

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.105/2021

DISTRICT:- AURANGABAD

1] Smita Khandu Suryavanshi,
P-16, Building No.B1-14,
ESIS Hospital Campus,
Chikalthana, Aurangabad,
MIDC Industrial Area, 431 006.

2] Mahesh Mahendra Padvi,
Age: 28 years, Occ: Service,
R/o. C/o: Smita Khandu Suryavanshi,
Plot No. P-16, Building No.B1-14,
ESIS Hospital Campus,
Chikalthana, Aurangabad.

3] Mahesh Suresh Parpani,
Age: 30 years, Occ: Service,
R/o. As above.

4) Jayashri Jagganath Munde,
Age: 26 years, Occ : Service,
R/o. As above.

5] Anagha Devendra Somkuwar,
Age: 25 years, Occ: Service,
R/o. As above.

6] Niraj Rajensha Pagare,
Age: 33 years, Occ: Service,
R/o. As above.

7) Vipul Vijay Bhopale,
Age: 28 years, Occ: Service,
R/o: As above.

8] Yogiraj Shivraj Lahane,
Age: 28 years, Occ: Service,
R/o: As above

- 9] Yuti Ramesh Adam,
Age: 27 years, Occ: Service,
R/o: As above.
- 10] Mayuri Prakash Mhatre,
Age: 27 years, Occ: Service,
R/o: As above.
- 11] Rahul Madhukar Pawar,
Age: 39 years. Occ: Service,
R/o: As above.
- 12] Vedraj Kanhu Rathod,
Age: 27 years, Occ: Service,
R/o: As above.
- 13] Akash Yadavrao Harde,
Age: 26 years, Occ: Service,
R/o: As above.
- 14] Pooja Shrikrushna Gomase,
Age: 25 Years, Occ: Service,
R/o: As above.
- 15] Pranav Dharmapal Bahade,
Age: 26 Years, Occ: Service,
R/o: As above.
- 16] Narpat Khatrya Valavi,
Age: 27 years, Occ: Service,
R/o: As above.
- 17] Yogesh Ashok Dongale,
Age: 29 Years, Occ: Service,
R/o: As above.
- 18] Tejas Rajendra Gurav,
Age: 26 years, Occ: Service,
R/o: As above.
- 19] Vaishali Baburao Khade,
Age: 27 years, Occ: Service,
R/o: C/o: Smita Khandu Suryavanshi,
Plot No.P-16, Building No.B1-14,
ESIS Hospital Campus,
Chikalthana, Aurangabad.

20) Nandankumar Dagadu Waghchaure,
Age: 29 years, Occ: Service,
R/o: Plot No.16, Building No B-3,
Quarter No.13, ESIS Hospital Campus,
Naregao Road, Near Garware Stadium,
Chikalthana, M.I.D.C. Area, Aurangabad.

21] Renuka Zhabbusing Chavan,
Age: 27 years, Occ: Service,
R/o: C/o. Nandankumar Dagadu Waghchaure,
R/o: Plot No.16, Building No B-3,
Quarter No.13, ESIS Hospital Campus,
Naregao Road, Near Garware Stadium,
Chikalthana, M.I.D.C. Area, Aurangabad.

22] Priyanka Rajkumar Kapse,
Age: 25 years, Occ: Service,
R/o: As above.

23] Swati Narayan Puri,
Age: 27 years, Occ: Service,
R/o: As above.

24] Namrata Bandu Patil,
Age: 25 years, Occ: Service,
R/o: As above.

25] Vasant Anantrao Dolas,
Age: 38 years, Occ: Service,
R/o: As above.

26] Bhagyashree Nandakishor Wagh,
Age: 25 years, Occ: Service,
R/o: As above.

27] Priyanka Arjun Padavi
Age: 27 years, Occ: Service,
R/o: As above.

28] Jayashri Madhukar Shinde,
Age: 28 years, Occ: Service,
R/o: As above.

29] Priyanka Dnyaneshwar Pedor,
Age: 27 years, Occ: Service,
R/o: As above.

30] Amol Kaviraj Jadhav,
Age: 27 years, Occ: Service,
R/o: As above.

31] Gokul Vasudev Dahbhanjan,
Age: 26 years, Occ: Service,
R/o: As above.

