

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 19/2018**

Dr. Sharada Laxman Deore,  
Aged 34 yrs, Occupation Service,  
R/o 301, Guru Aradhana Apartment  
Behind Canara Bank, Harshraj Colony,  
V.M.V Road, AMRAVATI-444 607.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Principal Secretary,  
Higher & Technical Education Department,  
Mantralaya, Mumbai-32.
- 2) The Secretary, Maharashtra Public Service  
Commission, 7 & 8 floor, Cooperage Telephone  
Nigam Building, Maharshi Karve Marge  
Kuprej, MUMBAI 400 021.
- 3) Paresh Remesh Mahaparale,  
Associate Professor, Government  
College of Pharmacy, Aurangabad.

**Respondents**

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Shri Bharat Kulkarni, Ld. counsel for the applicant.  
Shri A.M.Ghogre, Ld. P.O. for the respondent Nos.1 & 2.

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**Coram:-Hon'ble Shri M.A. Lovekar, Member (J).**

**Dated: - 24<sup>th</sup> March 2022.**

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**JUDGMENT**

**Judgment is reserved on 15<sup>th</sup> March, 2022.**

**Judgment is pronounced on 24<sup>th</sup> March, 2022.**

Heard Shri Bharat Kulkarni, learned counsel for the applicant and Shri A.M.Ghogare, Ld. P.O. for the Respondent Nos.1 & 2. None for Respondent No.3.

2. Grievance of the applicant is that in the Merit List she should be placed above respondent no.3.

Facts leading to this application are as follows.

In response to Advertisement no.15/2014 dated 4.1.2014 issued by respondent no.2, the applicant, respondent no.3 and some others applied for the post of Associate Professor. Their screening test and interview were held. On 15.6.2016 result was declared on the website of respondent no.2. One Smt. Inamdar was the top scorer with 141 marks. Respondent no.3 and the applicant both scored 128 marks. Smt. Inamdar was selected from the Open category. Respondent no.3 was selected against the vacancy of Open (Female) category. The applicant whose claim was considered from the Open category could not be selected for want of post. In all 6 persons were selected viz. Smt. Inamdar and respondent no.3 from the Open category two from OBC category and one each from S.C. category and Open PH category (Annexure A-3 and A-4).

As Per G.R. dated 3.8.2016 (Annexure A-2) 7 persons were appointed to the post of Associate Professor. Aggrieved by her non selection the applicant filed O.A.No.373/2016 before this Tribunal. Smt. Inamdar did not join. Therefore, her appointment was cancelled. Respondent no.1, by letter dated 20.9.2016 requested respondent no. 2 to recommend a name from the waiting list according to merit and thus, by letter dated 4.10.2016, respondent no.2 recommended name of the applicant to respondent no.1 (Exhibit R-1) Thereafter, by G.R. dated 28.12.2016 (Annexure A-1) the applicant was appointed to the post of Associate Professor. Because part of her grievance was redressed by giving appointment to her, the applicant withdrew O.A.No.373/2016 but kept her right of challenging her placement in Merit List below respondent no. 3 intact as reflected in the order of this Tribunal dated 7.7.2017 (Annexure A-7).

According to the applicant, as per Rule 10(7) of the MPSC Rules of Procedure notified in Official Gazette on 16.5.2014 (Annexure A-5) she should be placed above respondent no.3 in the Merit List because she completed Ph.D. earlier.

The applicant had raised this grievance before respondent no.2. She was informed vide Exhibit R-2, that though she and

respondent no. 3 both had secured same marks, respondent no.3 was placed above her because of his greater length of experience.

Since her grievance about placement above respondent no.3 in the Merit List remained unredressed the applicant has filed this O.A.

3. Affidavit-in-reply of respondent no.2 is at pp. 42 to 49. To this reply Exhibits R-1 and R-2 are attached.

4. The Advertisement no.15/2014 marked 'X' is at pp. 58 to 60. Clauses 4.3 and 4.4 thereof are relevant which read as under-

**1. Qualification**

***Bachelors and Masters degree in Pharmacy with first class or equivalent either in Bachelors or Masters Degree and Ph.D. or equivalent, in appropriate discipline. Post Ph.D. publications and guiding Ph.D. students is highly desirable.***

**2. Experience**

***Minimum of 5 years experience in teaching / research / industry of which 2 years Post Ph.D. experience is desirable.***

***Equivalence for Ph.D. is based on publication of 5 international journal papers, each journal having a cumulative impact index of not less than 2.0, with incumbent as the main Author and all 5***

