

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.1355 OF 2009
(Corrected as per order dated 22.12.2020)**

DISTRICT: SOLAPUR

Shri Mehmud Khajabhai Subhedar,)
Driver in the office of Chief Medical Officer, STDC,)
Aundh Camp, Pune)
R/at Sahara Nagar No.2, House No.33-A,)
Majarewadi Road, Hotgi Road, Solapur-3)..**Applicant**

Versus

1. The State of Maharashtra,)
Through the Additional Chief Secretary,)
Public Health Department, Mantralaya, Mumbai.)
2. The Deputy Director of Health Services,)
Pune Circle, New Administrative Building,)
3rd floor, Opp. Council Hall, Pune 411 001.)
3. The Deputy Director of Health Services,)
Kolhapur Circle, Central Administrative)
Building, 1st floor, Kolhapur.)
4. Shri Asaram Parmeshwar Tupe,)
5. Shri Madhukar Sopanrao Jadhav,)
6. Smt. Pramila Dashrath Jagtap,)
7. Shri Sachin Satishrao Garud,)
8. Shri Mahesh Dilip Nakate,)
9. Shri Sakhare Pradip Dinkhar,)
10. Shri Kale Hemant Bapu,)
11. Shri Amol Bahir Barade,)
12. Shri Shaikh Husen Bhadsha,)
13. Shri Ashpak Rafiuddin Sayyad,)
14. Shri Satish Tukaram Pawar,)
15. Smt. Ushadevi Balbhim Kamble,)
16. Smt. Rohini Ashok Saluke,)
17. Sou. Achala Sanjay Sanas,)
18. Shri Jagtap Rahul Shankarrao,)

19. Smt. Dilshadhabi Usman Tambholi,)
20. Shri Garje Bhagwat Bhagwan,)
21. Shri Shaikh Sadik Akbar,)
22. Shri Khadalkar Vijay Tukaram,)
23. Shri Gadave Santosh Govindrao,)
24. Shri Kolekar Anurag Vishnu,)
25. Shri Ajit Rajaram Venupure,)
26. Smt. Vrushali Narsignrao Deshmukh,)
27. Shri Vittal Jayram Shelke,)
28. Shri Mirja Najirkhan Maiboobkhan,)
29. Shri Kazi Akbar Narsuddin,)
30. Shri Thorat Dhanraj Vittal,)
31. Smt. Nakusha Yogesh Kambale,)
32. Shri Harish Balasaheb Balwadkar,)
33. Smt. Dharade Sangita Mahadev,)
34. Shri Lomate Ganpat Manikrao,)
35. Smt. Mane Swati Dilip,)
36. Shri Ghule Anand Ramrao,)
37. Shri Aganvane Navanath Baburao,)
38. Shri Devendra Tukaram Jadhav,)
39. Shri Mahadev Gopinath Dhapate,)
40. Shri Chavan Pramod Ekanathrao,)
41. Shri Bhosale Anmol Balkrishna,)
42. Smt. Anuradha Gangaram Kamble,)
43. Sou. Vidhaya Uday Sanas,)
44. Smt. Kiran Vishnupant Thadale,)
45. Shri Tibhole Shivaji Sahebrao,)
46. Shri Ram Ramkant Amrutkar,)
47. Shri Kiran Sundarrao Chawan,)
48. Shri Thorat Dyandev Vinayak,)
49. Shri Vijaykumar Kisanrao Shinde,)
50. Shri Shilkar Shashak Balasaheb,)
51. Shri Pawar Prakash Subhash,)
52. Shri Prashant Mallikarjun Kotale,)
53. Smt. Seema Vikas Gaikwad,)
54. Shri Raje Amit Sunil,)
55. Sou. Anushka Santosh Kadam,)
56. Smt. Shendage Meera Babasaheb,)
57. Ku. Palande Ashwini Ramesh,)
58. Smt. Saluke Manisha Shankar,)
59. Ku. Kavita Anand Ube,)
60. Shri Pacharane Suresh Malahari,)
61. Shri Pawar Hemant Nayanu,)
62. Shri Gopal Ramrao Rane,)
63. Shri Kate Dhanji Narayan,)
64. Shri Lavad Sunil Narayan,)
65. Shri Ajay Maruti Deshmukh,)

66. Ku. Bhalekar Subhagi Chandrakant,)
 67. Shri Jagtap Amol Gansham,)
 68. Shri Bale Sushen Bramdev,)
 69. Shri Thorat Manish Dhamodhar,)
 70. Shri Bhorate Vinayak Chandrakant,)
 71. Shri Ladale Mashak Abdulgani Mujawar,)
 72. Shri Sahane Ganesh Vasantrya,)
 73. Shri Bhirwala Abhimanu Bhikaji,)
 74. Shri Todakar Kailash Laximan,)
 75. Sou. Zore Dipali Prakash,)
 76. Shri Samir Jafar Tabholi,)
 77. Shri Pawar Vijay Shivaji,)
 78. Shri Farande Vivek Mahadev,)
 79. Shri Mahamuni Aswini Abaso,)
 80. Shri Vinod Parshuram Raje,)
 81. Shri Valsangkar Najim Salim,)
 82. Shri Kanake Anil Vasant,)
 83. Shri Dinkar Jagan Pandhurang,)
 84. Shri Navale Prashant Pandurang,)
 85. Shri Kapase Balasaheb Nata,)
 86. Shri Nikam Kishor Murlidharrao,)
 87. Sou. Jadhav Suvarna Prakash,)
 88. Shri Sonavane Manohar Raghunath,)
 89. Shri Prakash Sukhdev Agavane,)
 90. Shri Abhaysing Shahaji Sate,)
 91. Shri Bhosale Gourav Vilas Kidaki,)
 92. Shri Vinayak Shrimat Agane,)
 93. Shri Ramesh Narayan Jadhav,)
 94. Shri Vidhate Shrinivas Dhodhibha,)
 95. Shri Ladkath Santosh Tribak,)
 96. Shri Ravindra Suresh Lad,)
 97. Shri Saluke Mahesh Ashok,)
 98. Shri Kolekar Kodhiba Hari,)
 99. Shri Shahaji Dyanoba Bandgar)
 Nos.4-99 working as Clerks under the Public)
 Health Department in Maharashtra)..**Respondents**

Shri B.A. Bandiwadekar – Advocate for the Applicants

Smt. K.S. Gaikwad – Presenting Officer for Respondents No.1 to 3

Shri D.B. Khaire – Advocate for Respondents No.4, 5, 6, 8, 10, 15, 16, 22, 25, 31, 32, 35, 41, 57, 67, 88, 89, 92 and 93

Shri Vivek Patil – Advocate for Respondents No.7, 9, 11, 12, 18, 20, 21, 23, 24, 27, 28, 30, 33, 34, 37, 38, 39, 45, 46, 48, 52, 55, 56, 65, 66, 68, 69, 71, 72, 74, 75, 77, 80, 82, 84, 85, 86, 90, 91, 96, 98 and 99

Shri C.T. Chandratre – Advocate for Respondents No.11, 18, 20, 36, 68, 82 and 83

Shri Pratap V. Patil – Advocate for Respondents No.13, 17, 19, 43 and 76

Shri M.D. Lonkar – Advocate for Respondent No.14

Shri M.B. Kadam – Advocate for respondent No.79

Shri R.M. Patil is the Power of Attorney holder of Respondent No.44

Shri B. R. Deshmukh – Advocate for Respondents No.51, 58, 70, 78 and 87 as well as Respondent No.44

Shri Mahesh Salunkhe - Respondent No.97 appearing in person.

CORAM : **Shri P.N. Dixit, Vice-Chairman (A)**
Shri A.P. Kurhekar, Member (J)

PER : **Shri P.N. Dixit, Vice-Chairman (A)**

RESERVED ON : **28th October, 2020**

PRONOUNCED ON: **8th December, 2020**

JUDGMENT

1. The controversy in the present matter is about the recruitment process in which Applicant participated. He appeared for the examination conducted by the Public Health Department, Pune. Following the examination, on 17.2.2009 and 21.07.2009, Respondent No.2 (Deputy Director of Health Services, Pune Circle) issued orders selecting certain candidates for the post of Junior Clerk. These orders have been impugned by the Applicant in the present O.A.

