

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.1091 of 2015
(SUBJECT : ADVERTISEMENT)

Dr. Kshitij Digambar Lohite,)
R/o. Guru-Prit Bungalow,)
D.M. Nagar Old Agra Road, Pimpalgaon,)
Baswant, Tal : Niphad, District : Nashik)

....Applicant.

Versus

1. State of Maharashtra)
Through its Secretary,)
Public Health Department,)
Mantralaya, Mumbai 400 032.)
2. Maharashtra Public Service Commission,)
Through its Chairman,)
Having its office address at M.G. Road,)
Fort, Mumbai)
3. Dr. Priyank Vijay Kapade,)
R/o. Family Dental Clinic,)
Shop No., Vrindavan Bldg,)
Next to Rose Beauty Parlour,)
Near Mohinder Singh Kabul Singh School,)
Agra Road, Kalyan (W) 421 301.)
4. Dr. Shailesh Shashikant Badave,)
R/o. Shubham Dental Clinic,)
39, B, Shankar Peth,)
Opp. Laxmi-Vishnu Cloth Shop,)
Main Road, Karad 415 110)
5. Dr. Athiesh Pawar,)
R/o. Sub Dist Hospital Morshi,)
Tal : Morshi, District : Amrawati,)
Pin : 444 905)
6. Dr. Pradnya Patil,)
R/at. Ship No.3, Shroff Bldg,)
Opp. Gihvijay Mills,)
Dr. B.A. Road, Lalbaug,)
Mumbai 400 012)



7. Dr. Neha M. Gadade)
R/at. Shop No.4, Premlok Plaza,)
Upper Ground Floor, Vishrantwadi,)
Pune 15)
8. Dr. Chandrashekhar S. Dhage,)
Rural Hospital, Karanja (Gha.),)
Dist. Wardha.)
9. Dr. Anjum Sagir Deshmukh,)
Indira Gandhi Sub District Hospital,)
Bhiwandi, Dist. Thane.)
10. Dr. Gulam Anwar Naviwala,)
General Hospital, Malwani,)
Malad (W), Mumbai.)
11. Dr. Zia Tahir Ghadialy,)
Indira Gandhi Rural Hospital,)
Uran, Dist. Raigad.)
12. Dr. Sagar Pandharinath Nagare,)
Sub District Hospital, Kasa,)
Tal Dahanu, Dist. Palghar.)
13. Dr. Atish Prakash Pawar,)
Sub District Hospital,)
Marshi, Amravati.)
14. Dr. Priyank Vijay Kapade,)
Rural Hospital, Vani,)
Opp. Bus Stand, Tal. Dindori,)
Dist. Nashik.)
15. Dr. Bhagyoday Narssingrao Barewad,)
Rural Hospital & Trauma Care Centre,)
Sangameshwar, Dist. Ratnagiri.)
16. Dr. Gorakhnath Balu Shinde,)
Rural Hospital, Natepute,)
Solapur.)
17. Dr. Atul Uttam Bhagwat,)
Room No.18, Dental Department,)
Rural Hospital, Barshi, Solapur.)

18. Dr. Sachin G. Makne,)
Govt. Rural Hospital, Ghoti,)
Near Bus Stand, Tal : Igatpuri,)
Dist. Nashik.)
19. Dr. Syed Ruby Syed Asadullah,)
Sub District Hospital, Selu,)
Dist. Parbhani.)
20. Dr. Shrikant Ramchandra Sonune,)
Sub District Hospital, Karmala,)
Dist. Solapur.)
21. Dr. Ganesh Ramdhan Pawar,)
Rural Hospital, Arui,)
Dist. Yavatmal.)
22. Dr. Abhijit Wankhede,)
Sub District Hospital,)
Daryapur, Dist. Amravati.)
23. Dr. Kavita Annappa Amale,)
Sub District Hospital,)
Trambak, Dist. Nashik.)
24. Dr. Aditi Madhav Joglekar,)
Sub District Hospital, Roha,)
Dist. Raigad.)
25. Dr. Rupali Uday Naik,)
Rural Hospital, Devrukh,)
Dist. Ratnagiri.)
26. Dr. Ashish Ramesh Karode,)
Rural Hospital, Telhara,)
Dist. Akola.)
27. Dr. Ashish U. Bisane,)
Rural Hospital, Abhona,)
Dist. Nashik.)
28. Dr. Pranita Bhimrao Balkhande,)
Sub District Hospital,)
Mangaon, Dist. Raigad.)



