

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.800 OF 2016
WITH
ORIGINAL APPLICATION NO.815 OF 2016
WITH
ORIGINAL APPLICATION NO.816 OF 2016**

DISTRICT : MUMBAI

ORIGINAL APPLICATION NO.800 OF 2016

Dr. Mohan Apparao Jadhav.)
Occu. : Govt. Service, Incharge Director)
of Health Service, State of Maharashtra,)
C/o. Arogya Bhavan, 8th Floor, St. Georges)
Hospital Compound, Mumbai 400 001.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai - 400 032.)
(Copy to be served on the Presenting)
Officer, MAT, Mumbai.)
2. Maharashtra Public Service)
Commission, Through its Secretary,)
Bank of India Building, 3rd Floor,)



- Mahatma Gandhi Road, Hutatma)
Chowk, Mumbai.)
3. The State of Maharashtra.)
Through the Principal Secretary,)
General Admn. Department,)
Mantralaya, Mumbai 400 032.) **...Respondents**

WITH**ORIGINAL APPLICATION NO.815 OF 2016**

- Dr. Ratna W/o. Dinkar Raokhande)
(Dr. Ratnachhaya Pandurang Shivdas))
Occu. Assistant Director (Medical),)
Mumbai Circle, Thane and Residing at)
Bungalow No.1, Mental Hospital Campus,)
Teen Hath Naka, Wagale Estate,)
Thane West.) **...Applicant**

Versus

1. The State of Maharashtra.)
Through the Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai - 400 032.)
(Copy to be served on the Presenting)
Officer, MAT, Mumbai.)
2. Maharashtra Public Service)
Commission, Through its Secretary,)
Bank of India Building, 3rd Floor,)
Mahatma Gandhi Road, Hutatma)
Chowk, Mumbai.)

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3. The State of Maharashtra.)
 Through the Principal Secretary,)
 General Admn. Department,)
 Mantralaya, Mumbai 400 032.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.816 OF 2016

The Civil Surgeon Cadre Group A (Doctor's))
 Association, Health Services, Having Office)
 At 1st Floor, Aarogya Bhavan, Mumbai.)
 Through Dr. Eknath D. Male, President of)
 the Civil Surgeon Cadre, Group A (Doctor's)
 Association, Health Services, Mumbai.)
 Working as Civil Surgeon,)
 District : Osmanabad.)...**Applicant**

Versus

1. The State of Maharashtra.)
 Through the Principal Secretary,)
 Public Health Department,)
 Mantralaya, Mumbai - 400 032.)
 (Copy to be served on the Presenting)
 Officer, MAT, Mumbai.)
2. Maharashtra Public Service)
 Commission, Through its Secretary,)
 Bank of India Building, 3rd Floor,)
 Mahatma Gandhi Road, Hutatma)
 Chowk, Mumbai.)

3. The Chief Secretary,)
 State of Maharashtra.)
 General Admn. Department,)
 Mantralaya, Mumbai 400 032.)...**Respondents**

Shri Y.P. Deshmukh with Shri V.P. Potbhare, Shri S.S. Dere and Ms. S.P. Manchekar, Advocates for Applicants.

Shri K.B. Bhise, Presenting Officer for Respondent No.3 in all OAs.

Shri M.D. Lonkar, Special Counsel for Respondent Nos. 1 & 2 in all OAs.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
 R.B. MALIK (MEMBER-JUDICIAL)**

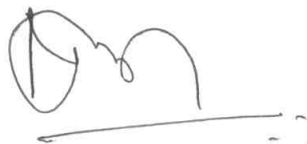
DATE : 23.11.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. The central issue involved in these three OAs being the same, they are disposed of by this common Judgment.

2. The matters relate to the post of Director of Health Services, Maharashtra Medical and Health Services, Group-A (to be hereinafter called the said post) by promotion and not nomination. The issue at heart is the



validity of the short listing criterion applied by the Maharashtra Public Services Commission (MPSC) who is the Respondent No.2 to all these three OAs. The 1st and the 3rd Respondents are the State of Maharashtra in Public Health Department and the Chief Secretary of the General Administration Department (GAD) respectively.

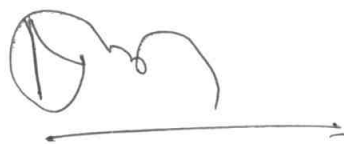
3. We have perused the record and proceedings and heard Mr. Y.P. Deshmukh with Shri V.P. Potbhare, the learned Advocates for the Applicants in the 1st OA, Shri S.S. Dere, the learned Advocate for the Applicants in the 2nd OA, Ms. S.P. Manchekar, the learned Advocate for the Applicants in the 3rd OA and Shri M.D. Lonkar, the learned Special Counsel for the Respondents 1 and 2 and Shri K.B. Bhise, the learned Presenting Officer for the Respondent No.3.

4. The Applicants in the 1st two OAs Dr. Mohan A. Jadhav and Dr. (Mrs.) Ratna D. Raokhande had applied for the said post, but they were not even called for the interview because according to the MPSC, they did not answer the eligibility requirement for the said post as a result of the application of the short listing criteria. The Applicants in the 3rd OA are an Association of Civil Surgeon

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Cadre Group 'A' duly recognized by the Government and approved as such Association to espouse the cause of the Members of the said Association.

5. The basic facts are not seriously in dispute. In the 1st OA of Dr. Mohan A. Jadhav, it is pleaded that he was holding the additional charge of the post of Director of Health Services. That fact is not seriously in dispute. Dr. Jadhav holds the qualification of D.M. Neurology which we understand is the highest qualification in that discipline. Dr. Jadhav did his MBBS in 1990, M.D. Pediatrics in 1991 and Super Specialist in Neurology (D.M). The Applicant in 2nd OA Dr. (Mrs) Raokhande did her MBBS in 1981 in Obs and Gynaec in 1986. She obtained a diploma in Public Health and Administration in the year 1994 by distance education. The Applicant Dr. Jadhav joined the Government service in the post of Medical Officer in the year 1984 in what is now called Group 'A' post. He has 25 years of service experience post Post Graduation and 26 years after completing Post Graduate Diploma. He has worked as Assistant Director, Deputy Director (Hospitals) and also held the charge of Joint Director (HIV/AIDS) for one and half years. He claims to have clinical experience as Civil Surgeon and also the experience of administration in the Health Department. The Applicant Dr. Raokhande



has been in Government service as claimed by her for more than 30 years after obtaining the qualifications above referred to. She was appointed as Gynecologist, Class-I on 9.1.1991. The Applicant Dr. Jadhav has annexed a copy of his Bio-data which shows that he has high attainments in the field of medicine and the academics connected therewith. It is there on record. It is not necessary to set it out in great details herein. But we can safely proceed on the basis that both the Doctors Jadhav and Raokhande have long experience and have attained heights in the academics also. Although on the basis of the record, it seems that Dr. Jadhav may be having a slight edge over Dr. Raokhande, but there is no conflict of interest between the two and for all practical purposes, they have made a common cause. We, in these OAs do not have to, and therefore, do not make any determination about the relative merit of Dr. Jadhav and Dr. Raokhande. We, in fact, make no pronouncement on the merit of even the short listed Doctors.