2. Initially the Applicant made following **prayers** in Para No.9:-

- “(a) To quash and set aside the order dated 21.07.2009 as well as the order dated 17.02.2009 appointing Respondent No.5 as Junior Clerk and Respondent No.6 in the rank of Junior Clerk.
- (b) To declare the Applicant entitled for being appointed as Junior Clerk in the vacant post by setting aside the order of appointments of the Respondent Nos.4, 5 & 6.
- (c) By suitable amendment, the Applicant also prayed to cancel the appointment orders of the Respondents 4 to 99 in the post of Clerk Typist and terminate their services, as the entire selection process is tainted with fraud and large scale illegalities.
- (d) The Applicant has further prayed that criminal prosecution should be lodged against Respondent Nos.4 to 99 for the offence of cheating, creation of bogus record, etc.”

By way of amendment, the Applicant made further prayers in 9(b)(b) :

- (a) To quash and set aside the entire selection process.

in 9(c)(c) :

- (a) To launch criminal prosecution against Respondent Nos.4 to 99 for offences of cheating, creation of bogus record.

And in 9(d)(d) :

- (a) To recover from Respondent Nos.4 to 99 the amount of pay and allowances received from the date of appointment.

3. **Brief facts** of the case are as under:-

The Respondent No.2 issued an Advertisement in Marathi Newspapers inviting applications for 52 posts of junior clerks among others as mentioned in Exh. 'E' (Page No.44 of Paper Book). On 17.08.2008, the examination was conducted and on 04.10.2008, 51 candidates were given the letter of appointment. Advertisement mentioned that the posts may be increased or decreased. Accordingly, number of posts was increased as posts falling vacant in Satara District from 01.04.2008 were added as well as 30 persons were given promotion or had retired. Hence, after calculating the same, 46 more candidates were given appointment on 29.02.2009. Following this pronouncement of select/waiting list, certain complaints were received by the Director, Public Health. As per his directions, the Joint Director, Public Health enquired in the matter and submitted his report on 22.04.2010 (Page Nos.63 to 63-L of the O/A). Briefly it stated that though the Advertisement was for 52 posts, additional 46 posts were filled-in, additional vacancies were not verified, the Advertisement did not mention the same and no approval was sought from the senior functionaries. The report underlined administrative irregularities committed by the Deputy Director Dr. Doiphode and Administrative Officer Mr. Kandekar. Meanwhile, Applicant filed this O.A. The O.A. was decided by this Tribunal on 02.04.2014. The operative portion of the order stated that the entire selection for the posts of Clerks Typists pursuant to the Advertisement dated 22.03.2008 by Respondent No.2 is quashed. Following the judgment by the Tribunal a Three Member Committee consisting of Dr. R.B. Nigade, Dr. B.P. Kadam and Dr. Sanjivkumar Jadhav was formed on 24.4.2014. This Committee submitted its findings on 30.04.2014 to the Respondents after examining the Answer Books, number of marks, the persons who attended and their entries in the register, and the signatures of Supervisors (Page No.63-A of P.B). In the report, it mentioned about irregularities by the officers in the establishment of the Respondents No.2 and 3.

4. Subsequently, the Respondents No.2 and 3 issued termination notices to private respondents. The private Respondents being adversely affected moved the Hon'ble High Court of Bombay in W.P. No.4917/2014. The Hon'ble High Court in their order on 29th October, 2018 observed in Para No.10 as under:-

(I) Impugned Judgment and Order dated 2nd April, 2014 passed by the Maharashtra Administrative Tribunal is hereby set aside and the Original Application No.1355 of 2009 is restored to the file of the Tribunal;

(II) We direct the petitioners in these petitioners and the applicant in the Original Application to appear before the Tribunal on 30th November, 2018 at 11.00 a.m. On that day, on a formal application being made by the applicant in the Original Application, the Tribunal will permit him to amend the Original Application for impleading the petitioners in these petitions who were not parties to the Original Application as party respondents. The Tribunal will also permit consequential amendment to be carried out to the Original Application by adding averments as well as prayers and for annexing documents;

(III) We make it clear that it will not be necessary for the Tribunal to issue notices to the petitioners in these petitions who will be added as party respondents and that the said petitioners will be entitled to appear and file a reply to the amended Original Application;

(IV) It will be open for the State Government to produce additional documents on which reliance is placed by the State in theses petitions;

(V) The Tribunal will follow the procedure analogous to Rule 8 Order I of the Code of Civil Procedure, 1908 by issuing necessary public notice at the cost of the petitioners in the Original Application;

(VI) As the Original Application which is restored to the file of the Tribunal is of the year 2009, we are sure that the Tribunal will give necessary priority to the disposal of the Original Application;

(VII) We make it clear that we have made no adjudication on the merits of the controversy involved in the Original Application and all questions are left open for determination of the Tribunal;

(VIII) Needless to add that as the decision of terminating the employment of the petitioners is based only on the impugned order dated 2nd April, 2014 which is set aside under this Judgment and Order, orders of termination issued to the petitioners also stand quashed and set aside.”

5. Following the remand of the O.A., this Tribunal ensured that the formality of serving public notice to the private respondents is completed and rectified this defect. Several hearings were held in which following advocates submitted their arguments: Shri A.V. Bandiwadkar, Learned Counsel for the Applicant, Mrs. K.S. Gaikwad, Learned Presenting Officer for the Respondents No.1, 2 and 3, Shri D.B. Khaire, Learned Counsel appearing for Respondents No.4, 5, 6, 8, 10, 15, 16, 22, 25, 31, 32, 35, 41, 57, 67, 88, 89, 92 and 93, Shri Vivek Patil, Learned Counsel for Respondents No.7, 9, 11, 12, 18, 20, 21, 23, 24, 27, 28, 30, 33, 34, 37, 38, 39, 45, 46, 48, 52, 55, 56, 65, 66, 68, 69, 71, 72, 74, 75, 77, 80, 82, 84, 85, 86, 90, 91, 96, 98 and 99, Shri C.T. Chandratre, Learned Counsel appearing for Respondents No.11, 18, 20, 36, 68, 82 and 83, Shri Pratap V. Patil, Learned Counsel for the Respondents No.13, 17, 19, 43 and 76, Shri M.D. Lonkar, Learned Counsel for Respondent No.14, Shri M. B. Kadam for Respondent 79, Shri B. R. Deshmukh, Learned

Counsel for Respondents No.51, 58, 70, 78 and 87 as well as Shri R.M. Patil who is the Power of Attorney holder on behalf of the Respondent No.44, and Shri Mahesh Salunkhe, who is Respondent No.97 appearing in person.

6. **Submissions by the Applicant :-**

The Applicant has furnished following grounds in support of his prayers. These are summarized as under:-

(1) The Respondent No.6 does not possess the eligibility qualification of passing Marathi and/or English Typing Certificate Examination of requisite speed from G.C.C. Respondent No.6 who was in the waiting list has been provided appointment which is illegal. Respondent No.6 is selected from Open category. However, Respondent No.6 is not from the Open category. Respondent No.6 being woman should have been accommodated in the posts reserved for Open Women category and the Applicant should have been declared as eligible. The name of the Respondent No.5 did not figure in the merit/waiting list but his name figures in the final merit list at sr. no.51. Thus it creates suspicion about authenticity of the said list. The Applicant is senior by birth of the Applicant and is thus elder to Respondent Nos.4 & 5 since all three have secured 166 marks each and belong to open category. Thus, the younger candidate cannot fill-up the said post. As per the criteria, the higher educational qualification on the last date of submission of the application should have been preferred in the case of tie-up as per the G.A.D. Circular dated 27.06.2008 clause 6. The Applicant possesses higher/same qualification to the one possessed by Respondent No.5 and the Applicant is elder in age to Respondent No.5, and therefore, needs to be appointed. Respondent Nos.4, 5 & 6 are appointed temporarily, and therefore, their services need to be discharged.

(2) The Applicant amended his averments and made further submissions in support of the prayers made by him. There is a complaint of corruption and illegality in the process of appointments and thus, the entire process is tainted with nepotism, corruption and favoritism. From the reply dated 26.11.2010 (Exb. 'J') obtained by the Applicant under the R.T.I. it is clear that there was total mess in the entire selection process. The perusal of the record produced before the Tribunal had shown that the candidates who were declared as selected were having bogus documents and the candidates were allowed to tamper by increasing their marks and thus make them eligible for appointment. A committee in the Department of Health was appointed and the three Officers, who scrutinized the papers, had findings pertaining to:

- (a) Answer sheets of the candidates and the correct marks obtained by the candidates in the written examination.
- (b) Typing certificates of the candidates.
- (c) Signatures of the candidates on the attendance sheets and the signatures of supervisors on the answer-sheets were verified and report submitted on 13.04.2014 which revealed large scale illegalities in the entire selection process in the said post
- (d) There were over-writings on the answer sheets as well as marks mentioned in the said answer sheets.
- (e) Typing certificates produced by some of the candidates were not of the Government recognized institutions.
- (f) Signatures of the Respondent No.6 before the Hon'ble Bombay High Court on attendance sheet were different from her signatures on answer sheets.

