

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI
BENCH AT AURANGABAD.

DIST. NANDED.

ORIGINAL APPLICATION NO.887/2012.

Lochana d/o Raosaheb Ghodke,
Age 52 years, Occu. Service,
r/o Assistant Director of Health
Services (Leprosy), Pochalegaonkar
Maharaj Math, Vasant Nagar, Nanded;
At present r/o H.No.26, MHADA colony,
Darga Road, near Railway Gate,
Aurangabad.

-- APPLICANTS.

VERSUS

1. The State of Maharashtra
Through its Secretary,
Public Health Department,
Mantralaya, Mumbai.
2. The Secretary,
Maharashtra Public Service
Commission, Bank of India
Building, 3rd Floor, Mahatma
Gandhi Road, Hutatma Chowk,
Mumbai 400 001.
3. Smt. Kanchan Vishwanath Jagtap,
Age 53 years, Occ. Service,
r/o Office of the Director State
Training Demonstration Center,
Center Chest Hospital, near
Health & Family Welfare Training
Center, Pune.

4. The Deputy Director,
Health Services, Near Baba
Petrol Pump, Aurangabad.

-- RESPONDENTS.

APPEARANCE : Shri AS Deshmukh, learned
Advocate for the Applicant.

: Shri NU Yadav, Learned Presenting
Officer for Respondents No.1,2 & 4.

: Shri Y.P. Deshmukh, learned Advocate
holding for Shri H.A. Joshi, learned
Advocate for the Respondent No.3.

CORAM : **Hon'ble Shri Rajiv Agarwal, Vice Chairman (A)**
&
: Hon'ble Shri JD Kulkarni, Member (J).

DATE : 13.12.2016.

JUDGMENT

(Delivered on 13/12/ 2016.)

(Per: Hon'ble Shri J.D. Kulkarni, Member (J))

1. Applicant Lochana Raosaheb Ghodke, the Assistant Director of Health Services (Leprosy) Pochalegaonkar Maharaj Math, Vasant Nagar, Nanded has filed this O.A. In the O.A. the applicant has prayed to quash and set aside the impugned order of appointment dated 25.10.2012 to the extent of Respondent no.3 since the said appointment order is contrary to the advertisement dated 30.4.2010.

Subsequently, on account of some developments during the pendency of the application, the O.A. is amended and the applicant is now claiming following reliefs :-

“G) To hold and declare that the applicant is entitled for appointment for the post of Deputy Director of Health Services as per advertisement dated 30th April, 2010 issued by the respondent no.2 in place of respondent no.3 in view of the facts and circumstances mentioned in the original application.

H) To quash and set aside the impugned order dated 5th December 2012 passed by the respondent no.1 in view of the fact that the respondent no.3 is not qualified as per clause no.5.3 of the advertisement dated 30th April, 2010 in view of the fact mentioned in the present original application.”

2. The Respondent no.2 issued an advertisement on 30.4.2010 and thereafter a corrigendum dated 24th May, 2010 and thereby invited an application from the eligible and qualified candidates for the post of Deputy Director of Health Services, Maharashtra Medical and Health Services, Group-A.

3. In pursuance of the advertisement no.2/2010, the applicant as well as the respondent no.3 participated in the

process. As per clause no.5.3 of the advertisement dated 30.4.2010 the eligibility criteria / qualification is as under:-

“5.3 Experience of health administration, medical relief or family welfare under government, Zilla Parishad or a local body for not less than 5 years in the case of those holding post-graduate degree and for not less than 7 years in the case of those holding post-graduate diploma, gained after acquiring the post-graduate degree or post-graduate diploma as the case may be and out of which experience for 4 years shall be in a class-1 post or in a post equivalent thereto.”

4. According to the applicant, the respondent no.3 does not possess required experience and the same is evident from her promotion order dated 27.6.2007. The respondent no.3 possess an experience as Class-1 post which comes to 2 years, 11 months and 8 days on the last date of submission of application form i.e. 5.6.2007 and therefore, the respondent no.3 does not fulfill the criteria of experience. The applicant on the contrary is more experienced than the respondent no.3. The respondent no.2 however, appointed the respondent no.3 on the post of Deputy Director, though the respondent no.3 was not qualified and therefore, this O.A.

