

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.**

**REVIEW APPLICATION NO. 03/2024
IN
ORIGINAL APPLICATION No. 312/2019**

DIST. : BEED

Maharashtra Public Service Commission,)
Through its Secretary,)
Plot No. 34, In front of Sarovar Vihar,)
Sector 11, CBD, Belapur, Navi-Mumbai.).. **APPLICANT**
(Original resp. No. 02)

V E R S U S

1) The State of Maharashtra,)
Through its Secretary,)
Public Health Department,)
8th Floor, G.T. Hospital Building,)
Near Mantralaya, Mumbai – 32.)

2) Dr. Ashok Panditrao Misal,)
Age 48 years, Occ. Doctor,)
R/o Flat No. 12, Shrikrishna Building,)
Sardar Residency, Savata Mali Chowk,)
Beed, Dist. Beed.).. **RESPONDENTS**
(Resp. No. 01 – Original Res. No. 01
Resp. No. 02 – Original Applicant)

APPEARANCE :- S/shri M.S. Kulkarni & M.B. Kolpe,
learned counsel for the applicants.

: Shri Mahesh B. Bharaswadkar, learned
Chief Presenting Officer for the
respondent authorities.

: Shri J.S. Deshmukh, learned counsel for
private respondents in Review
Applications / Applicants in O.As.

**CORAM : Hon'ble Shri Justice P.R. Bora,
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)**

**RESERVED ON : 09.08.2024
PRONOUNCED ON : 21.10.2024**

ORDER

[Per :- Justice P.R. Bora, V.C.]

1. Heard S/shri M.S. Kulkarni & M.B. Kolpe, learned counsel for the applicant in Review Application, Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officer for respondent authorities and Shri J.S. Deshmukh, learned counsel for private respondent in Review Application/applicant in O.A.

2. By filing the present application, Maharashtra Public Service Commission (MPSC) has sought review of the order passed by this Tribunal on 02-11-2023 in O.A.No.312/2019. In O.A.No.312/2019 the Tribunal has passed the following order:

“[i] MPSC is directed to recommend the name of the applicant for his appointment on the post of Dental Surgeon against 16 unfilled vacancies within 4 weeks from the date of this order.

[ii] Respondent no.1 shall in turn issue the order of appointment in favour of the applicant within 2 weeks after receiving recommendation from MPSC.

[iii] O.A. stands allowed in the aforesaid terms, however, without any order as to costs.

[iv] M.A.No.453/2023 stands disposed of accordingly.”

3. Shri Mukul S. Kulkarni, learned Counsel appearing for the review applicant submitted that the benefit of the judgment of the Hon’ble High Court in Writ Petition ST. No.9195/2021 with connected Writ Petitions decided on 20-03-2023 is specifically restricted to those candidates who had

challenged the shortlisting criteria before the Hon'ble Tribunal. Learned Counsel pointed out that Hon'ble High Court has specifically incorporated a negative covenant denying the similar benefit to other candidates. Learned Counsel submitted that the decision rendered by this Tribunal in O.A.No.312/2019 runs directly in conflict with the said covenant laid down by the Hon'ble High Court. In the circumstances, according to the learned Counsel the order passed by this Tribunal in O.A.No.312/2019 on 02-11-2023 needs to be reviewed.

4. Another ground which has been raised by the learned Counsel is that the finding recorded by this Tribunal that 16 posts are still unfilled is factually incorrect, only 14 posts of respective categories as mentioned in the tabular format are unfilled and therein no seat is vacant for NT(D) category. On this ground also according to the learned Counsel the order needs to be reviewed.

5. Shri J.S.Deshmukh, learned Counsel for the original applicant in O.A. opposed the submissions made on behalf of the review applicant. Learned Counsel pointed out that review applicant has annexed along with the review application the list of the candidates interviewed as per the order of the Tribunal as Annexure P-1. Learned Counsel further pointed out that

according to the review applicant the 82 candidates whose names are existing in said list at Annexure P-1 are only liable to be considered for appointment against 67 unfilled seats. Learned Counsel pointed out that the name of the present applicant is existing in the said list at Sr.No.15. According to the learned Counsel, objection raised in that regard by the review applicant therefore is unsustainable. Learned Counsel further submitted that another objection raised by the review applicant that there is no post available for recommendation of NT(D) candidate is also devoid of any substance. Learned Counsel submitted that when the applicant was interviewed by MPSC in no case it could have recommended the NT(D) category candidate who has scored less marks than the present applicant. Learned Counsel in the circumstances prayed for rejecting the review application.

6. We have considered the submissions made on behalf of the review applicant, learned P.O. and the learned Counsel appearing for respondent no.2 i.e. original applicant. We have also perused the documents placed on record. From the documents which are placed on record by the review applicant, it is quite explicit that the applicant was one of the 82 candidates who were interviewed to fill up the 67 vacancies. As

such, there appears no substance in the objection raised by the review applicant.

7. Another objection raised that there is no seat available for NT(D) category candidates also may not be a ground for review of the order passed by this Tribunal. In fact, when the name of the original applicant is existing in the list of 82 candidates who were interviewed for filling 67 vacancies, the MPSC could not have recommended any other NT(D) category candidate in the said list, who has scored less marks than the applicant. Moreover, in the order passed by this Tribunal there is no such direction to consider the applicant for his appointment against the seat reserved for NT(D) category. When the O.A. was heard no such information was there before the Tribunal since the MPSC did not file its affidavit in reply.

8. After having considered the facts as aforesaid, we do not see any reason for reviewing the order dated 02-11-2023 passed by us in O.A.No.312/2019. Review application, therefore, deserves to be dismissed and is accordingly dismissed, however, without any order as to costs.

(VINAY KARGAONKAR)

MEMBER (A)

Place : Aurangabad

Date : 21-10-2024.

2023\db\YUK M.A.NO.453.2023 WITH O.A.NO.312.2019 PRB

(P.R.BORA)

VICE CHAIRMAN