7. As stated above, the Judgment given by the Tribunal was challenged before the Hon'ble Bombay High Court and the Hon'ble High Court in their

order dated 29.10.2018 (Exb. 'P') set aside the order of the Tribunal dated 02.04.2014. The Hon'ble Bombay High Court granted liberty to the State Government to produce additional documents on which the reliance was placed before the Hon'ble Bombay High Court. The Tribunal in its order dated 13.12.2018 passed an order (Exb.'Q') directing Respondent No.2 to give inspection of the record to the Applicant and provide him true copies/photo copies of the answer-sheets of all the candidates. The Applicant accordingly had the inspection and enclosed Exhibit 'R', enclosing a chart containing all the necessary details of all 92 candidates with appropriate remarks against each private respondent to demonstrate as to how the fraud was played by them in collusion with Respondent No.2. According to the Applicant, there is a fraud played by 96 candidates in securing employment though they did not process necessary qualification and other eligibility requirements.

8. **Submissions by Private Respondents** :-

(a) Respondent No.4 is represented by his Counsel Shri D.B. Khaire. As per his Affidavit, the present O.A. takes the colour of Public Interest Litigation, as the prayers at Para 9(b)(b), 9(c)(c) and 9(d)(d) are reliefs claimed by the Applicant in respect of selection process and do not pertain to the appointment of the Applicant. All the contentions in the O.A. are vague, and therefore, according to him, this O.A. is not at all maintainable. The Applicant has failed to establish how on account of selection of Respondent No.4, the Applicant could not get selected. The Applicant should have restricted his entire claim to the denial of appointment to him. Instead, he has claimed relief about a public cause and has raised various other contentions which are unwarranted.

(b) The appointment of Respondent No.4 is based on higher qualification acquired, as on the last date of application as per the directions issued in the Circular/G.R. on priority basis mentioned at Paragraph 6(1). The Circular/G.R. dated 27.06.2008 mentioned that

while considering the directions/provisions mentioned in the earlier Circulars dated 01.10.2007, 19.10.2007 and 17.11.2007 are to be followed with the Circular/G.R. dated 27.06.2008, therefore, it is clear that the criteria mentioned in the aforesaid Circular/G.R. dated 27.06.2008 are also to be considered.

(c) Respondent No.4 acquired MA degree and the Applicant is having BA degree. The selection of Respondent No.4 at Serial No.50 in the merit list dated 17.08.2008 by the Recruitment Committee i.e. Respondent No.2 is as per the directions issued by the Government in Paragraph 6(1) of the said Circular/G.R. (Exb. 'E') that is on the basis of higher qualification.

(d) Respondent No.2 has issued appointment order dated 21.02.2009 to Respondent No.4 as well as to Respondent No.5 separately. However, Respondent No.4 did not receive the order dated 21.02.2009, and therefore, submitted application to Respondent No.2 and on the basis of said application, the Respondent No.2 issued order dated 21.07.2009. Accordingly, the Respondent No.4 has joined at Rural Hospital, Gargoti, District Kolhapur.

(e) The Circular dated 27.06.2008 speaks itself and the criteria mentioned in the Circular dated 27.06.2008 are to be considered. The retrospective effect is clearly mentioned in the said Circular dated 27.06.2008. Thus, the appointment given to Respondent No.4 is legal.

(f) The Tribunal by its order dated 13.12.2018 allowed the Petitioner inspection of Answer-sheets of all Respondents after completing the exercise mentioned in Para 6(a) & (b) of the order. The Applicant was allowed to take steps to specify particular Respondent against whom he would decide not to proceed for deleting them from the array of Respondents, if he chooses. The Tribunal has nowhere allowed the Applicant to make such pleadings as mentioned in Para 16 at Page

No.14(a). The limited amendment is allowed to specify particular Respondent against whom the Applicant would decide not to proceed for deleting them from the array of Respondents. In O.A.No.1355/2009, the Applicant has never claimed any relief or prayer for quashing and setting aside the entire process of selection. Therefore, now the Petitioner is estoppel from making such pleadings or a new case. The Respondent No.4 submits that such pleadings is time barred and beyond the limitation and cannot be allowed and is liable to be rejected in *toto*. The Applicant cannot amend his O.A. filed in the year 2009 on the basis of information allegedly received by him under the reply dated 24.11.2010 to the RTI application made to Respondent No.2. The reply dated 26.11.2010 (Exb.'J') and the list of selected candidates and waiting list do not disclose any document showing that there was total mess in the entire selection process.

(g) In Writ Petition No.4917/2014, the Judgment given by the Tribunal on 02.04.2014 was challenged. Before the Hon'ble High Court, the Petitioner has submitted that he has no objection for setting aside the impugned order dated 02.04.2014 and for remanding the O.A. to the Tribunal for fresh hearing. It was also submitted before Hon'ble High Court that after the remand of the O.A. to the Tribunal, the Petitioner is willing to implead the Petitioners who had not parties to the O.A. He also pointed out before the Hon'ble High Court that the O.A. is not for setting aside the entire selection process. On the basis of these submissions made by the Petitioner before the Hon'ble High Court, the Hon'ble High Court was pleased to pass common order dated 29.10.2018. The Hon'ble High Court was pleased to observe that there was no prayer in the O.A. for quashing and setting aside the entire process of selection and this was not a case where any authority had done a fact finding exercise to ascertain whether there were large scale or illegalities or irregularities in the process of selection and the State Government seems to have done the said exercise after passing of the

impugned order by the Tribunal. There are no specific averments as to the appointment of this Respondent in the amended pages.

(h) Respondent No.4 submits that he has committed no criminal offence and he has received appointment on the basis of his qualification and eligibility, and therefore, he should not be terminated. His salary also should not be recovered as it would be improper. He also should not be debarred, as it would be unjust and improper. Respondent No.4 underlines that the Hon'ble High Court has observed that this was not the case where any authority had done fact finding exercise to ascertain whether there were large scale of illegalities or irregularities in the process of selection.

9. Advocate Shri D.B. Khaire has filed Affidavit on behalf of Respondent No.92 on 25.11.2019. The Affidavit states that the Applicant in the O.A. is not eligible for being considered for appointment as Junior Clerk, as while he was working as Driver, there was a case of accident in which a boy of 16 years was killed and the Criminal Case regarding the same has been filed. The Motor Accident Claims Tribunal, Bijapur has held the Department of Public Health accountable and directed the same to pay the compensation to the deceased boy. According to the Affidavit, in view of the same the challenge by the Applicant to the selection process is not maintainable, because the Applicant himself is ineligible in view of the Judgment passed by learned M.A.C.T. Court.

10. Learned Advocate has repeated his averments made by him earlier in respect of other Respondents stating that the O.A. is in the form of a P.I.L, and therefore, it is not maintainable in service matter. He has repeated the same arguments made earlier that the reliefs claimed in Paras 9(b)(b), 9(c)(c) and 9(d)(d) are in the form of P.I.L, and therefore, cannot be considered before the Tribunal.

11. The Affidavit further submits that the allegations made in the report by the Department of Health on 30.04.2014 by Dr. Nigde Committee are against Dr. Doiphode, the then Deputy Director In-charge of the Selection Committee. However, there is no observation or findings against the candidates who were issued the appointment letters by Dr. Doiphode. Thus, he further mentions that the Department has never come to the conclusion about any irregularities committed by the candidates.

12. According to the Affidavit, the prayer made in Clause 9(c) is unwarranted. The allegations of cheating, creation of bogus report, etc. are on the basis of material, which were never shown to any of the Respondents. If the alleged overwriting is effected behind the back of the Respondents in respect of answer-sheets submitted by him, the Respondents cannot be held responsible for such overwriting, merely on the basis of surmises and conjunctures. The Applicant cannot seek any relief and as such, the prayer made by the Applicant deserves to be rejected and the petition deserves to be dismissed.

13. The Affidavit further mentions that the report prepared by Nigde Committee is a one-sided report, as the Committee never called the concerned candidate or did not give an opportunity to any candidate by showing him his answer-sheets. The committee acted on its own, collected the data and submitted its report without making any enquiry with the concerned candidate. Hence, the report prepared behind back of the candidates cannot be used against the Respondents, and therefore, the entire process deserves to be set aside.

