

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.259/2021  
WITH  
MISCELLANEOUS APPLICATION NO.87/2023**

**DISTRICT:- AURANGABAD**

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- 1] Megharani Prakash Tarkase,  
Age. 24 yrs, Occu. Service as Tutor  
at Aurangabad, R/o Plot No.66,  
C/o Shri Gopanpallikar, Rokda Hanuman Colony,  
Near Krishna Hospital, Aurangabad.
- 2] Avinash Ramesh Pawar,  
Age. 25 yrs, Occu. Service as CMO at Nashik,  
R/o. C/o Dilip V Doiphode, Jijau Nagar,  
Dholi Road, Kallam, Tq. Kallam, Dist. O'bad.
- 3] Shital Valmik Shinde,  
Age. 32 yrs, Occu. Service as Tutor  
at Parbhani, R/o. In front of D.P.M. College,  
Shinde Niwas, Sheri Galli, Kallamb,  
Tq. Kallamb, Dist. Osmanabad.
- 4] Ram Arunrao Dongre,  
Age. 33 yrs, Occu. Service as Nurse  
at Nandurbar, R/o Behind Old Shivajinagar  
Police Station, Vidyanagar West, Beed.
- 5] Dwarka Vitthal Lad,  
Age: 25 yrs. Occ. Service as CMO at Ambejogai.  
Ta. Ambajogai, Dist. Beed,  
R/o At Mulegaon, T. Kaij, Dist, Beed.
- 6] Samprada Jayawant Waghmare,  
Age. 24 yrs, Occu. Service-working as CMO at Ratnagiri,  
R/o. C/o. Shital Vishnu Sangle, Dhavjyachiwadi,  
Yellambghat, Beed.
- 7] Shraddha Suresh Dhotre,  
Age. 25 yrs, Occu. Service -Nurse at Pune,  
R/o.C/o. Ram Dongre, Behind Old Shivajinagar Police  
Station, Vidyanagar West, Beed.

8] Saraswati Jalinder Neharkar,  
Age, 30 yrs, Occ: Service, Lecturer at Gurugobindsingh  
School Nanded, R/o. Bhavaninagar, Dharur Road,  
Kaij, Tq Kaij, Dist. Beed.

[9] Dhakne Ajay Gangadhar, ] **The O.A. is**  
[Age, 28 yrs, Occ. Service as Staff Nurse,] **withdrawn to the**  
[Civil Hospital, Beed, R/o. At Yester, ] **extent of**  
[Tq-Ahmedpur, Latur. ] **Applicant-9 to 12**

[10] Bhagwat Ramakant Giri, ]  
[Age. 34 yrs, Occu. Service as Staff Nurse, ]  
[Civil Hospital, Beed, R/o Someshwar galli, ]  
[Ghatnandur, Tq. Ambajogai, Dist. Beed. ]

[11] Kendre Sharad Dhondiram, ]  
[Age. 29 yrs, Occu. Service as Tutor at Latur- ]  
[MIMS College of Nursing, R/o At Chopanwadi, ]  
[Tq. Ambejogai, Dist. Beed. ]

[12] Funde Asha Shilam, ]  
[Age.29 yrs, Occ. Service as Nursing Tutor at Latur] ]  
[- MIMS College of Nursing. R/o At.post-Wangdari, ]  
[Tq-Renapur, Dist.-Latur. ] **...APPLICANTS**

### **V E R S U S**

1] Department of Public Health,  
Through - The Secretary,  
Gokuldas Tejpal Hospital Compound, 10th Floor,  
New Mantralaya, Mumbai 400 001.

2] Department of Public Health,  
Through - The Commissioner,  
Arogya Bhawan Mumbai, PD Mello Road,  
Chatrapatil Shivaji Terminus Area,  
Fort, Mumbai, Maharashtra - 400001.

3] The Deputy Director [Nursing],  
Arogya Bhawan Mumbai, PD Mello Road,  
Chatrapatil Shivaji Terminus Area, Fort, Mumbai.

4] Mamta Kishore Manatkar,  
Age - Major [Exact age not known to the Applicant]  
Occu-Service as Staff Nurse,  
R/o. Civil Hospital - Akola, Tq. Dist. Akola.