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| 29. | Dr. (Smt.) Pooja B. Bhakre,
Rural Hospital, Biloli,
Tal. Biloli, Dist. Nanded. |)
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| 30. | Dr. Nitin Ashok Pagare,
Dental Department, District Hospital,
Dhule. |)
)
) |
| 31. | Dr. Mayor Vijaykumar Bidarkar,
Dental Surgeon, S.D.H. Kalamb,
Dist. Osmanabad |)
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) |
| 32. | Dr. Swapnil Santosh Deore,
Dental Surgeon, Rural Hospital,
Sungir, Dist. Dhule. |)
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| 33. | Dr. Prashant Sukhlal Sonawane,
Dental Surgeon, Rural Hospital,
Sindkheda, Dist. Dhule. |)
)
) |
| 34. | Dr. Rajaram Deshmukh,
At : Sub District Hospital, Jamaner,
Dist. Jalgaon |)
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| 35. | Dr. Mamta Lanjewar,
At : Sub District Hospital, Sakoli,
Dist. Bhandara. |)
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) |
| 36. | Dr. Swati Ingawale,
At : Sub District Hospital, Gadhinglaj,
Dist. Kolhapur. |)
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| 37. | Dr. Maseera Parveen Syeda,
At : Rural Hospital, Karnji,
Dist. Yavatmal. |)
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| 38. | Dr. Dinesh Dhole,
At : District Hospital, Nashik.
Dist. Nashik. |)
)
) |
| 39. | Dr. Varsha Suryawanshi,
At. L.D. Deshmukh Sub District Hospital,
Murtijapur, District : Akola. |)
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) |

.....Respondents.

40. Dr. Pritam Kumar Mankapure,)
Working as Dental Surgeon,)
Residing at 49, Greenwoods- C,)
Ranjeshwar Co-op. Housing Society,)
Katraj, Pune 411 046.)
41. Dr. Shashikant Pandit Katkade,)
Working as Dental Surgeon,)
Residing at Panewadi, Post Nagapur,)
Taluka – Nandgaon, District Nashik 423 104)
42. Dr. Yogesh Sakahari Sonawane,)
Working as Dental Surgeon,)
Residing at 8/B, Matoshree,)
Rajya Karmachari Housing Society,)
Samtanagar, Savedi, Ahmednagar – 414 003)
43. Dr. Manoj Vishwasrao Patil,)
Working as Dental Surgeon,)
Residing at 7, Aadhunik Society,)
Gitanjali Colony, Indira Nagar,)
Near Jogging Track,)
Nashik – 422 009.)
44. Dr. Monika Sambhajirao Desai,)
Working as Dental Surgeon,)
Residing at C/o. M.V.B. Jadhav,)
Plot No.37, Pramod Nagar,)
Near Samarth Colony, Sector No.2,)
Deopur, Dhule – 424 002.)
45. Dr. Sagar Rameshrao Bhule,)
Working as Dental Surgeon,)
Residing at Navjivan Colony,)
University Road, Camp, Amravati.)
46. Dr. Ashvini Subhash Jaiswal,)
Working as Dental Surgeon,)
Residing at Dhantoli, Kotal, District Nagpur.)
47. Dr. Dineshkumar Baburao Rathod,)
Working as Dental Surgeon,)
Residing at 'Jagdamba', H.No.6154,)
Shivaji Chowk, Dronagiri Nagar,)
Taluka Hadgaon, District Nanded – 431 712)

RESPONDENT NO. 1
Added as per order
dt. 18/01/2019

6/7/19

Registrar

Maharashtra Administrative Tribunal
Mumbai

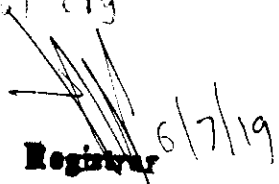
48. Dr. Deepak Chandrakant Kelgandre, -)
 Working as Dental Surgeon,)
 Residing at 52/B, Satkar Colony,)
 Near Bhagwanbaba Chowk,)
 Nirmalnagar, Savedi, Ahmednagar 414 001.)
49. Dr. Saba Mustafa Khan,)
 Working as Dental Surgeon,)
 Residing at Masoom Colony,)
 Darga Road, Parbhani – 431 401)
50. Dr. Sonali Tukaram Gadhave,)
 Working as Dental Surgeon,)
 Residing at Flat No.206/2/3, City View CHS,)
 Sainagar Oraripada, Dahisar (East),)
 Mumbai 400 068.)
51. Dr. Shailash Shashikant Badave,)
 Working as Dental Surgeon,)
 Residing at C/o. Yash Dental Clinic,)
 Azad Chowk, Near Hutatma Bank,)
 Islampur, District Sangali 415 409.)
52. Dr. Mahesh Baliram Pokie,)
 Working as Dental Surgeon,)
 Residing at House No.6, Plot No.116,)
 Nagu Niwas, Sanket Nagar, Bhawsar Chowk,)
 Taroda (Khurd), Nanded – 431 605.)
53. Dr. Ganesh Pandurang Mengal,)
 Working as Dental Surgeon, -)
 Residing at Flat No.104,)
 Gurukul Society, Gurunagar, Mudre (Khurd),)
 Karjat, Raigad – 410 201.)
54. Dr. Sheetal Prabhakar Mhaske,)
 Working as Dental Surgeon,)
 Residing at Bethel House, N-6,)
 Telecom Housing Society, CIDCO, Aurangabad.)
55. Dr. Ashish Rameshkumar Soni,)
 Working as Dental Surgeon,)
 Residing at Aandhi Chowk,)
 Ganpati ward, Arvi, District Wardha – 442 201.)