14. To establish and prove that the Respondents have committed any fraudulent act in the recruitment process, it is obligatory on the part of responding Department to give an opportunity to the Respondents to prove

their innocence. Once it is proved and established that the Respondents are guilty of misconduct, only then present O.A. can be entertained.

15. Referring to the prayer in 9(d)(d), the Affidavit mentions that the Applicant cannot claim a relief in a Petition held before a Service Tribunal. The Applicant has to file a Petition for seeking a relief for himself and no relief can be claimed as to what action the Respondent-State has to take.

16. The Affidavit states in Para 26 (Page No.530 of P.B.) that the Applicant is involved in corrupt practice, as two answer-sheets of the Applicant were received in the same examination. None of the candidates who appeared for the examination were issued two answer-sheets. It is found that there was overwriting on the said answer-sheet. Admittedly, there is no provision to issue another answer-sheet. If an answer-sheet was issued, then the Supervisor was obliged to record the time as to when the said answer-sheet was issued. It appears from both the answer-sheets that as there was overwriting on one answer-sheet, another answer-sheet was issued. However, it is not clear as to whether the answer-sheet issued to the Applicant at the time of the examination which was conducted on 17.08.2008 or it was subsequently placed in the answer-sheet. Therefore, the conduct of the Applicant is suspicious, as both the answer-sheets bare the signature of the Applicant. The Respondents submit that an irresistible conclusion can be drawn that the Applicant having proximity with Dr. Doiphode, attempt must have been made by the Applicant to replace the earlier answer-sheet where overwriting had taken place. However, both the answer-sheets remained with the Respondents, and therefore, that dubious and suspicious conduct of the Applicant gets revealed. Therefore, when the Applicant is himself not eligible to get selected for the post of Clerk-Typist, his O.A. fails. The Affidavit further mentions that the enquiry regarding the conduct of the Respondents and their mark-sheets cannot be left to the Tribunal instead of the Department. The O.A. is making an effort to widen the scope and the jurisdiction of the

Tribunal beyond the jurisdiction of the Tribunal. Hence, he prays that the present O.A. deserves to be dismissed with costs.

17. Shri D.B. Khaire, learned Advocate in addition to the abovementioned Respondents is also representing Respondent Nos.5, 6, 8, 10, 15, 16, 22, 25, 31, 32, 35, 41, 57, 59, 67, 88, 89 and 93. He has made similar observations as stated in the Affidavit on behalf of Respondent No.92 quoted above.

18. Respondent No.44 is represented through Power of Attorney holder, Shri R.M. Patil. As per Affidavit, the Applicant has not come with clean hand before this Tribunal. His prayers in 9(b)(b) of the O.A. amount to Public Interest Litigation and the Tribunal does not have power to entertain the PIL. According to Affidavit, the Applicant is not eligible for appointment because he himself is guilty. His answer-sheet has overwriting. He was issued new answer-sheets. Respondent No.2 in RTI (Exb. '1') has stated that no answer-sheet was issued to the Applicant. The Applicant has a record where there is Criminal Case filed against him. The Applicant was driving the vehicle when a boy was killed.

19. The Applicant being employed as Driver and being in possession of graduation (B.A.) along with Typing Certificate and work experience, he can be considered for the post of Junior Clerk directly. The Applicant's proposal for appointment on the post of Junior Clerk is pending with Respondent No.2 but Respondent No.2 has not given him the appointment, as this may result in dismissing the present O.A. According to Affidavit, the Applicant has relied upon his arguments on the basis of decision of Hon'ble Supreme Court in **O. Chakradhar** (Case No. Appeal (Civil) 1326 of 2002) which was the basis of cancelling the entire selection for the post of Clerk-Typists. The facts of **O. Chakradhar's** case and the present case are totally different. The difference of facts is as under:-

Sr.No.	O. Chakradhar Case Appeal (Civil) 1326 of 2002	THIS O.A.No.1355 of 2009
1	Adv. For single post i.e. Clerk	Adv. For 7 different posts i.e. Jr. Clerk, Adhiparicharika, Aushadh nirmata, X Ray Technicians, telephone Operator, etc.
2	Selection made by Chairman who is non official person	Selection made by Public Health Department, who is govt. authority.
3	CBI Enquiry made	No such enquiry made
4	1) Termination made on the basis of Enquiry Report of CBI 2) Termination of all the selected candidates made 3) Termination is made within 3 years of service of selected employees	1) Without considering Enquiry Report of committee Termination is made only on the basis of Judgment of Hon'ble MAT Court, Mumbai. 2) Out of 7 different cadres, Termination of only Jr. Clerk are made without any specific cause. 3) Termination is made after 10 years of continuous service of selected employees.
7	In the selection process important stages like application calling, scrutiny of applications, etc. are made by private firms.	Here A to Z are done only by the Government officials and authorities.
8	Entire selection shall cancel if and only if segregation is impossible.	As out of all enquiry reports (Enquiry report of 1. Jt. Director, Health Services, 2. Departmental Enquiry Report, 3. Three officers Scrutiny committee report, 4. Technical Board letters, 5. Verification by respondent No.2 (As per order of Hon'ble Chairman of this Tribunal), report on the record of this Tribunal, no any report shows that it becomes impossible to sort out right from the wrong or vice versa.

The Respondent, therefore, mentions that the case cited is not applicable in the present O.A.

20. Respondent No.44 mentions that she possesses English Typing Certificate of 40 w.p.m. She clarifies that for the post of Junior Clerk, Marathi Typing 30 w.p.m. or English 40 w.p.m. is essential and thus she possessed the Typing Examination of English 40 w.p.m, and therefore, is eligible. Secondly, it is alleged that the Respondent No.44 did not submit Caste Validity Certificate. The Respondent No.44 fulfills all essential criteria for Open Category. She has right to apply and get selected from the posts from Women Category, and therefore, as stated is eligible for the post of Junior Clerk. Respondent No.44, therefore, mentions that the Respondent is eligible, has obtained higher marks than selected two candidates in this category, and therefore, should be allowed to have her date of joining as other real selectees

namely 4th October, 2008 and treat this period as service period for all purposes.

21. Respondent No.97 - Mohan Ashok Salunkhe is represented by learned Advocate Shri C.T. Chandratre. The Affidavit filed on behalf of this Respondent mentions that the Applicant has not come with clean hands and, therefore, the O.A does not deserve to be considered and, therefore, it should be dismissed. In support, the Affidavit refers to the Affidavit filed by Respondent on 16.10.2019 which mentions that the Applicant was provided with two answer-sheets and this is a fraudulent practice. The Affidavit further states that the Enquiry Report dated 22.04.2010 are incomplete and the illegality cannot be determined. It adds that the procedural irregularities like filling-up additional vacancies are supported by valid reason namely two additional districts were attached to the Pune Region and thus the number of vacancies increased. The Affidavit admits that there may be certain plus/minus of vacancies in observing the reservation and roster but these are meager. All these irregularities are of procedural nature and not fatal to the entire select list which the Applicant has demanded for getting quashed. The Affidavit states that the investigating team has not recorded the statements of the Respondents nor ascertained the reasons for not signing the proceedings. It points out that there is no letter from Additional Chief Secretary for staying the selection process. The findings recorded regarding cases of Smt. Naikwade and Smt. Ubhe are not clear and do not disclose any irregularity. Statement of Shri Prakash Thorat in support of veracity of recording of CD and demand of money has also not been recorded. The relationship of appointed persons and Deputy Director - Shri Doifode has not been verified. The observation is merely based on newspaper report. Moreover, out of 15 relatives, only one person is appointed to the post of Clerk. The Affidavit mentions that the entire report is vague and based only on surmises and conjectures. It states that it is open for the Respondents to take any adverse action on the basis of this report.

22. The Affidavit points out that the report of another Committee viz. Dr. Nigade Committee has not been placed on record. The synopsis of the report shows that there are few cases of alleged irregularity and in fact, there are only three candidates who are not possessing Typing Test Certificate. All other irregularities which are not of fatal nature in selection of the Junior Clerks and, therefore, the selection cannot be quashed. It is possible for the Government - Respondents to take out the cases of irregularities which go through the root of the appointment. Hence, the challenge to entire select list is not maintainable. The Affidavit points out that the candidates have no role to play in instance such as Identity Card not signed by the Supervisor, name of the Inspecting Officer missing, erasing / overwriting on answer-sheets by examiner. The Affidavit further points out that the time-gap in the appointment and the date of investigation is wide as the appointment orders were issued on 14.11.2008 to 17.01.2009, while investigation was directed on 11.09.2009 and the report was submitted on 22.04.2010. In between the papers related to selection passed through the hands of many people. The possibility of intentional manipulation in records by the rival groups cannot be ruled out.