32] Vaibhav Ramchandra Surve,
Age: 33 years, Occ: Service,
R/o: As above.

33] Akshay Tukaram Patil,
Age: 30 years, Occ: Service,
R/o: As above.

34] Pranita Prakash Mayekar,
Age: 26 years, Occ: Service,
R/o: As above.

35] Sampada Dilip Joshi,
Age: 28 years, Occ: Service,
R/o: As above.

36] Ankita Pundalik Bhoir,
Age: 26 years, Occ: Service,
R/o: As above.

37] Sharda Vithoba Pandhare,
Age: 29 years, Occ: Service,
R/o: As above.

38] Hakeem Khurram Mohammad Wasim,
Age: 32 years, Occ: Service,
R/o: C/o. Hakeem Khurram,
Jahangir Colony, Harsul, Aurangabad.

39] Kajol Rajesh Telrandhe,
Age: 26 years, Occ: Service,
R/o: C/o. Hakeem Khurram,
Jahangir Colony, Harsul,
Aurangabad - 431001.

40] Pooja Dinkar Bandgar,
Age: 25 years, Occ: Service,
R/o: As above.

41] Payal Sahebrao Pawar,
Age: 26 years, Occ: Service,
R/o: As above.

42] Monika Lorence Arourj,
Age: 27 years, Occ: Service,
R/o: As above.

43] Tushar Balaram Mhatre,
Age: 29 years, Occ: Service,
R/o: As above.

44] Sharon Ramesh Mohite,
Age: 29 years, Occ: Service,
R/o: As above.

45] Kavita Bajirao Bahirwal,
Age : 28 years, Occ: Service,
R/o: As above.

46] Surbhi Jayaram Patil,
Age: 25 years, Occ: Service,
R/o: As above.

47] Tejaswini Baliram Malaji,
Age: 24 years, Occ: Service,
R/o: As above.

48] Nayan Nayabrao Lakde,
Age: 26 years, Occ: Service,
R/o: As above.

49] Pratibha Durgadas Sapkal,
Age: 25 years, Occ: Service,
R/o: As above.

50] Shilpa Raghunath Bodkar,
Age: 26 years, Occ: Service,
R/o: As above.

51] Vitthal S/o Ramdas Kale,
Age: 27 years, Occ: Service,
P-16 Building No B3-14,
ESIS Hospital Campus,
Chikalthana, Aurangabad.

...APPLICANTS

V E R S U S

1] The Deputy Secretary,
Department of Public Health,
Gokuldas Tejpal Hospital Compund,
New Mantralay, Mumbai - 400 001.

2] Employees State Insurance
Corporation - Regional office,
6th Floor, Panchdip Bhawan,
N.M.Joshi Road, Lower Parel,
Mumbai - 400 013.
[Through: The Commissioner]

3] Swati D Tavte,
Age. 37 yrs, Occu. Service,
R/o Deendayal Nagar, Ravi Compound,
In front of Satyam Apartment,
Pachpakhadi, Thane - 400 602.

4] Jyotsana Balaram Jadhav,
Age. 37 yrs, Occu. Service,
R/o. 302/B, Mauli Arambh Apartment,
3rd floor, Bhagasheth Compound,
Manpada, Dombivali East,
Thane-421 203.

5] Smt Dhanshri Madhukar Jadhav,
Age: 37 yrs, Occu. Service,
R/o. C/o. Smt Sushama Deshmukhe,
214/3, Somwari Peth, Near Rajarshi
Shahu Garden, Nagpur-440 009.

6] Smt Purnima Tulshiram Waghmare (Rokade),
Age. 37 yrs, Occu. Service,
R/o: 404 Radhey Residency, Vichumbe,
New Panvel, 410 206.

7] Smt Sarika Rakesh Kadam,
Age. 37 yrs, Occu. Service,
R/o. Dnyaneshwari Park Building,
First Floor, 105 Kalwa, Thane-400 605.

... RESPONDENTS

APPEARANCE : Shri C.V.Dharurkar, Counsel for Applicants.
: Shri V.R.Bhumkar, Presenting Officer for respondent nos.1 & 2.
: Shri Saket Joshi, Counsel holding for Shri Avinash S. Deshmukh, Counsel for respondent nos.3 to 7.

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

DATE : 03-09-2024

O R A L O R D E R

(PER: JUSTICE SHRI P. R. BORA, V.C.)