**publications being in the authors area of specialization.**

**For an incumbent Assistant Professor, experience at the level of Assistant Professor will be considered equivalent to experience at the level of Associate Professor, provided the incumbent Assistant Professor has acquired or acquires Ph.D. Degree in the relevant discipline.**

Further, clause 5 of this advertisement reads -

*5- iLr r tKgjlrte/; suem dyyh 'Kk.kd vgrkj vulllo br; khh vgrk fdeku vl m] fdeku vgrk/Kj.k dyyh Eg.ku menokj eyk[krhl ckylo.; kdfjrk ilé vl .Kj ulgh*

Relevant portion of Rule 10(7) on which case of the applicant is founded reads-

**10. Appointment of Interview Committee and declaration of result (1) to (6) \* \* \* \* \***

**(7) While preparing the final recommendation list for deciding the ranking of the candidates securing equal marks, the following criteria shall be made use of in a sequential manner one after the other :-**

**(i) Educational Qualification as on the last date of receipt of applications in descending order as Ph.D.**

***M.Phil. Post Graduation. Post Graduation by distance Education.***

***(ii) The date of acquiring higher qualification.***

***(iii) Preferential qualification if so mentioned in the advertisement / notification / Rules of Recruitment.***

***(iv) If the experience is desired for the post in question then the experience on the last day of receipt of application.***

***(v) If a provision is made in the advertisement or notification or Rules of Recruitment then the backward classes candidates in ST, SC, DT (A), NT(B), SBC, NT(C) in that order.***

***(vi) Older in age.***

***(vii) Thereafter the ranking should be decided by the first letter of the surname as it appears alphabetically.***

***\* \* \* \* \****

**5.** In Para 9 of affidavit-in-reply of respondent no.2 comparative details of the applicant and respondent no.3 are given in a tabular form as follows.

| Name                            | Qualifications |             |       | Experience                                    |  |                         | Total Experience  |
|---------------------------------|----------------|-------------|-------|---|--|-------------------------|-------------------|
|                                 | Degree/Diploma | Result date | class | Organization                                  | designation                              | From Date to Date       |                   |
| Mahaparale Paresh Ramesh (Open) | M.pharm        | 23/02/01    | 1st   | Padm. Dr.D.Y.Patil College of Pharmacy Akurdi | Associate Professor and head (Permanent) | 2.9.2002 to 24.1.2014   | 11 years 4 months |
|                                 | Ph.D.          | 14/11/13    |       |   |  |                         |                   |
| Deore Sharda Laxman (Open)      | M.pharm        | 22/07/06    | 1st   | Govt. College of Pharmacy, Amaravati          | Assistant Professor (Contract basis)     | 7.10.2006 to 17.10.2010 | 7 years 3 months  |
|                                 | Ph.D.          | 13/05/11    |       | Govt. College of Pharmacy, Amravati           | Assistant Professor (Regular)            | 18/12/2010 to 24/01/14  |                   |

Further, in Para 9 respondent no.2 has contended-

***Though the applicant and respondent no.3 Shri Mahaparale Paresh have equal marks i.e.128, the Commission had recommended Shri Mahaparale for appointment as Open (Female) against candidate. It may be noted that while recommending Respondent no.3 the Commission has taken***

*into consideration the Clause(iv) of Rule 10(7) of the Rules of Procedure mentioned above. Applicant and respondent No.3, both have the same educational qualifications i.e. Ph.D. on the last date of receipt of application which is one of the basic educational qualification required for the post in question and not one of the higher academic qualification than the essential required one. Rule 10(7)(i) is applicable when a candidate possesses higher academic qualification than the one that is basic essential qualification. Hence, the Commission could not apply the Clause No.(i). Ph.D. is the basic essential qualification as per the advertisement. Therefore, it cannot be considered as a higher qualification in this case. Hence Commission could not apply the Clause No.(ii). There is no provision for the preferential qualification in the advertisement hence the Clause No.(iii) also could not be applied. The fourth clause thus becomes applicable in this case. Applicant has around 8 years of experience on the post of Assistant Professor, of which 4 years she worked on the contract basis. While Shri. Mahaparale has more than 11 years of experience on the post of Associate professor and Head. Hence the Commission has applied the Clause (iv) of Rule 10(7) and rightly recommended Shri. Mahaparale. Shri. Mahaparale was recommended through the first recommendation list and the applicant was recommended through the waiting list. Hence the name of the applicant cannot be declared above Shri. Mahaparale, and also no question arises for the deemed date.*