5. The respondent no.2 resisted the claim and submitted that against the two posts of open female category 17 candidates were found prima facie eligible as they possessed minimum required qualification and experience as prescribed in the advertisement. They were called for interview and on merits the respondent no.3 was selected. The respondent no.2 in affidavit in reply in para nos. 5.1, 5.2 and 5.3 has stated as under :-

“5.1. M.B.B.S. Degree of a Statutory University or any other qualification specified in the First Schedule or Second Schedule to the Indian Medical Council Act, 1956;

5.2. Post Graduate Degree or Post Graduate Diploma in any of the qualifications specified in the First or Second Schedule to the Indian Medical Council Act, 1956 or any other qualification recognised as equivalent thereto by the Medical Council of India, and;

5.3 Experience of Health administration, Medical relief or Family Welfare under Government, Zilla Parishad or a local body of not less than 7 years in the Class-I post or in a post equivalent thereto.”

6. The respondent no.3 also filed affidavit in reply and submitted that, she has acquired requisite qualification as well as experience and she justified her appointment. It is

stated that, even for the sake of argument it is accepted that the applicant's objection for experience is legal, the M.P.S.C. itself has discretion to relax the experience criteria as per advertisement.

7. The applicant also filed rejoinder and reiterated the fact that the respondent no.3 has not acquired requisite experience. It is stated that, the respondent no.3 is working on Class-1 post for one year and 10 days and thereafter for one year, 9 months and 28 days, and her statement that she acquires experience of 6 years and 22 days is not legal.

8. We have heard Shri A. S. Deshmukh, learned Advocate for the applicant, Shri N. U. Yadav, learned Presenting Officer for the Respondents No.1, 2 and 4, and Shri Y.P. Deshmukh, learned Advocate holding for Shri H.A. Joshi, learned Advocate for the Respondent no.3. We have also perused the application, affidavit, affidavit in reply filed by the Respondents and various documents placed on record by the respective parties.

9. It is not disputed that the applicant as well as the respondent no.3 have acquired qualification as required under clause no.5.1 & 5.2 of the advertisement. The only material fact to be considered is whether the respondent no.3 has acquired experience as stated in clause no.5.3 and if not whether the appointment given to the respondent no.3 as Deputy Director of Health Services is legal and proper?

10. The learned Advocate for the applicant submits that, the experience of the candidate in Health Administration, Medical Relief on Family Welfare under Government, Zilla Parishad, or local body shall not be less than 5 years in case of those acquiring post graduate degree and not less than 7 years experience in case of those holding post graduate diploma gained after acquiring the post graduate degree or post graduate diploma, as the case may be and out of which experience of four years shall be in Class-I post, or in a post equivalent thereto. According to the learned Advocate for the applicant the respondent no.3 is

not holding experience for four years in Class I post or in a post equivalent thereto.

11. In the rejoinder affidavit it has been stated that, the experience of the respondent no.3 in Class-I post is less than four years.

12. In para no.11 of the O.A. it is stated as under :-

“11. The applicant submits that as per the clause no.3 of advertisement the candidate must possess 5 years experience in service. But if we see the promotion order dated 27.6.2007 as per government policy i.e. “Ashwasit Pragati Yojana” the respondent no.3 and considering the date of advertisement dated 30.4.2010 it reveals that the respondent no.3 possess an experience as Class-1 post which comes to 2 years, 11 months and 8 days on the last date of submission of application form i.e. 5.6.2007. From this position and as per the above criteria the respondent no.3 does not fulfill the criteria of experience mentioned in the advertisement particularly clause no.5.3. Therefore, the respondent no.3 is not entitled for appointment on the post of Deputy Director of Health Service, Maharashtra Medical and Health Services Group-A.”

13. The Respondent no.2 has already replied this para and the said reply in para nos.5.1, 5.2 and 5.3 is already reproduced earlier, from which it reveals that, according to

respondent no.2, respondent no.3 Kanchan Jagtap has experience of Class-I post as well as Medical Officer.