1. Heard Shri C.V.Dharurkar, learned Counsel for the applicants, Shri V.R.Bhumkar, learned Presenting Officer (PO) for the respondent nos.1 & 2 and Shri Saket Joshi, learned Counsel holding for Shri Avinash S. Deshmukh, learned Counsel for respondent nos.3 to 7.

2. Aggrieved by the order dated 19-08-2020 passed by respondent no.1 i.e. Deputy Secretary, Public Health Department, Mumbai whereby the seniority of the bonded/ad-hoc Staff Nurses is directed to be reckoned from the date of their regularization in service, the applicants have preferred the present O.A. seeking quashment of the said order. The

applicants have also prayed for declaration that regularized Staff Nurses cannot be treated senior to the applicants who have been appointed through the recruitment process duly carried out.

3. Applicants had applied for the post of Staff Nurse in pursuance of the advertisement issued by the Commissioner, State Employees Insurance Scheme in the month of September, 2017 and got selected and then were issued with the appointment orders sometimes in December, 2017. The Department of Public Health was having recruitment rules for the Nursing Staff Class-III brought into force from 10-01-1964. Department revised the said recruitment rules and the revised recruitment rules were published on 15-04-2015. As per the provisions under Rule 13 of the said Rules, the scheme of regularization of ad-hoc employees was introduced. Ad-hoc appointees who were in Government service up to 31-12-2011 were intended to be regularized. On 20-06-2019, the Public Health Department issued G.R. thereby permitting regularization of Staff Nurse candidates appointed as bonded in the intervening period between 01-01-2012 to 15-04-2015. Thus, the candidates employed into Government service as bonded staff nurse up to 15-04-2015 were held to be eligible to

appear for common written test for the purpose of their regularization into service. In the said G.R. it was mentioned that, recruitment rules shall be applicable to ESIS also.

4. On 22-09-2019 special examination test was conducted of the bonded candidates who were in service until 2015. On 26-12-2019 result of the said examination was published and regularization and absorption of the candidates who passed the examination was declared on 19-08-2020. The Deputy Secretary, Public Health Department issued guidelines for regularizing the services of the bonded Nurses who have passed the special examination from the date 15-04-2015 i.e. the date on which the amended Rules were notified.

5. It is the grievance of the applicants that, in no case the services of the bonded Staff Nurses could have been regularized by the respondents w.e.f. 15-04-2015. According to the applicants the services of the bonded Nurses were liable to be regularized only from the date of their passing examination and not from any prior date. The applicants have alleged that because of such erroneous decision taken by the respondents, the applicants who have been selected on their merit after having undergone the recruitment process duly carried out, have been shown junior to the said bonded Nurses. The

applicants have, therefore, prayed for setting aside the said order dated 19-08-2020.

6. Respondent State authorities have opposed the contentions raised in the O.A. as well as prayers made therein. Respondent no.2 has filed the affidavit in reply wherein it is contended that, the directions issued under letter dated 19-08-2020 have not been implemented yet and as such there was no cause of action for the applicants to file the present O.A. It is further contended that, vide letter dated 03-04-2020 instructions were given to regularize the services of the bonded Nurses from 15-04-2015 and to fix their salary accordingly. It is further contended that, final seniority list of Staff Nurses, however, is yet to be finalized and published.

7. The applicants have arrayed some of the Staff Nurses as party respondents who were likely to be affected if the prayers made in the O.A. are allowed in favour of the applicants. On behalf of said respondents 3 to 7 a common affidavit in reply has been filed. The private respondents have opposed the submissions made in the O.A. as well as the prayers made therein. According to these respondents the application is liable to be dismissed in *limine* being not maintainable because the applicants have no *locus standi* to

seek the relief as prayed for in the O.A. It is contended that, whatever service benefits have been conferred upon the private respondents and large number of other similarly situated Staff Nurses are based on the statutory provisions of law contained in “Staff Nurse (Maharashtra Nursing Services Group-C Recruitment) Rules, 2015 [for short “Rules of 2015] introduced by the State Government, more particularly, by Public Health Department of the State in exercise of powers conferred upon it under the proviso to Article 309 of the Constitution of India. It is further contended that, the applicants have not raised any challenge to the recruitment rules of 2015 or even to the G.R. dated 28-06-2019. In the circumstances, according to these respondents, no relief as has been prayed for by the applicants is liable to be granted.

