

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 1034 OF 2023

DISTRICT:- AURANGABAD.

Dr. Rekha W/o Govardhan Gaikwad,

Age : 55 years, Occ: Service,
(Deputy Director, Public Health Department)
R/o: V-7, Sahyadri Hills, Bagadiya Nagar,
Garkheda, Aurangabad. ..

APPLICANT

V E R S U S

1. The State of Maharashtra,

Through the Secretary,
Public Health Department,
G.T. Hospital, 'B' Wing,
10th Floor, Complex Building,
New Mantralaya, Mumbai.

2. Additional Chief Secretary,

Public Health Department,
Gokuldas Tejpal Hospital Compound
Mantralaya, Mumbai.

**3. Maharashtra Public Service
Commission, Through its Secretary,**

Having Office at Trishool Gold Field,
Plot No. 34, Infront of Sarovar Vihar Lake,
Sector 21, CBD, Belapur,
New Mumbai-400624.

4. National Medical Commission,

Through the Secretary General,
Having its office at
Pocket 14, Sector-8, Dwarka
Phase-I, New Delhi-110077.

5. Medical Education & Research,

Through Secretary,
Gokuldas Tejpal Hospital Compound,
Mantralaya-Mumbai.

.. RESPONDENTS

APPEARANCE : Shri Vaibhav B. Kulkarni, learned
counsel for the applicant.

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

: Shri S.K. Kadam, learned counsel for
respondent No. 4.

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

DATE : 22.08.2024

ORAL ORDER

[Per : Justice P.R. Bora, Vice Chairman]

Heard Shri Vaibhav B. Kulkarni, learned counsel for
the applicant, Shri Mahesh B. Bharaswadkar, learned Chief
Presenting Officer for the respondent authorities and Shri S.K.
Kadam, learned counsel for respondent No. 4.

2. The applicant has applied for the post of Director,
Health Services, Maharashtra Medical and Health Service
Group-A in the Directorate of Health Services, in pursuance of
the advertisement No. 053/2023 issued by respondent No. 3 on
13.09.2023. Following educational qualification is prescribed
(clause 9.1(ii) in the advertisement) for the said post:

“१. १ शैक्षणिक अर्हता - (i) -- -- -- -- -- -- --

(ii) Possess a Post-graduate degree in any of the Clinical subjects or in Preventive and Social Medicine as specified in the First or Second Schedule to the Indian Medical Council Act, 1956, or any other qualification recognized as equivalent by the Medical Council of India.”

3. The applicant possesses qualification of MBBS, MD Pathology. The application of the applicant got rejected on the ground that she does not fulfill requisite educational qualification. The applicant thereafter made representation to respondent Nos. 2, 3 & 4 requesting them to consider her candidature and not to reject her candidature only on the ground that Pathology was her subject for post-graduation. However, since no response was received from the respondents the applicant has approached this Tribunal by invoking the provisions under Section 19 of the Administrative Tribunals Act, 1985 claiming the following reliefs: -

“A. This Hon’ble Tribunal may kindly quash and set aside clause no. 9-1(ii) to the extent of post graduate degree in any of the clinical subjects of advertisement no. 053/2023 dated 13.9.2023.

B. This Hon’ble Tribunal may kindly declare and hold that, the applicant eligible for applying to the post of Director of Health Services, Maharashtra Medical and

Health services, Group-A, in pursuance of the advertisement no. 053/2023 dated 13.9.2023 on the basis of her qualification a M.B.B.S., M.D. in Pathology and having more than 10 years' experience in the Health Administration, Medical relief and Family Planning in Government Service.

C. This Hon'ble Tribunal seek clarification from the respondent No. 4 on the recent decision wherein all phase are now made clinical and no pre clinical, para clinical or clinical departments would exist."

4. As is revealing from the pleadings in the O.A. the applicant had in the past also agitated the issue by filing O.A. No. 230/2019 and in the said matter an interim order was also passed in her favour on the basis of which she was called for interview and was also interviewed. However, the said O.A. ultimately came to be dismissed on 21.07.2022.

