

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.559 OF 2015
WITH
ORIGINAL APPLICATION NO.802 OF 2015**

DISTRICT : MUMBAI
Sub.:- Selection Process

ORIGINAL APPLICATION NO.559 OF 2015

1. Dr. Audumbar N. Mhaske.)
Age : 44 Yrs, Occu. : Service,)
C/o. Department of Surgery,)
Dr. V.M. Medical College, Solapur – 4.)

2. Dr. Mukund B. Kulkarni.)
Age : 43 Yrs, Occu. : Govt. Service,)
R/o. 6, Ground Floor, Mayurvihar Colony,)
Pawasewadi Naka, Nanded – 431 602.)

3. Dr. Sudha S. Karadkhedkar.)
Age : 43 Yrs, Occu. : Govt. Service,)
R/o. Plot No.26, Sindhi-Patol Colony,)
New Mondha, Nanded.)

4. Dr. Manish M. Tiwari.)
Age : 34 Yrs, Occu. : Govt. Service,)
R/o. Sindhudurg-6, Medical Campus,)
SRTGMC, Ambajogai, District : Beed.)

5. Dr. Satish D. Kamble.)
Age : 39 Yrs, Occu. : Govt. Service,)
R/o. 1588A, Nr. Swimming Tank,)
Ganeshnagar, Sangli – 416 416.)...Applicants

Versus

1. The State of Maharashtra.)
Through it's Secretary,)

Medical Education & Drugs Dept.,)
G.T. Hospital, 9th Floor, Mumbai – 1.)

2. The Director.)
Directorate of Medial Education &)
Research, Govt. Dental College &)
Hospital Building, St. George's)
Hospital Compound, Near V.T.,)
Mumbai – 400 001.)

3. The Selection Board.)
Through its Secretary,)
Medical Education & Drugs Dept.,)
Mantralaya, Mumbai – 1.)

)...**Respondents**

WITH

ORIGINAL APPLICATION NO.802 OF 2015

1. Dr. Satish B. Mane.)
Age : 50 Yrs, Occu. : Govt. Service,)
C/o. S.R.T, GMC, Ambajogai,)
District : Beed.)

2. Dr. Santoshkumar A. Dope.)
Age : 39 Yrs, Occu. : Govt. Service,)
C/o. Govt. Medical College,)
Aurangabad – 431 001.)

3. Dr. Sujeet A. Divhare.)
Age : 37 Yrs, Occu. : Govt. Service,)
C/o. Grant Govt. Medical College,)
Mumbai.)

4. Dr. Rameshkumar G. Dawkar.)
Age : 41 Yrs, Occu. : Govt. Service,)
C/o. Dr. V.M. Govt. Medical College,)
Solapur.)

5. Dr. Pawar Baby Minakshi Laxman.)
Age : 42 Yrs, Occu. : Govt. Service,)
C/o. Department of Physiology,)
B.J. Medical College, Pune.)

6. Dr. Pradip Kasabe.)
Age : 41 Yrs, Occu. : Govt. Service,)

C/o. Dr. VMGM College)
Solapur.)

7. Dr. Paridhi R. Garg.)
Age : 38, Yrs, Occu. : Govt. Service,)
C/o. Government Medical College,)
Akola.)

8. Dr. Shreechakradhar U. Mungal.)
Age : 37 Yrs, Occu. : Govt. Service,)
C/o. Government Medical College,)
District : Latur.)

)...**Applicants**

Versus

1. The State of Maharashtra & 2 Ors.)...**Respondents**

Mr. Y.P. Deshmukh, Advocate for Applicants.

Smt. K.S. Gaikwad , Presenting Officer for Respondents 1 & 2.