56. Dr. Rahul Devidas Pimpalkar,)
Working as Dental Surgeon,)
Residing at 303, Bhalchandra Apartment,)
Ajni Road, Wanjari Nagar, Nagpur 440 003)
57. Dr. Deepali Subhash Kulkarni,)
Working as Dental Surgeon,)
Residing at 81-B, Shubham Society,)
Zambad Estate, Near Shreynagar,)
Aurangabad 431 005.)
58. Dr. Amol Vijay Nagrale,)
Working as Dental Surgeon,)
Residing at E-101, Shubham Apartment,)
Borkutte Layout, Landmark Complex,)
Narendra nagar, Nagpur.)
59. Dr. Sayali Belge – Mamdewar,)
Working as Dental Surgeon,)
Residing at A-3, Morya Housing Society,)
Sector – 5, Airoli, Navi Mumbai.)
60. Dr. Savita Abhay Mendhule,)
Working as Dental Surgeon,)
Residing at 48, Central Excise Colony,)
Behind Petrol Pump, Sneha nagar,)
Chhatrapati Chowk, Wardha road,)
Nagpur 440 015.)
61. Vishwajeet Tulashidas Kale,)
Working as Dental Surgeon,)
Residing at D-11, 2nd lane Shahunagar,)
Behind Y.C. College, Islampur, Taluka Walwa,)
District Sangli – 415 409.)
62. Dr. Ashwini Babanrao Chindhe,)
Working as Dental Surgeon,)
Residing at C/o.-Chindhe Hospital,)
A/P – Bhenda Bk. Taluka Newasa,)
District Ahmednagar 414 605.)

63. Dr. Sabanat Hafiz, Khan,)
Working as Dental Surgeon,)
Residing at "Al-Firdous",)
Naya Godam, Ismailpura, Kamptee,)
Nagpur, Maharashtra 441 002.)
64. Dr. Pushkar S. Dahiwal,)
Working as Dental Surgeon,)
R/o.Aurangabad.)

..... Added Respondents.

Respondent No 20 to 63
added as per entry
dt: 18/2/2019


Registrar
Maharashtra Administrative Tribunal
Mumbai.

Shri Abhijeet A. Desai, the learned Advocate with Ms. Vrushali L. Maindad, the learned Advocate for the Applicant.

Shri S.K. Nair, learned Special Counsel, Ms. S.P. Manchekar, learned Chief Presenting Officer, Ms. N.G. Gohad, learned Presenting Officer and Shri S.D. Dole, learned Presenting Officer for the Respondents.

Shri D.B. Bhargava, learned Special Counsel for the Respondents
Smt. Punam Mahajan, learned Advocate for Respondents No.40 to 63.

Shri A.V. Bandiwadekar, learned Advocate for Respondents No.3 to 34.

Shri B. Bhahhda, learned Advocate for Respondent.

Shri A.V. Sakholkar, learned Advocate for Respondent.64.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN
SHRI P.N. DIXIT, MEMBER(A)

RESERVED ON : 05.04.2019.

PRONOUNCED ON : 08.05.2019.

PER : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

6.7/19
Registrar
Maharashtra Administrative Tribunal
Mumbai

J U D G M E N T

1. Heard Shri Abhijeet A. Desai, the learned Advocate with Ms. Vrushali L. Maindad, the learned Advocate for the Applicant, Shri S.K. Nair, learned Special Counsel, Ms. S.P. Manchekar, learned Chief Presenting Officer, Ms. N.G. Gohad, learned Presenting Officer and Shri S.D. Dole, learned Presenting Officer for the Respondents, Smt. Punam Mahajan, the learned Advocate for Respondents No.40 to 63, Shri A.V. Bandiwadekar, learned Advocate for Respondents No.3 to 34, Shri B. Bhahhda, learned Advocate for Respondent and Shri A.V. Sakholkar, learned Advocate for Respondent.64.