5] Bhawna Ashok Shende,  
Age - Major [Exact age not known to the Applicant]  
Occu-Service as Staff Nurse,  
R/o. Civil Hospital - Chandrapur,  
Tq. Dist. Chandrapur.

**...RESPONDENTS**

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APPEARANCE : Shri C.V.Dharurkar, Counsel for  
Applicants.  
: Shri V.G.Pingle, Presenting Officer  
for the respondent authorities.  
: Shri A.S.Deshmukh, Counsel for  
Respondent nos.4 & 5.

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

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**DATE : 31-07-2024**

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**O R D E R**  
**(PER: JUSTICE SHRI P. R. BORA, V.C.)**

1. Heard Shri C.V.Dharurkar, learned Counsel for Applicants, Shri V.G.Pingle, learned Presenting Officer for the respondent authorities and Shri A.S.Deshmukh, learned Counsel for respondent nos.4 & 5.

2. This O.A. is prosecuted by applicant nos.1 to 8. The names of applicant nos. 09 to 12 are deleted in view of the pursis filed by the said applicants on 26.04.2024.

3. In pursuance of the advertisement issued by the Public Health Department of the State (Respondent no.1) on 21-02-2019 for recruitment of the post of Tutor, Public Health Nurse, Psychiatric Nurse and Pediatrics Nurse, the present applicants applied for the post of Public Health Nurse. Total 126 posts were advertised. To the advertisement published on 21-02-2019 a corrigendum was issued on 08-03-2019 whereby the respondent no.1 prescribed certain educational qualifications in addition to the qualifications earlier prescribed in the advertisement dated 21-02-2019. The applications were to be submitted on or before 25-03-2019. On 28-02-2021, written examination was held and the applicants appeared in the said examination. One day prior to the written examination i.e. on 27-02-2021, respondent no.1 notified the new Recruitment Rules titled as, "Matron, Assistant Matron, Public Health Nursing Instructor (P.H.N.I) Sister Tutor, Tutor, Public Health Nurses, Pediatric Nurses, Psychiatric Nurses, Recruitment Rules, 2021" (For short "Rules of 2021"). For the post of Public Health Nurse, the Government has prescribed the qualification of Master of

Science (MSc) in Nursing in the Rules of 2021 which was not there in the earlier Recruitment Rules.

4. Applicants have been declared ineligible for their appointment on the ground that, they do not possess the qualification as prescribed in the recruitment rules of 2021. Respondent no.2 notified new Recruitment Rules on 27-02-2021. In the new Recruitment Rules following qualification is prescribed for the post of Public Health Nurse:

Degree of MSc Nursing secured from the recognized institute of Community Health Services or Post Basic Diploma in Public Health Nursing (11 months) obtained from any recognized institution.

It is the grievance of the present applicants that they could not have been declared ineligible for want of educational qualification as prescribed in the Recruitment Rules of 2021 for the reason that, when the advertisement was published on 21-02-2019, the Recruitment Rules of 1964 were in vogue and the appointments of the Public Health Nurses were governed by the said rules. It is the contention of the applicants that, they all possess the qualification as prescribed in the Rules of 1964. It is their further contention that few days after publication of the advertisement dated 21-02-2019, the respondent no.1

published a corrigendum to the aforesaid advertisement on 08-03-2019 whereby certain qualifications in addition to the qualifications which were prescribed in the advertisement dated 21-02-2019 were provided.

5. According to the applicants the respondents could not have changed the educational qualification after issuance of the advertisement i.e. after the recruitment process was initiated. Another objection as has been raised by the applicants is that, respondent no.1 notified Recruitment Rules of 2021 just before one day of the written examination held for the purpose of the recruitment in pursuance of the advertisement published on 21-02-2019.

6. During the pendency of the O.A., appointment orders have been issued to some of the candidates. Out of the said candidates, the applicants have added two candidates as respondent nos.4 and 5 in the present matter.

