

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO.05/2024
IN
ORIGINAL APPLICATION NO.67/2018**

DISTRICT:- PARBHANI

The Maharashtra Public Service Commission,
Through its Secretary, Plot No.34,
In front of Sarovar Vihar,
Sector 11, CBD, Belapur,
Navi-Mumbai-400 694.

**...APPLICANT
(Original Respondent No.2)**

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
2. The Civil Surgeon,
Civil Hospital, Parbhani,
Tq. & Dist. Parbhani.
3. Dr. Mohd. Feroj Iqbal,
Age 47 years, Occ : Service,
R/o. Sub-District Hospital Selu,
Tq. Selu, Dist. Parbhani.

**...RESPONDENTS
(Respondent No.1 & 2 are Original
Respondent No.1 and 2,
Respondent No.3 is Original
Applicant)**

APPEARANCE : Shri M.S.Kulkarni & Shri M.B.Kolpe,
Counsel for Applicant in Review Appl.
(respondent no.2 in O.A.)
: Shri M.B.Bharaswadkar, Chief
Presenting Officer for respondent
authorities.
: Shri K.G.Salunke, Counsel for
respondent no.3 (Original Applicant in
O.A.)

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

**Reserved on : 09-08-2024
Pronounced on : 21-10-2024**

O R D E R

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

1. Heard Shri M.S.Kulkarni & Shri M.B.Kolpe, learned Counsel for Applicant in Review Appl. (respondent no.2 in O.A.), Shri M.B.Bharaswadkar, learned Chief Presenting Officer for respondent authorities and Shri K.G.Salunke, learned Counsel for respondent no.3 (Original Applicant in O.A.)

2. The Maharashtra Public Service Commission (in short "Commission") has filed the present application seeking review of the order passed in O.A.No.67/2018 by this Tribunal on 22-11-2023. In the said O.A. Commission was respondent no.2. The Tribunal has directed the Commission 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 said order.

3. Learned Counsel appearing for the review applicant submitted that, the order under review passed by this Tribunal is based on the finding recorded in paragraph 52 and 53 by the Hon'ble High Court in its decision in Writ Petition St. No.9195/2021 with connected Writ Petitions decided on 20-03-2023. Learned Counsel pointed out that, in paragraph 52 of its aforesaid judgment, the Hon'ble High Court has clarified that the relief granted vide the said order was restricted only to the O.As. relating to applicants who have approached the Tribunal and who have been litigating since the year 2015 and pursuant to the order of Tribunal were interviewed.

4. Learned Counsel further brought to our notice that, the Hon'ble High Court has further observed that, the benefit of the said judgment shall not be extended to those similarly situated candidates who did not move the Tribunal. Referring to the aforesaid judgment rendered by the Hon'ble High Court, learned Counsel submitted that, the judgment of the Hon'ble High Court if read as a whole, it reveals that several O.As. were filed before the Maharashtra Administrative Tribunal at its Principal Seat

at Mumbai challenging the action of shortlisting adopted by the Commission.

5. It is the matter of record that, since large number of applications were received in pursuance to the advertisement issued for filling 189 posts of Dental Surgeon, Commission has resolved to consider the candidates having higher qualification i.e. the qualification of MDS. The applicants who approached the Tribunal were all holding the qualification of BDS. The Tribunal in the said matters by its interim order directed the MPSC to interview the applicants possessing BDS qualification subject to outcome of the said O.As. In the final order passed by the Tribunal, it held the action of Commission of shortlisting the candidates based on higher qualification of MDS to be unsustainable. The Tribunal further held that, the shortlisting on the aforesaid ground amounts to en-bloc elimination of candidates possessing BDS qualification.

