

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 535/2019 (D.B.)

Dr. (Mrs.) Veena w/o Arvind Thakre,
Aged about 55 years, Occ. Service,
R/42 Subhash Nagar, Nagpur,
Tq. & Dist. Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Secretary Medical Education & Drugs,
Gokuldas Tejpal Hospital Compound, Lokmanya Tilak
Marg, New Mantralaya, Mumbai-4400001.
- 2) Director, Medical Education & Research,
Government Dental College & Hospital,
4th floor, Saint Georges Hospital Campus,
De-Mello Road, Fort, Mumbai-4400001.
- 3) Dean, Government Medical College,
Ajni, Nagpur, District Nagpur.
- 4) Maharashtra University of Health Sciences,
through its Registrar, Vani Road, Mashrul,
Nashik-422 004.

Respondents.

**S/Shri R.M. Ahirrao, S.N. Chichbankar, R.V. Shiralkar, Advs. for
the applicant.**

Shri M.I. Khan, P.O. for respondent nos.1 to 3.

Shri Abhijit L. Deshpande, Advocate for respondent no.4.

WITH

ORIGINAL APPLICATION No. 536/2019 (D.B.)

Dr. (Mrs.) Minal Manohar Kulsange,
Aged about 40 years, Occ. Service,
R/o 42, Kanhal Toli Gondia, Tq. & Dist. Gondia.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Secretary Medical Education & Drugs,
Gokuldas Tejpal Hospital Compound, Lokmanya Tilak
Marg, New Mantralaya, Mumbai-4400001.
- 2) Director, Medical Education & Research,
Government Dental College & Hospital,
4th floor, Saint Georges Hospital Campus,
De-Mello Road, Fort, Mumbai-4400001.
- 3) Dean, Government Medical College,
Ajni, Nagpur, District Nagpur.
- 4) Maharashtra University of Health Sciences,
through its Registrar, Vani Road, Mashrul,
Nashik-422 004.

Respondents.

**S/Shri R.M. Ahirrao, S.N. Chichbankar, R.V. Shiralkar, Advs. for
the applicant.**

Shri M.I. Khan, P.O. for respondent nos.1 to 3.

Shri Abhijit L. Deshpande, Advocate for respondent no.4.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 13th March, 2020.

Date of Pronouncement of Judgment : 27th April, 2020.

COMMON JUDGMENT

Per : Member (J).

(Delivered on this 27th day of April, 2020)

Heard Shri R.M. Ahirrao, learned counsel for the
applicants, Shri M.I. Khan, learned P.O. for respondent nos.1 to 3 and
Shri A.L. Deshpande, learned counsel for respondent no.4.

2. As identical questions of facts and law are involved in both the applications, therefore, they are heard together and disposed of by this common order –

3. Both the applicants are challenging the recruitment rules framed by the Government dated 1st June, 2019 on the ground that the Rule 6 (a) is arbitrary, discriminatory and unreasonable and it is in violation of Articles 14 & 21 of the Constitution of the India. It is submitted that the rules are framed to promote the Physiotherapist who were not eligible for promotion as per the old rules as per seniority and only with intention to show undue favour to some of the Physiotherapists, the rules are framed in a fashion that their operation would cease after 31/3/2020. The learned counsel for both the applicants submitted that the applicants joined the services as Physiotherapist, they had sufficient experience. Both the applicants obtained the Master Degree in the Physiotherapy and therefore as per the 1973 rules, they were entitled to be promoted. It is grievance of the applicants that vide Notification dated 1/6/2019 the respondent no.1 framed the rules to be remained in force till 31/3/2020 and the impugned rule 6 (a) is framed for increasing the eligibility criteria. It is submitted that as per the old rules, it was not requirement that there must be three years experience as a Physiotherapist after obtaining Post Graduate Degree. It is submitted that considering the fact that

the rules would operate only till 31/3/2020, therefore, the intention of the respondent no.1 was obvious i.e. to give undue favour to some of the Physiotherapist who were not entitled for the promotion as per the seniority.