6. The members of the Applicants in OA 816/2016 (3rd OA) as already hinted above are in the cadre of Civil Surgeons or equivalent posts. The said members hold degrees of MBBS being a graduation degree in the field of medicine. They also hold post degree qualifications in any

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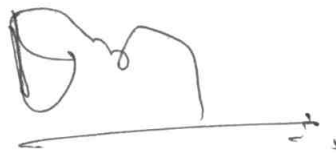
of the clinical subjects as specified in the Ist Schedule or 2nd Schedule to the Indian Medical Council Act, 1956 or any other qualification recognized as equivalent thereto by MCI. They also claim to have experience post P.G. in one or the other clinical subjects and also in Health Administration, Medical relief or Family Welfare under the Government, Zilla Parishad or any other Local Self-Government.

7. The cause giving rise hereto was issuance of an Advertisement No.6 of 2016 for the said post on 17.2.2016 by the MPSC. All the Applicants have annexed the copies of the said Advertisement. The same in the 1st OA is at Exh. 'H' (Page 113 of the Paper Book (PB)). As far as the qualifications are concerned, Para 4.4 thereof needs to be fully quoted.

“४.४.शैक्षणिक अर्हता :-

Candidate must possess :

४.४.१ Possess the **M.B.B.S.** Degree of a statutory University or any other qualification specified in the first or Second Schedule of the Indian Medical Council Act, 1956;



४.४.२ Possess a **post-graduate degree in any of the clinical subjects or in Preventive and Social Medicine** as specified in the First or Second Schedule to the Indian Medical Council Act, 1956 or any other qualification recognized as equivalent by the Medical Council of India;

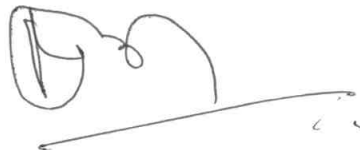
४.४.३ Possess experience of Health Administration, medical Relief or Family Planning in Government, Zilla Parishad or a Local Body of not less than **ten years** after acquiring post-graduate qualification mentioned in 4.4.2;

४.४.४ Provided that in the case of candidates possessing a post graduate degree in any clinical subject, those possessing a Diploma in Public Health or equivalent in addition, will be given preference.”

8. Although the required educational qualification is quite clear from the above quote, it may be noted that in the first place, the candidates must be holding a degree of MBBS. Further, they should hold Post Graduate (P.G)



Degree in any of the clinical subjects or in preventive or social medicine (PSM hereinafter) or any other qualification recognized as equivalent thereto by MCI. Still further, they should possess the experience of health administration, etc. as mentioned in Clause 4.4.3 of a minimum of 10 years or more post P.G. Clause 4.4.4 fully quoted hereinabove will be of great moment herefor. A plain reading unhampered by the aid of extrinsic or intrinsic interpretative tools and if read literally, in our view, would quite clearly indicate that the diploma in Public Health or its equivalent would be additional qualification (in addition) and a preferential one (will be given preference). Further, this will be in case of the candidates who possess a P.G. degree in any clinical subjects. Simply put, it would appear that those holding P.G. in any of the clinical subjects would be given preference, if they additionally held diploma in Public Health. To us, it appears in the first blush that the occasion for such an eventuality would arise provided there is a tussle or tie between or among the candidates and such a tie was required to be broken. This is a plain reading conclusion and we think, we may have to delve slightly into this aspect of the matter presently because erudite submissions were made at the Bar in that behalf.

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9. There is a litigative history to these OAs which may now be taken note of. They have been dealt with in extenso in the OAs of Dr. Jadhav and Dr. Raokhande. The same post was advertised by MPSC vide Advertisement No.1184/2012, dated 20.1.2012. Both the Applicants got aggrieved by the manner in which the Respondents went about conducting themselves in that connection. Ultimately, 3 OAs being **OA Nos. 360/2012, 94/2013 and 95/2013 (Dr. Mohan A. Jadhav Vs. State of Maharashtra and 2 others, Dr. Abhay S. Gajbhiye Vs. State of Maharashtra and 2 others and Dr. Ratna D. Raokhande Vs. State of Maharashtra and 2 others)** came to be decided by a common Judgment on 27th January, 2014 by the Bench of the then Hon'ble Chairman speaking through the learned Member (A). There also a short listing criteria was the bone of contention. The Tribunal was told that the said criteria was in conflict with the Advertisement and instead of being stricter, it was more liberal in nature. It so happened that amongst the candidates called for the interview, one was Dr. Satish D. Pawar, who was actually appointed. His wife was another successful contender along with one more. It seems that three others got eliminated. Shorn of avoidable details, it would appear that undue importance was given in the short listing criterion therein to those that held the



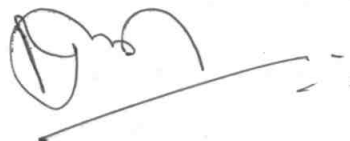
post of the Deputy Director or equivalent post of given pay scale. After a detailed discussion from Paras 25 onwards, this Tribunal held that while the MPSC had the powers to adopt a short listing criteria, but it must conform to the Advertisement which naturally must conform to the Recruitment Rules. It was found that due to the short listing criterion adopted by the MPSC, a number of candidates with higher qualification and better credentials were eliminated which was found to be unacceptable. The short listing criteria, it was held, should be within the scope of the Recruitment Rules. The Tribunal observed that the Commission had the right and discretion to prescribe qualifications and higher number of years of experience like only those with 20 years or 25 years experience in health administration, etc. But it was illogical to specify an experience to a particular post in Public Health Department as crucial. This aspect was dealt with in extenso. The Tribunal held *inter-alia* that the experience as a Deputy Director which was undoubtedly administrative experience could still not override or negate the wide scope and reasonableness provided by the Recruitment Rules (Clause 5) and short listing had to be purely on the basis of the duration of experience and the MPSC could shortlist on the basis of higher qualifications and longer experience in accordance with the Recruitment

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Rules. The Tribunal held that if the short listing criteria giving primacy to the experience as Deputy Director was provided in preference to the other experience in the relevant field, it would be for all practical purposes, an instance of promotion and there would be other consequences that would follow in that case. Thereafter, the Tribunal noted the comparative details of the qualifications, etc. of the various candidates. Para 37 of the Judgment was for all practical purposes the concluding Paragraph and the 2 Paragraphs that followed were merely consequential. We would, therefore, reproduce Para 37 of the said common Judgment.

