

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.960 OF 2018

(SUBJECT : APPOINTMENT)

DISTRICT: MUMBAI

Dr. Alankar Laxman Khanvilkar, )  
State Employees Insurance Scheme Hospital, )  
Vashi, Mumbai. )  
Residing at : Room No.7748, Vaintey CHS, )  
Kannamwar Nagar, Vikroli (E), )  
Mumbai. )

.. Applicant

**Versus**

1) The State of Maharashtra, )  
Through its Principal Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai )

2) Mr. A.B. Dhulaj, )  
Commissioner, )  
Add. Office of Commissioner of State )  
Employees Insurance Scheme Hospital, )  
Public Health Dept., 6<sup>th</sup> Floor, Panchdeep )  
Bhavan, N.M. Joshi Marg, Lower Parel, )  
Mumbai 13. )

3) Mr. Kiran Vahul, )  
Administrative Director, )  
Add. Office of Commissioner of State )  
Employees Insurance Scheme Hospital, )  
Public Health Dept., 6<sup>th</sup> Floor, Panchdeep )  
Bhavan, N.M. Joshi Marg, Lower Parel, )  
Mumbai 13. )

4) Dr. Megha Aayare, )  
Medical Superintendent, )  
Add. Office of Commissioner of State )  
ESIS Hospital Quarters, Type No.4, Building No.1, )  
Block No.4, 1<sup>st</sup> floor, L.B.S. Marg, Mulund West, )  
Mumbai 400 080. )

.. Respondents

Shri A. Chaware, the learned Advocate for the Applicant.

Shri S.D. Dole, the learned Presenting Officer for the Respondents.

**CORAM** : **JUSTICE SHRI A.H. JOSHI, CHAIRMAN**  
**SHRI P.N. DIXIT, MEMBER(A)**

**RESERVED ON** : 13.02.2019.

**PRONOUNCEMENT ON** : 18.02.2019.

**PER** : **JUSTICE SHRI A.H. JOSHI, CHAIRMAN**

### J U D G M E N T

1. Heard Shri A. Chaware, the learned Advocate for the Applicant and Shri S.D. Dole, the learned Presenting Officer for the Respondents.

2. In the present O.A. the Applicant has challenged the order passed by the Respondent No.2.

3. By the impugned order Respondent No.4 has been put into additional charge of the said post. Text of the impugned order in relation to putting Respondent No.4 into additional charge reads as follows :-

“उपरोक्त उहापोह लक्षात घेता, डॉ. मेघा आयरे, वैद्यकीय अधिकारी यांच्या सेवा नियमित असल्याने त्यांची शैक्षणिक अर्हता बी.ए.एम.एस. अशी असली तरी वैद्यकीय शिक्षण व औषधी द्रव्ये विभागाच्या दि.२३/१२/१९८६ रोजीच्या वैद्यकीय अधिक्षक, निम्न श्रेणी पदाचे सेवा प्रवेश नियमातील तरतुदी अवलोकूनच त्यांना तात्पुरत्या स्वरूपात वैद्यकीय अधिक्षक पदाचा अतिरिक्त कार्यभार देण्यात आलेला आहे. तसेच त्यांना देण्यात आलेला वैद्यकीय अधिक्षक पदाचा कार्यभार हा नियमित स्वरूपाचा नसून अतिरिक्त, अर्थात तात्पुरत्या स्वरूपाचा असल्याने यासंदर्भातील निर्णय आयुक्तालयाने विवेकाधीन तत्वावर रुग्णालयीन प्रशासनाच्या सौयीच्या दृष्टीकोणातून घेतलेला आहे.”

(Quoted from page 42 of the paper book of O.A.)

4. The impugned order also describes that the Applicant is considered to be not eligible on merit for the said appointment.

5. Applicant's grievance in nutshell is as follows :-

(a) Respondent No.4 is not qualified and eligible to be appointed even to act as Medical Superintendent because she hold qualification of B.A.M.S, which is degree in Ayurveda and she is not competent as she lacks expertise, caliber and experience to prescribe Allopathy medications. Applicant has expressed it through paragraph 6.9. The same is quoted below for reference :-

*“6.9.) the respondent no.3 on 11-10-2018 passed an order thereby held that the petitioner is not eligible for the post of medical superintendent. The copy of the said order dated 11-10-2018 is hereto annexed and marked herewith as Exhibit-E.*

*The respondents have not at all taken into consideration the Government Resolution dated 23-3-2015 wherein the temporary medical officer is defined / explained by the state of Maharashtra. The copy of the said GR. Dated 23-3-2015 is hereto annexed and marked herewith as Exhibit-F the applicant has brought all the irregularities of the order passed by the respondents by his letter dated 15-10-2018. The copy of the said letter/ representation is hereto annexed and marked herewith as Exhibit-G.*