23. According to the Affidavit, the Respondent has crossed the outer-age limit and is working in the Department for 10 years and hence, it would be inequitable to quash the entire selection process due to some procedural irregularities. The Respondent No. 97 has, therefore, submitted that the O.A. be dismissed.

24. Affidavits have been filed by Respondent No. 83 viz. Jagan Pandurang Dinkar and Respondent No.36 - Anand Ramrao Ghule. Both these Affidavits are filed by learned Advocate Shri C.T. Chandratre. These Affidavits repeat the averments made by other Respondents who are being represented by learned Advocate Shri C.T. Chandratre.

25. Advocate Shri Vivek Patil has filed Affidavit on behalf of Respondents No.7, 9, 11, 12, 18, 20, 21, 23, 24, 27, 28, 30, 33, 34, 37, 38, 39, 45, 46, 48, 52, 55, 56, 65, 66, 68, 69, 71, 72, 74, 75, 77, 80, 82, 84, 85, 86, 90, 91, 96, 98 and 99 (total 42 in number). Referring to the observations by the Scrutiny Committee regarding possessing of Marathi 30 W.P.M. Typing Certificate while others possessing English 40 W.P.M. Typing Certificate and some possessing both the Typing Certificates, the affidavit mentions that as per the Recruitment Rules and advertisement, the post of Junior Clerk was having the criteria of Marathi 30 W.P.M. or English 40 W.P.M. as essential. Referring to the 2nd observation that there was no signature of Supervisor on Identity Card and for some candidates there is no name of answer-sheet checker, the Affidavit states that the issue of signature of Supervisor on Identity Card and the answer-sheet checker on answer-sheets, it is not essential and is not part of the duty to be performed by the Respondent. Referring to the allegation of overwriting on answer-sheets by candidates and also by answer-sheet checker for some candidates and the marks, the Affidavit states that the issue of overwriting on answer-sheet by candidates and by answer-sheet checkers, it is not understood how and on what basis the Committee decided that out of those over-writings, some are made by paper checker and some by candidates. Report does not explain on which date and period these over-writings are made i.e. before publishing the result or after publishing the result of the examination. All answer-sheets were checked by other officers in two to three days' Camp and all these officers are from Respondent No.2's office and the issue is not concerned with the Respondents. The Affidavit further mentions that the Applicant has not come to the Tribunal with clean hands and, therefore, the O.A. is not maintainable. He also states that the O.A. amounts to Public Interest Litigation in terms of the prayer clause 9 (b)(b) and the Tribunal is not permitted to entertain such P.I.L. and, therefore, the O.A. is not maintainable. According to the Affidavit, in case the Respondent from the Government Department comes to the conclusion that there is illegality in actions by the candidates, then as per the

G.R. dated 12.10.1993 regarding guidelines for action taken on employees appointed on basis of wrong information or bogus documents, Government has power to take action against such employees and, therefore, it is not necessary to quash the entire process of selection.

26. Advocate Shri B.R. Deshmukh has filed Affidavits on behalf of Respondents No.51, 58, 70, 78 and 87. These Affidavits have raised preliminary objection to the O.A. regarding jurisdiction of the Tribunal, the O.A. is abuse of the process of law, the Applicant has suppressed material facts and concealed important facts and documents, all candidates who have been appointed have not been joined by the Applicant, as the entire Selection Committee has not been made party Respondent by the Applicant, there is no pleading against the Respondent on behalf of whom the Affidavit has been filed and, therefore, the O.A. needs to be dismissed.

27. The Respondent mentioned that he has completed English Typing Course successfully and possesses the Certificate of W.P.M. 30 in English Typing. The Respondent further states that in the year 2013, he has given Internal Departmental Examination and has secured highest marks in the said Examination. He has been also selected for the post of promotion being Sr. Clerk by order dated 23.06.2015. He, therefore, submits that the O.A. be dismissed. The other Respondents mentioned above have made similar submissions.

28. The Affidavit by Respondent No 58 mentions that she secured 157 out of 200 marks, and therefore, she was called by Deputy Director for obtaining the appointment letter dated 04.10.2008. She further mentions she has passed 12th standard and completed her B.A. in Marathi. She had registered her name with Employment Exchange. She completed her MS-CIT Course successfully and obtained the Certificate dated 27.09.2005. She possesses Marathi Typing speed of 30 W.P.M. and has a Certificate to this effect from Commissioner of

Maharashtra State Bureau of Examination, Pune dated 28.08.2002. She has also passed English Typing Examination and has certificate mentioning that her speed is 30 W.P.M. The certificate is dated 28.08.2002. In addition, she has passed the English Typing speed examination of 40 W.P.M. and has a Certificate dated 27.08.2014. She, therefore, claims that she possesses all the requirements mentioned in the eligibility criteria in the Advertisement. She belongs to Open Women category and she had applied for Non-Creamy Layer Certificate to Tahsildar, Bhor. Accordingly the N.C.L. was issued to her on 11.09.2008 and same is annexed. She, therefore, claims that she has not received any notice or intimation either by oral or written for holding the enquiry on the basis of the report mentioned in the O.A. She further mentions that as far as the signatures of the examiner and supervisor are concerned on her answer-sheets, she is not aware about the same. The objections raised in the report according to her are not at all sustainable in the eyes of the law. In her opinion, the enquiry report initiated without following the due process of law, and therefore, it is not binding upon her. She, therefore, submits that the O.A. be dismissed.

29. Respondent No.79- Smt. Ashwini Abaso Mahamuni @ Ashwini Vikas Kharmate has filed her Affidavit. She is represented by Advocate Shri M.B. Kadam. She claims that her selection is legally sound and there was no malpractice in the same. She has mentioned that she has Marathi Typing Certificate of 30 W.P.M. She states that she has secured 173 marks and was belonging to O.B.C. category. She has, therefore, prayed that the O.A. be dismissed. She has also stated that she possesses Certificate of English Typing with 40 W.P.M. and has enclosed the Certificate for the same.

30. Respondent No.73 - Abhaimanyu Bekaji Baherwal is being represented by Advocate Shri D.B. Khaire. He has filed Affidavit on the same lines as other Respondents being represented by Advocate Shri D.B. Kahire. In his opinion,

the prayers made by the Applicant in Paras 9(b)(b), 9(c)(c) and 9(d)(d) are in the form of P.I.L, and therefore, not maintainable before this Tribunal.

31. Respondent No.44 has his Power of Attorney. He has filed Affidavit-in-reply. According to the same, he had obtained information under R.T.I. dated 20.01.2020. According to the same, Shri S.B. Kumbhar who was supervisor for the examination has issued a letter stating that the 2nd answer-sheet was not provided to the Applicant. Only the first overwritten answer-sheet has his signature as supervisor. He further mentions that the signature on the 2nd answer-sheet is not his. The Affidavit states that the Applicant has brought the fabricated copy of second answer-sheet on record. He, therefore, submits that the Applicant is involved in fraudulent behavior, and therefore, the O.A. made by him must be dismissed.

Submissions by the Respondents No.2

32. Respondent No.2 has filed Affidavit. Affidavit is signed by Shri Sanjay Atmaram Deshmukh working as Deputy Director, Health Services dated 26.10.2020. He mentions that there was a complaint against the recruitment process before Lokayukta dated 02.09.2009. Hence, preliminarily enquiry was made by Joint Director (Finance and Administration) and he submitted his report on 22.04.2010. On the basis of this report, the Deputy Director, Pune was directed on 28.07.2010 to take action and initiate D.E. against the then Deputy Director, Dr. Doiphode and Ors. The Respondents were accordingly suspended for irregularities. Following the judgment by the Tribunal, three Members' Committee was appointed by Deputy Director, Pune to scrutiny the record, answer-sheets and Typing Certificates of the candidates and submitted their report (Exhibit R-4(A)).

33. According to the Affidavit, the Enquiry Committee report stated that there were irregularities in the recruitment process. As a result of the

Judgment by the Tribunal on 02.04.2014 all candidates were terminated. The orders by the Tribunal were challenged before the Hon'ble High Court at Bombay and the orders of termination were stayed by the Hon'ble High Court.

34. The Deputy Director further mentions that it is not possible for him to take any independent decision in the present matter.