“37. In view of the foregoing, following orders are issued:

a) The impugned short listing criteria adopted by the MPSC for appointment to the post of Director of Health Services is hereby quashed being violative of the Recruitment Rules, beyond the scope of the Recruitment Rules and the advertisement and being unfair, unreasonable and inequitable.

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- b) The short listing criteria has to be in accordance with the provisions of the recruitment rules, i.e. to say higher numbers of years of experience and higher qualifications should only be the basis of short listing criteria and not other interloping parameters which are introduced subsequently and which find no mention in the recruitment rules.
- c) The impugned selection of respondent no.3 Dr. Satish Dhanaji Pawar, made on the basis of erroneous short listing criteria, is hereby cancelled and set aside.
- d) While MPSC's right to fix short listing criteria keeping in view a large number of applications is undisputed, the criteria have to be fair, reasonable and equitable and within the scope of the Recruitment Rules.
- e) In view of the importance of the post of Director of Health Services, the ratio of 1:6 may be adopted for short listing to ensure adequate competition and in view of the fact that the word "normally" is used while adopting the ratio 1:3.

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f) The State Government should send a requisition afresh to the MPSC and MPSC should initiate the recruitment procedure afresh within one month from the date of this order.

g) The professionals in Medical Colleges or Medical Services in hospitals cannot be excluded on the ground that their experience do not pertain to health administration or in medical relief.

h) Objections in the OAs to the inclusion of some candidates in the shortlist on the ground of they having not worked as Deputy Directors cannot be sustained and are not acceptable.”

10. The said order of the Tribunal was challenged in **Writ Petition No.1936/2014 (Dr. Satish D. Pawar Vs. Dr. Mohan A. Jadhav and 4 others and in Writ Petition No.5951/2014 (The Secretary, MPSC Vs. Dr. Mohan A. Jadhav and 4 others)**. A Division Bench of the Hon'ble Bombay High Court decided those two Writ Petitions by a common Judgment dated 1st August, 2014. The Hon'ble High Court was pleased to rely upon the Judgment of the Hon'ble Supreme Court in **B. Ramakichtnin @ Bala**



Gandhi Vs. Union of India and others (2008) 1 SCC

Page 177. Paras 16 and 17 from that Judgment came to be reproduced in Para 9 by the Hon'ble High Court. We would reproduce the said Para 9 for facility.

“9. In support of the submissions, the learned Counsel for the petitioner placed reliance on the judgment in the case of ***B. Ramakichenin alias Balagandhi v/s. Union of India & Ors (2008 I SCC page 177)***. The Apex Court in the facts of the said case observed in paragraph 16 and 17 as under :

“16. Even if there is no rule providing for shortlisting nor any mention of it in the advertisement calling for applications for the post, the selection body can resort to a shortlisting procedure if there are a large number of eligible candidates who apply and it is not possible for the authority to interview all of them. For example, if for one or two posts there are more than 1000 applications received from eligible candidates, it may not be possible to interview all of them. In this situation, the procedure of shortlisting can be resorted to

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by the selection body, even though there is no mention of shortlisting in the rules or in the advertisement.

17. However, for valid shortlisting there have to be two requirements – (i) it has to be on some rational and objective basis. For instance, if selection has to be done on some post for which the minimum essential requirement is a Bsc degree, and if there are a large number of eligible applicants, the selection body can resort to shortlisting by prescribing certain minimum marks in Bsc and only those who have got such marks may be called for the interview. This can be done even if the rule or advertisement does not mention that only those who have the aforementioned minimum marks, will be considered or appointed on the post. Thus the procedure of shortlisting is only a practical via media which has been followed by the Courts in various decisions since otherwise there may be great difficulties for the selecting and appointing authorities as they may not be able to interview hundreds and thousands of eligible candidates; (ii) if a



prescribed method of shortlisting has been mentioned in the rule or advertisement then that method alone has to be followed.”

It may be carefully noted that the law with regard to short listing contained in the above passage will be a guiding light for the purposes hereof. It needs also to be noted that the Hon'ble Apex Court has not laid down that short listing criterion must be adopted. It can be adopted, if the number of Applicants was disproportionately large when compared with the vacancies to be filled. Here, the question is if for such a crucial post like the said post, 65 applications can be said to be disproportionately large. So be it. It is held that if the exigencies therein mentioned were to occur, then the selecting body like MPSC can take recourse to the short listing criterion. The illustrations given in **Balagandhi's** case are significant to show that the short listing criteria can be applied to facilitate the process of selection if such an eventuality arose within the jurisdictional circumscription, such a criteria is not immune from judicial scrutiny because no such mandate is to be found therein. **Balagandhi's** case was cited by Mr. Y.P. Deshmukh, the learned Advocate for the Applicant in the 1st OA.



(C) Nos. 22792-22793 of 2014 (Dr. Satish D. Pawar Vs. Mohan A. Jadhav and others). The SLP came to be disposed of at the threshold with the following observation:

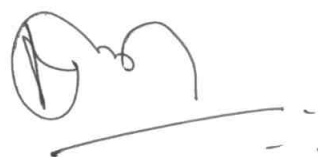
“Having heard learned counsel for the parties, we are of the considered opinion that there is no error in the order passed by the High court to interfere. Hence, we decline to interfere. However, we direct that the directions issued by the High Court shall be complied with within a period of four months and till the selection process is complete, the petitioner shall continue. Needless to say, if the petitioner comes within the criteria, his case will be considered. Neither the order passed by the High Court, nor our non-interference would weigh with the authorities while proceeding with the selection process.”