Shri D.B. Khaire, Advocate for Respondent No.3.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 24.02.2023

JUDGMENT

1. Both these Original Applications are heard and being decided by the common order, since issue involved is identical.

2. The Applicants are non-selected candidates for the post of Associate Professor in Physiology, Pediatrics and Surgery for which applications were invited by Respondent No.2 under Advertisement dated 01.04.2015. That time, the Government had taken decision to exempt the filling of these posts through Maharashtra Public Service Commission (MPSC) and accordingly, Advertisement was issued for the selection through Selection Committees. There were total 82 vacant posts of different streams in Medical College. The Applicants applied for the post of Associate Professor in Physiology, Pediatrics and Surgery. Respondent No.2 received 471 applications and out of them, 461

candidates were interviewed from 25.06.2015 to 30.06.2015. Since number of candidates to be interviewed were large in number, Respondent No.2 constituted 7 Panels in terms of G.Rs. dated 16.06.2015 and 23.06.2015 whereby Government had constituted Panel of experts for selection of the candidates. The Applicants also participated in the process, Interviewed, but did not succeed.

3. The Applicants have challenged entire selection process undertaken by Advertisement dated 01.04.2015 and prayed to quash and set aside the same. Pertinently, no relief is claimed by the Applicants for themselves. It is not the case of Applicants that they be declared successful candidates. All that, prayer is to quash and set aside the entire selection process undertaken in terms of Advertisement dated 01.04.2015.

4. Shri Y.P. Deshmukh, learned Advocate for the Applicants sought to challenge the process of selection on following grounds :-

- (i) Respondents ought to have short-listed the candidates in the ratio of 1:3 in terms of Rules of MPSC.
- (ii) Respondents have not fixed any criteria or guidelines about the evaluation of candidates for their selection.
- (iii) In some Panels, one of the Members was acquainted to the candidate one way or other at least in 6 selected candidates as mentioned in Page No.44. The learned Advocate for the Applicants, therefore, submits that there was a conflict of interest and that particular member from selection Panel ought to have recused from the Panel.

5. On the above grounds, learned Advocate for the Applicants sought to canvass that selection was not transparent, fair and there was likelihood of undue favour to 6 candidates as mentioned at Page No.44 of P.B.

6. Per contra, Shri D.B. Khaire, learned Advocate for Respondent No.3 retorted that O.A. itself is not maintainable, since Applicants have not joined the successful candidates for the post of Associate Professor in Physiology, Pediatrics and Surgery in which Applicants applied and in absence of those candidates in O.A, there is inherent defect of non-joinder of necessary parties and O.A. is liable to be dismissed on this ground alone.

7. As regard merit of the matter, he admits that no short-listing criteria was adopted in terms of ratio of 1:3 as per MPSC Rules, since Respondents wanted to give opportunity to all eligible candidates and by not adopting short-listing criteria, no prejudice has been caused to the Applicants. Insofar as conflict of interest is concerned, he submits that since 461 candidates were to be interviewed, 7 Panels of experts were constituted in terms of G.Rs. dated 16.06.2015 and 23.06.2015 and the candidates were allotted to the Panel randomly by giving token to them. Thus, he meant to say, there is no certainty of interviewing particular candidate by particular Panel, and therefore, question of conflict of interest did not survive. Apart, according to him, the decision was taken by Selection Committee unanimously and even if assuming that one of the member of Committee was known to some of the candidates, that itself would not be a ground of bias or prejudice or favoritism. He submits that in absence of any specific pleadings and allegations of nepotism, favoritism, such a challenge on vague and unsubstantiated pleadings holds no water.

8. In view of above, the issue posed for our consideration is whether entire selection process conducted in terms of Advertisement dated 01.04.2015 can be quashed and set aside as prayed for and in our considered opinion, the answer is in emphatic negative.

9. During the course of hearing, when repeatedly Tribunal raised the question to learned Advocate for the Applicants about non-joining of

those successful candidates at least from streams of Physiology, Pediatrics and Surgery, all that he tried to contend that the Tribunal by order dated 28.09.2015 protected the interest of Applicants by giving direction to the Respondents to proceed with the appointments, but they be specifically informed that their appointment is subject to outcome of the orders to be passed in O.A. on merit.