5. It is the contention of the applicant that there is no rational in not allowing the holders of post-graduation degree in non-clinical subjects to compete for the post of Director of Health Education. It is the further contention of the applicant that G.R. dated 14th December, 1971 laying down the rules for the post of Director of Health Services, cannot be now invoked in view of the subsequent developments and the changes brought in the Postgraduate Medical Education Regulations. It

is further submitted that in the recently amended said Regulations by the National Medical Commission, no such distinction is made between the pre-clinical/ para-clinical and clinical department/ subjects in the Medical College. It is further contended that Regulations of 2023 are published in the Gazette of India on 01.01.2024. It is the further contention of the applicant that if the experience possessed by the applicant is concerned, she is holding wide experience in the administration, which is required for holding the post of Director of Health Services. The applicant has provided the particulars of such administrative works done by her in paragraph 4 of the O.A.

6. It is the further contention of the applicant that, clause 9.1(ii) of the advertisement no.053/2023 to the extent of the criteria of post graduate degree in any of the clinical subject is contrary to the provisions of Article 14 and 16 of the Constitution of India. It is further contended that, nature of duties of the subject post is advisory, administrative and supervisory. In such circumstances, according to the applicant it matters little which post-graduation degree is held by the incumbent.

7. The contentions raised in the O.A. and the prayers made therein are resisted by the respondents. Respondent nos.2, 3 and 4 have submitted their separate affidavits in reply. In his affidavit in reply, respondent no.2 has emphasized on the Recruitment Rules of 1971 and has contended that in the advertisement the educational qualification is prescribed strictly as per the recruitment rules.

8. In his affidavit in reply, respondent No. 3 also has referred to Recruitment Rules dated 14.12.1971. He has further contended that, Director General, Health Services vide his letter dated 03-04-2002 had communicated that MD Pathology qualification is not a qualification in Clinical subject. A copy of the said letter dated 03-04-2002 is annexed by respondent no.3 along with his affidavit in reply. It is further contended that the applicant earlier had also approached this Tribunal raising the same issue by filing O.A.No.230/2019, however, the same was dismissed by this Tribunal. It is further contended that, after receiving request / representation by the applicant, the Commission vide its letter dated 06-10-2023 sought opinion of the Government whether MD Pathology qualification is included in Clinical subject or not, but reply of the Government is not received to the Commission till the date

of filing affidavit. It is further contended that, it may not be within the domain of this Tribunal to cause interference in the policy decision taken by the Government to prescribe a certain qualification for the subject post. It is also contended that, applicant since is not holding the prescribed educational qualification, cannot be considered for the subject post. Respondents have prayed for dismissal of the O.A. so filed by the applicant.

9. Respondent no.4 in its affidavit in reply has contended that, under the Postgraduate Medical Education Regulations, 2000 there was a distinction between pre-clinical /para clinical and clinical departments. It is further submitted that the said Regulations of 2000, as amended vide notification dated 05-04-2018 also provided pre clinical and para clinical subjects and according to that, Pathology was a non-clinical subject. Respondent no.4 has further contended that, according to the Regulations of 2023, there remains no distinction between subjects/departments in a medical college on a basis of being pre-clinical/ para clinical and clinical departments. Respondent no.4 has, however, contended that, at the time of issuance of advertisement by MPSC in the present matter the Postgraduate Medical Education Regulations, 2000

as amended vide notification dated 05-04-2018, were in force, which provide distinction between clinical and non-clinical subjects. Respondent no.4 has, as such, prayed for dismissal of the O.A.

10. Learned Counsel appearing for the applicant earnestly urged that, in view of the subsequent changes adopted by the National Medical Commission in the Post-Graduate Medical Education Regulations, 2023, the applicant requires to be held eligible to compete for the post of Director of Health Services. Learned Counsel urged that, neither in the Rules nor in the reply submitted on behalf of the respondents any such material is brought on record justifying their stand that for the subject post the only appropriate qualification shall be the post-graduation degree in the Clinical subject. Learned Counsel further submitted that, in view of the changes so effected the present applicant must be held eligible and it be declared that qualification held by her is requisite qualification for the post of Director of Health Services. Learned Counsel submitted that, in the earlier round of litigation after having found prima facie case in favour of the applicant, this Tribunal had directed MPSC to call the applicant also for interview and accordingly she was interviewed in the said selection process.