***The applicant was not eligible to be recommended in the first recommendation list dated 6.10.2015. Smt. Inamdar Najama Najirahmad was recommended as per merit by the Commission. But she had not joined the post and hence Government requested the Commission to recommend the next meritorious candidate from the waiting list vide its letter dated 20.9.2016. After this, the Commission recommended the name of the applicant from the waiting list as per the merit for the said post vide letter dated 4.10.2016. Copies of the letters dated 20.9.2016 and 4.10.2016 are attached collectively and marked as Exhibit R-1.***

6. Thus, the record shows that respondent no.3 was appointed in the 1<sup>st</sup> round and the applicant came to be appointed afterwards only because appointment of Smt. Inamdar who had topped the Merit List was cancelled as she had communicated that she was not going to join. I have quoted relevant portion of Para 9 of affidavit-in-reply of respondent no.2. It is not in dispute that the applicant had completed Ph.D. earlier i.e. on 13.5.2011 and respondent no.3 had completed it on 14.11.2013. According to the applicant, by virtue of Rule 10(7)(ii) she should have been placed above respondent no.3 because she had acquired higher qualification i.e. Ph.D. earlier in point of time. Reply of respondent no.2 of this point is that for the post of Associate Professor Ph.D. was the basic qualification and hence Rule 10(7) (ii) which speaks

about higher qualification was not applicable. There is merit in this submission. Clause 4.3 of the advertisement fully supports aforesaid contention of respondent no.2.

7. According to respondent no.2, respondent no.3 was placed above the applicant in the Merit List because of greater length of his experience. The table reproduced above shows that respondent no.3 had more experience. Clause 4.4 of the advertisement states that experience of two years post Ph.D. was desirable. As against this, Rule 10(7) (iv) reads- "If the experience is desired for the post in question then, experience on the last day of receipt of application". Plain reading of Rule 10(7)(iv) makes it clear that it only refers to length of experience and makes no distinction between pre Ph.D. and post Ph.D. experience. This being the position the Rule which is unambiguous will have to be given effect to.

In the application the applicant has also raised the following ground.

***(iv) That the applicant in female Open is available with experience and higher qualification earlier to R.No.3. Thus no point to shift the R. No.3 female Open. It is sheer injustice to female candidate when the applicant is available in the same category deserving for selection and merit above the R. No.3.***

In reply to ground (iv) quoted above, respondent no.2 has asserted as follows -

**19. With reference to Para grounds (iv), I say and submit that, females belonging to Non Creamy Layer section can only be considered for the posts reserved for women. The applicant is a female candidate of Open category but mentioned 'NCL-NO' in her application form. Accordingly she was rightly considered as an Open General candidate. Hence, the applicant and the Respondent no.3 had equal opportunity to compete for and to be considered against the post reserved for the Open female category. The respondent no.3 is recommended for the Open female against post as mentioned above. So no injustice has been caused to the applicant.**

The question which arises, so far as this ground is concerned, is whether it would be open to the applicant to agitate it now i.e. after she withdrew O.A.No.373/2016 impugning her non-selection. The answer would be in the negative. While withdrawing O.A.No.373/2016 the applicant sought limited liberty to avail appropriate legal remedy only with regard to her placement in the Merit List. So rest of the contentions can be said to have been waived by her while withdrawing O.A.No.373/2016. This order (Annexure A-7) reads –

**Heard Shri Bharat Kulkarni, the learned counsel for the applicant and Shri V.A.Kulkarni, the learned P.O. for respondents 1 and 2. Shri R.V.Shiralkar, Adv.for R.3.**

**The learned counsel for the applicant stated that, by order dated 28.12.2016, the applicant has been appointed and selected to the post of Associate Professor. However, the applicant appears to have some grievance about her placement in the merit list prepared by MPSC and the learned counsel for the applicant seeks liberty of this Tribunal to seek appropriate legal remedy. O.A. is disposed of with liberty sought by the applicant. No. order as to costs.**

8. Discussion made hereinabove shows that respondent no.2 rightly placed respondent no.3 above the applicant in Merit List which was perfectly in consonance with Rule 10(7). Therefore, no interference would be called for. Hence the order.

**ORDER**

- (i) Application is dismissed.
- (ii) No order as to costs.

(M.A.Lovekar)  
Member (J)

Dated – 24/03/2022.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 24/03/2022.

and pronounced on

Uploaded on : 24/03/2022.\*