2. All the Original Applications i.e. O.A.No.1091 of 2015 with O.A.No.1118 of 2015 with M.A.No.314 of 2018 in O.A.No.1118 of 2015 with O.A.No.1119 of 2015 with O.A.No.1120 of 2015 with O.A.No.1124 of 2015 with O.A.No.1125 of 2015 with O.A.No.1126 of 2015 with O.A.No.1128 of 2015 with O.A.No.1129 of 2015 with O.A.No.1130 of 2015 with O.A.No.03 of 2016 with O.A.No.04 of 2016 with O.A.No.28 of 2016 with O.A.No.29 of 2016 with O.A.No.32 of 2016 with O.A.No.33 of 2016 with O.A.No.34 of 2016 with O.A.No.35 of 2016 with O.A.No.62 of 2016 with O.A.No.67 of



2016 with O.A.No.135 of 2016 with O.A.No.144 of 2016 with O.A.No.148 of 2016 with O.A.No.1153 of 2017 with O.A.No.1187 of 2017 with O.A.No.24 of 2018 with M.A.No.13 of 2018 with O.A.No.25 of 2018 with O.A.No.26 of 2018 with O.A.No.27 of 2018 with O.A.No.1128 of 2017 with O.A.No.629 of 2016 with O.A.No.92 of 2016 with O.A.No.117 of 2018 with O.A.No.118 of 2018 with O.A.No.51 of 2017 were heard together, and present Original Application is taken as lead Original Application and is taken up for writing judgment.

3. Heard both sides. Perused the record annexed to the O.A. and reply etc..

4. Applicants have prayed for relief, which reads as follows :-

- "i. To call for the record and files from the office of Respondent Nos.1 and 2 in respect of recruitment to the post of Dental Surgeon in view of advertisement dated 31st July 2015.
- ii. This Honourable Tribunal may be pleased to quash and set aside the corrigendum / order dated 2nd December 2015 (Exhibit H) vide which the Applicant had been held to be ineligible for appointment as a Dental Surgeon as against the 189 posts advertised by the Respondent No.2 vide its advertisement No.87/2015 dated 31st July 2015.
- iii. This Hon'ble Tribunal may be pleased to absorb/ regularize the services of the Applicant on the contractual post being held by them respectively as a dental surgeon upon considering his and as per the due process of law inter alia for the Applicant already having worked as Dental Surgeon in Government Hospital for more than three years and also the Applicant continues to be in service as on date.
- iii-a) This Honourable Tribunal may be pleased to quash and set aside the merit list dated 18th November 2016 (Exhibit P-1) for appointment as a Dental Surgeon as against the 189 posts advertised by the Respondent No.2 vide its advertisement No.87/2015 dated 31st July 2015."

(Quoted from page 19, paragraph 8 (i), (ii), (iii) and (iii-a) of the paper book of O.A.)

5. Pleadings are long drawn. Reply and documents are voluminous. The issues on which the judgment would be based considering the controversy agitated are summarized as follows :-

- (a) Whether the action/ decision of M.P.S.C. in acceptance of condition of experience 'gained in private hospital' by many candidates, violates the prescription laid down in the recruitment rules and notified in the advertisement.
- (b) Is the M.P.S.C. /State Government with its power to apply "Master of Dental Surgery (M.D.S.)" as only educational qualification, in total exclusion to those candidates who do not possess the M.D.S. degree, though possess minimum educational qualification prescribed by Recruitment Rules.

- (c) Is the action of M.P.S.C. in eliminating the class of applicants who did not possess the degree of Master of Dental Surgery, en bloc, violative of Article 14 and 16 of the Constitution of India.
- (d) Are the Applicants who have rendered service longer than three years, eligible for declaration and direction that they be absorbed as Dental Surgeons.
- (e) What relief are the Applicants entitled ?

6. The learned Advocate for the Applicants has tendered statement summarizing therein the length of service put in by the Applicants wherein it is seen that most of the applicants have put in tenure which is more than 3 years.

7. The present O.A. is opposed by the State and other Respondents. The common submission of the contesting parties are as follows :-

- (a) Experience in private establishment is the prescription decided by State Government which is legitimate and within the power of State Government which is legitimate and within the power of State as laid down in the recruitment Rules. Moreover many applicants in O.A. possessed same/similar experience.
- (b) Masters in Dental Surgeon is prescribed as preferential qualification and it is legally applied and enforced.
- (c) M.P.S.C. is competent to give preferential treatment and weight-age to the candidates to possess Masters in Dental Surgeon degree and giving special preferential treatment is not getting with the recruitment rules as well as advertisement.

The advertisement contained the stipulation that the clinical experience could be such as prescribed by the Government and in absence of such prescription done either on the web site or by primary announcement, any objection as regards experience in private institution cannot be entertained, else it will result in reversing clock and denial of fair opportunity to the candidates. The candidates were selected and have joined should not be unsettled.

Moreover Private Respondents emphasis that if it is possible to accommodate applicants as well as Respondents it would meet the ends of justice.