11. Learned Counsel further submitted that the respondents have remained stuck to the Rules of 1971 ignoring the changes occurred in the medical field. Learned Counsel urged that, the applicant holds ample experience in administering the Health Services and has worked on Executive post constantly for about 10 years. Learned Counsel contended that, phrase “Clinical or Non-Clinical Subjects” used in the 1971 Rules is on the basis of the then prevailing rules laid down by the Medical Council of India, the parent body so far as the Medical Education is concerned and now when the said body itself has removed the said distinction, candidature of the applicant deserves to be considered for the subject post.

12. Countering the arguments made on behalf of the applicant, learned CPO and learned Counsel for respondent no.4 submitted that the qualification as prescribed in the advertisement is strictly as per the educational qualification prescribed in the Rules of 1971. Learned Counsel for respondent no.4 further argued that, the recruitment process since was started much earlier, even though the concerned rules suffered an amendment which has been brought into effect from 01-01-2024, it would be impermissible to make the said rules retrospectively applicable. Learned Counsel further

submitted that in such matters very little scope is available for the administrative Tribunals for causing interference in the administrative decisions. Learned Counsel further submitted that, what qualification will be best suited to the candidate for any particular post can only be decided by the employer State and the Tribunal cannot substitute its view in regard to the suitability of any educational qualification other than prescribed in the recruitment rules. Learned Counsel relied upon the judgment of the Hon'ble Apex Court in the case of **J. Ranga Swamy V/s. Govt. of A.P. and Ors. [AIR 1990 SC 535]**. Learned Counsel submitted that, though now there remains no distinction between Clinical and Para-Clinical subjects since the said amendment has been brought into the effect from 01-01-2024, the said cannot be made retrospectively applicable to the recruitment process which started in the year 2023.

13. We have duly considered the submissions advanced on behalf of the parties and learned CPO. We have also perused the documents provided on record by the parties. It is not in dispute that, educational qualification prescribed in the advertisement is strictly in consonance with the qualification as prescribed in the recruitment rules for the post of Director of Health Services introduced vide G.R. dated 14-12-1971. It is

well settled that, it is the prerogative of the Government to lay down requisite qualifications for the posts in the Government. The Rules of 1971 require that a person to be appointed on the post of Director of Health Services must possess a post-graduation in any of the clinical subjects. At the time when the applicant applied for the subject post she was well aware of the fact that Pathology does not fall in the category of clinical subjects.

14. The applicant had earlier also applied for the subject post in pursuance of the advertisement no.49/2018 dated 04-12-2018. At that time also she was disqualified on the ground that, she is not holding the requisite qualification meaning thereby that, she is not holding the post-graduation in any of the clinical subjects. The applicant had, therefore, filed O.A.No.230/2019 raising challenge to Rule 1(c)(iii) of the Recruitment Rules for the post of Director of Health Services dated 14-12-1971 to the extent of possession of postgraduate degree in any of the clinical subjects. It is true that, on the strength of interim order passed in the said O.A., the applicant was interviewed for the said post. It is the further matter of record that, the applicant was not selected and some other candidate was selected on the said post. Ultimately,

O.A.No.230/2019 came to be dismissed by this Tribunal on 21-07-2022. We deem it appropriate to reproduce the observations made by this Tribunal in paragraph 3 of the said order, which read thus:

“3. After having heard the learned Counsel appearing for the parties at length, we have reached to the conclusion that it may not be within the domain of this Tribunal to cause interference in the policy decision taken by the Government to prescribe a certain qualification for the post of Director, Health Services and no such material is also available before us to cause interference in the same. Hon'ble Apex Court has time and again cautioned courts and tribunals not to encroach upon the jurisdiction of the executive or the legislatures in so far as the policy matters are concerned. In the circumstances, we are not inclined to cause any interference in the present matter. O.A., therefore, stands rejected with no order as to costs.”