7. Respondent nos. 1 to 3 have filed their joint affidavit in reply to oppose the contentions raised in the O.A. and the prayers made therein. It is the contention of these respondents that though initially 126 posts were

advertised of the Public Health Nurse, by subsequent advertisement issued on 18-01-2021, the number of posts to be filled in was brought down to 50%. It is further contended that the Principal Bench of the Tribunal at Mumbai in its order dated 26-02-2021 specifically directed to fill up only 75% of the total vacancies by promotion and the remaining 25% by way of nomination. In the circumstances, the number of Public Health Nurses was reduced to 67. It is further contended that in the said 67 posts, two were reserved for SC, one for ST, one for NT-B and one for NT-D category. It is the further contention of the respondents that as per roster, 5 candidates were called for counseling on 27-10-2021. Out of which 3 candidates were selected who were found to be fulfilling the eligibility criteria as per the advertisement and the corrigendum dated 08-03-2019 and 2 candidates, who were not fulfilling the said criteria, were not selected. It is further contended that applicant no.1 Smt. Megharani Prakash Tarkase is not possessing the requisite qualification as per the Recruitment Rules and corrigendum dated 08-03-2019. Therefore, she was not called for counseling and was disqualified.

8. Respondents have further raised an objection that though the applicants were having knowledge because of corrigendum issued on 08-03-2019 that the enhanced qualification is prescribed for the post of Public Health Nurse, they did not raise any objection or challenge to the said corrigendum and also did not raise any challenge to the recruitment rules notified on 27-02-2021 and without raising any such objection participated in the selection process and only after having failed in securing the appointment such objections are raised by them. It is the contention of these respondents that the applicants are estopped from raising any challenge to the corrigendum or the new Recruitment Rules after having participated in the selection process. On these grounds the respondents have prayed for dismissal of the O.A.

9. Respondent nos. 4 and 5 have also submitted their joint affidavit in reply. These respondents have also raised similar objection and have questioned the very action of the applicants of challenging the corrigendum and the Recruitment Rules after having participated in the selection process. It is further contended by these respondents that, respondent nos.4 and 5 possess the requisite qualification as prescribed in the corrigendum and the Recruitment



Rules of 2021. As such, respondent authorities have rightly selected them against the seats reserved for SC candidates. It is further contention of these respondents that they have been appointed and have been working since last about 3 years and as such the prayer made by the applicants cannot be accepted. They have, therefore, prayed for dismissal of the O.A.

10. Shri Dharurkar, learned Counsel appearing for the applicants submitted that after issuance of advertisement on 21-02-2019, in no case respondents could have introduced the change in the qualification prescribed for the subject post in the advertisement. Learned Counsel further submitted that even if it is assumed that it was within the discretion and authority of the respondents to enhance the qualification for the subject post, than the qualification prescribed in the recruitment rules, it could not have been done once the recruitment process has commenced. Learned Counsel further submitted that ideally the qualification which is not prescribed in the Recruitment Rules cannot be prescribed in the advertisement. Learned Counsel further argued that in the instant matter, corrigendum was issued on 08-03-2019 whereby the Government prescribed additional

qualification for the post of Public Health Nurse as Masters' Degree in Nursing, but recruitment rules were amended after about two years thereafter. Learned Counsel further submitted that it is settled legal position that, the qualification which is not prescribed in the recruitment rules cannot be prescribed in the advertisement.

11. The learned Counsel further argued that Corrigendum dated 08-03-2019 does not contain any such clause or provision or content to the effect that educational qualification prescribed for the post of Public Health Nurse in the Rules of 1964, no more remained a requisite qualification and has been substituted with the qualification prescribed in the said corrigendum meaning thereby that the qualification as prescribed in the recruitment rules of 1964 was till then a valid educational qualification for the post of Public Health Nurse. Learned Counsel further submitted that the educational qualification as prescribed in the recruitment rules of 1964 and in the advertisement published on 21-02-2019 was not declared as inapplicable. It was also nowhere clarified that the persons who had applied during the period between 21-02-2019 to 07-03-2019 holding the educational qualification as prescribed in the recruitment rules of 1964

will be held ineligible on the ground of not having requisite qualification.