8. The case proceeds in following admitted background :-

- (a) The Government wanted to fill-in certain posts of Dental Surgeon under the scheme sponsored by Central Government titled as "National Health Mission" (for brevity referred as "NHM").
- (b) For the purpose of opening of the Dental Clinics, Dental Chairs and allied equipment were procured.
- (c) By following due procedure as prescribed by the Government various Dental Surgeons were appointed on contract basis for fixed tenure of 11 months, on fixed salary and on the terms and conditions stated therein.
- (d) The appointment of Dental Surgeons were continued on same terms and most of them are in uninterrupted service.
- (e) It is not the case of the State that the Applicants are back door entrances.
- (f) Appointments are made on the condition that whenever regular selection process would be conducted the services of the applicants would be terminated.
- (g) The Government of Maharashtra created 884 posts of Dental Surgeons.
- (h) Government of Maharashtra has decided to appoint only 189 Dental Surgeons.
- (i) The Government of Maharashtra had sent requisition to M.P.S.C. and M.P.S.C. published vide Advertisement No.87 of 2015 dated 31.07.2015, (copy whereof is at Exhibit "E", page 47 of the paper book of O.A.) inviting Applicants for 189 vacancies, by dividing the vacancies for various classes and categories.
- (j) The advertisement contains certain mandatory stipulation relating to eligibility which are as follows :-

"४.६ शैक्षणिक अर्हता व अनुभव :-

Candidate must :

- (i) Possess a degree in Bachelor of Dental Surgery as included in Part – I or Part-III of the Schedule to the Dentists Act, 1948 (16 of 1948) and thereafter.
- (ii) have experience of not less than one year as a Clinical Assistant or in any post which in the opinion of the Government is equivalent to or higher than, the post of Clinical Assistant, gained after acquiring the qualification mentioned in sub-clause (i) above.

Provided further that, preference may be given to candidates possessing post-graduate qualification in Dental Sciences.

- (iii) If at any stage of selection, the Commission is of the opinion that sufficient number of candidates possessing the requisite experience are not available to fill in the vacancies reserved for candidates belonging to the Schedule Castes, Scheduled Tribes, Denotified Tribes, or Nomadic Tribes, then the Commission may, in the matter of such selection, relax the requirement upto 40% in respect of period of experience and select suitable candidates belonging to such Castes or Tribes."

(Quoted from page 48, paragraph 4.6 of the paper book of O.A.)

- (k) M.P.S.C. has issued the Bench mark as fixed by M.P.S.C. prescribing different span of length of services for various categories.
- (l) No dispute is raised as regards the length of service prescribed by M.P.S.C. for short listing, being erroneous / bad etc. for grounds whatsoever.

9. Serious objection is raised by applicant to the fixing of the Bench mark for all categories (except Schedule Caste Sports), to be possessed of the qualification of degree of Masters in Dental Surgeon.

These said stipulation of the Bench mark as fixed by M.P.S.C. reads as follows :-

- "(ii) Possess **MDS** degree with experience of not less than **1 year, 11 months, 3 Days** as a Clinical Assistant or in any post which in the opinion of the Government is equivalent to or higher than, the post of Clinical Assistant, gained after acquiring the qualification mentioned in sub-clause (i) above."

(Quoted from page 63, Exhibit "H" of the paper book of O.A.)

10. The eligibility is prescribed in Rule 3(b) of recruitment rules while preferential qualification is mentioned/ stated in 2nd proviso of Rule 3(b) texts whereof reads as follows:-

- "(b) by nomination from amongst the candidates who, -
- (i) unless already in the service of the Government are not more than thirty-five years of age;
 - (ii) possess a degree of Bachelor of Dental Surgery as included in Part I or III of the Schedule to the Dentists Act, 1948 (16 of 1948); and
 - (iii) have experience for not less than two years as a Clinical Assistant in any equivalent to or higher than, the post of Clinical Assistant, gained after acquiring the qualification mentioned in sub-clause (ii) above.

Provided further that, preference may be given to candidates possessing post-graduate qualification in Dental Science.

(Quoted from page 203 of the paper book of O.A.)

11. Applicant had pleaded that permissibility of experience in Private hospital was belatedly applied by the State Government, through the communication dated 01.10.2015.



Copy of communication dated 01.10.2015 is brought on record by the Applicants at page 177-J of O.A. Exhibit P-2 of the paper book of O.A..

12. The State has brought on record copy of communication issued way back on 30.03.2009 wherein experience gained by the candidates as clinical assistance in approved private institute was regarded as adequate. Similarly validity and acceptability of experience in private hospital / clinic has been reiterated in earlier communication dated 03.12.2003 and 04.11.2008 (copy whereof is at page 235 and 234 respectively of the paper book of O.A.).

13. It has come on record that 189 vacancies were invited and 188 candidates were recommended, and actually only 122 candidates have accepted and joined the posting.