4. It is submitted that vide order dated 31st September,2019 the respondents have promoted Ku. Archana B. Sonare who was at Sr.No.7 in the seniority and Smt. Sarla Khangare who was at Sr.No.16 in the seniority. It is submission of the applicants that the applicant Veena A. Thakre was at Sr.No.2 and the applicant Smt. Meenal Kulsunge was at Sr.No.11 in the seniority. Thus it is submitted that as per the old rules, both the applicants were eligible for promotion and by framing the rules giving force for a short period, their right is intentionally defeated by the respondents and therefore the rule 6 (a) be quashed and direction be given to the respondents to appoint the applicants on the post of Assistant Professor, Group-B in Physiotherapy subject.

5. The respondents have resisted the applications vide their reply which is at page no.74. The first contention of the respondents is that it is prerogative of the respondent no.1 to frame the recruitment rules and this policy decision is taken by the respondent no.1 to enhance the eligibility criteria and therefore three years experience after Post Graduation is prescribed. It is submitted that it is a policy

decision of the Government, therefore, this decision cannot be challenged before the Administrative Tribunal. It is submitted that the situation was governed by the rules which were framed on 29/10/1973 and therefore it was need to frame the new rules and accordingly the rules are framed.

6. The next ground of attack is that the Clauses 2 (f), 5 (b) and 6 (b) of the rules are very much material. According to the respondents these clauses referred to the provision of the Selection Board. In the year 2014 teaching post in Government Medical Colleges were excluded from the purview of MPSC and an independent Selection Board was constituted to make recommendation of suitable candidates. As per the decision taken by the Cabinet vide Resolution dated 13/8/2018, the teaching post in Government Medical Colleges were again to be brought in purview of MPSC and to abolish Selection Board w.e.f. 31/3/2020 and therefore the life of the rules is till 31/3/2020. It is denied that only for giving undue benefit to other Physiotherapists and to dislodge the seniority of the applicants, the rules are framed in such fashion. On this ground it is submitted there is no merit in both the O.As.

7. We have heard submissions on behalf of both the sides. So far as contention of the applicants that the rules are unreasonable, arbitrary and contrary to Articles 14 & 21 of the Constitution of India is

concerned, we do not see any merit in this contention. The legal position is well established in case of **CMD/ Chairman, Bharat Sanchar Nigam Limited & Ors. Vs. Mishri Lal and Ors, (2011)14 SCC,739.** The Hon'ble Apex Court has laid down that the Government is not under any restriction not to change the rules under Article 309 proviso before a particular period and Government can even frame the rules giving retrospective effect even detrimental to the Government employee. In view of this legal position, we reject the contention of the applicants that rule 6 (a) is violative of the Article 14 & 21 of the Constitution of India or it is unreasonable.

8. So far as second contention of the applicants is concerned, we would like to point out that the respondents have placed on record the G.R. dated 31/8/2018. The Government has taken a decision that till 31/3/2020 the appointments on the teaching posts, in the Government Medical and Dental Colleges, be taken out of the jurisdiction of Board and from 1/4/2020 the said post be filled in by the MPSC. Thus it seems that there is a reason to give limited life to the rules dated 1/6/2019.

9. In this background, we would like to point out that if in future the eligibility i.e. experience criteria is again relaxed by the Government and it is reduced as per the rules framed in 1973, only in that situation the applicants can contend that only for giving undue

advantage to some of the Physiotherapists Rule 6(a) was incorporated.

10. In view of this, we do not see any merit in both the applications, however we give liberty to the applicants to challenge the promotion and claim the deemed date if the eligibility experience criteria is again reduced by the Government. In the result, we pass the following order–

ORDER

The O.As. stand dismissed. Liberty is given to the applicants to challenge the promotions of Ku. Archana B. Sonare and Smt. Sarla Khangare in event the eligibility experience criteria for the post of Assistant Professor, Physiotherapy Group-B is again reduced by the Government. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 27/04/2020.

*dnk.

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

Name of Steno : D.N. Kadam

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

Judgment signed on : 27/04/2020.

Uploaded on : 30/04/2020.