12. Learned Counsel further argued that, post of Tutor was also advertised in the common advertisement published on 21-02-2019. In the matters of Tutor also one O.A. was filed before this Tribunal bearing O.A.No.208/2021 raising the same issue of change in the educational qualification for the post of Tutor and in the said O.A., in the affidavit in reply filed on behalf of the respondents, more particularly in paragraph 4, it was clarified that the State Government is not intending to apply the new recruitment rules of 2021 to the recruitment process which has already started in the year 2019. Learned Counsel submitted that, respondents being model employer ought to have adopted uniform criteria and if the Recruitment Rules of 2021 were not to be applied to the ongoing recruitment process in so far as the post of Tutor, the same criteria must have been applied also for the post of Public Health Nurse. Learned Counsel submitted that, for 2 set of employees respondents have applied two different criteria. According to the learned Counsel this was a partial and discriminative approach adopted by the respondents. Learned Counsel further submitted that,

despite having lesser qualification than the respondent nos.4 and 5, in the written examination, applicant nos.1 and 2 have scored more marks and secured higher position in merit. Learned Counsel submitted that in no case the applicants can be held ineligible by the respondents. Learned Counsel in the circumstances prayed for allowing the application as prayed by the applicants.

13. Learned P.O. resisted the contentions raised on behalf of the applicants. Learned P.O. supported the impugned order stating that in view of the corrigendum issued by the respondents and amendment brought in the recruitment rules, the candidates aspiring for the appointment on the post of Public Health Nurse were required to hold the qualification as per the revised recruitment rules. Learned P.O. further submitted that to determine the educational qualification for a particular post under the Government is the subject which falls within the exclusive domain of the State. Learned P.O. further argued that prescription of higher qualification than prescribed in the recruitment rules is always permissible. He further submitted that educational qualification which is provided in the recruitment rules is to be always treated as the minimum qualification prescribed for a particular post and

the employer State is not precluded from prescribing a higher qualification than the prescribed qualification in the said rules.

14. Learned P.O. further argued that the applicants did not challenge the corrigendum dated 08-03-2019. According to the learned Counsel without challenging the amended recruitment rules or amendment in the recruitment rules of 2021 when the applicants participated in the selection process, now they are estopped from raising objection to the said corrigendum or the amendment brought in the recruitment rules pertaining to the educational qualification. Learned P.O. further submitted that respondent nos.4 and 5 since possess the requisite educational qualification, they have been rightly selected and recommended for their appointment against the seats reserved for SC Female candidates. He further submitted that since the applicants do not possess the requisite qualification as prescribed in the recruitment rules of 2021, the respondents have rightly held them ineligible for to be appointed on the post of Public Health Nurse. According to the learned P.O., no interference is required in the order so passed.

15. Shri A.S.Deshmukh, learned Counsel appearing for respondent nos.4 and 5 submitted that a draft of the amended rules was prepared way back in the year 2012 and was pending for approval of the Hon'ble Governor of the State. Learned Counsel submitted that, this fact was also within the knowledge of these applicants. Learned Counsel further submitted that after issuance of the advertisement dated 21-02-2019 a corrigendum was issued within a fortnight thereafter i.e. on 08-03-2019 laying down revised minimum required educational qualification for various posts including the post of Public Health Nurse. Learned Counsel further submitted that applicants were well aware of the revised minimum educational qualification prescribed by the corrigendum dated 08-03-2019. Learned Counsel further submitted that the last date of filling application was 25-03-2019 whereas the corrigendum was issued on 08-03-2019. According to the learned counsel ample time was available after issuance of the said corrigendum to apply for the posts which were advertised. Learned Counsel further submitted that the draft of the recruitment rules was prepared in the year 2012 but it was pending for approval by the Hon'ble Governor and the moment approval was received the

amended rules were notified in the official gazette on 27-02-2021.