14. For urging the points referred to in foregoing paragraph No.4, learned Advocate Shri Abhijeet A. Desai for the Applicants have placed reliance on following judgments :-

Sr. No.	Judgments	Point
1.	Secretary, A.P. Public Service Commission V/s. Y.V.V.R. Srinivasulu and Others, (2003) 5 Supreme Court Cases 341	Decision to exclude a candidate fulfills eligibility conditions as per recruitment rules but was excluded even from appearing in qualifying written examination by fixing higher educational qualification bench mark is bad, though higher weight-age and preferential treatment can be given to candidates holding preferential qualification.
A-1	Duddilla Srinivasa Sharma and Ors. V/s. V. Chrysolite, Civil Appeal No.10492/2013, decided on 21.11.2013 (S.C.C.).	
2.	Secy (Health) Deptt of Health & F.W and Another V/s. Dr. Anita Puri and Other (1996) 6 Supreme Court Cases 282)	
3.	Smt. Malvika Singh V/s. U.P. Subordinate Services Selection Commission Board and other 1997 SCC OnLine all 1282 : (1998) 2 AWC 986.	
4.	Afaq Mirza V/s. State of j & K Ors.	
5.	Dr. Satish Dhanaji Pawar V/s. Dr. Mohan Apparao Jadhav & Ors. 2014(5) All MR 721	
6.	Dr. Arun Deka an Ors. V/s. State of Assam and Ors (2007) 1 GLR 728.	

7.	Dr. Anil s/o Sukhderao Dhage V/s. State of Maharashtra and ors (Writ Petition No.1250/2002)	Adhocism is abhorred and permanency be granted for those who have been serving for considerably long duration.
8.	Shri Vinod Ramchandra Badekar V/s. State of Maharashtra (Original Application 467/2015)	
9.	Gopalkrishna Shataram Borkar V/s. State of Goa (Writ Petition No.154/2012)	
10.	Rattan Lal and Others V/s. State of Haryana and Others (1985) 4 Supreme Court Cases 43.	

15. Learned Advocate Shri Bimal Bhadhda for the Respondent have placed reliance on following judgment :-

Sr. No.	Judgment	Point
1.	Ramesh Chandra Shah and Ors. V/s. Anil Joshi and Others	A person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.

16. Learned Advocate Shri A.V. Bandiwadekar for the Respondents No.3 to 34, have placed reliance on following judgment :-

(A) Proposition :- O.A. is not maintainable due to estoppel by conduct in view of candidates consciously participating in selection process.

Sr. No.	Citations / Judgments
1	Manish Kumar Shahi V/s State of Bihar & Ors. dt. 19.5.2010 decided by Hon'ble S.C. (CDJ 2011 SC 492)
2	Dhananjay Malik V/s State of Uttaranchal & Ors. dt. 5.3.2008 by Hon'ble S.C. in Civil Appeal No.1771/2008.
3	D. Sarojakumari V/s. R. Helen Thilakom & Ors. dt. 13.9.2017 by Hon'ble S.C. in Civil Appeal Nos.8345-8346/2009.
4.	Shri V.D. Tambe & ors. V/s. The State of Mah & Ors. decided on 6.4.2018 by Hon'ble M.A.T., Mumbai in O.A.Nos.321, 323 & 644/2016.



5.	Shri G.S. Kharade & ors. V/s. State of Mah & Ors. decided on 4.6.2018 by Hon'ble Bombay High Court in Wp st. no.12956/2018.
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(B) Proposition :- Though rules of game cannot be allowed to change after the game starts, however bench mark can be prescribed within the limit of Recruitment Rules and Advt.

6.	The M.P.S.C. v/s. Dr. P.B. Shamkuwar decided on 18.6.2018 by Hon'ble Bombay High Court in wp No.5919/2017.
7.	Nagaland Public Service Commission V/s. State of Nagaland & ors decided on 9.3.2017 by Hon'ble S.C. 2018[2] SLR 119 SC.

(C) Proposition :- On the point of the M.P.S.C. cannot give go-bye to the qualification prescribed in the Advt & as such it cannot improve upon it. Thus none can rely upon subsequent opinion sought for that too after selection process is completed.

8.	Abhay Kumar Singh & ors. V/s. State of Bihar & Ors. decided on 2.9.2014 by Hon'ble S.C. 2015[1] SCC L & S 13.
9.	Tukaram Namdeo Satpute V/s. State of Mah & Ors. with other companion matters decided on 28.2.1989 in leading matter wp.No.710/1983 by Hon'ble Bombay H.C. bench at Aurangabad.

17. On perusal of record and in particular Government communication dated 30.03.2009 and 03.12.2009 it is vivid that State Government has prescribed that clinical experience in private establishments is acceptable.

18. Hence, Applicants' contention that introduction of condition of experience in his clinical assistance in private institute to be sufficient was in the nature of concession introduced after the advertisement cannot be accepted as the matter of fact.

19. Applicant's contention that those who are holding the degree of Bachelor of Dental Surgery are "en bloc eliminated", needs to be dealt with.

20. Emphasis of learned Advocate Shri Abhijeet A. Desai for the Applicant is on the judgment delivered by Hon'ble Supreme Court in case of Secretary, A.P. Public Service Commission V/s. Y.V.V.R. Srinivasulu and Others, (2003) 5 Supreme Court Cases 341.