13. It appears that thereafter, the Applicants Dr. Jadhav and Dr. Raokhande moved the MPSC reminding them of the decision of the Hon'ble Supreme Court and the need to reinitiate the process for the appointment to the said post. In the ultimate analysis, the Advertisement herein involved came to be issued calling for on-line applications from all interested and eligible candidates for



11. Their Lordships in the common Judgment then referred to the Judgment of the Hon'ble Bombay High Court in the matter of **Mukulika S. Jawalkar and others Vs. State of Maharashtra and Another, 2007 6 MLJ 368.** Another Judgment of the Hon'ble Bombay High Court in the case of **MPSC Vs. Kishan, 2011 Supp. Bombay Cases Reporter 448** was also referred to. Their Lordships were told on behalf of their Respondents that the MPSC had no power post short listing to further short list the candidates from 6 to 3. What really had happened was that out of the 3 short listed also, 2 were a couple. It is not necessary to say anything more in that behalf. Here also, both of them have made it to the select list. Their Lordships referred to the various aspects of the matter relating to the short listing criteria and upheld substantially the order of this Tribunal above detailed except the directions contained in Clauses (b) and (g) thereof. It was found that the directions in Clause (g) of this Tribunal's order were excessive in nature, and therefore, except for Clauses (b) and (g), the Judgment of this Tribunal was upheld though modified to the extent just mentioned.

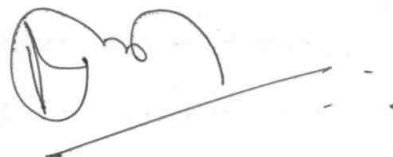
12. Dr. Satish D. Pawar carried the matter to the Apex Court by way of Petition for **Special Leave to Appeal**



that solitary post. Clause 5 of the said Advertisement laid down inter-alia that the mere fact of candidates holding minimum qualification and experience by itself will not be sufficient to be compulsorily called for interview. If the number of applications received was disproportionately larger and if it was found that it would not be possible to call all of them, the MPSC reserved to itself the power to adopt a short listing criteria.

14. On 26th July, 2016, MPSC issued a declaration (Exh. '1', Page 115 of the 1st OA in Marathi) informing that the interview for the said post would be held on 8th August, 2016 and the list of the eligible candidates for the said interview would be shortly put up. This list was ultimately put up presumably in accordance with the short listing criteria adopted by the MPSC. We have already quoted Clause 4 of the Advertisement. At Exh. 'L' Collectively (Page 119 of the 1st OA), there is an extract of Rules (Rule 3.3). It needs to be reproduced.

“3.3 The Recruitment Rules lay down the essential qualifications and experience as follows:-

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- (1) Unless already in the service of the Government of Maharashtra not more than 50 years of age.
- (2) Possess the M.B.B.S. degree of a statutory university or any other qualification specified in the first or second schedule to the Indian Medical Council Act, 1956.
- (3) Possess a post graduate degree in any of the clinical subjects or any Preventive in social medicine as specified in the first or second schedule to the Indian Medical Council Act, 1956 or any other qualification recognized as equivalent by the Medical Council of India.
- (4) Possess experience of Health Administration, Medical Relief or Family Planning in Government Zilla Parishad or or a local body for not less than 10 years after acquiring the above mentioned qualifications.

Provided that in the case of candidates possessing a post graduate degree in any of the clinical subjects those possessing a

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diploma in Public Health or equivalent in addition will be given preference.”

At Exh. 'K' (Page 118 of the 1st OA), one finds the short listing criterion as “Nikash I” and “Nikash II”. The same needs to be reproduced.

“संचालक, आरोग्य सेवा, महाराष्ट्र वैद्यकीय व आरोग्य सेवा, गट-अ अराखीव -
एका पदाकरीता

निकष - I

those possessing **M.B.B.S.** Degree of a statutory University or any other qualification specified in the First or Second Schedule of the Indian Medical Council Act, 1956; and

possessing a post graduate degree in any clinical subject or in Preventive and Social Medicine, together with a Diploma in Public Health or equivalent.

and possessing experience of Health Administration, Medical Relief or Family Planning in Government, Zilla Parishad or a Local Body of not less than **14 years, 1 month, 22 days** after acquiring post-graduate qualification.

निकष - II

those possessing **M.B.B.S.** Degree of a statutory University or any other qualification specified in the First or Second Schedule of the Indian Medical Council Act, 1956; And

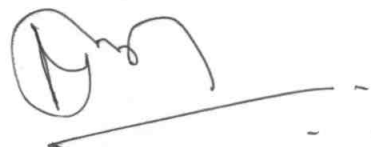
possessing a **post graduate degree in any clinical subjects or in Preventive and Social Medicine** as specified in the First or Second Schedule to the Indian Medical Council Act, 1956 or any other qualification recognized as equivalent by the Medical Council of India;

and possessing experience of Health Administration, Medical Relief or Family Planning in Government, Zilla Parishad or a Local Body of not less than **27 years, 2 months, 27 days** after acquiring post-graduate qualification.”

15. We have already analyzed hereinabove the Clause 4 of the Advertisement. That needs to be borne in mind. We have just now quoted the Rules also and in that light, let us here and now itself analyze the short listing criteria adopted by the MPSC for the said post this time around. It is very clear that the short listing criteria clubs

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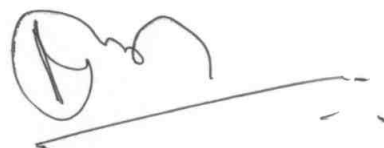
together the requirement of a P.G. Degree in any clinical subject or PSM with Diploma in Public Health or equivalent. In our opinion, as already examined hereinabove the said Diploma is only an additional preferential qualification to be resorted to if the occasion therefor arose, but that has been converted into an essential qualification. We were told on behalf of the Applicants that this was a part of a mission to pave way for some favoured candidates and to eliminate the Applicants Dr. Jadhav and Dr. Raokhande. At this stage, we may only mention that the list of the candidates found eligible for being called for interview at Exh. 'J' (Page 116 of the 1st OA) as per the 1st norm is Dr. Satish D. Pawar, Dr. Archana V. Patil, who we were told, are a couple. The three others are Dr. Kumbhar, Dr. M.S. Pawar and Dr. V.S. Bhathan. According to the 2nd norm above referred to, the 5 candidates found fit for being called for interview were Dr. B.G. Pawar, Dr. K.P. Patil, Dr. H.A. Chauhan, Dr. G.M. Gaikwad and Dr. S.W. Kamble. The Applicants Dr. Jadhav and Dr. Raokhande were not found eligible for being called for interview. We are, therefore, unable to just dismiss out of hand the grievance voiced by Mr. Deshmukh, the learned Advocate for the Applicant in the 1st OA and Mr. Dere, the learned Advocate for the Applicant in the 2nd OA about a clear possibility of the process being

