

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 369 /2022 (D.B.)

Dr. Shri Milind S/o Suryakantrao Vyawahare,
Aged about 50 years,
Occupation - Service, R/o Plot No. 28,
Suryamala, Near Shri Datta Mandir,
Dattatrey Nagar, Nagpur Tahsil &
District Nagpur (Maharashtra).

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Medical Education & Drugs,
Office at 9th Floor, B-Wing,
Gokuldas Tejpal Hospital Building,
Lokmanya Tilak Road,
Mumbai-400 001.
- 2) Director, Medical Education & Research,
Having office at 4th Floor,
Government Dental College and Hospital Building,
P. Demelo Road, Fort,
Mumbai- 400 001.
- 3) Maharashtra Public Service Commission,
Through its Secretary,
Having head office at 5, 7 & 8 Floor,
Koopraj Telephone Nigam Building,
Maharashree Karve Marg,
Kuprej, Mumbai-400 021.
AND
Fort Office - Bank of India Building, 03rd Floor,
Fort, Mumbai-400 001.

Respondents

WITH

ORIGINAL APPLICATION NO. 394 /2022 (D.B.)

Dr. Shri Atul S/o Vijay Rajkondawar,
Aged about 54 years,
Occupation - Service, R/o Capital Heights,
T-1/F-1805, Near Medical Square,
District Nagpur (Maharashtra).

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Medical Education & Drugs,
Office at 9th Floor, B-Wing,
Gokuldas Tejpal Hospital Building,
Lokmanya Tilak Road,
Mumbai-400 001.
- 2) Director, Medical Education & Research,
Having office at 4th Floor,
Government Dental College and Hospital Building,
P. Demelo Road, Fort,
Mumbai- 400 001.
- 3) Maharashtra Public Service Commission,
Through its Secretary,
Having head office at 5, 7 & 8 Floor,
Koopraj Telephone Nigam Building,
Maharashree Karve Marg,
Kuprej, Mumbai-400 021.
AND
Fort Office - Bank of India Building, 03rd Floor,
Fort, Mumbai-400 001.

Respondents

Shri H.D.Dangre, Id. Advocate for the applicant.

Shri S.A.Sainis, Id. P.O. for the respondents.

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

JUDGMENT**Judgment is reserved on 18th Jan., 2023.****Judgment is pronounced on 31st Mar., 2023.****(Per:-Member (J))**

Heard Shri H.D.Dangre, learned counsel for the applicants and Shri S.A.Sainis, learned P.O. for the Respondents.

2. Since identical issues arise in these O.As. the same are being decided by this common judgment.

3. In response to advertisement dated 17.09.2021 both the applicants submitted online application for the post of Professor in General Medicine from Open (General) category since they possessed prescribed qualification and minimum experience of 3 years as Associate Professor. By the impugned decision dated 14.03.2022 experience criterion for Open (General) category was revised from 3 years to 14 years and 11 months. Since the applicant in O.A. No. 369/2022 was having experience of 6 years, 2 months and 22 days, he was not shortlisted for interview. However, the applicant in O.A. No. 394/2022 was possessing experience as per revised criterion dated 14.03.2022, therefore, he was shortlisted. As per this revised experience criterion 11 persons were shortlisted. Thereafter, by another impugned decision dated 21/22.03.2022 experience criterion for Open (General) category was again revised to 15 years and 7 months. For Open (Female) category

experience criterion was reset at 6 years 2 months. The applicant in O.A. No. 394/2022 did not possess said experience. Therefore, he, too, was found to be not eligible. The applicants came to know that by applying revised experience criterion only 3 candidates each from Open (General) and Open (Female) categories were shortlisted for interview. According to the applicants the shortlisting of candidates for interview was arbitrary, contrary to relevant clauses of the advertisement as well as Rules of Procedure. In O.A. No. 369/2022 both the decisions dated 14.03.2022 and 21/22.03.2022 have been impugned whereas in O.A. No. 394/2022 the decision dated 21/22.03.2022 has been impugned.

4. The applications are opposed by the M.P.S.C./Respondent no. 3 by relying on clauses 5.1 and 5.2 of the advertisement and Rule 9 (i) of the Maharashtra Public Service Commission Rules of Procedure, 2014.