21. Respondents did not cite any judgments to show that the judgment of Hon'ble Supreme Court Secretary, A.P. Public Service Commission V/s. Y.V.V.R. Srinivasulu and Others, (2003) 5 Supreme Court Cases 341 is neither shown descendent over ruled etc.. The precedent that is emerging from this judgment, is to be read as law of land.

Therefore en bloc elimination of Bachelor of Dental Surgery candidates by forming the Bench mark in such fashion shall that Masters in Dental Surgeon candidates consideration is grossly arbitrary.

22. It would have been legitimate as well reasonable and fair to have granted weight-age to those who are holding the larger/ longer experience and weight-age to those who are possessing the degree of M.D.S.. However en bloc elimination of those who are holding B.D.S., is denying to those who do not possess the degree of M.D.S. equal opportunity of public employment, though eligible and qualified as per Recruitment Rules. En bloc elimination cannot stand to prudent and intelligible criteria of elimination, by devising a procedure which turns out to be violative of right of equal opportunity.

23. The rule of preference essentially or mandatorily eliminates total elimination.

24. If such elimination is done it results in denial of equal, reasonable and fair opportunity of consideration despite the fact that the candidates hold prescribed qualification.

25. The process of elimination could be done on by applying various parameters such as experience, merit in academics, written tests, etc., but block elimination was certainly be abhorred.

26. Now the situation that has emerged is as follows :-

- (a) 189 vacancies were to be filled in.
- (b) 122 candidates have joined.
- (c) 67 vacancies have remained available.
- (d) The applicants who are before this Tribunal are 48 in number approximately.



- (e) Those who have already worked on the post were appointed on contract basis for 11 years.
- (f) The post held by the applicants was not permanent since those were the vacancies which had occurred on temporary posts due to the implementation of the scheme of National Health Mission.
- (g) However, the fact that now 884 posts are created and 189 permanent vacancies are notified cannot be lost sight.
- (h) Those who are appointed for fixed tenure and are serving without interruption.
- (i) Applicants claim that they deserve benefit of the Judgment of Hon'ble High Court of Judicature at Bombay, Nagpur Bench at Nagpur in case of Sachin Ambadas Dawale & 90 Ors. Versus State of Maharashtra & Anr, Writ Petition No.2046/2010 decided on 19.10.2013, (copy whereof is at page 69, Exhibit "K" of the paper book of O.A.) and other judgment rendered by this Tribunal following **Sachin Dawale's case**.

27. The fact remains that the posts / vacancies exist, and Government of Maharashtra has resolved to have more than 500 Dental chairs and consequently to have at least 500 dental surgeons. Hence the posts held by the applicant though not permanent, the potential and seeds of perpetuity do exist therein. Therefore though **Sachin Dawale's case** may not apply to applicant's case as a book picture replica or book picture precedent, yet the principal laid down therein and spirit shows as a definite path of simile.

28. In the background that applicants are possessing minimum required qualification they have clinical experience, rejection of their candidature en bloc turns out to be violative of constitutional guarantee conferred under Article 14 and 16 of Constitution of India.

29. Moreover under the interim order passed by this Tribunal applicants in the present group were intervened. The bench mark of viva is bound to be fixed by M.P.S.C. considering the number of vacancies vis-à-vis the eligibility of candidates. Considering the principle that the selected candidates need not be thrown out due to denial of opportunity to the applicants, all those who are selected and appointed need not be disturbed.

30. Justice can be attained by directing M.P.S.C. to revise the list of selected candidates and send additional names by including therein such of the names of applicants who, to MPSC on scrutiny stands to eligibility based on minimum qualification. Until this procedure is completed, none of the applicant should be terminated.

31. In case any one amongst the candidates is not selected, services of such candidates/ applicants should not be terminated without giving notice of clear 30 days.

32. If some of the applicant do not fulfill the test of eligibility their claim for challenging any adverse decision of M.P.S.C. / State Government and also for seeking benefit of being treated as permanent Government servant is left open and unadjudicated on the principles of **Sachin Dawale's case** supra and on the points whatsoever.

33. M.P.S.C. is directed to complete the process of scrutinizing and furnish fresh additional list of candidates to the State Government within one month from today, and State Government shall carry out further steps by issuing orders of appointment in favour of those eligible applicants within one month thereafter.