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completely committed and with a slant for and against. In order to emphasize the primacy of statutory rules despite the permissibility of adoption of short listing criteria Ms. Manchekar, the learned Advocate for the Association in the 3rd OA relied upon **Durgacharan Mishra Vs. State of Orissa, (1987) 4 SCC 646 (Para 14)**. Further, the experience aspect of the matter also makes what to us appears to be a curious reading. The experience has been pegged at 14 years, 1 month and 22 days in Health Administration, Medical Relief, Family Planning, etc. As per the 2nd norm, the experience provided is 27 years, 2 months and 27 days. Even as we have in store some more discussion, we must record our astonishment at this very peculiar duration meticulously in terms of years, months and even days. We should have thought that the process of short listing should be such that the experience of all the Applicants should be taken note of rather than physically lifting the experience of one or a few candidates to cement his/Their place/places first of all and then let others try their "luck". We think that is not acceptable. In this group of OA, therefore, there are factual features that distinguish them from **Shri Maheshwar Vs. Shri Suresh Singh, 1997 SCC (L & S) 212 Para (6) cited by Mr. Lonkar.**



16. It is very clear, therefore, that the net result of someone not being armed with a diploma in public health which as per Rules is only an additional preferential qualification and not a necessary one must have an experience in excess of about 13 years. At this stage itself, we may mention that Mr. Lonkar, the learned Special Counsel for the Respondents 1 and 2 told us relying on a number of precedents that we must remain within the confines of our jurisdiction and should not either directly or indirectly tread on the area reserved for his clients. On principles, there can be no quarrel with the said proposition. We shall later on discuss the case law. However, we do not think that it could be successfully argued that this Tribunal is only required to put a stamp of approval on whatever decision is manifested by the orders of the statutory authorities and brought before it for scrutiny. In all fairness to Mr. Lonkar, we must note that even he did not go that far. As a matter of fact, there are legally well known jurisdictional limitations of the judicial forum. The said limitations are too well known to require narration in great details. But still it needs to be mentioned that the judicial forum would not just for the asking rush where the authorities have already treaded. The mere fact of possibility of the another point of view would not be sufficient for the judicial forum to act. If the

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statutory authorities like the MPSC herein are empowered to discharge a particular function, then their authority by and large and speaking generally will have to be judicially respected. But having said all that, it is not as if, the Tribunal is totally helpless, and therefore, powerless even in the event of the facts disclosing the performance of duties in a manner that reflects the existence of vitiating vices and why, even inter partes, this very Tribunal in the first round of litigation, if we may call it like that, did interfere in the manner of exercise of jurisdiction by the MPSC. The Hon'ble High Court modified that order to a certain extent without finding any basic fault with the Tribunal assuming jurisdiction and striking down the short listing criterion therein and finally, the Hon'ble Supreme Court also did not disapprove of the Tribunal and the Hon'ble High Court exercising their respective jurisdictions in the matter. Therefore, the power to scrutinize the actions of the MPSC in this Tribunal are there, but equally important is the issue of manner of exercise of powers.

17. Therefore, returning to the short listing criterion herein, we find that by elevating a Diploma in Public Health to a level which would bring in a difference in experience of about 13/14 years, cannot pass muster with the judicial scrutiny and no amount of the restraint in the

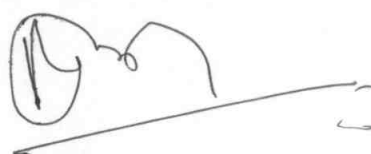
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manner of exercise of jurisdiction would come in our way because to do so, would amount to abdicating our judicial duties which is the mandate neither of law nor rules nor case law.

18. The Respondent No.2 has to their Affidavit annexed at Exh. 'A-1' a copy of the Recruitment Rules for the post of Director of Health Services. The proviso to Rule 1 (c)(iv) reads as follows :

“Provided that in the case of candidates possessing a post graduate degree in any clinical subjects those possessing a diploma in public health or equivalent in addition will be given preference.”

This aspect of the matter has already been sufficiently discussed hereinabove. They have also annexed a chart of what can be described as duty list of the Director. They are as many as 22. It may not be necessary for us to reproduce them verbatim, but still a bird-eye view, a kind of summation of duties would not be out of place. The Director holding the said post is responsible to the Government for the administration of Health Department. He also would advise the Government in all matters

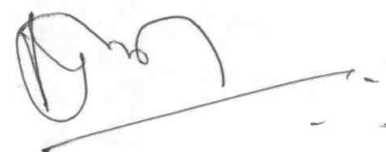


relating thereto. He will be the controlling authority on finances. He shall be privileged to have an access to the Government records whenever the necessity arises which of course would be subject to the general governmental control. He is obliged not to share the Government information with anybody else in his office. This aspect of the matter is amplified in various ways in the said chart. The Director would be on the Committee for Regional Hospital inspection under the ESIS. He would also be a Member of the governing Council of Haffkine Institute and a Member of Board of Administrators of Sushrusa Citizens Cooperative Hospitals Limited and in the State Advisory Board in the Executive Committee regarding the State Anti-Tuberculosis Association. He is an ex-officio representative of the Government on the Board of Management of N.W Maternity Hospital and a Member of the Selection Committee for National Awards to outstanding handicapped employees. He is also a Member in the Advisory Committee for Special Employment of Physically handicapped, Indian Red Cross Society, Bombay Maternity and Child Welfare Society, Maharashtra Dental Council, Maharashtra Nursing Council, Maharashtra Medical Council, Maharashtra State Pharmacy Council, Indian Nursing Council, State Leprosy Advisory Board and certain other medical institutions and also a Member of

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International Institute for Population Studies. He is also a Member of Coordination Committee of the Board of Visitors of Government Hospitals in Bombay. He is obliged to visit once every year the office of the Joint Director of Health Services, Bombay and Pune and he has also to carry out additional inspections, if required for specific purposes. He is empowered to appoint bonded candidates for Maharashtra Medical Health Services, Class-II.

