Rule 52 of MCS (Leave) Rules, 1981. In her aforesaid rejoinder, in Para 8, the Applicant states as follows:

“8. I say that Appendix-II of rule 52 of The Maharashtra Civil Services (Leave) Rules, 1981 provides for list of Government servants serving in vacation and non-vacation departments. I say that I fulfill the said provisions of Appendix-II of Rule 52 and hence, I am entitled, eligible and suitable to be considered for promotion to the post of Professor and Head of the Department. I was holding additional charge with more than 5 years teaching experience in the post of Associate Professor.”

This is also stated in Para 7(q) of the OA. Rule 52 of the MCS (Leave) Rules, reads as follows:

“52. Vacation Department.

A Vacation Department is, subject to the exception and to the extent stated in Appendix II, a department or part of the department to which regular vacation are allowed,

during which a Government servant serving in the department is permitted to absent from duty.”

Appendix II is a list of Government servant serving in Vacation/Non-Vacation Department. Rule 2 deals with Directorate of Medical Education and Research. Note below this rules states that:

- (i) Professor of Dentistry and Dental Surgeon, belong to Non-vacation Department.

The Applicant apparently believes that as Professors and Lecturers in Dentistry are in Non-Vacation Department and the Dental Surgeon is also in Non-Vacation Department, they are somehow equivalent. This claim has to be rejected. Appendix II only list Govt. servant serving in Vacation or Non-vacation Department and has no bearing on equivalence of a post with any other post.

17. The Applicant has failed to establish her claim that she is entitled to be appointed as Associate Professor. This Tribunal cannot give any directions, either to modify the Recruitment Rules or to relax the same.

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18. Having regard to the aforesaid facts and circumstances of the case, this OA is dismissed with no order as to costs.

Sd/-

~~(R.B. Malik)~~
Member (J)
3.5.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
3.5.2016

Date : 3rd May, 2016

Dictation taken by: S.G. Jawalkar.

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