Affidavit-in Rejoinder by the Applicant

35. The Applicant has filed Affidavit-in-rejoinder. The Affidavit reads that the report submitted by Three Members' Committee on 30.04.2014 has found that there were irregularities and the entire recruitment process is tainted with nepotism, corruption and favouritism. There were false, bogus and fabricated documents about the qualification. The Committee had examined answer-sheets of candidates and marks obtained by the candidates in the Written Examination, Typing Certificate of the candidates and signatures of the candidates on the attendance sheets and signatures of supervisor on the answer-sheets.

36. Affidavit-in Rejoinder claims the Committee/ Authority have done the fact finding exercise and found the large scale irregularities or illegalities in the process of selection. It, therefore, underlines that fraud committed in the process cannot be equated to equitable principles or any affairs tainted with fraud cannot be perpetuated. According to it, the report dated 30.04.2014 finds that the entire selection process is the outcome of misuse of powers in bad faith.

37. According to the Affidavit-in Rejoinder, Respondent Nos.2 and 3 have supported the contention about large scale illegalities in the recruitment process, and therefore, the relief sought by the Petitioner at prayer clause

9(b)(b) is justified. According to it, the findings in the report dated 30.04.2014 are conclusive.

38. Referring to the Affidavit-in-replies by Private Respondents, the Applicant mentions that a reference to criminal case filed against the Applicant is not relevant in the present case. Moreover, the criminal case has ended in acquittal in the present Applicant. The Applicant is an aggrieved party and the application by him is certainly maintainable and he is not alien to the process. According to him, this is not P.I.L. as claimed by the Respondents. According to the Applicant, the Hon'ble Bombay High Court had set aside the Judgment without taking recourse to the procedure analogues of Rule (8) of the order (1) of C.P.C. 1908. According to the Applicant, the Respondents did not mention before the Bombay High Court that the prayers by the Applicant are in the nature of P.I.L. According to the Applicant, the contention of the Respondents that the Tribunal has no jurisdiction to entertain the present O.A. is without any basis. The claim by the Respondents has ignored the provisions of section 3(q) (i) (ii) (v) of the Administrative Tribunals Act, 1985.

39. The Applicant points out that the enquiry report has mentioned the illegalities and irregularities committed in respect of each individual candidates. The report has given specific illegalities in terms of the eligibility criteria, and therefore, the averments made by Private Respondents is fallacious and also without any basis. According to him, the allegations made against the Applicant are vague and baseless.

40. Referring to allegation against the Applicant about having issued another answer-sheet raising suspicion that there were overwriting in answer-sheets; he mentions that the allegations against him are denied. He points out that there is an endorsement on account of overwriting in the original answer-sheets and that too, at his request, the supervisor issued him fresh

answer-sheet which is signed by the supervisor and the Zonal Officer of the Department. He was permitted to change the answer-sheet.

41. The Affidavits filed by the Private Respondents have commented on the conclusions drawn in the enquiry report but these are incorrect. According to the Affidavit-in-rejoinder, the entire selection process, if conducted in a fair and transparent manner, appointment of meritorious candidates could have been taken place. However, the same is conducted in bad faith with grave illegality which has resulted in effecting undeserving candidates.

Issues for consideration

42. Whether the selection of Respondent No.4, 5 and 6 is illegal and therefore needs to be quashed?

The answer to the same is negative.

Legality of recruitment process is challenged in view of irregularities and defects and the private respondents are beneficiaries of the same. As the recruitment process is vitiated, selection and appointments need to be terminated. In the light of this, it needs to be ascertained what is the law on the subject, and whether selection and appointments of all candidates need to be terminated. Whether the Respondents have identified tainted as different from untainted candidates on the basis of enquiry after giving notices to the private respondents?

The findings and reasons are mentioned below.

43. Applicant has also raised other issues pertaining to difference in signatures of candidates on answer sheets and register, difference or absence of signatures of supervisors, erasing of marks and answers in answer sheets, submission of typing certificates as per the eligibility criteria mentioned in advertisement etc. These are factual aspects and Three Member Committee

has made observations regarding these in their report. Respondents need to obtain the say from the private respondents in each of these and accept the same. Available record does not indicate that the Respondents have accepted these findings so far. The Applicant also has made no such claim in his averments. Unless the Respondents have satisfied themselves and established tainted as segregated from untainted candidates, and taken action accordingly, we find there is no cause for adjudication for this Tribunal. Hence we have not adjudicated on these issues at this stage.

Reasoning and findings:-

44. It is necessary to recapitulate prayer by the Applicant and Reply there to. Applicant has prayed in 9 (a) and (b) to set aside appointments of Respondents no.4, 5 and 6 and instead he should be appointed in their place. In support he mentions, he is born on 1/6/1974, belongs to open category and has passed B.A. Respondents 4,5 and the Applicant secured 166 marks and all belonged to open category. As per the Circulars dated 1.10.2007, 19.10.2007 and 17.11.2007, elder candidate should have been preferred against younger candidate in case of tie up. He contends Circular dated 27.6.2008 is brought in force prospectively and not retrospectively. Therefore applying criteria mentioned in the Circular 27.6.2008 and giving appointments to Respondents No 4-6 is illegal. Denying appointment to Applicant and giving appointment to Respondent no 5 on the ground that he possessed higher educational qualification is wrong. Applicant is elder in age and therefore he should have been appointed. As far as Respondent no 6 is concerned, Applicant mentions, she secured 168 marks and belongs to open category. Candidates Kum. A.R. Palande, Smt. M.S. Salunkhe and Smt. L.S. Nayakwad secured 157, 157 and 133 marks respectively. They have been considered as open (women) category but Respondent no 6 is not considered in that category. According to Applicant, Respondent no 6 should have been

accommodated in one of the posts reserved for open (women) category and consequently Applicant would have been entitled for the appointment.

45. These contentions by the Applicant have been denied and rejected by Respondent no 2 and 3 in their Affidavit-in-Reply filed on 29.1.2010 (p.64-75 of the O/A). According to the same, Respondent No.4, 5 and 6 are selected and recruited according to merit and roaster of backlog. While the recruitment was in process, G.AD. issued a circular on 27.6.2008 and introduced revised procedure to be followed in filling up class III posts. Appointments have been made as per this circular. In Final Merit List, Respondent No.4, 5, and 6 are at No 50, 51, and 48, respectively, while Applicant is at no.52. Name of Respondent no 5 and applicant did not figure in the select/waiting list dated 17.8.2008. Applicant belongs to other backward category though he applied from open category. Respondent no.4 to 6 belongs to open category. There were 23 posts for open category. As mentioned in advertisement 22.3.2008, under clause 9, number of posts was increased as two additional districts were attached to Pune Region and 30 persons were promoted or retired. Consequently, respondent No 5 Mr M.S. Jadhav was given appointment. Advertisement had further clarified in clause 14, candidates belonging to VJ (A), Bhaj (B),K,D, special reserved category and other backward category candidates need to submit Non-creamy layer certificate along with their application. Though Respondent no 4 was given appointment on 21.2.2009, he did not get it in time and hence requested for fresh appointment order. Accordingly he was given the appointment order. This explains how he was appointed subsequent to Respondent no 5 namely Mr Jadhav. As far as Respondent no 6 is concerned, she secured 168 marks, which is higher than the applicant and hence selected as per merit. To be eligible for consideration in Open Women category, it is necessary to obtain certificate from competent authority as per government circular dated 25.10.2005 vide no.1003/99-11-16A. This was clarified in the advertisement as well. Smt Jagtap, Respondent no 6 did not file this certificate. Hence there was no question of considering

her in Open Women category. She was rightly considered in open category on merit. Private respondents No.4, 5 and 6 have reiterated these facts denied the claims by the Applicant.

46. In our opinion, on examination of the grounds raised by the Applicant and relevant government circulars mentioned above, the prayer by the applicant that selection of Respondents no.4, 5 and 6 should be set aside and he should be given appointment is only his dream. In order to realise his dream, Applicant has created suspicion about the rightful selection of Respondent No.4-6. Examination of Circulars dated 1.10.2007, 19.10.2007 and 17.11.2007, reveals, there is no mention to support his claim that elders should be appointed in case of tie up. Applicant has not produced any Government Resolution to support his belief that a person who is elder in age needs to be given appointment in case of tie up. We find Respondents no.4, 5 and 6 are meritorious and above the Applicant. Their appointment is as per prevailing government circulars and nothing objectionable can be found in the same. Respondent No 4 possesses M.A. degree while Applicant is B.A. Respondent No.4 is at serial no.50 while Applicant is at 52. Though Respondent no 4 was given appointment on 21.2.2009, he did not get it in time and hence requested for fresh appointment order. Accordingly he was given the appointment order again. This explains how he was appointed subsequent to Respondent no.5 namely Mr Jadhav. Thus delayed appointment is explained satisfactorily and there is no mess in the same as imagined by the Applicant. Respondent no.6 is correctly appointed in Open category and she could not have been considered in Open women category, unless she produced necessary certificate from the competent authority. Respondent no.6 did not produce this certificate; hence in the absence of the same, the question of considering her in open women category does not arise. Just because of the desire of the Applicant to get him appointed in her place, the Respondents cannot be directed to consider her in open women category. Applicant has failed in demonstrating any sound ground to support his claim

that appointments of Respondent no.4, 5, and 6 are illegal. In fact available material reveals that appointments of Respondent no.4, 5 and 6 do not violate provisions of horizontal reservation. For the above reasons, prayers made by the Applicant in Para 9 (a) and 9(b) are rejected.

