IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI

ORIGINAL APPLICATION NO.413 OF 2018
(Subject : Appointment)

DISTRICT : PUNE

Shri Ravindra Madhukar Shinde,)
Age : 49, Occupation : Govt. Servant.)
Working as Sr. Chemical Assistant in)
District Public Health Laboratory, Kolhapur,)
Address : 1832, Raghukul Apartment, B Wing,)
L.G. Deshpande Road, Sadashiv Peth,)
Pune 411 030) **….. Applicant**

Versus

1) The State of Maharashtra,)
Through Secretary, Public Health Department,)
Mantralaya, Mumbai 400 032.)

2) The Secretary,)
Maharashtra Public Service Commission,)
Coouprej Telephone Nigam Building,)
M.K. Road, Mumbai 400 021)

3) Shri Madhukar Suhas Bakare,)
Deputy Director, Health Services,)
State Public Health Laboratory, Pune)
Cantonment Water Works Compound,)
Stavely Road, Pune Camp, Pune – 411 001) **….RESPONDENTS.**

Shri C.T. Chandratre, learned Advocate for the Applicant.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondent No.2.

Shri K.R. Jagdale, learned Advocate for the Respondent No.3.

CORAM : SHRI P.N. DIXIT, VICE-CHAIRMAN
SHRI A.P. KURHEKAR, MEMBER(J)

RESERVED ON : 10.12.2019

PRONOUNCED ON : 18.12.2019

PER : SHRI P.N. DIXIT, VICE-CHAIRMAN

J U D G M E N T

1. Heard Shri C.T. Chandratre, learned Advocate for the Applicant, Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondent No.2 and Shri K.R. Jagdale, learned Advocate for the Respondent No.3.

2. Brief facts :-

On 02.06.2008, Respondent No.2 (M.P.S.C.) issued advertisement for the post of Deputy Director of Health Services (Public Health Laboratories) General State Services, Group 'A'. Applicant was issued appointment order on 02.06.2012 subject to final outcome of the O.A.No.5/2012 in this Tribunal. While deciding this O.A. on 16.07.2014 this Tribunal held that the selection of appointment to the post of Deputy Director of Health Services (Public Health Laboratories) is illegal and bad in law and selection of Respondent No.4 (Applicant in the present O.A.) to the said post was quashed and set aside. The Tribunal also mentioned that the short listing criteria fixed by M.P.S.C. was arbitrary. Applicant in the present O.A. contested the same vide Writ Petition No.6994 of 2014 before the Hon'ble High Court at Bombay. The Hon'ble High Court, Bombay decided the same finally on 08.03.2018. The operative part of the order at page 88 of the paper book reads as under :-

> "21] *Accordingly, this petition is disposed of with the following order :*
>
> *(a) This petition is partly allowed and the direction in the impugned judgment and order making the original application absolute in terms of prayer clause 10(da) is partly modified and it is made clear that the*

consideration for the post of Dy. Director, Health Services is to be made only in accordance with the Recruitment Rules dated 11th June 1985;
(b) Since, it is the common ground that the MPSC has made reference only to Recruitment Rules dated 11th June 1985, there is no case made out at least at present, to set aside the appointment of respondent No.6;
(c) However, the matter is remanded to the MAT for deciding the issue as to whether respondent No.6 fulfills eligibility criteria as prescribed in the Recruitment Rules dated 11th June 1985. If not, the MAT, is directed to make appropriate consequential order with regard to selection and appointment of respondent No.6.
(d) The petitioner, if he so desires, is granted liberty to transpose himself as O.A.No.5 of 2012 or in the alternate to file a detailed affidavit in the matter of his challenge to the appointment of respondent No.6 and his contention that respondent No.6 does not fulfill the eligibility criteria as per the Recruitment Rules dated11th June 1985;(e)Respondent No.6, the MPSC or other parties to O.A. No. 5 of 2012 are given liberty to file adequate response in the matter defending their respective positions;
(f) The MAT is requested to dispose of the matter expeditiously and preferably within three months from the date of production of authenticated copy of this order;
(g) It is made clear that we have not examined the issue as to whether respondent No.6 indeed fulfills the eligibility criteria as prescribed in the Recruitment Rules dated 11th June 1985 and therefore all contentions of all parties are left open for determination by the MAT in pursuance of the remand;
(h) The impugned judgment and order to the extent it has interfered with the criteria of short-listing earlier adopting by the MPSC is not interfered with. However, the issue is left open for a decision in an appropriate case.
(i) Rule is made partly absolute in the aforesaid terms. There shall however, be no order as to costs.
(j) The parties to appear before the MAT on 9th April2018 at 11.00 a.m. and to produce an authenticated copy of this order;
(k) All concerned to act on the basis of authenticated copy of this order."