On perusal of the aforesaid observations, it is evident that, the Tribunal did not accept the prayer made by the applicant in the said O.A. to set aside Rule 1(c)(iii) of the Recruitment Rules for the post of Director of Health Services, Maharashtra State introduced vide G.R. dated 14-12-1971.

15. The applicant has now raised a plea that, the position has now changed and no distinction has remained in clinical and non-clinical subjects. It is also the contention of the applicant that, neither first schedule nor the second schedule of the Indian Medical Council Act, 1956 describes and

acknowledges any distinction between clinical and non-clinical subjects. It also does not provided list of clinical and non-clinical subjects at post-graduation level. The emphasis of the applicant is on the Postgraduate Medical Education Regulations, 2023 framed by the National Medical Commission, which according to the applicant do not make any distinction between clinical and non-clinical subjects. On these grounds, the applicant has prayed for the quashment of clause 9.1(ii) of the advertisement no.053/2023 dated 13-09-2023 to the extent of postgraduate degree in any of the clinical subjects.

16. It is true that, the Postgraduate Medical Education Regulations, 2023 framed by the National Medical Commission do not provide any distinction between pre-clinical/para-clinical and clinical departments/subjects in the Medical Colleges. In the affidavit in reply filed on behalf of the National Medical Commission (respondent no.2) the aforesaid fact is expressly stated in paragraph 26 as well as in paragraph 28. Shri S.K.Kadam, learned Counsel appearing for the National Medical Commission in his arguments fairly pointed out the aforesaid fact. It is, however, his further contention that, the aforesaid regulations have come into effect from 01-01-2024. Learned Counsel has also pointed out that, previously, however, there

was a distinction between pre-clinical and para-clinical and clinical subjects as per the Postgraduate Medical Education Regulations, 2000. In the affidavit in reply filed on behalf of respondent no.2 relevant Regulation No.8 is reproduced in paragraph 24 thereof, which provides that Pathology is a non-clinical subject.

17. It need not be stated that, the appointments are made as per the provisions in the recruitment rules. Once the rules have been made, the appointment has to be in accordance with such rules. As noted hereinabove, the educational qualification prescribed in the advertisement no.053/2023 is strictly as provided under the 1971 Rules. The prayer made in the present O.A. by applicant seeking quashment of clause 9.1(ii) in the advertisement no.053/2023 dated 13-09-2023, therefore, may not be considered for the reason that the relevant rule in the Rules of 1971 is not challenged and is not sought to be quashed and set aside by the applicant. In the O.A. previously filed by the applicant bearing No.230/2019, along with clause in the advertisement, in the said matter, Rule 1(c)(iii) of the Recruitment Rules of 1971 was also sought to be quashed and set aside. In the instant matter, the applicant, however, has not made any such prayer. In absence of any

challenge to the relevant rule in the Rules of 1971 and any prayer for quashment of the said rule, relevant clause in the advertisement, cannot be quashed and set aside.

18. The applicant was fully aware of the fact that, earlier also she was disqualified on the ground of not holding requisite qualification i.e. post-graduation degree in any of the clinical subjects. According to the applicant, if the condition as aforesaid was arbitrary or unconstitutional the applicants must have raised her objection to the said clause in the advertisement as well as against the concerned rule in the Recruitment Rules of 1971 before participating in the recruitment process. Without raising any objection to the said clauses when the applicant participated in the selection process, she is, in fact estopped from raising any challenge to the said clauses.

19. On the date of advertisement i.e. on 13-09-2023 the distinction between clinical and non-clinical subjects was in existence. Though, it is true that, during the pendency of the present O.A. the Postgraduate Medical Education Regulations, 2023 are brought into effect whereby the distinction between clinical and non-clinical subjects is done away with, the Regulations of 2023 cannot be made applicable to the

recruitment which was commenced with the advertisement issued on 13-09-2023.

