

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.428 OF 2021

DISTRICT : PUNE

Shri Sachin Ashok Kamble,)
Age 43 years, Drug Inspector in the office of)
Joint Commissioner, Food & Drugs Administration,)
Pune, Lucky Building, New Guruwar Peth, Pune 42)
R/o Audi Arcade No.404, I-Wing,)
Opp. Lake Town Society, Bibawewadi, Pune-37)..Applicant

Versus

1. The Secretary,)
Maharashtra Public Service Commission,)
Cooperage Telephone Exchange Building,)
M.K. Road, Mumbai 400021)

2. The State of Maharashtra,)
Through Principal Secretary,)
Medical Education & Drugs Department,)
Mantralaya, Mumbai 400032)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

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

DATE : 6th October, 2023

J U D G M E N T

1. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents. Not a single officer from Medical Education & Drugs Department is present.

2. The applicant who is working as Drug Inspector in Food and Drugs Administration prays that the impugned order dated 19.4.2021 passed by respondent no.1 be quashed and set aside under which he declined to recommend the name of the applicant to the respondent no.2 from the waiting list for vacancy of Assistant Commissioner for Drugs under SC reserved category and it is submitted that said order is not in compliance with the GR dated 23.8.2019 and Rule 10(8)(b)(c) of the MPSC Rules of Procedure. He further prays that respondent no.2 be directed to recommend the name of the applicant for being appointed to the post of Assistant Commissioner for Drugs.

3. The applicant who is working as Drug Inspector in Food and Drugs Administration wants to aspire for appointment to the post of Assistant Commissioner of Drugs. The applicant joined service on 27.2.2012 as Drugs Inspector, Class-III. Ld. Advocate submits that MPSC issued advertisement on 17.2.2014 for filling the post of Assistant Commissioner of Drugs. He appeared in the examination. The results were declared and in the waiting list dated 25.4.2016 the applicant was shown at Sr. No.1 in the SC category.

4. Ld. Advocate relies on the communication dated 19.4.2021 from respondent no.1 to respondent no.2 pursuant to the requisition. Ld. Advocate for the applicant relies on GAD circular dated 2.8.2019. He

states that pursuant to advertisement of 2014 nobody was appointed on 4 posts. Ld. Advocate submits that issue of experience of the candidates was challenged before the Tribunal which was decided in favour of the applicant and subsequently it was set aside by the Hon'ble High Court and taken to the Hon'ble Supreme Court by MPSC in SLP No.8494/2018 MPSC vs. S.S. Wardhane & Ors. decided on 3.5.2019. Since the issue of experience in the earlier advertisement was pending not a single candidate was appointed from Advt. 64/2014. He pointed out GR dated 18.3.2021 wherein it is mentioned that 4 candidates who were recommended on 6.5.2016 pursuant to the advertisement of 2014 were not appointed because of the pendency of the matter before the Hon'ble Supreme Court after decision of the Hon'ble Supreme Court on 3.5.2019 MPSC by letter dated 21.6.2019 recommended and informed to the Govt. and thereafter the process of appointment started. In the said letter it is mentioned that out of 4 candidates Sr. No.3 Tirpude and Sr. No.4 Supe were already promoted to the post of Assistant Commissioner of Drugs from promotee quota on 30.5.2015. Thereafter Tirpude informed that he is not interested. As Tirpude belong to same SC category the applicant claims his right on that post. Thereafter Govt. asked Tirpude by letter dated 22.7.2019 to inform whether he is accepting the post in nomination and Tirpude responded that letter on 5.2.2021 that he was not interested and therefore Govt. by letter dated 18.3.2021 cancelled his recommendation.

5. Ld. Advocate for the applicant has placed a fact before us that applicant by letter dated 16.6.2020 addressed to respondent no.2 informed that Shri Tirpude has already been appointed by way of promotion on 30.5.2015.

6. Ld. PO submits that delay can be explained as after the judgment of the Hon'ble Supreme Court dated 3.5.2019 in SLP No.8494 of 2018 MPSC Vs. S.S. Wardhane & Ors., opinion of the Law & Judiciary Department

was sought about giving appointment to the applicants in OA No.346/2016 which was for the same post of 2012 recruitment and the present applicant was in waiting list in the recruitment process of 2014. Law & Judiciary Department gave positive opinion on 20.1.2020 of appointing the candidates and the candidates were given appointment on 29.5.2020 for the recruitment process of 2012. Ld. PO submits that a letter was sent by respondent no.2 to Commissioner, Food & Drugs Administration whether Shri Tirpude the selected candidate is interested in the post of Assistant Commissioner, Drugs in SC category. Ld. PO submits that thereafter the waiting list lapsed on 24.4.2017 as it was published in April, 2016 and therefore the applicant was refused to give appointment and impugned letter dated 19.4.2021 was issued accordingly.

7. We have considered the submissions. We have gone through the relevant letter dated 22.7.2019 and order dated 18.3.2021. The submissions of Ld. PO that waiting list lapsed in April, 2017 cannot be accepted because the appointment of 2012 recruitment was made on 29.5.2020. Thereafter a letter was written to Tirpude who was selected candidate of recruitment of 2014. Letter was issued on 22.7.2019 to the selected candidate Shri Tirpude from SC category who was selected from recruitment of 2014 whether he is accepting the post of nomination of Assistant Commissioner of Drugs. Ld. PO has submitted that on 12.2.2021 i.e. Joint Commissioner, FDA informed Medical Education & Drugs Department that Shri Tirpude is not interested in accepting the post as he has informed by his letter dated 5.2.2021. This explanation cannot be accepted at all. The letter asking about acceptance of the post was sent on 22.7.2019. There was no need for the Government to wait arbitrarily for more than one month to get reply from Shri Tirpude who was already promoted on 30.5.2015. Assuming that department was not

aware of promotion given to Shri Tirpude in 2015 yet there was no need to wait for answer from Shri Tirpude beyond one month.

8. Immediately after letter of 22.7.2019 the Government should have been aware that Shri Tirpude has not responded and is not interested and they should have proceeded. This is inordinate delay and negligence in taking decision at right time. Today there is one post vacant of Assistant Commissioner of Drugs. The submissions of Ld. PO about lapse of waiting list in 2017 also on this background do not sustain because the actions of the Government itself is responsible in sending letter to Tirpude and considering Tirpude for giving the post till 2019. In view of this one post of Assistant Commissioner for Drugs is vacant and available and present applicant is to be given the appointment on the said post. Hence, we pass the following order.

9. The Original Application is allowed. The MPSC is directed to recommend the name of the applicant to respondent no.2 for being appointed to the post of Assistant Commissioner for Drugs in the vacancy meant for SC reserved category within one month and the respondent no.1 to issue the appointment order to the applicant within three months thereafter, after verifying the documents. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
6.10.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
6.10.2023

Dictation taken by: S.G. Jawalkar.