6. The order passed by the Tribunal was challenged before the Hon'ble High Court as noted hereinabove and the Hon'ble High Court upheld the criteria of shortlisting adopted by Commission by setting aside the

finding recorded by the Tribunal to that extent. However, having considered the fact that original applicants had already been interviewed by Commission in pursuance of interim order passed by the Tribunal, the Commission was directed to recommend the names of only those original applicants who were already interviewed against 67 unfilled vacancies based on the performance of the candidates concerned in the interview and as mentioned above, the Hon'ble High Court restricted the said relief only to the extent of the candidates who have approached the Tribunal and who have been interviewed pursuant to the order of Tribunal. As such, it has been argued by Shri Kulkarni, learned Counsel appearing for the review applicant that, the order passed by the Tribunal directing the Commission to recommend the name of the original applicant is not in consonance with the order passed by the Hon'ble High Court. Learned Counsel in the circumstances has prayed for recalling the order passed in O.A.No.67/2018 along with M.A.No.452/2023 and hear the said O.A. afresh.

7. Shri K.G.Salunke, learned Counsel appearing for the original applicant has opposed the submissions made on behalf of the review applicant. The learned Counsel submitted that, the original applicant was already

interviewed by Commission, however, he could not be recommended only on the ground that the Commission has adopted the mode of shortlisting the candidates and the candidates having higher qualification i.e. of MDS were only to be considered for appointment. Learned Counsel submitted that since the applicant was not possessing the postgraduate degree, he was not considered.

8. Learned Counsel further submitted that, the Hon'ble High Court though has upheld the shortlisting criteria having regard to the fact that out of 188 names recommended by MPSC only 122 candidates joined the services thereby leaving 67 seats of Dental Surgeon vacant, did not disturb the ultimate direction issued by the Tribunal to send the names of the original applicants for being appointed though they were holding the qualification of BDS. Learned Counsel submitted that while recommending the names of the candidates pursuant to the order passed by the Hon'ble High Court, Commission has recommended the names of candidates to be appointed against the seats reserved for OBC having less marks than the applicant, that the original applicant was constrained to file the M.A. seeking direction against the Commission to

recommend his name as he had scored more marks than the recommended candidates.

9. Learned Counsel further submitted that, considering the fact that 16 seats have remained unfilled, the applicant has clarified that, he is not insisting for cancellation of the appointment of the candidate appointed against the seat reserved for OBC and to give appointment to the applicant on the said seat but was praying for recommendation of the name of the original applicant to fill in the said 16 vacancies. In the circumstances, learned Counsel submitted that if the facts and circumstances as mentioned above are considered, no error can be noticed in the order passed by this Tribunal and as such the application filed seeking review of the said order is devoid of any substance and deserve to be dismissed.

10. We have duly considered the submissions made on behalf of the review applicant and the original applicant. It is true that, original application has been allowed and the original applicant is directed to be recommended for appointment against 16 unfilled seats in view of the observations made by the Hon'ble High Court in paragraph 52 of its judgment in Writ Petition St. No.9195/2021 with

connected other W.Ps. We deem it appropriate to reproduce the said observations contained in paragraph 52 of the said judgment which reads thus:

“52. As observed by the Tribunal, out of 188 names recommended by the MPSC, only 122 candidates joined the service, thereby leaving 67 vacancies of Dental Surgeon vacant. In the event we accept the contentions of the original applicants that experience in private hospitals/clinics cannot be taken into consideration, the action of MPSC in resorting to shortlisting would be rendered meaningless as the number of eligible candidates with experience on the post of clinical assistant would be less than 567. Thus, we have a unique situation where MPSC has already adopted shortlisting criteria and have recommended names of candidates having experience in private hospitals/clinics. The State Government has opined vide its letter dated 17th November 2016 that experience in private hospitals/clinics cannot be considered. The Recruitment Rules provide some degree of jurisdiction on the State Government to determine the exact nature of experience which can be taken into consideration as the words used in the Recruitment Rules are “which in the opinion of the Government is equivalent or higher than the post of clinical assistant”. 67 posts of Dental Surgeon still continue to remain vacant, despite issuance of appointment orders to all 188 recommended candidates. The advertised vacancies were 189. In these circumstances, in our view, though the Tribunal has erred in criticizing the action of MPSC in resorting to shortlisting, the ultimate direction issued by the Tribunal to send the names of the original applicants for being appointed need not be disturbed. The original applicants have already been interviewed by MPSC in pursuance of the interim orders passed by the Tribunal. In these circumstances, we are of the considered view that the ends of justice would meet if the MPSC is directed to recommend the names of only those