10. True, the perusal of order dated 28.09.2015 reveals that the appointment was to be made with specific mention in the appointment order that it would be subject to outcome of final orders to be passed in O.A. However, the question arises as to whether this would dispense with the necessity of non-joinder of necessary parties. As stated above, the Applicants have prayed to quash and set aside the entire selection process without joining the selected candidates. The Applicants are aware about the names and details of those selected candidates. Though the orders of appointments were issued to them subsequent to filing of O.A, the fact remains that they are working for last 8 years on the post on which they are selected. This being so, the principles of natural justice as well as basic rules of procedure require that they should have been joined as Respondents. At least some of them ought to have been joined in the representative capacity. Order 1, Rule 9 of Code of Civil Procedure provides that no suit shall be defeated by reason of mis-joining or mis-joinder of parties or Court may in any Suit deal with the matter in controversy insofar as record the rights and parties actually before it. However, it's proviso makes it clear that nothing in Order 1, Rule 9 applies to non-joinder of necessary parties. Needless to mention, necessary parties are those parties whose presence in the Suit or matter is indispensable for proper adjudication in the matter on merit. The selected candidates are definitely affected persons and at least some of them ought to have been joined in these O.As.

11. During the course of hearing also, though opportunity was given to the learned Advocate for the Applicants, he did not make any statement

for taking remedial measures or to join them as party. All that, he submits that the matter is of 2015 and it be decided on the basis of submissions advanced by him.

12. In this view of the matter, the defect of non-joining of necessary party itself goes to be root of the matter and on that count itself, O.A. is liable to be dismissed.

13. Apart, even on merit also, we find no merit in the O.A.

14. True, in terms of Rules of MPSC, the ratio should be 1:3 for interview. However, in the present case, admittedly, the decision was taken by Government in terms of G.R. dated 15.07.2014 to fill-in the posts independently by taking interviews through Selection Committee. This being the position, the Rules of MPSC would not attract here and discretion is left to Respondent No.2 about the short-listing.

15. Here again, the question would arise about the prejudice to the Applicants for not adopting short-listing criteria. The Respondents interviewed all 471 candidates instead of restricting ratio of 1:3 for interview. Indeed, by doing so, the Respondents have given scope to one and 461 candidates who were found eligible, so that the zone of consideration is bigger and to get good candidates on merit. This being so, the grievance of the Applicants that Respondents ought to have called 3 times candidates only for interview holds no water. At any rate, it has not caused any prejudice to the Applicants. One can understand such grievance, where candidates are deleted from the list by adopting short-listing criteria. Here, situation is different, since Applicants as well as all other eligible candidates got opportunity to present themselves before Selection Panel. We, therefore, find no substance in the submission advanced by the learned Advocate for the Applicants.

16. Then it comes the issue of so called conflict of interest. In this behalf, learned Advocate for the Applicants has placed on record the Chart at Page No.44 to bolster-up that 6 candidates were known to one of the member of Selection Committee, and therefore, those members of Selection Committee ought to have recused from the exercise. This is the only ground raised to substantiate alleged conflict of interest. Notably, the Panel was consist of 4 members and the assessment was made by Committee headed by present Vice-Chancellor of Medical Science Universities of Maharashtra. Even assuming that the Government representative who is Member No.4 in Selection Committee alleged to be known to 6 candidates, that itself would not vitiate the entire selection process. The bias is required to be substantiated, otherwise it amounts to surmises and conjunctions.

17. The Respondents in Para No.7 of their Affidavit-in-reply states as under :-

“7. With reference to Para 6 (F), I say that the contentions made in this para are denied. I say that the interview committees were constituted by the selection board vide G.R. Medical Education & Drugs Dept. dated 16.6.2015 and 23.6.2015. Copies of said G.Rs. are annexed hereto and mark as **Exhibit-R-5 Colly**. Accordingly a Vice chancellor was appointed as a Chairman of the interview committee and one Dean of the Govt. medical college was appointed as a member Secretary of the interview committee, one govt. representative and two subject experts were there in the interview committee. In this way the seven interview committees were constituted for the various subjects. It is clearly mentioned in the Govt. G.R. dated 16.6.2015 and 23.6.2015 that the Ex-Vice Chancellor or Sitting Vice Chancellor will be the Chairman of interview committee. The interview committee were as per the orders of the Govt. and not decide as alleged by the applicant. The interview committee have assessed the performance of every candidate and evaluate them properly and given marks impartially to every candidate. It is submitted that, no information regarding the name, category of the candidates were before the interview committee while interviewing the candidates. Only token number of each candidates were given to the interview committee. So that identity of the candidates was not disclosed to the interview committee. Therefore well transparency was maintained in the interview process and justice has given to the meritorious candidates by the interview committee and no any favour have been shown to any candidates and there was no any conflict of interest in any case as alleged by the applicants.”