3. Respondent No.6 referred in the above order in the Writ Petition is Respondent No.3 (Shri Madhukar Suhas Bakare) in the present O.A. This Tribunal is thus directed to examine whether Respondent No.3 in the present O.A. fulfills eligibility criterion as per Recruitment Rules dated 11.06.1985.

4. The Notification issued by Public Health Department on 11.06.1985, page 36, reads as under :-

"ii) possess post-graduate degree in Biochemistry, Inorganic chemistry, Organic Chemistry, Chemistry of Foods, Drugs and Water or Food Technology or an equivalent qualification; and

iii) possess experience for a period of not less than 10 years gained after acquiring the qualification mentioned in sub-clause (ii) in analysis of food, knowledge of food standards and their composition, water and effluent analysis, knowledge of water and effluent standards and problems connected with environmental pollution;"

5. The post of Deputy Director Health Services (Public Health Laboratories) General State Services, Group I shall be filed in :-

(a) By promotion ….

(b) By transfer of suitable officer ….

(c) By nomination from amongst candidates …

6. In the advertisement published on 02.06.2018, page 41, Exhibit A-5, the same reads as under :-

"5. QUALIFICATIONS : Candidates must ------

5.1.1. Possess post-graduate degree in Biochemistry, Inorganic chemistry, Organic Chemistry, Chemistry of Foods, Drugs and Water or Food Technology or an equivalent qualification. ***AND THEREAFTER***

5.1.2 Possess experience for a period of not less than 10 years in analysis of food, knowledge of food standards and their composition, water and effluent analysis, knowledge of water and effluent standards and problems connected with environmental pollution.

Preference may be given to candidates having research experience in food and water Chemistry and Microbiology as evidenced by published papers."

Submission by Private Respondent:-

7. Learned Advocate Shri K.R. Jadgale appearing for Respondent No.3 has filed affidavit-in-reply. The relevant portion of the same reads as under (page 112 & 113) :-

"I am post graduate in physical chemistry (year 1982). I have completed Ph.D in chemistry on 13.04.2015 and the interview was held on 22.12.2015. The title of the thesis is "Development of Chromatographer & mass spectrometric

method for identification of adulteration & quantitative estimation of adulterant in vegetable oil." I had analysed food samples (Saffron, cold drink, ghutka, vegetable oil & milk samples in forensic science laboratory for last 26 years. I have done precise analysis of food samples with respect to finding the name of adulterant and stating its accurate percentage. Present public health laboratory food analytical report states only food sample is substandard, misbrand or unsafe as per FSSAI (Food Safety Standard Authority Of India). And the report does not state the name of adulterant not its percentage as the reports are made with reference to FSSAI guidelines. However, work done by me in food analysis is advance as it identify the adulterant and states its percentage. I have published sixteen research papers in Indian and international journals. I have four research papers in food analysis out of which 3 papers are published in International journals. Most important fact is that I was holding Ph.D degree at time of interview (22nd December, 2015) . I have also completed Diploma in Industrial pollution and Control from Annamalai University. I had also worked in Ion Exchange (I) Ltd. Company at Ambernath where I was also analyzing effluent samples of BOD and COD contents. I am enclosing the list of research papers, four research papers of food analysis, Ph.D degree, experience certificate issued by Forensic Science Laboratory and table showing how the I fulfils the recruitment rule criteria dated 11th June 1985 of Deputy Director post."