14. In order to show that the Respondent no.3 was not possessing the experience in Class-I post, the learned Advocate for the applicant has placed reliance on one G.R. dated 2.7.2002 issued by the Govt. of Maharashtra. It is marked at Exh.X for the purposes of identification. As per said G.R. the Govt. of Maharashtra has classified the Class-I, Class-II, Class-III & Class-IV posts on the basis of pay scales drawn by said Officers. Perusal of the said G.R. shows that, the pay scale of the post or the maximum pay of the post if is not less than Rs.11,500/- then such posts are categorized as a Group-A posts, irrespective of the fact as to whether such posts are Gazetted or Non Gazetted.

15. The learned Advocate for the applicant invited our attention to the experience certificate of Respondent no.3, which is at paper book page no.78. From the said certificate it seems that the respondent no.3 has served as Medical Officer in Primary Health Center from 10.10.1986 to 13.7.2002, 14.7.2002 to 30.5.2006 and 1.6.2006 to

20.7.2007 in the pay scale of Rs.8000-13,500, and the nature of her post was supervisory/administrative. Thereafter, from 21.7.2007 to 18.5.2009 the applicant has served as a R.M.O. in Civil Hospital, Aundh and from 19.5.2009 to 5.6.2010 as C.M.O. in S.T.D.C. Pune in the pay scale of Rs.15,600-39,100 with Grade Pay of Rs.6600/-. If this total experience is considered and is compared with the pay scale which was paid to respondent no.3 it seems that, all the time her post was getting maximum salary of not less than Rs.11,500/- and therefore, on this count also the service of the respondent no.3 throughout was of Group-A as per G.R. dated 2.7.2002.

16. The learned Advocate for the applicant submits that, para no.5.3 of the advertisement clearly shows that the candidate must have experience for four years in Class-I post or in a post equivalent thereto. He submits that, the Class-I post carries pay scale of Rs.15,600-39,100 and not below. We are unable to accept this contention as from the G.R. on which the applicant himself has placed reliance i.e.

G.R. dated 2.7.2002 it seems that the post of which the maximum pay scale is not less than Rs.11,500/- falls within Group-A, and therefore, it can not be said that the Respondent no.3 has no requisite experience of serving on Class-I post.

17. We are also unable to accept the contention of the learned Advocate for the applicant that, the Class-I post must carry pay scale of Rs.15,600-39,100 for the simple reason that the Advertisement No.2/2010 for the post of Dy. Director carries pay scale of Rs.15,600-39,100 with Grade Pay of Rs.7600/-. As per Clause no.3.1 the pay scale is prescribed and higher pay is admissible in case of candidate with exceptionally higher qualification and experience. The said clauses reads as under :-

“3. PAY:

- 3.1 Rs.15600-39100 Grade Pay Rs.7600/- plus other admissible allowances as per prevalent rules. (Total Emolument Approx. Rs.36424/-p.m.).
- 3.2 Higher starting pay is admissible in case of candidate with exceptionally higher qualifications and experience, when suitable candidate are not available on the minimum.
- 3.3. The extent of higher starting pay will be decided by the Govt. on merit of each case.”

18. Had it been a fact that four years experience was required in the pay scale of Rs.15600-39100, no candidate should have applied for the post of Deputy Director, since they were already drawing said pay scale.

19. There is no dispute that, applicant as well as Respondent no.3 have acquired requisite qualification and therefore, merely because the applicant has more experience than the respondent no.3 it can not be said that the applicant was entitled to be appointed on that basis only. No mala fides are alleged against the respondent no.2 for selecting respondent no.3 on the post.

20. The learned Advocate for the Respondent no.3 has placed on record the order dated 17.10.2016, which is marked at Exh.X-1 for the purposes of identification, from which it seems that, the applicant Dr. Lochana Ghodke has been appointed as Deputy Director and has been posted as such at Nashik. Thus, it is clear that the applicant has also got her post as Deputy Director. Hence, we find no merits in the O.A. and therefore, the following order.

ORDER.

- i) The Original Application is dismissed.
- ii) No order as to costs.

MEMBER (J)
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VICE CHAIRMAN (A)