16. Learned Counsel further submitted that the applicants were well aware of the revised minimum educational qualification prescribed by corrigendum dated 08-03-2019 and only thereupon they had submitted their respective applications. Learned Counsel submitted that in view of the facts as aforesaid when the applicants did participate in the selection process without raising any challenge to the revised educational qualification or to the corrigendum dated 08-03-2019, the applicants now cannot challenge the action of the respondents of introducing the revised minimum educational qualification. Learned Counsel further submitted that applicant nos.2, 4, 5, 7 & 8 as are not belonging to SC category, cannot raise any grievance about selection and consequential appointment of respondent nos.4 and 5. Learned Counsel further submitted that the applicant nos.1, 3 and 6 lack basic eligibility condition of minimum educational qualification, cannot raise any challenge to the selection and appointment of respondent nos.4 and 5 on the said ground. Learned Counsel further pointed out that an incorrect statement has been made in the O.A. that corrigendum was

issued after the examinations were over. Learned Counsel further submitted that, since the applicants have failed in substantiating their contentions in the O.A., the O.A. deserves to be dismissed.

17. After having heard learned Counsel appearing for the parties and after having perused the documents placed on record, following questions arise for our consideration:

[i] Whether it was permissible for the respondent authorities to prescribe the enhanced qualification by way of corrigendum dated 08-03-2019 than provided in the basic advertisement issued on 21-02-2019?

[ii] Whether the respondents could have provided the enhanced qualification by way of corrigendum other than the qualification prescribed in the recruitment rules?, and

[iii] Without amending the recruitment rules in so far as the educational qualification is concerned, whether the respondents could have prescribed such qualification?



18. Basic advertisement was published on 21-02-2019 and the corrigendum was issued on 08-03-2019 whereby the enhanced educational qualification was prescribed. In such circumstance the question arises “whether candidates who applied for the advertised posts during the period between 21-02-2019 to 08-03-2019 can be held ineligible by the respondents on the ground of not having prescribed the educational qualification?” and whether it was declared by the respondents that the said candidates were ineligible? Advertisement was admittedly issued on 21-02-2019 wherein for the post of Public Health Nurse following qualification was prescribed:

2. शैक्षणिक अर्हता व अनुभव:

अ. क्र.	पदाचे नांव	शैक्षणिक अर्हता व अनुभव
१	.....	.....
२	.....	.....
३	सार्वजनिक आरोग्य परिचारीका	[i] are qualified Nurses-Midwives who are registered with the Maharashtra Nursing Council or are eligible for such registration, and, [ii] hold the certificate in Public Health Nursing or B.Sc. degree in Nursing recognized by the Indian Nursing Council, and registered by the Maharashtra Nursing Council or are eligible for such registration.
४	.....	.....

Corrigendum was issued to the said advertisement on 08-03-2019 whereby the educational qualification in so far as the Public Health Nurse is concerned was enhanced and prescribed as under:

अ. क्र.	पदाचे नांव	शैक्षणिक अर्हतेमध्ये समाविष्ट करावयाची अर्हता
१	.....	.....
२	सार्वजनिक आरोग्य परिचारीका	GNM/Basic BSc व Diploma (Public Health Nursing)/ MSc (Community Health Nursing)
३	.....	.....
४	.....	.....

19. Further, there is no dispute that the amended recruitment rules came into force w.e.f. 27-02-2021 i.e. one day prior to the examinations held in the present recruitment process. There is further no dispute that the applicant nos.1 and 2 have been declared not eligible for lack of prescribed educational qualification. On the date of issuance of the advertisement, recruitment rules of 1964 were in vogue. Applicants claim to be possessing the requisite educational qualification as prescribed in recruitment rules of 1964. In the advertisement published on 21-02-2019 since the same qualification was prescribed, applicants applied for the post of Public Health Nurse being holding the requisite educational qualification as well as

the experience. In the written examination held on 28-02-2021 the applicant nos.1 and 2 received 158 and 150 marks, respectively. The applicants have been declared ineligible on the ground that they do not possess the educational qualification as prescribed in the corrigendum issued on 08-03-2019 as well as prescribed in the recruitment rules of 2021 notified on 27.02.2021.

