

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.726 OF 2023

DISTRICT : AHMEDNAGAR

Mr. Bhaktraj Jalindar Ghortale)
R/at. Maruti Vasti, Bodegaon,)
Tal. Shevgaon, Dist. Ahmednagar)

....APPLICANTS

VERSUS

1. The State of Maharashtra,)
Through Additional Chief)
Secretary, Public Health)
Department, Mantralaya,)
Mumbai.)
2. The Director,)
Health Service (Malaria))
New Central Building,)
First floor, Pune 411 001)
3. The Joint Director,)
Health Service (Malaria,)
Filaria & Water Borne Disease))
Arogya Bhavan, Opp. Vishrant))
Wadi, Police Station, Vishrat)
Wadi, Yerwada.)
Pune 411 006)
4. The District Malaria Office,)
District Collector Office,)
Thane West, Dist. Thane)
5. The District Malaria Office,)
Yerwada, Pune 6)

...RESPONDENTS.

Mr. S.S. Dere along with Mr. R.V. Shinde, learned Counsel for the Applicants.

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

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

DATE : **01.03.2024.**

J U D G M E N T

1. Applicant working as Seasonal Health Worker challenges order of cancellation of his appointment dated 14.11.2022 and prays that he be reinstated. On perusal of the prayer we came across some contradictory prayer which is amended. Therefore, learned Counsel Mr. Dere maintains prayer Clause (A) and Prayer Clause (B) and does not press, the amended prayer.

2. Applicant was earlier working as Seasonal Health Worker and was given appointment from time to time and now aspiring for the regular appointment as Health Worker pursuant to advertisement dated 22.02.2019 for the post of Multipurpose Health Worker. As per the advertisement the candidates are required to put in experience of 90 days as Seasonal Health Worker and they should produce Certificate to that effect. Thereafter they are required to appear for the examination and applicant claims that he has experience of working for 90 days as Seasonal Health Worker. Learned Counsel Mr. Dere has submitted that

the applicant was earlier given appointment as Multipurpose Health Worker by order dated 03.03.2022. However, subsequently his appointment was cancelled by impugned order dated 17.08.2023 which is under challenge. He challenges the said order on two grounds:-

Firstly, the impugned order states that his Verification Report required as per circular dated 12.01.2022 was not received by the District Malaria Office, Thane and therefore his appointment is cancelled. Learned Counsel has submitted that this report was required to be furnished or to be made available by the District Malaria Office, Pune and it is not in the custody of the applicant.

Secondly, learned Counsel has submitted that some candidates who had appeared for the examination pursuant to the impugned advertisement are already appointed as per the conditions which are mentioned in the Circular dated 10.08.2021 and the conditions mentioned in the subsequent Circular dated 12.01.2022 are not applied as they were appointed earlier and they continued and presently working as Multipurpose Health Workers. Learned Counsel Mr. Dere has submitted that it is against the law.

Learned Counsel Mr. Dere has relied on the judgments of Hon'ble Supreme Court in the case of **Shri Ram Krishna Dalmia Versus Shri Justice S.R. Tendolkar and Ors. reported in AIR 1958 SC 538.** Learned counsel submitted that if the order of termination of the applicant is set aside, then by way of necessary corollary the applicant is

to be reinstated in service subject to verification of the documents as per second Circular dated 12.1.2022.

3. Learned P.O. has relied on the affidavit-in-reply dated 09.10.2023 filed on behalf of Respondents No.1 and 4 through Dr. Mahesh Dinkar Nagre, District Malaria Officer, Thane and has submitted that the Respondents have come across fake experience Certificates and query is made by various candidates, local authorities, raising of L.A.Q. star questions by the M.L.A. in assembly. Thereafter circular dated 12.01.2022 was issued with separate guidelines. She has submitted that the experience certificate of the applicant was verified on the basis of circular dated 12.01.2022. She has submitted that by following conditions as prescribed in subsequent circular dated 12.01.2022 it was found by the Special Committee appointed for the verification the original documents were not available and therefore has rejected the candidature of the applicant on the ground that original documents are not submitted.

4. We make it clear that the production of the documents or making original documents available to the verification committee is basically the job of the Respondents Department. It is their duty to maintain all the original documents and produce accordingly. If at all the original documents is not made available to the verification committee or Respondents should state that the original was never issued or not in existence, at all and they should verify the fact and state accordingly.

After going through the report it transpired that the original documents were not produced and made available for the perusal of the Verification Committee and this is not the ground to reject the candidature or appointment of the Applicant. Moreover, applying the different criterion to the same class of candidates, we address the ratio laid down in the case of ***Dalmia (supra)*** the Hon'ble Supreme Court while relying on the ratio in the case or ***Budhan Chaudhary Versus State of Bihar reported in (1955) 1 SCR 1045***. It is referred that permissible classification two conditions i.e.,

- (i) that it should be founded on an intelligible differentia and
- (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question.

In the present case, Respondents are not in position to answer our query whether all candidates who have joined and who are rejected for completion of 90 days is tested by applying same criterion i.e., conditions mentioned in circular dated 10.08.2021 or conditions mentioned in circular dated 12.01.2022. It should not happen that some candidates are given appointment that they fulfill the criterion mentioned in the circular dated 10.08.2021 and their documents are not required to be verified as per the conditions mentioned the circular dated 12.01.2022. If it is done as submitted by the learned Counsel then we do not find any intelligible differentia in making this clarification in the present application and other candidates by testing them by different circular. Respondents can be justified while applying two different criteria,

however, it is to be justified by showing it as intelligible differentia and that is not shown.

5. In view of the above we pass the following order :

O R D E R

- (A) The order dated 17.08.2023 which is passed by the District Malaria Officer, Respondent No.4 is not legally valid as the reason given therein is not correct and therefore it is hereby quashed and set aside.
- (B) We direct the Respondents to reinstate the applicant in service, subject to re-verification of the documents by the Committee as per second Circular dated 12.1.2022. However, the applicant shall not claim any equity if his report is negative and till then he should be continued in service.

SD/-

(Medha Gadgil)
Member(A)

SD/-

(Mridula Bhatkar, J.)
Chairperson

prk/_ank