5. Clauses 5.1 & 5.2 of the advertisement read as under:-

५.१ प्रस्तुत जाहिरातीमध्ये नमूद केलेली अर्हता, अनुभव इत्यादी अर्हता किमान असून, किमान अर्हता धारण केली म्हणून उमेदवार मुलाखतीस बोलाविण्याकरिता पात्र असणार नाही.

५.२ जाहिरातीस अनुसरून प्राप्त अर्जांची संख्या आयोगाच्या कार्यनियमावलीतील तरतूदीनुसार वाजवी प्रमाणापेक्षा जास्त असेल आणि अर्ज सादर केलेल्या सर्व पात्र उमेदवारांच्या मुलाखती घेणे सोयीस्कर नसल्यास मुलाखतीसाठी उमेदवारांची संख्या मर्यादित करण्याच्या दृष्टीने जाहिरातीमध्ये नमूद शैक्षणिक अर्हता आणि/अथवा अनुभव

यापेक्षा अधिक शैक्षणिक अर्हता/अनुभव किंवा अन्य योग्य निकष यांच्या आधारे अथवा चाळणी परीक्षेद्वारे मुलाखतीस पात्र उमेदवारांची संख्या मर्यादित करण्यात येईल.

It was submitted by Shri Dangre, Id. Counsel for the applicant that by no stretch of imagination could it be said that the candidates were unreasonably large in number necessitating shortlisting as aforesaid by taking recourse to clause 5.2 of the advertisement. It is not in dispute that for 6 posts of Professor in General Medicine 26 applications were received out of which 7 were rejected at the outset for various reasons and 19 applicants were found to be *prima facie* eligible.

6. It is the contention of respondent no. 3 that for Open (General) and Open (Female) categories eligible candidates were more than the proportion stipulated in rule 9 (i) of Rules of Procedure and hence only for these two categories shortlisting was required to be made. Such shortlisting was not required for S.C. (General), O.B.C. (General) and D.T.-A (General) categories because candidates belonging to these categories were less in number. By adopting this procedure 11 out of 19 candidates were found to be eligible for interview for 6 posts of Professor in General Medicine.

7. Categorywise chart for the post of Professor in General Medicine, furnished by the respondents is as under:-

| Sr. No. | Category | No. of posts | No. of eligible candidates as per criteria | Experience Criteria |
|---------|----------------|--------------|--|---|
| 1 | Open (General) | 1 | 3 | 15 years, 7 months |
| 2 | Open (Female) | 1 | 3 | 6 years, 2 months |
| 3 | SC (General) | 1 | 2 | As per experience mentioned in advertisement. |
| 4 | OBC (General) | 1 | 1 | As per experience mentioned in advertisement. |
| 5 | DT-A (General) | 1 | 2 | As per experience mentioned in advertisement |
| 6 | EWS | 1 | 0 | Did not receive application. |

8. Rule 7 of Rules of Procedure of 2014 lays down modes of recruitment. Rule 7 (H) reads as under :-

(H) Direct recruitment:

Shall consist of any one of the following-

(i) Interviews only when the number of eligible applicants is within the proportion prescribed under the provision of Rule 9 (i).

- (ii) *Shortlisting of candidates by applying suitable criteria and thereafter by interview of the shortlisted candidates.*
- (iii) *Screening test of the candidates followed by interview.”*

The respondents have relied on rule 9 (i) relevant part of which reads as under:-

“9 *Direct Recruitment:-*

- (i) *The number of candidates to be shortlisted for the interview shall be as follows:-*

| <i>No. of posts advertised</i> | <i>No. of candidates to be called for interview</i> |
|--------------------------------|---|
| <i>1</i> | <i>5</i> |
| <i>2</i> | <i>8</i> |
| <i>3 and more</i> | <i>3 times</i> |

The respondents have further relied on rule 9 (v) (d) which reads as under:-

“(v) *In case, the response to the advertisement exceeds the proportion laid down in Rule 9 (i) above, the Commission may apply criteria for shortlisting of the candidates for interview as follows:-*

(a)****

*(b)*****

*(c)*****

(d)For the posts prescribing minimum academic qualifications together with minimum experience, the criterion of higher experience than the minimum prescribed shall be applied after the preferential qualification for short listing and if the ratio is not reached, then only the criterion of higher academic qualification as provided for in clause (b) above shall be invoked.