19. It is, therefore, very clear that the responsibility attached to the post of Director is onerous, important and multifaceted. However, it is a job of administration of Governmental Medical Institution. Therefore, to make a sweeping generalization that it is purely an administrative post like any pure administrator may not be an accurate description of the nature of the job performed by the Director. It is inextricably linked up and connected with medical field. But in order to discharge his duties, he has also got to have administrative experience. Further, Mr. Lonkar, the learned Special Counsel is right in contending that in considering the nature of the duties of the Director, the current trend of medico legal thinking must be borne in mind. He told us that the significance of the qualification of PSM is such that the Government no more remains a silent facilitator to the issue of public health but



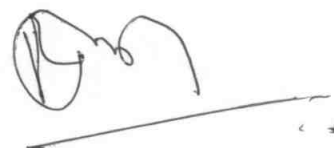
its role is more proactive than what was traditionally thought, and therefore, by the process of interpretation, we should not dilute that aspect of the matter. He referred us in this behalf to an article in the Daily Hindu. It may not be necessary to closely read that article for the purposes hereof. But then, while we agree that the role of the Director has to be examined in the present context, but then to think that he is just a simple administrator will amount to erring to the other extreme. He is basically a medical man and an administrator as well and we must repeat, he is not just an administrator, and therefore, while construing the short listing criteria, we find substance in the contention of Mr. Dere, the learned Advocate for the Applicants in OA 815/2016 that as a matter of fact, the requirement of a diploma is not an eligibility criterion. We have already discussed in extenso, this aspect of the matter as to how that requirement has to be considered if the eventuality so demands. But the short listing criteria ends up doing exactly what is not intended by Rules. It spills itself in excess of the ambit of the Rules and the Advertisement.

20. Therefore, even as in deserving cases, the MPSC has the power to adopt short listing criteria as already hinted hereinabove, the said criteria can be placed in the

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judicial crucible for being tested which was exactly done in the earlier round of litigation *inter partes*. In a Judgment of the Hon'ble Supreme Court cited by the learned Special Counsel Mr. Lonkar in the matter of **Duddilla S. Sharma and others Vs. V. Chrysolite, (2013) 16 SCC 702**, as far as the legal principles are concerned, Their Lordships held that the short listing criteria must be reasonable and based on intelligible criteria. In Para 11, Their Lordships were pleased to hold that the issue of short listing criteria is fact specific, and therefore, speaking generally and by and large, the conclusions drawn on facts of a particular matter may not always be applicable to any other matter and each matter has to be decided on its own merit.

21. Mr. Lonkar relied upon another Judgment of the Hon'ble Supreme Court in the matter of **Chandigarh Administration through The Director, Public Instructions Vs. Usha Kheterpal Waie & Ors, AIR 2011 SC 2956 (Usha Kheterpal's case)**. That was a matter arising out of the selection to the post of Principal. The Petitioners before the Hon'ble Supreme Court did not hold the degree of Ph.D although they had been serving from 1969-70 or thereabout. The Rules were amended and were reserved for being issued in the name of the President of India. That process got delayed. Their Lordships found



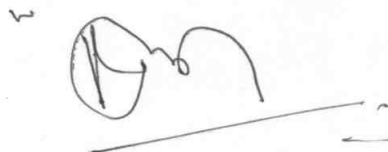
that the Government still acted on the basis of their executive powers contained in the administrative instructions, and therefore, it was not an invalid exercise. It was held that when Draft Rules had been made and the promotions were to be made in accordance therewith in the circumstances such as they obtained in **Usha Kheterpal's** case, it was a valid exercise of power and the Courts in such circumstances should not interfere. We have already discussed this aspect of the matter and while some more discussion may follow, but peculiarity of the fact situation herein has already been adverted to. Quite pertinently, the selection to the post of Additional Director of Health Services (Family Welfare), Maternal Child Health (Additional Director) also became the subject matter of the **OA No.734/2013 (Dr. Mohan A. Jadhav Vs. State of Maharashtra and 2 others)**. There, the 3rd Respondent was Dr. (Smt) Archana V. Patil who is one of the short listed candidates herein and if we are right on the basis of the submissions at the Bar, she is the wife of Dr. S.L. Pawar, who is another short listed candidate herein. The Applicant in the 1st OA herein was the Applicant therein. The allegations of bias were made in the matter of short listing criteria therein. That OA was decided on 9.7.2014 (See Para 3 of the order) which spoke through one of us viz. the Hon'ble Vice-Chairman, Acting Chairman then. The

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Applicant therein being the Applicant in the 1st OA herein again bore the brunt of the alleged discrimination and was not short listed. **Balagandhi** (supra) was cited before us in that matter and Para 17 thereof which we have already reproduced herein was reproduced in that OA as well. The short listing criteria therein was higher educational qualification or higher experience or both as advertised. However, an entirely different criteria came to be applied actually which was totally contrary to the law laid down in **Balagandhi's** case. The Judgment of the Hon'ble Supreme Court in **Secretary, A.P. Public Service Commission Vs. Y.V.V.R. Srinivasulu and others, (2003) 5 SCC 341** was also relied upon. Para 10 thereof was reproduced which we may do it here as well.

“10. “The preference” envisaged in the Rules, in our view, under the scheme of things and contextually cannot mean an absolute and en bloc preference akin to reservation or separate and distinct method of selection for them alone.”

22. Now, in that OA as well, by way of short listing, only the candidates having preferred qualification were treated eligible as if it was a case of promotion which could not be permitted. Pertinently, another extract from the



Judgment of the Hon'ble Supreme Court is most illustrative which we had reproduced in the said OA. It read as follows :

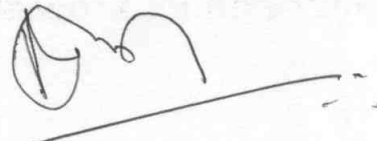
“On the other hand, preference envisaged has to be given only when the claims of all candidates who were eligible are taken for consideration and when anyone or more of them are found equally positioned, by using the additional qualification as a tilting factor, in their favour vis-à-vis others in the matter of actual selection. (emphasis added).”

23. A few cases decided by the Tribunal earlier were taken note of along with the Judgment of the Hon'ble Supreme Court in **M.P. Public Service Commission Vs. Navnit Kumar Potdar, 1994 SCC (6) 293** and the entire selection process for the post of Additional Director vide the advertisement therein involved came to be quashed and set aside. Needless to say that the said Judgment had close parity with the present one. The findings and observations of the Hon'ble Supreme Court reproduced just now have important bearing and those principles will have to be borne in mind, even as we return to some other cases cited by Mr. Lonkar. He relied upon the Judgment

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of the Division Bench of the Hon'ble the Chief Justice of the Bombay High Court in **Mukulika Jawalkar's** case which has already been discussed in the earlier part of this Judgment.

