

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 70/2022 & O.A.No.71/2022 (D.B.)**

Priyanka Pratap Pandhare,  
Aged about 29 years, Occupation- Service,  
R/o Flat 104, Ashoka Residency, Near  
Samaj Kalyan Office, Post Kala Nagar,  
Sangli – 416416.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through the Principal Secretary,  
Ministry for Public Health Services,  
Health Services Department,  
Mantralaya Mumbai.
- 2) The Commissionerate,  
Health Sciences, Maharashtra State,  
At- Arogya Bhavan,  
Saint George Hospital Campus,  
P.D.Melo Road, Mumbai – 400001.
- 3) The Deputy Director,  
Health Services,  
Commissionerate (Nursing),  
At – Arogya Bhavan,  
Saint George Hospital Campus,  
P.D.Melo Road, Mumbai – 400001.
- 4) The Deputy Director,  
Health Sciences, Nagpur.  
Office – At Mata Kacheri,  
Near Dikshabhoomi, Nagpur.

**Respondents**

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Shri R.R.Rathod, Ld. Counsel for the applicant.  
Shri S.A.Deo, Ld. P.O. for the respondents.

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**Coram:-Hon'ble Shri Shree Bhagwan, Vice-Chairman and  
Hon'ble Shri M.A.Lovekar, Member (J).**

**Dated: - 25<sup>th</sup> August 2022.**

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**With**

Pradeep Vitthal Dokhe,  
Aged about 29 years, Occupation-Service,  
R/o Satyabhama Niwas, Mali Nagar,  
Panmala, Shirdi, Tq. Rahata,  
Dist. Ahmednagar - 423109.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through the Secretary,  
for its Ministry for Health Sciences  
Department,  
Mantralaya Mumbai.
- 2) The Commissionerate,  
Health Sciences, Maharashtra State,  
At- Arogya Bhavan,  
Saint George Hospital Campus,  
P.D.Melo Road, Mumbai - 400001.
- 3) The Deputy Director,  
Health Services,  
Commissionerate (Nursing),  
At - Arogya Bhavan,  
Saint George Hospital Campus,  
P.D.Melo Road, Mumbai - 400001.
- 4) The Deputy Director,  
Health Sciences, Nagpur.

Office – At Mata Kacheri,  
Near Dikshabhoomi, Nagpur.

**Respondents**

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Shri R.R.Rathod, Ld. Counsel for the applicant.  
Shri S.A.Deo, Ld. P.O. for the respondents.

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**Coram:-Hon'ble Shri Shree Bhagwan, Vice-Chairman and  
Hon'ble Shri M.A.Lovekar, Member (J).**

**Dated: - 25<sup>th</sup>August 2022.**

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**JUDGMENT**

**Per :Member (J).**

**Judgment is reserved on 04<sup>th</sup> August, 2022.**

**Judgment is pronounced on 25<sup>th</sup> August, 2022.**

Heard Shri R.R.Rathod, learned counsel for the applicants and  
Shri S.A.Deo, learned C.P.O. for the respondents.

2. The issue for determination in these applications is identical.  
Hence, these applications are being decided by this common  
judgment.

3. Both the applicants are M.Sc. (Nursing). In response to the  
advertisement dated 21.02.2019 they applied for the post of  
Podiatric Nurse. The applicant in O.A.No.70/2022 belongs to SC  
category. The applicant in O.A.No.71/2022 belongs to OBC category.

As per Clause 8(2) of the advertisement it was necessary to secure

45% marks in the examination. Both the applicants waited for reasonable time hoping that the examination would be held. Since examination was not held within this period both of them joined on another post. The applicant in O.A.No.70/2022 joined as Clinical Instructor in Child Health Nursing Department at Sangali. The applicant in O.A.No.71/2022 joined as CHO at Sinner, District Nashik. Ultimately, as per advertisement dated 21.02.2019 the examination was held on 28.02.2021. Both the applicants appeared for the examination. They were declared to have passed the examination for the post of Paediatric Nurse. In the select list their names featured at Sr.No.7 & 18, respectively. They were called for verification of documents and counselling. They resigned their jobs to join on the post of Paediatric Nurse. They received appointment letters to join at Daga Hospital, Nagpur. They joined on this post. By the impugned communication dated 1/6.12.2021 their appointment was cancelled on the ground that they had not secured 45% marks as required under Clause 8(2) of the advertisement. Hence, these applications.

4. It is the contention of the respondents that in O.A.No.1133/2018 the Principal Bench of this Tribunal had directed to fill the vacant posts (pursuant to the aforesaid advertisement), the procedure was expedited, later on the documents furnished by the

candidates were again scrutinised and it was found that both the applicants (and some others) had secured less than 45% marks and to rectify this bonafide mistake the orders cancelling appointment of such ineligible candidates were passed. Further contention of the respondents is that there can be no relaxation in the absence of specific enabling provision so far as qualifying marks are concerned and hence these applications are fit to be dismissed.

5. The applicants have relied on the common judgment dated 06.05.2022 delivered by the Aurangabad Bench of this Tribunal in O.A.Nos.793/2021 and 794/2021. According to the learned Advocate for the applicants said common judgment has squarely covered the issue and hence these applications deserve to be allowed by granting identical relief.