8. It is further contended by these respondents that, Rules of 2015 having been introduced much prior to the entry of the applicants in service in the cadre of Staff Nurse, applicants cannot raise any challenge thereto. It is further stated that the applicants have misconstrued the communication dated 19-08-2020 to be an order issued by respondent no.1 to the Chief Executive Officer of ESIS. According to these respondents the said communication is

merely a clarification given by the State Government in respect of the Rules of 2015 and G.R. dated 28-06-2019.

9. It is further contended that, the applicants entered into the Government service after December, 2017 i.e. after introduction of the Rules of 2015 under which the respondent nos.2 to 7 along with the similarly situated large number of other persons were ordered to be regularized in service upon passing of the special written examination. According to these respondents, therefore, the applicants do not have any right to question any action of respondent nos.1 and 2 based on the Rules of 2015. It is further contended that respondent nos.3 to 7 and the similarly situated large number of other Staff Nurses have been extended with the benefit of deemed regularization in service w.e.f. 15-04-2015 as specified in Rule 13 thereof. It is further contended that the contention raised on behalf of the applicants based on the provisions of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 does not deserve consideration for the reason that, the service conditions of respondent nos.3 to 7 and others are governed by the statutory provisions contained in Rule 13 of the Rules of 2015. On the aforesaid grounds the said respondents have also prayed for dismissal of the O.A. filed by the applicants.

10. Learned Counsel for the applicants as well as the learned Counsel appearing for the private respondents and the learned PO appearing for the said authorities have advanced their arguments based on their pleadings in their respective O.A. and the affidavits in reply. Moreover, learned Counsel for the applicants and the learned Counsel appearing for respondent nos.3 to 7 have placed on record written notes of arguments.

11. There is no dispute about the fact that vide clause 13 of the Recruitment Rules of 2015, the Government has regularised the services of the bonded Staff Nurses appointed as bonded Staff Nurse till 31-12-2011. We deem it appropriate to reproduce the said Rule, which reads thus:

“13. Notwithstanding anything contained in these rules, bonded nurses appointed as bonded Staff Nurse till the 31st December, 2011 and who is not regularized, shall be required to pass special written examination conducted by the Maharashtra Knowledge Corporation Limited or by any other authorised institute as decided by the Government for regularization of their service; a bonded staff nurse who,-

(a) Shall not pass the special written examination in first chance, will be given a second chance to pass the examination;

(b) Shall not pass special written examination in second chance, will be given one more chance to pass the examination;

(c) Shall not pass the examination even in the last chance as prescribed in the sub-rule (b), his/her services shall be liable to be terminated: Provided that, the bonded staff nurse, who will pass the written examination within prescribed chances, their services shall be deemed to be regularized from the date of publication of these rules."

12. It is not the case of the applicants that, respondent nos.3 to 7 or similarly situated other employees working on the post of Staff Nurse who have been regularized in service by virtue of the provisions under the aforesaid Rule 13 of the Recruitment Rules of 2015, were appointed after 31-12-2011. It is also not the case of the applicants that, without passing the special examination as prescribed in Rule 13 any bonded Staff Nurse has been absorbed or regularized in service. It is also not the case of the applicants that, either of respondent nos.3 to 7 or any other identically placed employee whose services have been regularized did not pass the special examination within the stipulated period and/or stipulated chances.

13. Bare reading of Rule 13 of the Rules of 2015 reveals that the Government has regularized services of the bonded Nurses appointed as bonded Staff Nurse till 31-12-2011 and who were not regularized till the date of notification of the said Rules, on their passing the said written examination to be conducted by the Maharashtra Knowledge Corporation Ltd or by

any other authorised institute, as may be decided by the Government for regularization of their services. Sub-clause (a) of said Rule 13 provides that, the candidates who may not pass the special written examination in first chance will be given a second chance to pass the examination. Sub-clause (b) of the said Rule 13 says that, the candidates who failed in passing the examination in second chance will be given one more chance to pass the examination. Sub-clause (c) provides that the candidates who would fail to pass the examination even in last chance, their services shall be liable to be terminated. Proviso to the aforesaid Rules says that, services of the bonded Staff Nurses who will pass the written examination within prescribed chances, shall be deemed to be regularized from the date of publication of these Rules. From the material placed on record, it is quite evident that the services of the bonded Staff Nurses have been regularized from the date of publication of Rules of 2015 i.e. w.e.f. 15-04-2015 as they all had passed the said written examination in the stipulated chances.