8. As far as requirement regarding experience is concerned, Respondent No.3, in his affidavit has submitted following table :-

"RR of Deputy Director dated 11.06.1985	*Respondent No.3 qualification and experience.*
1) Possess Post graduate degree in Biochemistry, Organic chemistry, chemistry of Foods, Drugs and Water or Food Technology or equivalent qualification.	*Post graduate Degree in Physical Chemistry, Diploma in Industrial pollution and control from Annamali University. Possess Ph.D Degree in Analytical Chemistry (Topic Vegetable oil adulteration) at time of Interview.*
2) Possess experience of not less than 10 years gained after acquiring above qualification in analysis of food, knowledge of food standards and there composition, water and effluent analysis, knowledge of water and effluent standards and problems connected with environmental pollution.	*Experience of about 2 years (after acquiring Post graduate degree) in forensic science field where food samples such as vegetable oil, saffron, milk samples, guthaka, samples were routinely analysed for purity and for adulteration therein. Respondent has published research paper in the journals on saffron adulteration and in duplication of parachute coconut oil in the Journals. Respondent has Diploma in Industrial pollution and control and has knowledge of water. Respondent has worked in Ion Exchange (I) Ltd. Company for about 2*

	years in the field of effluent treatment and in purification of water.
3) Preference may be given to the candidate having research experience in food and water chemistry and microbiology with published papers.	*Respondent has about 12 research papers in the journals. Respondent has two research papers published in Indian journal (saffron and parachute coconut oil sample. Respondent has acquired Ph.D. degree in Analytical Chemistry area of vegetable oil adulteration. Respondent has two research papers in vegetable oil adulteration and degradation of vegetable oil in International Journals."*

(Page 120 of O.A)

9. In support of the above, applicant has enclosed copies of the research papers submitted by him. He has also enclosed his certificate of experience dated 16.12.2014, which states that he was working as Assistant Director from 10.12.2011 till today. (Exhibit R3-2, page 169 of the O.A.)

10. During hearing, Respondent No.3 also produced copy of the certificate issued on 27.06.2008 issued by the Director Forensic Science Laboratories. The said certificate mentions "Shri Madhukar Suhas Bakare is working in the office as Forensic Science Laboratories from 05.10.1989 as Assistant Chemical Analyst, Class-II and has published 7 research papers. (separate compilation). This document has been tendered during hearing by Respondent No.2 (M.P.S.C).

11. During hearing learned C.P.O. for the Respondents has submitted that the verification of the documents and his eligibility as far as experience was satisfied by Respondent No.1 (Public Health Department). The same reads as under (separate compilation) :-

> *"३. आयोगाने उपसंचालक, आरोग्य सेवा (राज्य आरोग्य प्रयोगशाळा) या पदासाठी निवड झालेले श्री. सुहास बाकरे यांच्याकडून साक्षांकन नमुना दिनांक १९.१.२०१६ रोजी प्राप्त झाला आहे. (पृ. ६४३/प.वि.). श्री. बाकरे हे गृह विभागाच्या अधिपत्याखालील सहायक संचालक, न्यायसहायक वैज्ञानिक प्रयोग्शाळा पदावर कार्यरत आहे. श्री. बाकरे यांची वैद्यकीय तपासणी करण्यात आली असून, सर ज.जी. समूह रुग्णालये, मुंबई यांचकडून प्राप्त झालेल्या दिनांक ४.३.२०१६ च्या वैद्यकीय अहवालानुसार श्री. बाकरे हे शारीरिकद्दष्टया पात्र असल्याचे प्रमाणित केले आहे. (पृ.६७१/प.वि.) श्री. बाकरे हे सन १९८९ पासून सहायक रासायनिक विश्लेषक तर दि.१०.२.२०११ पासून सहायक संचालक म्हणून कार्यरत असल्याने सामान्य प्रशासन विभागाच्या दिनांक १९.११.९० च्या शासन निर्णयमधील तरतुदीनुसार नियुक्तीपुर्वी त्यांच्या चारी« याची पुन्हा पडताळची करण्याची आवश्यक्ता नाही. आयोगाने*

श्री. बाकरे यांचे गोपनीय अभिलेख न पाहता शिफारस केली असल्याने आयोगया च्या सूचनेनुसार त्यांचे गोपनीय अभिलेख तपासून नियुक्तीबाबत निर्णय घेण्यात यावा. त्याअनुषंगाने श्री. बाकरे यांचया गोपनीय अहवालांची नस्ती गृह विभागाकडून प्राप्त झाली असून,ती या नस्तीबाबत सादर करण्यात आली आहे. श्री बाकरे यांच्या सर्वसाधारण गोपनीय अहवालाची प्रतवारी दर्शविणारे विवरणपत्र पृष्ठ ६७७/प.वि. वर सादर केले असून, त्यानुसार प्रतवारी समानाधानकारक आहे."