9. We have reproduced the chart containing details of the candidates who were called for interview for the post of Professor in General Medicine. In all 5 candidates belonging to S.C. (General), O.B.C. (General) and D.T.-A(General) were called for interview. After excluding these 5 candidates 14 candidates belonging to remaining two categories viz Open (General) and Open (Female) remained. According to the respondents since this number i.e. 14 exceeded the stipulation of 1:3 in Rule 9 (i), shortlisting became necessary. By resorting to shortlisting in all 8 candidates belonging to Open (General) and Open (Female) categories were eliminated. In each of these two categories 3 candidates were shortlisted for interview.

10. By virtue of interim order passed by this Tribunal both the applicants were permitted to appear for the interview and they were interviewed. Marks obtained by 11 candidates who were held to be eligible, as well as these two applicants, in the interview are placed on record.

11. It cannot be disputed that respondent no. 3 does have power to truncate the list of candidates to be called for interview. We have reproduced Rules 9 (i) and 7 (H) of Rules of Procedure of 2014. Rule 7 (H) (ii) lays down that for shortlisting suitable criteria shall be applied.

12. We have also reproduced clause 5.2 of the advertisement. It was submitted by Advocate Shri Dangre that in the instant case shortlisting ought not to have been resorted to because all 14 candidates belonging to Open (General) and Open (Female) categories could have been called for interview without any inconvenience. Out of 14 candidates belonging to these two categories 6 i.e. 3 each were shortlisted and 8 were eliminated.

13. In support of his submission that interpretation sought to be placed on Rule 9 of the Rules of Procedure of 2014 by the respondents is misconceived, Advocate Shri Dangre has placed on record a chart in the rejoinder. Said chart refers to other posts advertised by the same advertisement. The chart is as under:-

| Sr. No. | Advertisement No. | Post | Total Posts | Date of publication of list of eligible candidates | No. of candidates held eligible and called for interview | Date of interview |
|---------|-------------------|------------------------------|-------------|--|--|---------------------|
| 1. | 066/2021 | Professor in Surgery | 3 | 11.08.22 | 39 | 22.08.22 |
| 2. | 073/2021 | Professor Anatomy | 2 | 30.06.22 | 38 | 05.07.22 & 06.07.22 |
| 3. | 076/2021 | Professor Physiology | 1 | 20.05.22 | 12 | 08.06.22 |
| 4. | 078/2021 | Professor Forensic Medicine | 4 | 30.08.22 | 26 | 30.09.22 |
| 5. | 079/2021 | Professor Micro Biology | 4 | 30.08.22 | 29 | 02.09.22 & 05.09.22 |
| 6. | 082/2021 | Professor Pathology | 6 | 30.08.22 | 28 | 16.09.22 |
| 7. | 083/2021 | Professor Community Medicine | 5 | 30.08.22 | 49 | 01.09.22 & 02.09.22 |

On the basis of this chart it is contended in para no. 6 of rejoinder (in O.A. No. 369/2022):-

6. The applicant thus submits that such discriminatory approach of respondent No. 3- MPSC for the advertisement

and post which is subject matter of the present application was solely with a view to illegally reduce the competition under the veil of shortlisting and to deprive the meritorious candidates from participating in the selection process. Such an approach and overtact by respondent No. 3 MPSC would not sustain in the eyes of law.

This chart clearly shows that shortlisting of candidates belonging to Open (General) and Open (Female) categories for the post of Professor in General Medicine was discriminatory.

14. In support of shortlisting made by them, the respondents have relied on **Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar & Another etc. etc. (Judgment of Hon'ble Supreme Court dated 19.09.1994)**. In this case it is held :-

The question which is to be answered is as to whether in the process of shortlisting, the Commission has altered or substituted the criteria or the eligibility of a candidate to be considered for being appointed against the post of Presiding Officer, Labour Court. It may be mentioned at the outset that whenever applications are invited for recruitment to the different posts, certain basic qualifications and criteria are fixed and the applicants must possess those basic

qualifications and criteria before their applications can be entertained for consideration. The Selection Board or the Commission has to decide as to what procedure is to be followed for selecting the best candidates amongst the applicants. In most of the services screening tests or written tests have been introduced to limit the numbers of the candidates who have to be called for interview. Such screening tests or written tests have been provided in the concerned statutes or prospectus which govern the selection of the candidates. But where the selection is to be made only on the basis of interview, the Commission or the Selection Board can adopt any rational procedure to fix the number of candidates who should be called for interview. It has been impressed by the courts from time to time that where selections are to be made only on the basis of interview, then such interviews/viva voce tests must be carried out in a thorough and scientific manner in order to arrive at a fair and satisfactory evaluation of the personality of the candidate.