14. Having considered the provisions under Rule 13 as aforesaid, and more particularly, having regard to the fact that all the bonded Staff Nurses passed special examination within the stipulated chances, there appears no substance in the

contentions raised on behalf of the applicants that the said candidates lack any merit. The entire thrust of the applicants is on the fact that, all the ad-hoc appointees established their eligibility for regularization on the date of passing their examination i.e. 26-12-2019. It is, therefore, further contention raised on behalf of the applicants that the seniority of such employees, therefore, has to be counted from the date of passing eligibility examination i.e. from 26-12-2019. It has also been argued on behalf of the applicants that any reward of prior date of seniority to the said regularized candidates would be detrimental and prejudicial to the interest of the direct recruits i.e. the applicants and would bestow undue benefits on the ad-hoc appointees.

15. The argument as has been advanced is liable to be rejected at the threshold for the reason that, the date for reckoning the seniority of the regularized candidates is provided under Rule 13 of the amended Rules i.e. Rules of 2015. The applicants have admittedly not challenged the said Rules or clause 13 of the said Rules. In the circumstances, the applicants do not have any right to contend that the seniority of such ad-hoc appointees is to be reckoned from the date of passing their examination.

16. It has also been argued on behalf of the applicants that mere granting regularization would not entail in granting seniority to the Staff Nurses regularized under Rules of 2015. It is further contended that in so far as the seniority aspect is concerned, the same can only be decided under Rule 4 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. Referring to the proviso under Rule 4(1) of the said Rules, it has been argued that for the purpose of seniority, the services rendered by the bonded Staff Nurses till the date of passing the examination shall not liable to be considered. According to the learned Counsel all such appointments issued in favour of the bonded Staff Nurses were fortuitous appointments.

17. It has been further submitted that, the State has not explained the reasons for not regularizing the services of the said Staff Nurses prior to 15-04-2015. As has been submitted by the learned Counsel all the ad-hoc appointees established their eligibility for regularization on the date of passing their eligibility examination i.e. on 26-12-2019. As such, according to him the date of passing the eligibility examination i.e. 26-12-2019 will be the appropriate date for counting seniority of the said Staff Nurses. Learned Counsel reiterated that the

applicants on their own merit after having faced the selection process conducted by the competent authority have entered into Government service in the year 2017 i.e. before passing of the eligibility examination by the private respondents and therefore the applicants only can be held senior and placed above the private respondents in the seniority list.

18. Submissions made as aforesaid appear difficult to be accepted. As we have discussed hereinabove as per clause 13 of the Rules of 2015, the services of the bonded staff nurses who would pass the prescribed special written examination shall be deemed to be regularized from the date of publication of the Rules of 2015. As such, the contention of the applicants that, the services rendered by the bonded staff nurses like the respondent nos.3 to 7 must be held fortuitous services even after 15-04-2015 till the date private respondents and similarly situated others passed the examination cannot be accepted.

19. Sub clause (c) of Rule 13 provided the consequences of not passing the examination within the stipulated period as well as passing the examination within the stipulated chances. As provided therein candidates not passing the examination within the stipulated chances were liable to be terminated whereas the bonded staff nurses who will pass the written

examination within prescribed chances, their services were deemed to be regularized from the date of publication of the said Rules. The services of the bonded staff nurses who passed the examination within the prescribed chances, therefore, must be held to have been regularized w.e.f. 15-04-2015 and their seniority in the cadre of staff nurse has to be reckoned from the said date. The applicants have admittedly entered into Government service in the year 2017. When the services of the bonded staff nurses were regularized i.e. on 15-04-2015, the applicants have not even been in the cadre of staff nurse. In the circumstances, in no case, it can be accepted that the respondents must have placed the applicants in the seniority list above the bonded staff nurse whose services came to be regularized by virtue of Rule 13 of the Rules of 2015.

20. For the reasons elaborated hereinabove, the O.A. deserves to be dismissed and is accordingly dismissed, however, without any order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 03.09.2024