20. The employer may during the continuance of the process of selection change the qualifications for the post advertised, but a duty is cast upon the employer in such contingency to give wide publicity to the change so effected and to give opportunity to all those who can be held eligible as per the changed/amended qualification along with the candidates possessing the qualification before the amendment. Further, the benefit of the Postgraduate Medical Education Regulations, 2023 cannot be extended in favour of the applicant alone. It is the matter of record that, at the relevant time when the advertisement was published, the distinction between clinical and non-clinical subjects was very well in existence. There is every reason to believe that, many others who may be otherwise eligible to compete for the post of Director of Health Services did not apply for the said post but for the post-graduation in clinical subjects. If the applicant is to be considered, the respondents will have to give opportunity to all such candidates also to apply for the said post. Adoption of such course will be too impracticable when the entire selection process has been virtually completed. We reiterate that, the basic law cannot be

lost sight of that it is the employer who has to take all such decisions.

21. Learned Counsel for respondent no.4 has relied upon the judgment of the Hon'ble Apex Court in the case of **J. Ranga Swamy V/s. Govt. of A.P. and Ors. [AIR 1990 SC 535]**. We deem it appropriate to reproduce observations made by the Hon'ble Apex Court in paragraph 6 thereof, which apply to the facts of the present case:

“6. So far as the second plea is concerned, admittedly, the petitioner does not have, while the respondent has, a doctorate in nuclear physics. The plea of the petitioner is that, for efficient discharge of the duties of the post in question, the diploma in radiological physics (as applied in Medicine) from the Bhabha Atomic Research center (BARC) held by him is more relevant than a doctorate in nuclear physics. It is submitted that in all corresponding posts elsewhere, a diploma in radiological physics is insisted upon and that, even in the State of Andhra Pradesh, all other physicists working in the line, except the respondent, have the diploma of the BARC. It is not for the Court to consider the relevance of qualifications prescribed for various posts. The post in question is that of a Professor and the prescription of a doctorate as a necessary qualification therefor is nothing unusual. Petitioner also stated before us that, to the best of his knowledge, there is no doctorate course anywhere in India in radiological physics. That is perhaps why a doctorate in nuclear physics has been prescribed. There is nothing prima facie preposterous about this requirement. It is not for us to assess the comparative merits of such a doctorate and the BARC diploma held by the petitioner and decide or direct what should be the qualifications to be prescribed for the post in question. It will be open to the petitioner, if so advised,

to move the college, university, Government, Indian Medical Council or other appropriate authorities for a review of the prescribed qualifications and we hope that, if a doctorate in nuclear physics is so absolutely irrelevant for the post in question as is sought to be made out by the petitioner, the authorities concerned will take expeditious steps to revise the necessary qualifications needed for the post appropriately. But, on the qualifications as they stand today, the petitioner is not eligible to the post and cannot legitimately complain against his non-selection.

22. We may also refer to the decision of the Hon'ble Apex Court in the case of **Maharashtra Public Service Commission V/s. Sandeep Shriram Warade & Ors.** with some other matters reported in **[(2009) 6 SCC 362]**, wherein it is held thus:

“9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.”

23. Having considered the law laid down by the Hon'ble Apex Court in both the aforesaid judgments, it does not appear to us that it may be possible and permissible for this Tribunal to cause any interference in the present matter. O.A., therefore, deserves to be dismissed and is accordingly dismissed.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

[Per : Shri Vinay Kargaonkar, Member (A)] (Concurring)

24. The recruitment rules established in 1971 classify medical specialties into "clinical" and "non-clinical" categories. Clinical subjects, such as Pediatrics, Radiology, Ophthalmology and Neuroscience, are those directly involving patient diagnosis and treatment. Non-clinical subjects, on the other hand, include Pathology, which primarily involves laboratory-based diagnostic work rather than direct patient interaction.