*That the only irrelevant consideration, without considering the eligibility of the respondent no.4 is the recommendation of the petitioner by minister and her appointment was not made because of her eligibility or credibility please find attached herewith a copy of office note of the commissioner office that is respondent no.2 office dated 21-2-2018 annexed herewith and marked as exhibit-H. the respondents have failed to understand the clear provisions of the rule 3(B) of Maharashtra Medical Insurance service, Class-1 (administrative) (Recruitment rules), 1986, dated 23-12-1986 published by medical education and drugs department which clearly puts forth the eligibility criteria while handing over this additional charge. That as per the said rule 3(B) the qualification of M.B.B.S. is necessary requirement for the post of medical superintendent. It clearly reads as M.B.B.S or any equivalent qualification specified in the first or second schedule to the Indian Medical Council Act, 1950. That the clear perusal of the aforesaid schedules to the Indian Medical Council Act makes it very clear the aspect as to which degree is equivalent to the M.B.B.S.*

*Further they have neither taken into consideration GR bearing no.srv 2018/pra/cra/208/office 12 Dated 5-9-2018. The aforesaid GR. Specifically speaks of as to whom the charge of the medical superintendent be handed over. The criteria for the same, is who is from the same department and who is the senior most must get the charge of the medical superintendent whereas as far as respondent no.4 is concerned she is from the commissioner office as she is on the muster of the Commissioner office. Copy of the aforesaid rule as well as GR is hereto annexed and marked collectively as Exhibit-I.*

*(Quoted from page 9 to 11 of the paper book of O.A.)*

- (b) Applicant holds comparatively higher qualification. He also had experience of holding additional charge of the post of Medical Superintendent and it would be unjust and unfair to deny him opportunity.
- (c) There is another candidate namely Dr. Swati Sarukte, who could have been put into additional charge. However, candidates who are eligible have not made any grievance.
- (d) Qualifications for the post of Medical Superintendent prescribed by the recruitment rules are not held by Respondent No.4.

- (e) Applicant has expressed the same through paragraph 6.16, which reads as under :-

*"6.16 The administrative director of Employees State Insurance Scheme, Maharashtra i.e. the respondent No.3 herein was required to take into account while selecting a candidate to the post of Medical Superintendent, the seriousness of the post, nature of responsibility, expertise, caliber, experience and various other important duties. It has failed to appreciate that the post of Medical Superintendent is head of the Hospital. That the administrative director of without considering the above mentioned facts had arbitrarily passed an order dated 11-10-2018."*

(Quoted from page 13 and 14 of the paper book of O.A.)

6. In the affidavit-in-reply, Respondent No.2 has averred to following facts :-

- (a) The fact that Respondent No.4 does not hold qualification of M.B.B.S. is not disputed.
- (b) It is alleged that candidates having qualification of M.B.B.S. are eligible to practice Allopathy.
- (c) As per Medical Education and Drugs Department notification dated 25.11.1992 Respondent No.4 is a permanent Government servant.
- (d) Applicant's services are not regularized, moreover he is engaged in private practice and he is not regular and devoted in service.
- (e) Respondent No.4 will give away to candidate who may be appointed after regular selection, as appointment of Respondent No.4 is temporary and ill-natured.

7. Learned Advocate for the Applicant argued vehemently and emphatically, and thereupon learned Advocate for the Applicant was called upon as follows :-

- (a) Legal right, if any, in favour of the Applicant.
- (b) Inherent illegality, if any, in the appointment of Respondent No.4.
- (c) Whether present petition is a Public Interest Litigation.
- (d) Whether the Applicant is praying relating nature of writ of covenant.

8. Reply to the queries raised by this Tribunal answered by learned P.O. are as follows :-

- (a) Applicant does not have any describable legal right except his urged for good governance and fair administration.
- (b) There is no illegality i.e. violation of mandatory provision of law however according to the applicant Respondent No.4 does not hold qualification to prescribed Allopathic / modern medicine.
- (c) The present is not a Public Interest Litigation.
- (d) The present is not a petition for writ of *quo warranto*.

9. Considering the answers which learned Advocate for the Applicant has given what emerges is that Applicant does not have any legal right nor any illegality is shown in so far as putting Respondent No.4 in additional charge.

10. Urge for good governance is laudable, however applicant has to maintain it for Public Interest Litigation for which this Tribunal is not a forum.

11. Moreover, the belief on which Applicant has pursued present Original Application is that the medical practitioner holding the degree of B.A.M.S. is not entitled to practice modern medicine as is potentially fallacy, since the course of B.A.M.S. is all throughout recognized as a degree of combined study of Ayurved and Modern Medicine (Allopathy).

12. Applicant has failed to demonstrate any prohibition clause in any provision of law which disqualifies the candidates holding degree of B.A.M.S from preferring medicines in use in modern medicines/ allopathy.

13. Moreover, admittedly Respondent No.4 is permanent Government servant having larger span of length of service while applicant is comparatively younger doctor with higher degree in Hospital Management which could not *ipso facto* by virtue of said higher qualification claim better expertise than experienced hand.

14. We, therefore, find that no jurisdiction is offered by the applicant for entertaining present Original Application and the same is dismissed.

15. Parties are directed to bear their own costs.

Sd/-  
**(P.N. Dixit)**  
**Member(A)**

Sd/-  
**(A.H. Joshi, J.)**  
**Chairman**

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