

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.202 OF 2016

DISTRICT : PUNE

Smt. Sharadini Sureshrao Ketkar,)
(Name after marriage)
Mrs. Sharadini Aniket Karambelkar),)
Age 36 years, occ. Service)
Flat No.5, Prabhu Shriram Apartment,)
Sadashiv Peth 1420, Pune 411030)..Applicant

Versus

1. The State of Maharashtra,)
Through Secretary,)
Medical Education & Drugs Department,)
Mantralaya, Mumbai 400032)
2. The Secretary,)
Maharashtra Public Service Commission,)
7th and 8th Floor, Cooperage Telephone)
Exchange Building, M.K. Road, Mumbai-21)
3. Dr. Sushma Damuji Dongare,)
Through Maharashtra Public Service Commission,))
7th and 8th Floor, Cooperage Telephone)
Exchange Building, M.K. Road, Mumbai-21)..Respondents

Shri C.T. Chandratre – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for Respondents No.1 & 2

Shri S.P. Wasnik – Advocate for Respondent No.3

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

DATE : 23rd March, 2023

J U D G M E N T

1. An advertisement dated 12.12.2013 was published for 4 posts of Assistant Professor in Rasshastra, Maharashtra Ayurveda Services, Group-II. 2 posts were reserved for ST category, 1 for OBC and 2 for Open category. Out of 2 posts from Open Category 1 post was reserved for Sports person. In that year no candidate from Sports category had applied, so that post was made available to Open category. The applicant has applied for the said post from Open category and respondent no.3 was appointed from Open category as Assistant Professor in 2016. The applicant prays that respondent no.2-MPSC be directed to recommend the name of the applicant in place of respondent no.3.

2. Ld. Advocate for the applicant points out clause 4.6 of the advertisement dated 12.12.2013 wherein the eligibility criteria are mentioned. The applicant holds Post Graduate Degree of MD, Ayurved in Rasshastra. Ld. Advocate submits that applicant has more than 4 years experience in teaching Rasshastra. So the applicant fulfilled all the criteria mentioned in clause 4.6 of the advertisement. The applicant cleared the MPSC examination and 12 candidates were shortlisted for posts by respondent no.2. Hence, she was called for interview.

3. The list of eligible candidates was published and applicant is at Sr. No.8. A list of 10 candidates who were interviewed was published on 6.2.2016 and in that applicant stood at Sr. No.3 and she scored 56 marks. Ld. Advocate submits that respondents have accepted that applicant is having 7 years and 10 months experience. By way of interim relief the applicant has prayed that respondents be restrained from appointing respondent no.3 as per recommendation of the communication dated 6.2.2016 till final disposal of this OA. In short the order dated 6.2.2016 is to be stayed. OA is filed on 23.2.2016. In this matter respondent no.3 has secured 54 marks, so she is appointed in Open category and 2nd person in Open Sports Shri Piyush Krantikumar Gandhi with 68 marks was appointed. The applicant has secured 56 marks.

4. In the course of arguments it is found that this Tribunal by order dated 24.2.2016 has given following directions:

“2. In so far as the interim relief is concerned it is no doubt true that the applicant cannot be left entirely unprotected. But equally true is the fact that those who are unquestionably eligible to be appointed should not be made to needlessly wait. Therefore, in our opinion a just balance could be struck by directions to the respondents that if the said four candidates are appointed it must made clear to each of them that their appointment is subject to the outcome of this OA. This interim order shall remain in force till further orders.”

5. Thus, it was obligatory on the part of the respondents to mention this fact in the appointment order of respondent no.3. However, in the order of appointment issued on 7.11.2016 of Dr. Shushma Damuji Dongare-Respondent No.3, this fact was not mentioned and therefore no order can be passed against her and no action can be taken against

respondent no.3 in this OA. It is to be noted that applicant has secured 56 marks and it appears prima facie that the procedure is adopted by MPSC after merger of the posts of Sports and Open about shortlisting criteria.

6. Ld. Advocate for the applicant submitted that on 19.12.2015 the list of eligible candidates was declared and 12 candidates were called for interview. No category was specified while calling for interview. On 6.2.2016 merit list was declared. They were aware that no application from sports category was received. Despite that they fixed the criteria for sports category and it is illegal. He stated that merit list was twisted/articulated. He question how Shri Piyush Krantikumar Gandhi was recommended against open sports when there was no sports category. He further states that though the applicant participated in the selection process after criteria was published, still applicant has right to bring out any glaring illegality. Ld. Advocate for the applicant has relied on the judgment and order dated 17.12.2019 passed by the Hon'ble Supreme Court in **Civil Appeal No.9482 of 2019 Dr. (Major) Meeta Sahai Vs. State of Bihar**, on the point that though a candidate participated in the selection process it does not mean that he has accepted illegality in the selection process.