12. Following the same Respondent No.1 issued the appointment order to Respondent No.3 on 04.05.2016.

13. Learned Advocate for the Respondent No.3 further mentions that Respondent No.3 retired from the service on superannuation on 31.07.2018.

14. In the present O.A., Applicant has made the following prayers :

*"9. **RELIEFS SOUGHT** :*

In view of the facts and grounds mentioned above, the applicant prays for following relief(s).

a) The Hon. Tribunal be pleased to call for record and proceedings of the impugned letter dated 17.12.2015 (at Exh.A-15) and the list at (Exh.A-14) qua the Applicant and after examining its legality and validity the Hon. Tribunal be pleased to hold and declare that, the letter dated 17.12.2015 and list, qua the Applicant and thereby declaring the Applicant as not eligible for want of administrative experience, as illegal.

b) The Hon. Tribunal further be pleased to call for record and proceedings of the order of appointment dated 04.05.2016 (at Exh. A-17) issued in favour of Respondent No.3 and after examining its legality and validity the Hon. Tribunal be pleased to hold and declare that, the Respondent No.3 is not in possession of the requisite experience as per RR of 1985 and by further suitable order the Hon. Tribunal be pleased to quashed and set aside the order dated 04.05.2016."

15. Learned Advocate for the Applicant has submitted that the certificate of experience furnished by the Respondent No.3 mentions that he has worked as Assistance Director from 10.02.2011 till date. Further the certificate of experience is issued on 16.12.2014 and he does not have requisite experience of 10 years. (Exh. R3-2, page 169 of O.A)

16. Learned Advocate for the Applicant further submitted as under (page 12):-

> *"The Respondent No.3 is not having the experience of the analysis of food, knowledge of food standard and their composition, water and effluent analysis, knowledge of water and effluent standards and problems connected with environmental pollution as stated in the RR of 1985 and duties and responsibilities."*

He, therefore, submits that the appointment of Respondent no. 3 is invalid and be quashed.

17. **OBERVATIONS AND FINDINGS**

(a) We have carefully examined the Recruitment Rules for the post of Deputy Director and Health Services (Public Health Laboratories) published on 11.06.1985 and the advertisement issued for the post of Deputy Director of Health Services (Public Health Laboratories) published on 02.06.2008.

(b) We have also examined the academic certificates of Respondent No.3. He has done M.Sc. in Physical Chemistry in May 82 from the University of Bombay. He has diploma in Diploma in Industrial pollution and Control from Annamalai University. In the year May 1995 he has experience of working in Ion Exchange (I) Ltd. for 1 ½ years and was engaged in research and development work in membrane sciences field. He has also published papers regarding adulteration in vegetable oil and gutka samples. He has analyzed cold drink samples from adulteration point of view. He has analyzed saffron samples and detected exhausted saffron sticks and published research papers on the same.

(c) As far as academic qualifications are concerned, his degree of M.Sc (Physical Chemistry) is considered as academically equivalent to M.Sc in Inorganic Chemistry and M.Sc in Organic Chemistry as per communications from Pune University and Bombay University.

(d) Examination of all documents mentioned above, confirms that Respondent No.3 is in possession of necessary academic degree as required by the advertisement. He has worked in Forensic Science Laboratory from the year 1989 till his selection and in this capacity he has analyzed various samples of food and water as required. He, thus, satisfies qualification in the advertisement and recruitment rules namely, "possessing experience for the period of not less than 10 years in the analysis of food, knowledge of food standards & their composition, water and effluent analysis, knowledge of water and effluent standards and problems connected with environmental pollution". He has also published several papers based on his experience in respect of analysis of food and water.

18. Thus the contention by the Applicant in the present O.A. that Respondent No.3 does not possess necessary educational qualification and necessary experience is misplaced and is not on the basis of any factual position. Available documents on record prove otherwise.

19. For the reasons stated above, O.A. is without any merits and therefore is dismissed. No order as to costs.

Sd/- Sd/-

(A.P. Kurhekar) **(P.N. DIXIT)**
Member(J) **VICE-CHAIRMAN**

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