18. As regard guidelines for interview, the Respondents in Affidavit-in-reply in Para No.15 states as under :-

“15. With reference to Para 7.2, I deny the contentions made in this para. I say that the interview committee consisting a very senior and reputed members and they are expert in their subjects. Guidelines for interview were given to them before the commencement of the interview and all committees have adopted the similar procedure of marking and they have assess the performance of the candidates impartially. As stated in foregoing para that, identity of candidates was not disclosed before the interview committee. To protect the identity of all the candidates token number were given to each candidate, no name or category was given to the interview committee therefore they have judge the performance of all the candidate fairly and impartially.”

19. In terms of G.R. dated 16.06.2015, the Committee of following members was constituted :-

१	अध्यक्ष	महाराष्ट्र आरोग्य विज्ञान विद्यापीठ व महाराष्ट्रातील अन्य विद्यापीठाचे माजी कुलगुरु
२	सदस्य सचिव	अधिष्ठाता, शासकीय वैद्यकीय महाविद्यालये किंवा बृहन्मुंबई महानगरपालिका वैद्यकीय महाविद्यालय - १ सदस्य
३	विशेष तज्ञ सदस्य	मुलाखत पॅनल्सकरिता विषय निहाय शासकीय वैद्यकीय महाविद्यालये व रुग्णालयातील विशेषतज्ञ (वर्तमान व माजी प्राध्यापक पदावरील व्यक्ती) - २ तज्ञ सदस्य
४	शासकीय प्रतिनिधी	शासकीय वैद्यकीय महाविद्यालये/दंत महाविद्यालये/आयुर्वेदिक महाविद्यालये येथील प्राध्यापक स्तरावरील शासकीय व्यक्ती - १ सदस्य

20. Whereas by G.R. dated 23.06.2015, Corrigendum was issued taking present as well as former Vice-Chancellor of Maharashtra Health Science and other Universities.

21. During the course of hearing, we repeatedly asked the learned Advocate for the Applicants about number of marks obtained by the Applicants, but he did not assist the Tribunal by showing their results. All that, he stated that he has no such information. This being so, the selection done by the Respondents cannot be said marred with bias or favoritism. It is not the case of Applicants that they were entitled to particular number of marks and were required to be declared successful.

They themselves are in dark about their performance. It is also not a demand of Applicants to compare their performance with the performance of other successful candidates. All that, Applicants prayed for cancellation of entire selection process by raising vague ground as discussed above.

22. It is well settled that once Experts Committee interviewed the candidates in which Applicants participated and interviews were taken on the basis of common guidelines or yardsticks, then such unsuccessful candidates cannot be allowed to turn around and to challenge the entire selection process unless they come with a specific pleading and evidence demonstrating actual bias or prejudice. Mere allegations or speculations would not help them in any manner.

23. Reliance placed on **(2022) 8 SCC 713 [Krishna Rai Vs. Banaras Hindu University]** is totally misplaced. In that case, the Board of Examiners have changed criteria at their level and allotted different marks though there was no provision to do so in the Manual approved by Executive Council. It was a case of promotion and not nomination. The Board of Examiners on their own changed criteria and make it on purely merit-based by introducing interview and also prepared the merit list on the marks awarded in the Typing Test, Written Test and Interview. Whereas, as per provision of Manual Typing Test was not mandatory and anybody who failed in Typing Test would also be promoted subject to the rider that they would have to qualify the type test within two years from his joining. This being so, in our considered opinion, the decision is totally distinguished and hardly of any assistance to the Applicants.

24. The totality of aforesaid discussion leads us to sum-up that O.A. is without any merit and liable to be dismissed. Hence, the order.

ORDER

Both the Original Applications are dismissed with no order as to costs.

Sd/-

(BIJAY KUMAR)
Member-A

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 24.02.2023

Dictation taken by :

S.K. Wamanse.

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