24. A Division Bench Judgment of the Hon'ble Bombay High Court in the matter of **Maharashtra Public Service Commission Vs. Kisan T. More, 2011 (supp.) Bombay Cases Reporter 448** was the another authority relied upon by Mr. Lonkar. The post involved therein was the Assistant Commissioner of Drugs. The matter was brought before this Tribunal because the Applicants were not invited for interview. In so far as the matter relating to short listing was concerned, it was found by the Tribunal that the degree in law as a short listing criteria was not shown as alternative but compulsory and that was in contravention of the Rules. The Hon'ble High Court found that the only issue of moment was as to whether the short listing criteria was de hors the Rules. The powers of MPSC to prescribe short listing criteria in deserving circumstances was reiterated. The perusal of Para 23 thereof would show that in so far as the degree in law was concerned on those facts, there was nothing wrong with providing the same as a short listing criteria and it did no violence to the Rules.



25. Mr. Lonkar relied upon **Navnit Kumar Potdar's** case (supra) which was considered by us in **OA 734/2013** as already discussed hereinabove. Mr. Lonkar relied upon **University of Delhi and others Vs. Dr. Waseem Begum, a Judgment of the Hon'ble Delhi High Court reported in ILR (Delhi) 2010 Page 284.** He laid particular emphasis on the findings of the Hon'ble Delhi High Court that in the matters of selection, it was best left to the academic institution to frame its parameters and also the non-disclosure of the parameters for short listing would not be fatal. This principal of law has already been noticed by us on more than one occasions hereinabove.

26. Mr. Y.P. Deshmukh, the learned Advocate for the Applicant in the 1st OA referred us in this behalf to buttress his submissions on **Reliance Energy Limited Vs. Maharashtra State Road Development Corporation Limited, (2007) 8 SCC 1.** It was held therein that in the first place, any criteria pertaining to the appointment to public post must be reasonable. In Para 39, it was observed that in judging the validity of the norms applied in the matter of judging the validity of the governmental action, the three pronged test would have to be applied. The said test would be on the anvil of (a) illegality, (b) irrationality and (c) procedural impropriety. Applying these

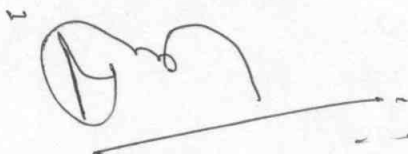


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principles to the present facts, we think that the impugned action must conform to these guidelines without which such a governmental action could not claim immunity from judicial intervention or even interference.

27. Apart from the Judgments discussed hereinabove, the learned Advocates for the Applicants relied upon some other Judgments which will be discussed presently. However, before we did that, we shall examine another aspect of the matter which was very assiduously urged by Shri Lonkar, the learned Special Counsel for the Respondents 1 & 2. It appears that it is his case that in so far as the eligibility criterion is concerned, there is no distinction as such between the clinical subjects and the subject matter of PSM and that apparently appears to be the substance of his submissions that in any case, even PSM will not be a non-clinical subject, and therefore, he would have the entire set of arguments on behalf of the learned Advocates for the Applicants relegated to the state of pointless hue and cry.

28. In order to assist us in the matter of the literal interpretation of the word, "health" in the context of the present facts, he drew from the meaning of the word, "health" from some kind of a dictionary being Collins

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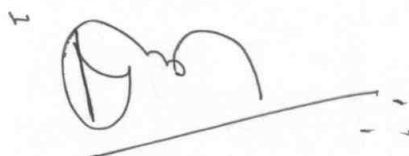
English Dictionary. It appears to be his submission that a proper interpretation will have to be given to the word, "health" even while determining the present facts at issue. While the state of health in the sense it is understood in common parlance will no doubt be a relevant factor, but a larger meaning in the context of the public health will have given to the word, "health".

29. Another source which Mr. Lonkar wanted to tap was in the matter of admissions in the field of academics. He relied upon the words, "M.D. in Community Medicine" is a non-clinical specialized course offered by the Amrita School of Medicine. Mr. Lonkar then referred us to accompaniments to a G.R. of 14th December, 1971 from Urban Development Public Health and Housing Department. He laid emphasis on the point of the Post Graduate Degree or Diploma in Public Health or Sanitary Science or Hygiene and Health Administration in Government Department. He also relied upon certain other instruments in that behalf. Further relying upon a curriculum of M.D. in Community Medicine passed by Academic Council vide Resolution No.355/2006, dated 30.5.2006. He also relied upon the provisions of the Clinical Establishments (Registration and Regulation) Act, 2010. Section 2(c) thereof defines the word, "clinically

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establishments". He further relied upon an extract showing the categories of clinical establishments. His harp apparently is that wherever there is facility requiring diagnosis, treatment or care for illness, injury, deformity, etc. such an establishment would be a clinical establishment. It seems to be his submission that there is no scope, need or necessity, therefore, to segregate PSM from the clinical aspect of the medicine. Relying upon the medical specialities, Mr. Lonkar submitted that community medicine is a larger genera of which PSM may be a specie. Mr. Lonkar further relied upon some kind of a booklet from All India Institute of Medical Sciences, New Delhi for Post Graduate Courses and he wanted to contend that there is no difference between clinical subjects as well as the PSM. In order to buttress his submissions, Mr. Dere, the learned Advocate for the Applicant in the 2nd OA also relied upon such literatures.

30. Now, in our opinion, the issue of clinical and non-clinical subjects arises in a peculiar context and hue, which must inform us adequately. We cannot allow ourselves to be ransomed by either the lexicon or literature. The simple issue is to construe the eligibility criterion for the said post in the context of clinical or non-clinical subject. But even that will not be in a broader

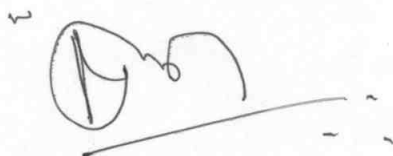
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sense. It would have to be pinpointed to the issue of the construction being given to it bearing in mind the contextual connotation peculiar hereto and if the Rules prescribed a distinction between the clinical and non-clinical subject and in that context provides for additional or preferential qualification, then the scope of judicial action would become narrowed down thereto and the various aspects sought to be canvassed by Mr. Lonkar and Mr. Dere, in our view, will become academic. The simplest of the questions to ask would be as to whether if a particular interpretation is warranted by employing the usual tools of interpretation including literal interpretation of the Rules relevant hereto, is it open to us to deviate therefrom and give it a different interpretation relying on the literature or laxicon. We think, the answer is axiomatic.