34. Hence, we allow the O.A. in terms of foregoing paragraphs No.30 to 33.

35. In the facts and circumstances, of the case parties are directed to bear their own costs.

Sd/-

(P.N. Dixit)
Member(A)



Sd/-

(A.H. Joshi)
Chairman

prk

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

O.A.No.1091 of 2015 with O.A.No.1118 of 2015 with M.A.No.314 of 2018 in
O.A.No.1118 of 2015 with O.A.No.1119 of 2015 with O.A.No.1120 of 2015 with
O.A.No.1124 of 2015 with O.A.No.1125 of 2015 with O.A.No.1126 of 2015 with
O.A.No.1128 of 2015 with O.A.No.1129 of 2015 with O.A.No.1130 of 2015 with
O.A.No.03 of 2016 with O.A.No.04 of 2016 with O.A.No.28 of 2016 with
O.A.No.29 of 2016 with O.A.No.32 of 2016 with O.A.No.33 of 2016 with
O.A.No.34 of 2016 with O.A.No.35 of 2016 with O.A.No.62 of 2016 with
O.A.No.67 of 2016 with O.A.No.135 of 2016 with O.A.No.144 of 2016 with
O.A.No.148 of 2016 with O.A.No.1153 of 2017 with O.A.No.1187 of 2017 with
O.A.No.24 of 2018 with M.A.No.13 of 2018 with O.A.No.25 of 2018 with
O.A.No.26 of 2018 with O.A.No.27 of 2018 with O.A.No.1128 of 2017 with
O.A.No.629 of 2016 with O.A.No.92 of 2016 with O.A.No.117 of 2018 with
O.A.No.118 of 2018 with O.A.No.51 of 2017

DISTRICT: NASHIK

Dr. K.D. Lohite	O.A.No.1091 of 2015
P.B. Thakare & Ors.	O.A.No.1118 of 2015
Dr. S.U. Pawar & Ors.	O.A.No.1119 of 2015
Dr. K.V. Shegaonkar & Ors.	O.A.No.1120 of 2015
Dr. S.D. Shinde	O.A.No.1124 of 2015
Dr. R.D. Kolekar & Ors.	O.A.No.1125 of 2015
Dr. B.M. Dahat	O.A.No.1126 of 2015
Dr. S.N. Ghawade etc 3.	O.A.No.1128 of 2015
Dr. R.S. Toshniwal & Ors.	O.A.No.1129 of 2015
Dr. J.R. Tambe & Ors.	O.A.No.1130 of 2015
M.A. Margiya & Ors.	O.A.No.03 of 2016
Dr. A. Rathod & Ors.	O.A.No.04 of 2016
Dr. A.N. Bhingare & Ors.	O.A.No.28 of 2016
Dr. P.M. Deshmukh	O.A.No.29 of 2016
Dr. S.D. Ahire	O.A.No.32 of 2016
Dr. S.P. Gophane & Ors.	O.A.No.33 of 2016
Dr. P.D. Myakalwar & Ors.	O.A.No.34 of 2016
R. Bhendarkar	O.A.No.35 of 2016
Dr. R.K. Waychanl & Ors.	O.A.No.62 of 2016
Dr. M.M. Patil & Ors.	O.A.No.67 of 2016
Dr. Gaikwad S.S. & Ors.	O.A.No.135 of 2016
Dr. Sangeeta Chopkar	O.A.No.144 of 2016
Dr. M.D. Chavan	O.A.No.148 of 2016
Dr. M.N. Narwade	O.A.No. 1153 of 2017
Dr. Y.G. Fegade	O.A.No.1187 of 2017
A.Kute & Ors.	O.A.No.24/18 with M.A.No.13/2018
Dr. P.P. Sirsat	O.A.No.25 of 2018
Dr. P. Sonawane	O.A.No.26 of 2018
Dr. R.A. Mundhe	O.A.No.27 of 2018
Dr. V.T. Thakur & Ors.	O.A.No.1128 of 2017
Dr. N.N. Dhumey	O.A.No.629 of 2016

Dr. P.V. Gaikwad & Ors. O.A.No.92 of 2016
 Dr. M. Wankhede O.A.No.117 of 2018
 Dr. P.R. Muley O.A.No.118 of 2018
 Dr. S.B. Deshmukh O.A.No.51 of 2017

.....Applicants

Versus

State of Maharashtra & Anr.

....Respondents

Smt. Punam Mahajan, learned Advocate for Respondent Nos.40 to 63.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

Shri D.B. Khaire, learned Special Counsel for the Respondents.

CORAM : Justice Shri A.H. Joshi, Chairman
 Shri P.N. Dixit, Vice-Chairman

DATE : 18.06.2019.

PER : Justice Shri A.H. Joshi, Chairman

ORDER

1. Heard Smt. Punam Mahajan, learned Advocate for Respondent Nos.40 to 63, Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents and Shri D.B. Khaire, learned Special Counsel for the Respondents.

2. Note for speaking to minutes dated 16.05.2019 is allowed. Names of Respondent Nos.40 to 63 be shown in cause title judgment dated 08.05.2019 in O.A.N.1091 of 2015. Necessary correction be carried out in the original judgment.

3. Shri D.B. Khaire, learned Special Counsel for the Respondents orally prayed for showing his appearance as he has participated in the hearing. Learned Special Counsel Shri D.B. Khaire's name be shown in the appearances in the body of judgment.

Sd/-

(P.N. Dixit)
 Vice-Chairman (A)

Sd/-

(A.H. Joshi, J.)
 Chairman

prk