6. It may be mentioned that in the applications before us as well as the applications decided by the Aurangabad Bench the applicants had secured less than 45% marks and all of them belong to the reserved category.

7. In the common judgment dated 06.05.2022 the Aurangabad Bench observed-

27. In the instant case, if at all, any error has been committed, it is not by the applicants but by the respondents in the matter of allowing the applicants as well as six other candidates to participate in the further selection process in spite of the fact that none of them had received the minimum qualifying marks. However, in the error so committed by the respondents, undisputedly, there is no role of the applicants. It is also not the case of the respondents that the applicants have obtained the appointments by fraud, mischief, misrepresentation or mala fide. It is further not in dispute that, to join the present postings, both the applicants have relinquished their earlier job with Zilla Parishad, Nashik by submitting their resignations for the said posts. In view of the fact that without any fault on their part, the applicants are now subjected to suffer the consequences, and as the cancellation of their appointments would severely affect

their economic security, we feel that the dispute in the present matter has to be viewed differently. In the circumstances, as has been held by the Hon'ble Apex Court in the case of *Vikas Pratap Singh and Ors.* cited supra, it would be highly unjust and grossly unfair to cancel the appointments of the applicants who are the innocent appointees. No doubt, in the case of *Vikas Pratap Singh and Ors.* the length of service rendered by the employees who were party in the said dispute was one of the weighing factors along with the fact that in getting such wrongful or

irregular appointment, there were no allegations against the said employees that they have played any fraud, mischief or misrepresentation. In the instant matter, we reiterate that there are no allegations against the present applicants of having committed any fraud or misrepresentation or malafide. In the present matter, according to us, weighing factors to consider the cases of the present applicants would be the fact that both of them have relinquished their earlier job with Zilla Parishad, Nashik in order to join the present posting.

28. Secondly, the applicants belong to backward class and the other six candidates who also have been included in the list of selected candidates though have not received qualifying marks, are also from the backward class. As such, in our opinion, having regard to the observations made and the findings recorded by the Hon'ble Apex Court in the case of *Rajesh Kumar Verma V/s. State of M.P.* [1995 (2) SCC 129] cited supra, the State government may exercise its powers to relax the criteria of minimum qualifying marks in so far as the candidates belonging to backward class are concerned, so that the appointments of the present applicants as well as few others can be saved.

29. Even otherwise, it was difficult to sustain the impugned order since it was passed in utter disregard of the principles of natural justice. The learned Counsel for the applicants has relied upon the judgment of the Hon'ble Apex Court in the case of *Basudeo Tiwary V/s. Sidokanhu*

University [1998 (8) SCC 194]. Observations made in paragraph of the said judgment are relevant in this context, which read thus:

*“(9) The law is settled that non-arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. It has come to be established, as a further corollary, that the audialterampartem facet of natural justice is also a requirement of Article 14, for natural justice is the antithesis of arbitrariness. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable which are the components of fair treatment. The conferment of absolute power to terminate the services of an employee is an antithesis to fair, just and reasonable treatment. This aspect was exhaustively considered by a Constitution Bench of this Court in Delhi Transport Corporation vs. D.T.C. Mazdoor Congress.”*

30. In the instant matter, undisputedly, before cancellation of the appointments of the applicants respondents have not issued any notice to the applicants. No explanation is given by the respondents as to why an opportunity of hearing was not given to the applicants before taking a drastic step of cancellation of their appointments.



**31. For the reasons stated above, the orders of cancellation of appointments of the present applicants have to be held unsustainable and deserve to be set aside. We accordingly set aside the same and direct the State Government to favorably and sympathetically reconsider the cases of the present two applicants as well as similarly situated other candidates in light of the observations made by us in the present order and take a decision in light of the judgment delivered by the Hon'ble Apex Court in the case of Rajesh Kumar Verma V/s. State of M.P. [1995 (2) SCC129] to suitably relax the criteria of the minimum qualifying marks to ensure that the employment of the present applicants is protected. All such exercise has to be completed by the respondents within eight weeks from the date of this order. It is clarified that in the event of reappointments of the applicants and other similarly situated candidates, if any, the same shall for all intents and purposes be fresh appointments, which would not entitle the applicants/appointees to any back wages, seniority or any other benefits based on their earlier appointments.**

By observing thus the impugned order dated 06.12.2021 passed against the applicants cancelling their appointment was quashed and set aside and the respondents were directed to reconsider their decision of cancelling appointment / terminating services of the applicants. The applicants before us are identically

placed. Hence, they, too, would be entitled to the following relief.

Hence, the order.

**ORDER**

- (I) The order dated 1/6.12.2021 whereby the respondents have cancelled the appointment of the applicants is quashed and set aside.
- (II) The respondents are directed to reconsider their decision having regard to the observations made in this judgment as well as the common judgment dated 06.05.2022 passed by the Aurangabad Bench of this Tribunal in O.A.Nos.793/2021 & 794/2021, within eight weeks from the date of this order.
- (III) There shall be no order as to costs.

(M.A.Lovekar)  
Member (J)

(Shree Bhagwan)  
Vice Chairman

Dated – 25/08/2022

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 Vice Chairman &  
Court of Hon'ble Member (J) .  
Judgment signed on : 25/08/2022.  
and pronounced on  
Uploaded on : 25/08/2022.