31. It is, therefore, not possible for us to accept the submissions on behalf of the Respondents 1 & 2 that the degree in preventive and social medicine should be treated as a Post Graduate Degree in clinical subject. However, the Rules and the Advertisement need to be perused to determine the efficacy thereof, regardless of clinical or non-clinical. We are here more with short listing criteria. In support of principle that other factors remaining constant,

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the Rules and instruments should be construed as mandated by the tools of interpretation, a few more authorities cited at the Bar may now be referred to. Mr. Deshmukh relied upon **Dinesh Chandra Sangma Vs. State of Assam, (1977) 4 SCC 441.** It was held that no words should be considered as redundant or surplus in interpreting the provisions of a statute or rule. Para 15 from **D.C. Sangma** may be perused for that proposition. Mr. Deshmukh then relied upon **V. Jaggnadha Rao V/s. The State of Andhra Pradesh and others, (2001) 10 SCC 401.** In that Judgment also, the Hon'ble Supreme Court was pleased to lay down the principle that enshrines Rule against redundancy. That approach would obviate the necessity of trying to draw sustenance say from a source foreign to the subject matter of this OA like a prospectus or medical literature in this case in construing the crucial phrases and words, which was sought to be done by the learned Special Counsel Shri Lonkar. When the Rules are required to be interpreted and an attempt is made to invoke such sources like Medical Literature, Prospectus, etc. then the ultimate scope of those literatures, etc. would also have to be borne in mind and the Court shall not readily accept an interpretation based on those sources which at best of times would be an extrinsic aid to interpretation. It is further held in **V. Jaggnadha Rao**



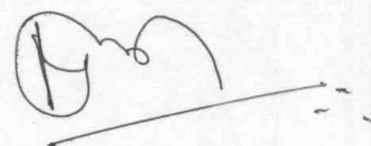
(supra) that no provision or word has to be read in isolation and the statute would have to be read as a whole as a mandate of legislature. In our view, the same principle would be applicable to even the interpretation of Rules. It would, therefore, be necessary, in our opinion, while construing the Rules in the context of short listing criteria to draw and determine, if a prescribed method of short listing had been mentioned in the Rule or Advertisement themselves and if it was there, then only that should have been applied. This is the mandate in **Balagandhi** (supra) as well. In our opinion, therefore, the application of the law laid down by the Hon'ble Supreme Court to the present facts must lead to the conclusion that we are driving at and it is not possible for us to go along with the Respondents and hold that either the scope of the word, "clinical subject" should be expanded to let in even those faculties that are not expressly mentioned or even by necessary implication or to elevate the diploma above referred to, to a status that the said diploma did not deserve.

32. Another Judgment of the Division Bench of the Hon'ble Bombay High Court in **Writ Petition No.532/2013 (Maharashtra Public Service Commission Vs. Mr. Benishirur V. Ahmed and 2 others, 2nd July,**

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2013) was cited at the Bar. That matter related to the post of Statistician, General State Service, Group 'B' in the Directorate of Medical Education and Research. One post was reserved for ST and three were Open. One of which was again reserved for woman. A short listing criteria adopted by MPSC was again a bone of contention. This Tribunal granted a certain relief to the private party Respondent in that matter whereagainst the matter was carried to the Hon'ble High Court in Writ Petition. Their Lordships were told that the criteria applied was based on higher educational qualification or marks/ 1st Class obtained at Masters' Degree level. Their Lordships were pleased to emphasize that the test was as to whether there existed a rational or objective basis and if the short listing criteria was provided in the Rule or Advertisement, whether it was binding to adhere thereto. In Para 9, Their Lordships were pleased to hold that even as the public authority like the MPSC was entitled to adopt or evolve a criteria for short listing, but it should be rational and not whimsical or arbitrary and once set out, it must be applied right through the end of the recruitment process. The Writ Petition was in those circumstances dismissed.

33. Mr. Dere, the learned Advocate for the Applicant in the 2nd OA relied upon the Judgment of the Hon'ble

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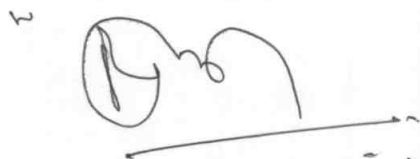
Kerala High Court in **K. Natrajan Vs. State of Kerala, 2014-8-309 Kerlt-2014-3-1001**. He laid emphasis on the significance even of punctuation in the matter of construction of instruments, statute, etc.

34. The above discussion must, therefore, lead us to conclude that when put in simpler words as done in written submissions by Ms. Manchekar, the learned Advocate for the Association, if one were to peruse the short listed candidates, 7 out of 10 possessed the Post Graduate Qualification in PSM and only three candidates were holding degrees in clinical subjects. Therefore, it quite clearly appears that in actual practice, the main soul of the process has been shattered beyond recognition by the short listing criterion and by some coincidence or whatever while the Rules give a proper primacy or significance to clinical subjects, the end product of the short listing criteria turns it on its head and provides to the additional or preferential qualification which is a diploma a place which it did not deserve. We are, therefore, quite clearly of the opinion that the impugned short listing criteria and the list of short listed candidates cannot stand the judicial scrutiny even as we are quite conscious of the judicial and jurisdictional limitations that bind us in this Tribunal, but we still cannot afford to

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remain in a state of mute judicial inaction when we must act even by the normal cannon of interpretation and the scope of jurisdiction. The clock will, therefore, have to be set back and the short listing criteria and the list of short listed candidates will have to be struck down making it clear, however, that we have not pronounced any candidate even in the short listed lists either ineligible or disqualified. They may be allowed to compete afresh with others left out including the Applicants - Dr. Jadhav and Dr. Raokhande.

35. The short listing criteria adopted herein and the list of short listed candidates prepared in accordance therewith are both stuck down, quashed and set aside. The Respondent-MPSC shall commence the process from the stage such as it was bearing in mind the observations herein which in turn are based on the law laid down by the Hon'ble Constitutional Courts. It is made clear that if short listing becomes absolutely imperative on the facts and the candidates who are already on the list, some of them or anyone of them are/is found qualified for getting their names included again, there shall be no embargo in that behalf. However, upon a proper application of the principles herein enunciated, the Respondents shall also consider the case of the Applicants Dr. Jadhav and Dr.



Raokhande as well as the others from amongst those who have applied for the post. The Respondent-MPSC shall act with due dispatch in deference to the mandate of the Hon'ble Supreme Court in the earlier round of litigation and expeditiously take the further steps in the matter. These Original Applications are allowed in these terms with no order as to costs.

Sd/-

Sd/-

(R.B. Malik)
Member-J
23.11.2016

(Rajiv Agarwal)
Vice-Chairman
23.11.2016

Mumbai

Date : 23.11.2016

Dictation taken by :

S.K. Wamanse.

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