The respondents have also relied on **Union of India and Ors. Vs. T. Sundararaman & Ors. (Judgment of Hon'ble Supreme**

Court dated 09.04.1997 in Civil Appeal No. 44/1990). In this case the facts were as follows:-

2 In the present case 37 applications were received for the three posts. The Commission thereupon shortlisted the candidates to be called for interview on the basis of 4 years years experience or more. As a result, 20 candidates were called for interview. Respondent no. 1 did not qualify for short listing and hence he was not called for Interview.

In these facts it was held:-

The Tribunal has clearly erred in doing so. Note 21 to the advertisement expressly provides that if a large number of applications are received the commission may shortlist candidates for interview on the basis of higher qualifications although all applicants may possess the requisite minimum qualifications. In the case of M.P. Public Service Commission V. Navnit Kumar Potdar and Anr. MANU/SC/0017/1995 (1995) ILLJ 180SC this Court has upheld shortlisting of candidates on some rational and reasonable basis. In that case, for the purpose of shortlisting, a longer period of experience than the minimum prescribed was used as a criterion by the Public Service Commission for calling candidates for an interview.

This was upheld by this Court. In the Case of Govt. of A.P. V. P Dilip Kumar and Anr. MANU/SC/0483/1993 (1993)1SCR435 also this Court said that it is always open to the recruiting agency, to screen candidates due for consideration at the threshold of the process of selection by prescribing higher eligibility qualification so that the field of selection can be narrowed down with the ultimate objective of promoting candidates with higher qualifications to enter the zone of consideration. The procedure, therefore, adopted in the present case by the Commission was legitimate. The decision of the Tribunal is, therefore, set aside and the appeal is allowed. There will, however, be no order as to costs

In both these rulings it is stressed that shortlisting should be rational and reasonable.

In the instant case one post each of Professor in General Medicine from Open (General) and Open (Female) Category is to be filled and before shortlisting, 14 candidates were found to be eligible. Out of these 14 candidates 8 were eliminated and 6 shortlisted. Such shortlisting was discriminatory as becomes evident from the chart (at P. 123 in O.A. No. 369/1994) which we have reproduced above.

15. Rule 9 (i) of Rules of Procedure of 2014 prescribes proportion of 1:3. The issue involved in the instant O.As. can be appreciated from another angle as well. There were in all 6 posts of Professor in General Medicine. Total valid applications for these 6 posts were 19. This could not be said to be a large number. By applying proportion of 1:3, 18 candidates in all for all categories could have been shortlisted. Addition of 1 candidate to these 18 would have meant elimination of no candidate for interview. This would have been quite rational. This could have been done without any inconvenience whatsoever. These 19 candidates of all categories who were *prima facie* found to be eligible possessed minimum experience of 3 years as Associate Professor. Had all of them been called for interview it would have meant offering them a level field. For the reasons discussed above the impugned decisions dated 14.03.2022 and 21/22.03.2022 will have to be quashed and set aside. Hence the order:-

ORDER

- A. Decisions dated 14.03.2022 and 21/22/03.2022 taken by respondent no. 3 to shortlist candidates belonging to Open (General) and Open (Female) categories for the post of Professor in General Medicine are quashed and set aside.

- B. Both the applicants as well as remaining 6 candidates who were eliminated, provided they are eligible, are held entitled to be called for interview.
- C. Since both the applicants have been already interviewed by virtue of interim order passed by this Tribunal, remaining 6 candidates, too shall be interviewed provided they are eligible. After these candidates are interviewed, composite result of all 14 candidates including the applicants shall be declared and based on such result recommendation to fill the posts of Professor in General Medicine from Open (General) and Open (Female) categories shall be made.
- D. The O.As. are allowed in these terms with no order as to costs.

(M.A.Lovekar)
Member(J)

aps

Dated - 31/03/2023

(Shree Bhagwan)
Vice Chairman

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

Name of Steno : Akhilesh Parasnath Srivastava.

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

Judgment signed : 31/03/2023.
on and pronounced on

Uploaded on : 03/04/2023.