47. Ld. Counsel Mr. Bandiwadekar has made submission that the private respondents no 4 to 99 are beneficiaries of irregularities as mentioned in the two reports and therefore their selection is vitiated. He contends that the entire selection process needs to be set aside and appointments based on the same need to be terminated from the beginning. Irregularities mentioned by him are summarized as under:

- 1) tampering of answer-sheets by increasing their marks,
- 2) failure to provide Horizontal Reservation as mentioned in the Advertisement,
- 3) failure to implement 100 Point Roaster,
- 4) absence of signature of the independent members of the Recruitment Committee except that of the Deputy Director,
- 5) failure to appoint Female Member on the Recruitment Committee,
- 6) failure to appoint Member of the Minority Member on the Recruitment Committee,
- 7) failure to prepare select list and obtain signature of the members except that of the Deputy Director, Dr Doiphode,

- 8) absence of signatures of representative of Social Justice Department, Tribal Department and Employment and Self-employment Department,
 - 9) Failure to adjust Backward class candidates in open category post as per their merit,
 - 10) Charges of large scale corruption,
 - 11) selection of large number of relatives of Deputy Director, Dr. Doiphode and A.O. Mr. Kandekar in the post of Pharmacy officer,
 - 12) Giving appointment to candidates at Sr.Nos.29, 36, 39, 45 and 46 despite their names not figuring in the waiting list.
48. Ld. Counsel Shri Bandiwdekar has relied on following decisions:
- 1) **(2002) 3 SCC 146 Union of India v/s. O. Chakradhar.** In this case CBI conducted enquiry in selection process and came to the conclusion that there was *malafide* and arbitrariness. The Apex Court therefore came to the conclusion that it may not be possible to pick out or choose any few persons whose selection can be cancelled and their services could be terminated.
 - 2) **2020(1) SLR 258 (S.C) Kerala State Road Transport Corporation Vs. Akhilesh V.S. & Ors.** In this judgment it was held, "Vacancies which may have been arisen subsequently could not be clubbed with the earlier requisition and necessarily had to part of another selection process".

3) 2019(6) SLR 634 (S.C.) The State of Tamil Nadu & Anr. Vs. A. Kalaimani & Ors. In the selection process of lecturers, the Board enquired into allegations of manipulation of OMR sheets. 196 persons were identified to have been beneficiaries. As many more persons were likely to be involved, the Board took a conscious decision to cancel the entire selection. In this case the Central Crime Bureau had conducted the enquiry and several persons were arrested for corruption.

49. In support of his contention that the Tribunal is justified in looking into the charges of malpractices and corruption, Ld. Counsel Shri Bandiwadekar relies on **1991 Mh.L.J. 1204 Gangaram Topaji Hupade vs. Digamber Sadashio Kanwale and another.** The ratio is, "Administrative Tribunal has jurisdiction under Section 14 and 15 of the Administrative Tribunal Act (13 of 1985) to look into the matter of initial recruitment to service irrespective whether there is order or not. Existence of an order is not always a must for exercise of jurisdiction."

50. Ld. Counsel Shri Bandivdekar submitted, following the judgment by the Tribunal in 2014, Public Health department appointed Nigade Committee which submitted its report on 24.4.2014 (page 63-A-22). The summary of the findings is as under:-

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|--|------------------------|
| (१) तपासण्यात आलेल्या उत्तरपत्रिका व ओळखपत्रे | १०२ |
| (२) पैकी ओळखपत्र उपलब्ध न झालेले उमेदवार | २ (आसन क्र.१०५०, १०७७) |
| (३) उमेदवारांची स्वाक्षरी तफावत
(उत्तरपत्रिका व हजेरीपत्रकावरील) | २ (आसन क्र.१०३३, १०३६) |
| (४) पदे व्यक्षाकांची तफावत स्वाक्षरी तफावत
(उत्तरपत्रिका व हजेरीपत्रकावरील) | १ (आसन क्र.१०३६) |
| (५) एकूण गुण खाडाखोड आढळलेल्या | |

उमेदवारांची संख्या	99 (आसन क्र.२२२८, १८८८, १३८२, १४११, २२००, २२०१, १७४९, १६४९, ३४९३, २९३५, १९५६)
(६) एकूण गुणांमध्ये तफावत (- / +) आढळलेल्या उमेदवारांची संख्या	१६ (आसन क्र.३६६२, २२०१, ३२१०, १७४६, १७४९, १४७३, १३०२, ११००, २३१६, २३८४, ४२१६, ४२२४, २४७५, १८३९, ३४९३, २३७६)
(७) तपासणी न करता गुणदान केलेल्या उमेदवारांची संख्या	५ (आसन क्र.२२६५, २२५७, ४२१२, १३०२, ४३१७)
(८) उमेदवारांची खाडाखोड केलेल्या उत्तरपत्रिकांची संख्या	६८
(९) पैकी गुण समाविष्ट झालेल्या उमेदवारांची संख्या	५५
(१०) तपासणी अधिकार्यांनी खाडाखोड केलेल्या उत्तरपत्रिकांची संख्या	५१
(११) पैकी गुण सामाविष्ट झालेल्या उमेदवारांची संख्या	३२
(१२) टंकलेखन प्रमाणपत्र (मराठी + इंग्रजी) नसलेल्या उमेदवारांची संख्या	३ (आसन क्र.१९२१, ३८१९, ४२२३)
(१३) अर्ज उपलब्ध न झाल्याने टंकलेखन तपासणी न केलेल्या उमेदवारांची संख्या	८ (आसन क्र.३०५८, २७९५, ३८२०, ३८६२, १४७८, २२५०, ३८२२, ३८३२)

51. Ld Counsel Shri Bandiwadekar, therefore, submitted that the guilt of each private respondent has been established and therefore the ratio mentioned in above case laws needs to be followed and the entire process of recruitment needs to be set aside.

52. On the other hand the private respondents submitted as under:

- a) These findings by Nigade Committee are one sided as it did not obtain the say from private respondents,
- b) No effort is made to segregate tainted candidates from non-tainted after the findings,
- c) Respondents should have initiated action against the tainted following due legal process,
- d) Private respondents cannot be held liable for alleged irregularities. These might have been committed by Respondents No.1 to 3,
- e) Private respondents possess necessary typing certificates which have been held valid by competent government body,
- f) Private respondents are meritorious and have necessary eligibility criteria,
- g) Alleged nepotism and corruption charges have not been established against any private respondent.

53. Ld. Counsels for private respondents have relied on following case laws in support of their contentions:

- 1) **Judgment by Hon'ble Supreme Court in Vikas Pratap Singh vs. State of Chhattisgarh & Ors (Civil Appeal No 5318-5320 of 2013 decided on 9.7. 2013.** It is held that the error committed by the

respondent –Board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed *qua* the first merit list and therefore they should not be terminated.

2) Judgment by Hon'ble Madras High Court at Madurai in M. Iamathi vs. State of Tamil Nadu (W.P. No 2942 of 2018, 3457, 3580, 3862 to 3865 of 2018 dated 22.2.2018. It was found that the evaluation process was vitiated by irregularity and fraud and not the stage prior to it. When the original answer sheets are available in intact form, segregation is definitely possible. The decision of the Board to cancel the entire examination was therefore quashed.

3) Judgment by Hon'ble Bombay High Court (Nagpur Bench) in Bhavikkumar Shriramji Tandale & Ors vs. State of Maharashtra (W.P. No 2686 of 2010) dated 21.12.2012, Para No.13:-

13. In the present case, the second affidavit which is filed only refers to an irregularity in the selection process. As has already been discussed by us, the said irregularity is the one of not providing the post-wise reservation. There is no allegation of either any mal-practices or any candidate having been illegally selected and appointed with some ulterior motive. In that view of the matter, we find that the decision of the Government to cancel earlier selection process was not sustainable in law. The candidates who had gone through the process of written examination as well as the oral examination and who were validly appointed, could not have been terminated on account of alleged irregularity which, according to us, is not an irregularity and even if

it is presumed to be an irregularity, it was not of such a nature which would vitiate the entire process of selection process.”