original applicants who are already interviewed against 67 unfilled vacancies of Dental Surgeon, based on their performance in the interview. We are conscious of the fact that there are several other candidates who may possess the experience on the post of clinical assistant but did not approach the Tribunal and who are similarly situated to the original applicants. However, considering the peculiar facts and circumstances of the present case, we are restricting the relief only to the original applicants who had approached the Tribunal and who have been litigating since the year 2015 and pursuant to the order of Tribunal are interfered. In these peculiar circumstances, the benefit of the present judgment cannot be extended to those similarly situated candidates who did not move the Tribunal.”

11. From the observations made as above, two issues were for consideration before the Hon’ble High Court; first whether criteria of shortlisting adopted by the Commission was permissible and other that the experience in private hospitals /clinics whether can be considered as requisite experience as prescribed in the advertisement. Hon’ble High Court upheld the criteria of shortlisting. In so far as the experience part is concerned, the Hon’ble High Court in paragraph 50 of its judgment has noted that, it could have delved further on the said issue to record its finding about exact experience which could be accepted in view of the fact that the selection has already been finalized and the State Government has appointed candidates having experience in private hospitals/clinics and the said

appointees have been serving from 2017, it will be too late to disturb them. In premise of the facts as aforesaid, the Hon'ble High Court in paragraph 51 has observed thus:

“51. We thus have before us a unique case where we have upheld MPSC's action of shortlisting, which would throw all the originals applicants possessing qualifications of BDS out of interview process. However, they have already been interviewed in pursuance of interim order passed by the Tribunal. We have not recorded any conclusive finding on the exact experience which could be accepted. If private experience is to be excluded, the shortlisting itself would be rendered erroneous. In the light of the position that now emerges before us, we proceed to determine the exact course of action that can be adopted to balance the equities.”

12. We have already reproduced hereinabove the observations made and findings recorded by the Hon'ble High Court in paragraph 52 of its judgment. In so far as the present applicant is concerned, he is having experience of working in the Government hospital and as such he fulfills the said criteria. In so far as the qualification criteria of higher qualification is concerned the Hon'ble High Court though has upheld the mode of adopting the said shortlisting criteria has directed the Commission to also recommend the candidates possessing the qualification of BDS alone who have been interviewed under the orders of the Tribunal. It is a contention of the review applicant

that the original applicant does not fall in the criteria of the candidates as stated in abovesaid paragraph 52 of the judgment of the Hon'ble High Court. The Commission has appended a list of 82 candidates who were interviewed under the orders of the Tribunal and admittedly the said list does not contain the name of the present original applicant. As such, it is the contention of the review applicant that the order passed by the Tribunal is not in consonance with the order passed by the Hon'ble High Court. We, however, find it difficult to accept the contention so raised.

13. It is the matter of record that, applicant was already interviewed by the Commission and in the said interview he secured 50 marks. At the relevant time, his claim was not considered for the reason that Commission resolved to apply the criteria of shortlisting and decided to recommend the names of the candidates possessing higher qualification i.e. of MDS. It is also the matter of record that accordingly the Commission though recommended names of 188 candidates against 189 vacancies only 122 joined the services and 67 posts remained unfilled.

14. As noted hereinabove, having regard to the said vacancies the Hon'ble High Court permitted

recommendations of the BDS candidates also with a rider that the candidates who are interviewed under the orders of the Tribunal shall only be considered for such appointment. While passing the order in O.A., the Tribunal has clarified that the applicant was already interviewed by MPSC, however, remained to be recommended only on the ground that he was not possessing higher qualification. The order passed by the Tribunal, therefore, cannot be in any way said to be not in consonance with the order passed by the Hon'ble High Court. We, therefore, see no substance in the review application. Hence, the following order:

ORDER

Review Application No.05/2024 is rejected. No costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 21-10-2024.