20. Ordinarily, the educational qualification prescribed in the advertisement must be in tune with and as prescribed in the recruitment rules in operation on the date of issuance of advertisement. Though, it is open to the appointing authority to lay down requisite qualifications for recruitment to the Government service as it pertains to the domain of policy, as held by the Hon'ble Apex Court in the case of **A. P. Public Service Commission V/s. B. Swapna [(2005) 4 SCC 154]**, a rule which provides for qualification cannot be amended during the continuation of the selection process since such rule must be considered as having prospective operation unless expressly or by necessary implication it can be considered as retrospective. As further held by the Hon'ble Supreme Court in case of **M. Sundar Reddy V/s. State of Andhra Pradesh [2015 8 SCC 410]**, once the selection process has commenced, the State

cannot issue any retrospective Government order affecting the process. In the instant matter, admittedly, change has been effected in the educational qualification after issuance of the advertisement by bringing a corrigendum to the said advertisement.

21. The applicants in the present O.A. have been held ineligible on the ground of not possessing the educational qualification as prescribed in the corrigendum and/or in the recruitment rules of 2021. It is not the case of the respondents authorities that applicants do not possess the qualification as prescribed in the advertisement issued on 21-02-2019. As noted hereinabove, according to the respondents educational qualification was enhanced by issuing the corrigendum to the original advertisement and the applicants were thus required to possess the qualification as per the corrigendum. We have carefully perused the corrigendum dated 08-03-2019. Corrigendum so published nowhere provides that the qualification as prescribed in the recruitment rules of 1964 has been made redundant and in that place qualification as prescribed in the corrigendum was made retrospectively applicable. Further, it is nowhere mentioned that, the qualification as prescribed in the recruitment rules of 1964 would cease to

be the educational qualification after issuance of the corrigendum dated 08-03-2019. If the corrigendum is read in a proper perspective, it envisages the additional qualification for all the 4 posts. Words used in that regard in vernacular are, “अतिरीक्त शैक्षणिक अर्हतेबाबतचे शुध्दीपत्रक”. Thus, the basic qualification as was prescribed in the recruitment rules of 1964 was kept as it is and some additional qualification was prescribed by way of corrigendum.

22. As we have noted hereinabove, nothing has been placed on record by the respondents showing that the candidates who applied during the period between 22-02-2019 to 08-03-2019 and who were holding the qualification as prescribed in the basic advertisement as well as in the recruitment rules, were not held eligible on the ground of ‘not possessing prescribed educational qualification’. The only consequence of the corrigendum was that the candidates who were having higher qualification than prescribed in the recruitment rules of 1964 were also permitted to apply for the advertised posts. If the recruitment rules of 2021 notified on 27.02.2021 are perused, they have not been made retrospectively applicable. It is, thus, evident that on the date of

advertisement and even thereafter for the recruitment process commenced vide the said advertisement, the qualification as prescribed in the rules of 1964 was the requisite qualifications and the respondents could not have in the circumstances held the present applicants ineligible on the said ground. The order passed in this regard by the respondents is wholly unsustainable and deserves to be quashed and set aside.

23. Learned Counsel for the applicants has brought to our notice that a statement was made on behalf of the Government that, in so far as the appointments of Tutor are concerned, the same are being made as per the provisions of the Act of 1964. The advertisement for Staff Nurse and Tutor was commonly issued by the respondents. In the circumstances, the stand taken by the respondents not to apply the new rules for the appointments of the Tutors is apparently discriminatory. The respondents cannot apply two different standards for the common recruitment process. On that ground also the rejection of the applications of the present applicants cannot be sustained.

24. For the reasons elaborately recorded by us hereinabove, we hold the decision taken by the

respondents to make the appointments on the basis of the amended rules notified on 27.02.2021 meaning thereby to exclude the candidates, who fulfill the eligibility criteria as per the rules of 1964, unsustainable. Insofar as the present recruitment is concerned, the candidates, who satisfy the criteria of educational qualification as prescribed in the rules of 1964, are liable to be considered along with the candidates holding the qualification prescribed in the rules of 2021. Applying the criteria as aforesaid we hold that the applicants in the present O.A. fulfill the criteria of educational qualification for their appointment on the post of Public Health Nurse.