54. The private respondents have therefore submitted that it would be inappropriate to terminate the services of the private respondents without giving notices and obtaining their say about alleged irregularities.

55. To recapitulate, the allegations against the private respondents are: 1) identity cards of those who wrote the answer sheets were not available, 2) signatures of the candidates on answer sheets and register were different, 3) difference in signatures of supervisor on answer sheets and register, 4) calculations of marks was tampered, 5) marks were given without examination, 6) in answer sheets there was tampering, 7) typing certificate was not available in three cases. In our considered opinion, after the Nigade Committee submitted its report in 2014, it was obligatory for the respondents to initiate appropriate enquiry by giving notice to the concerned, obtain their say and initiate action against those, who were identified as tainted. All answer sheets are available in intact condition with the Respondents, but no effort has been made to initiate any further action, even though there was adequate time available. The role of the private respondents has not been conclusively identified. In the cases cited by the Ld. Counsel for the Applicant, the facts indicate that there was C.B.I. or C.I.D. enquiry which had established the conspiracy, identified the culprits, registered criminal cases against the concerned, few of them were arrested and they were facing trial in criminal matters. It was on the basis of these established findings that the recruitment was cancelled. This ratio is not applicable in the present case as the exercise of segregation is not undertaken by the Government. Therefore the case laws cited by Ld. Counsel for the Applicant are not of any assistance to him.

56. In the present matter, it is necessary to take note of the law laid down by Hon'ble Supreme Court in the recent case **(2019) 12 Supreme Court Cases 285, Uttar Pradesh Jal Nigam and Others vs Ajit Singh Patel and others, Civil Appeals Nos.11017-18 of 2018, decided on November 15, 2018**. Hon'ble Supreme Court explained the law regarding cancellation of recruitment process. Paras 13, 15 & 16 of the judgment are as under:

*“13. The appellants have now relied upon the opinions given by the experts (Indian Institute of Information Technology, Allahabad and Indian Institute of Technology, Kanpur) as noted in the report submitted to this Court dated 20th August, 2018. The same were certainly not available to the appropriate authority before the order was passed on 11th August, 2017. Indeed, the appropriate authority took into account two inquiry reports but the same did not evince that an exercise had already been undertaken to distinguish the tainted and untainted candidates or that it was not possible to do so, so as to uphold the decision of declaring the entire selection process as void. Had the appropriate authority done that exercise and recorded its satisfaction in that behalf, to be reflected in the order passed by the Chief Engineer on 11th August, 2017, the High Court could have then followed the settled legal position expounded in **Union of India and Others Vs. O. Chakradhar** - that the nature and extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about the future course of action to be adopted in the matter. Further, if the mischief played is so widespread and all-pervasive, affecting the result so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, in such cases, it will neither be possible nor necessary to issue individual show-cause notices to each*

*selectee. In that case, the only option would be to cancel the whole selection process and not limiting to one section of appointees. This view has been restated in the recent decision in **Veerendra Kumar Gautam and Others Vs. Karuna Nidhan Upadhyay and Others**, (also see **Joginder Pal and Others Vs. State of Punjab and Others**). The dictum in the two judgments relied upon by the appellants of **O. Chakradhar** (*supra*) and **Vikas Pratap Singh and Others Vs. State of Chhattisgarh and Others** will be of no avail to the appellants in the fact situation of the present case.*

15. *The limited plea taken before this Court as noted in the first paragraph of order dated 16th March, 2018 was to allow the appellants to re-work the question and answer sheets and revise the merit list and issue fresh, reasoned order after providing opportunity of hearing to the affected candidates. That option has been kept open. It is for the appellants to pursue the same. In other words, the appellants must, in the first place, act upon the decision of the High Court dated 28th November, 2017 whereby the order passed by the Chief Engineer dated 11th August, 2017 has been quashed and set aside. The appellants may then proceed in the matter in accordance with law by passing a fresh, reasoned order. Indeed, while doing so, the appellants may take into consideration the previous inquiry reports as also all other relevant material/documents which have become available to them. We make it clear that we have not dilated on the efficacy of the opinion given by the experts of IIT Allahabad and IIT Kanpur.*

16. *In view of the above, the challenge to the impugned*

judgment dated 28th November, 2017 and 25th July, 2018 must fail but with a clarification that the competent authority of Nigam is free to pass a fresh, reasoned order in accordance with law.”

57. The decision is squarely applicable to the present case. In our opinion, it is certainly possible to identify the candidates who have committed the illegalities after conducting the enquiry and after obtaining their say. After the Three Members Committee submitted its report, no further steps were taken by Government and the Private Respondents have not been given any opportunity to have their say. Therefore, the findings cannot be considered as conclusive proof of any illegality against any candidates to terminate their services.

58. The above quoted law laid down by the Hon'ble Supreme Court in the matter of **Uttar Pradesh Jal Nigam** (supra) is squarely applicable in present situation. We are of the considered opinion that without conducting proper enquiry and identifying tainted candidates after segregating from untainted, *en masse* cancellation of appointments is not permissible.

59. In the present case, the Respondents have relied on the Report dated 22/4/2010 and the Three Member Committee Report dated 30.04.2014. However, these findings are in the nature of observations and these have not reached finality, as record does not show that the Respondents have accepted these findings. No efforts are made to segregate the tainted and non-tainted candidates even after this Tribunal specifically asked the Respondents to revisit the entire process on 07.09.2020. We, therefore, find that the prayers in the O/A in Para 9 (b) (b), (c) (c) and (d) (d) are premature. We are not adjudicating on observations in the Three Member Committee Report, unless the Respondents No.1 to 3 identified tainted candidates, segregated untainted candidates and take legal action against the tainted candidates. It is

premature for the Tribunal to undertake the task to come to any conclusion regarding the same. It is for Respondents No.1 to 3 to undertake such exercise and to take the matter to logical conclusion in accordance to law.

60. In view of the above, we proceed to dispose of this OA by following order:

A) Respondents No.1 to 3 shall take appropriate action/decision including segregation of tainted candidates from untainted after providing opportunity of hearing to the candidates and then pass fresh order in accordance to law in view of reports dated 22.4.2010 and 30.4.2014.

B) Respondents No.1 to 3 are directed to complete the exercise within six months.

C) Copy of judgment be forwarded to Additional Chief Secretary, Public Health Department, Mantralaya, Mumbai for information and necessary compliance.

D) O.A. is accordingly disposed of.

E) No order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)
8.12.2020

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
8.12.2020

Dictation taken by: S.K. Wamanse.

Office Notes, Office Memoranda of Coram,
Appearance, Tribunal's orders or
directions and Registrar's orders

Tribunal's orders

O.A. No.1355 of 2009

Mehmud K. Subhedar ..Applicant
Vs.
The State of Maharashtra & Ors. ..Respondents

Heard G.A. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for Respondents No.1 to 3.

2. Shri R.M. Patil, Power of Attorney Holder of Respondent No.44 has sent application dated 11.12.2020 through email for speaking to minutes of the order dated 8.12.2020 passed in the above OA.

3. He has sought the following corrections:

(i) In column no.2, 8th row of table at page 18 of the judgment the sentence, 'Entire selection shall cancel if and only if segregation.' should be replaced by 'Entire selection shall cancel if and only if segregation is impossible.'

(ii) In line no.1, para 18, page 17 of the judgment the sentence 'Respondent No.44 is represented through Power of Attorney holder on behalf of Respondent No.44.' should be replaced by 'Respondent No.44 is represented through Power of Attorney holder, Shri R.M. Patil.'

(iii) In line no.1, para 25, page 21 of the judgment the sentence, 'Advocate Shri Anil Vasant Kale has filed Affidavit on behalf of' should be replaced by 'Advocate Shri Vivek Patil has filed Affidavit on behalf of'.

4. Ld. Advocate for the applicant and Ld. PO for the respondents have no objection for the above corrections.

5. Hence, the above corrections be carried out in the judgment. Speaking to minutes is disposed off.

Sd/-
(A.P. Kurhekar)
Member (J)
22.12.2020

Sd/-
(P.N. Dixit)
Vice-Chairman
22.12.2020

(sgj)