7. Ld. Advocate for the applicant further stated that applicant should have figured in the merit list ignoring the fact that they have prepared different short listing criteria for open and open sports. Applicant was standing at Sr. No.6 in the list and should have been appointed.

8. In clause 4.6 of the advertisement dated 12.12.2013 it is stated that condition of experience is not applicable to Post Graduate. Ld. Advocate for the applicant has based his submissions on this specific statement in the said clause of educational qualification and therefore it was argued

that the applicant is a Post Graduate in Rasshastra and the criterion of experience should not have applied to her. It is true that the applicant has secured 56 marks and the candidate who has secured less marks than her i.e. 54 is appointed in Open category. There is no challenge to the appointment of the other candidate on the second post Piyush K. Gandhi because he has 68 marks i.e. more than the applicant. The explanation given by Ld. PO and also by the Ld. Advocate for Private Respondent no.3 in respect of applying criterion of experience is required to be taken into account. Our attention is drawn to Rule 7(II)(ii) of the MPSC Rules of Procedure, 2014 which states about the short listing of the candidates and it is reproduced below:

“7. Mode of Recruitment.-

(II) Direct Recruitment:

(ii) Shortlisting of candidates by applying suitable criteria and thereafter by interview of the shortlisted candidates.”

9. Ld. Advocate for respondent no.3 relied on the judgment and order dated 3.6.2010 passed by the Hon'ble Supreme Court in **Civil Appeal No.2808 of 2008 State of Orissa & Anr. Vs. Rajkishore Nanda & Ors.**

10. On 19.12.2015 MPSC published eligibility criteria of the experience and interviews were conducted on 5.1.2016.

11. Ld. PO relied on the judgment and order dated 4.8.2017 passed by the Hon'ble Bombay High Court in **W.P. No.9117 of 2016 Dr. Dhananjay Vithal Hange Vs. The State of Maharashtra & Ors.** He has placed a list of eligible candidates of Open-1 post and Open Sports-1 post on record. The relevant part is reproduced below:

OPEN-1 POST

Sr. No.	Candidate Name	Designation	Experience			Marks obtained
			Year	Month	Days	
1	Chopade Rajeshwar Bhagawan	Lecturer / Associate Professor	10	5	10	48
2	Dongre Sushma Damuji	Associate Professor	10	0	0	54
3	Waghmare Jyoti Dnyanoba	Lecturer / Associate Professor	9	11	26	50

OPEN SPORTS-1 POST

Sr. No.	Candidate Name	Designation	Experience			Marks obtained
			Year	Month	Days	
1	Korde Deepali Rayachand	Lecturer / Associate Professor	8	3	22	55
2	Ketkar Sharadini Sureshrao	Lecturer / Associate Professor	7	10	15	56
3	Gandhi Piyush Krantikumar	Lecturer / Associate Professor	7	4	24	68

12. Ld. Advocate for respondent no.3 submits that MPSC has followed the list of MPSC. Shortlisting can be done by applying suitable criteria as per Rule 7(II)(ii) of the MPSC Rules of Procedure, 2014 and MPSC has accordingly fixed the short listing criteria and published the same on website on 19.12.2015. Since there were 4 posts, 12 candidates were shortlisted.

13. Our attention was rightly drawn by Ld. Advocate for respondent no.3 to Rule 9(v)(d) of the MPSC Rules of Procedure, 2014, which reads as under:

“9. Direct Recruitment.-

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

Therefore selection has been proper by adhering to the Rules.

14. MPSC is enjoying the power to decide the criterion of short listing at the time of short listing. In clause 4.6 of the advertisement there is mention of notification of 1961 of Maharashtra Medical Profession Act, 1961 – Appendix Part-1, Part-A-1, Part-B and Part-C.

15. Ld. CPO has pointed out the criteria of experience which was issued for Assistant Professor Rasshastra on 19.12.2015 and as per the notification of 1961 a particular experience of work is mentioned that it should be 9 years and 11 months and for Open sports it was 7 years and 4 months. MPSC therefore made two groups of meritorious candidates, one for Open where the criteria of 11 years and 9 months is applied and for other group i.e. Open Sports by giving some concession in the criteria as laid down in 1961 notification of 7 years and 4 months minimum is applied. Therefore, the applicant was called for interview in the second group. In the first group she could not be called because her experience was lesser than 9 years but she could fulfill the criteria of minimum experience of 7 years and 4 months. In fact MPSC could have applied only one criteria for Open which is available for Open for common selection of two posts. As the post was reserved for Open Sports, MPSC applied the second criteria, where minimum requirement of experience was lesser.

16. We do not find any fault in the short listing criteria and the selection method and hence there is no merit in the OA and the same deserves to be dismissed.

17. Original Application is dismissed. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
23.3.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
23.3.2023

Dictation taken by: S.G. Jawalkar.