25. It has come on record through the affidavit in reply submitted on behalf of respondent nos. 01 to 02 that 05 seats approved by the Backward Class Cell were to be filled in and therefore 05 candidates were called for counseling by respondent no. 02 on 27.10.2021. Amongst the said 05 posts 02 posts were reserved for S.C. candidates and 01 each for S.T., NT-B and NT-D category candidates. Amongst the present applicants, the applicant no. 01 and applicant no. 06 belong to S.C. category. Applicant no. 01 Megharani Prakash Tarkase had secured 158 marks, whereas applicant no. 06 Sampada Jayawant

Waghmare is stated to have scored 142 marks. Respondent no. 04 Mamta Kishore Manatkar has earned 136 marks, whereas respondent no. 05 Bhawana Ashok Shende has scored 132 marks. Both these candidates belong to S.C. category. It is evident that since the respondents disqualified applicant no. 01 and applicant no. 06, respondent no. 04 and respondent no. 05 came to be selected despite having scored less marks than the applicant no. 01 and applicant no. 06. In view of the findings recorded by us, the applicant no. 01 and applicant no. 06 are liable to be selected and appointed against the seats reserved for S.C. candidates. Appointment of the applicant no. 01 and applicant no. 06 against the seats reserved for S.C. would inevitable result in the cancellation of orders of appointment issued in favour of respondent nos. 04 and 05.

26. Apprehending the aforesaid contingency, it was argued by the learned counsel Shri Avinash Deshmukh appearing for said respondents that both the said respondents are working from last more than 03 years and in the circumstances it would be unjust and unfair to terminate their services. It has been argued by the learned counsel that though the authentic information is not



thereon record as about the vacancies of post of Public Health Nurse, as per the information of respondent nos. 04 and 05 there are large number of posts vacant. Learned counsel appearing for respondent nos. 04 and 05 and learned counsel appearing for the applicants were common in making submission that considering the vacancy position the applicants, as well as, respondent nos. 04 and 05 all can be accommodated against the vacant seats.

27. We find substance in the submissions made on behalf of the applicants, as well as, respondent nos. 04 and 05. Respondent nos. 01 and 02 even if decided to fill in 25% of the advertised posts, the applicants, as well as, respondent nos. 04 and 05 all can be accommodated. As has come on record, except respondent nos. 04 and 05 no one else has been given order of appointment. As noted by us herein above, out of 05 vacancies only 02 are noticed to have been filled in. Both these candidates belong to S.C. category. It is the matter of record that they have been working on the subject post since past 03 years. It is not the case that in securing appointments on the said post, the said candidates have played any fraud role or adopted any illegal method. It is the respondent no. 01, who has misinterpreted the provisions, which has resulted in

depriving the applicant no. 01 and applicant no. 06 from the appointment on the said post and in issuance of appointments in favour of respondent nos. 04 and 05. In such circumstances, we do not wish to disturb the appointments given to respondent nos. 04 and 05. Of course, the legitimate claim on the said posts is of the applicant nos. 01 and 06. As such, applicant nos. 01 and 06 will get the posting in place of respondent nos. 04 and 05 and respondent nos. 04 and 05 can be accommodated against the vacant seats. Insofar as the other applicants are concerned, who are also holding eligibility, the respondent authorities may consider to appoint them on the vacant posts against their respective category. In the result, the following order is passed:-

### **ORDER**

(i) The decision of the respondents to consider only the candidates possessing the educational qualification as prescribed in the amended rules notified on 27.02.2021 (Annex. A-9) is quashed and set aside.

(ii) It is held and declared that in the present recruitment process insofar as educational qualification is concerned, the candidates holding the educational qualification as prescribed in the rules of 1964 would also be eligible.

(iii) The respondents are directed to consider the applicant no. 01 and applicant no. 06 for their appointment on the post of Public Health Nurse against the seats reserved for Scheduled caste having regard to number of marks scored by these candidates.

(iv) It is further directed that respondent nos. 04 and 05 shall also be accommodated against the available vacant seats.

(v) The respondents shall consider other applicants for their appointment in order of their merit against the vacancies available in their respective category.

(vi) The aforesaid exercise is to be carried out within 10 weeks from the date of this order.

(vii) The Original Application stands allowed in the aforesaid terms. The Misc. Application, if any, stands disposed of. There shall be no order as to costs.

**(VINAY KARGAONKAR)**  
**MEMBER (A)**

**(P.R.BORA)**  
**VICE CHAIRMAN**

**Place : Aurangabad**  
**Date : 31-07-2024.**