25. As of 2024, the classification system established in 1971 has come under scrutiny for several reasons:

(a) Evolution of Medical Practice: The field of medicine has advanced significantly since 1971. Today, the roles of medical professionals in non-clinical fields like

Pathology have become increasingly integral to patient care. Pathologists, for instance, are crucial in diagnosing diseases through laboratory tests, which directly impacts patient management and treatment plans. The contemporary understanding recognizes the value of Pathology in clinical decision-making, blurring the lines between clinical and non-clinical categories.

(b) Educational and Professional Developments:

Modern medical education and training have evolved to integrate clinical and non-clinical aspects more seamlessly. Many programs emphasize the importance of understanding both diagnostic and therapeutic dimensions, reflecting the integrated nature of modern medical practice. This shift challenges the rigid separation of medical disciplines into clinical and non-clinical categories.

(c) Relevance of Specific Qualifications: The existing recruitment rules classify MD Pathology as a non-clinical subject, thereby excluding MD Pathologists from eligibility for the Director Health Services position. In contrast, MDs in clinical disciplines such as Ophthalmology, ENT, Orthopedics, Pediatrics, and Psychiatry are considered eligible. This classification appears increasingly out-dated given that Pathology plays a critical role in patient diagnostics and overall healthcare delivery. Excluding Pathologists from such high-level administrative roles overlooks the significant contributions they make to the medical field.

(d) Impact on Healthcare Administration: The role of the Director Health Services is strategic and involves overseeing and coordinating various aspects of healthcare delivery. Given the comprehensive nature of modern healthcare systems, it is crucial that the Director possesses a broad understanding of all medical disciplines, including those traditionally classified as non-clinical. Limiting eligibility based on out-dated classifications may result in a less informed leadership that does not fully appreciate the interconnected nature of various medical specialties.

26. The National Medical Commission (NMC) Notification dated December 29, 2023, signifies a significant shift in the classification of medical subjects, abolishing the out-dated dichotomy between clinical and non-clinical disciplines. This change reflects a modern understanding of the interconnected nature of medical practice and the integral role that all specialties play in patient care and healthcare administration. Consequently, it is crucial that these updated classifications are uniformly applied to all recruitment processes, including those currently on-going.

27. The NMC's recent notification underscores the need to integrate medical specialties more holistically, moving away from a rigid classification system. The previous distinction, which categorized subjects like Pathology as non-clinical and

thereby excluded them from certain roles, no longer aligns with contemporary medical practice. The elimination of this dichotomy acknowledges that all medical specialties contribute crucially to patient outcomes, whether through direct patient care or diagnostic support.

28. The correction of the recruitment rules to align with the NMC's new "Post Graduate Medical Education Regulations, 2023" should not be limited to future recruitments. It is imperative that these updated regulations be applied retroactively to all on-going recruitment processes. Ensuring that the revised criteria are used universally will uphold fairness and consistency, allowing candidates from previously excluded specialties to be considered for positions they are qualified for under the new NMC guidelines.

29. The applicant holds a Master's degree in Pathology, i.e., an MD in Pathology. Pathology is the study of the nature and causes of diseases, involving the examination of body tissues, organs, and bodily fluids. This discipline is central to the practice of modern medicine, providing the crucial diagnostic information that guides clinical decision-making and patient management.

30. The recruitment rules for the Director Health Services, established in 1971, have increasingly lost relevance due to advancements in medical practice and education. The rigid classification of medical subjects into clinical and non-clinical categories fails to reflect the contemporary understanding of the integrated nature of healthcare. To ensure that the selection process for this critical position is equitable and aligns with modern medical practice, it is recommended that these rules be reviewed and revised.

31. The fact, however, remains that ultimate decision has to be taken by the employer State. Moreover, as per the law laid down by the Hon'ble Apex Court in the judgments cited supra, it may not be within the jurisdiction of this Tribunal to substitute the educational criteria. As such, I concur with the final conclusion recorded by the learned Vice Chairman.

(VINAY KARGAONKAR)
MEMBER (A)

PLACE : AURANGABAD
DATE : 22.08.2024