

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.579/2021

DISTRICT :- NANDED

Siddharth Ramrao Pandurnikar,
Age : 45 years, Occ. Agriculture – on call as
Dietician at Nanded,
R/o. Piwali Girni, Near Water Tank,
Kabde Hospital Road, Shivaji Nagar,
Nanded – 431 602.

...APPLICANT

V E R S U S

1. The Deputy Director of Health Services,
Regional Health Bhavan,
Govt. Female Hospital Compound,
Akola – 444 001.
2. Director of Health Services,
Public Health Commissionerate,
Central Building, Pune-411 001.
3. The State of Maharashtra,
Through the Principal Secretary,
Public Health Department, 10th Floor,
G.T.Hospital Complex, Mumbai – 400 001.
4. Smt. Subhadra Madhav Harale,
Age : Major, Occ : Nil,
R/o. Shivni (Jamga), Post Sunegaon,
Tq. Loha, Dist. Nanded.
5. Marathwada Agricultural University,
Parbhani, Through its Registrar.
6. Sunanda Purushottam Khobragade,
R/o. C/o. Govind Bakade, Sneha Nagar,
Wardha.

...RESPONDENTS

APPEARANCE : Shri Ajay Deshpande, Counsel for
applicant.
: Shri V.R.Bhumkar, Presenting
Officer for respondent nos.1 to 3 & 5.

: Shri Shailendra S. Kulkarni, Counsel
for respondent no.4.

: Shri A.S.Shelke, Counsel for
respondent no.6.

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

Date : 05-08-2024

ORAL ORDER

1. Heard Shri Ajay Deshpande, Counsel for applicant, Shri V.R.Bhumkar, learned Presenting Officer for State authorities i.e. respondent nos.1 to 3 & 5, Shri Shailendra S. Kulkarni, learned Counsel for respondent no.4 and Shri A.S.Shelke, learned Counsel for respondent no.6.

2. Advertisement dated 22-02-2019 was issued by respondent no.1 for various posts including the post of Dietician. Two posts of Dietician were to be filled in. Present applicant as well as respondent nos.4 and 6 had applied for the said post. Out of two posts, one was earmarked for Open which is undisputedly filled in. The other was reserved for Scheduled Caste (SC) candidate. Applicant, respondent no.4 and respondent no.6 all belong to SC category. In the merit, applicant is above respondent

no.4 and 6. At one point of time, respondent authorities had resolved to issue appointment order in his favour. However, respondent no.4 raised an objection to his appointment stating that, he is not holding the qualification as prescribed in the advertisement.

3. It is not in dispute that in the advertisement the qualification prescribed for the post of Dietician is B.Sc. (Home Science). It is also not in dispute that, except that qualification no other qualification or no equivalent qualification was prescribed for the said post. It is the precise objection raised on behalf of respondent no.4 that the candidate not having the prescribed qualification even if may have secured more meritorious position cannot be selected and appointed on the said post. The State as well as the respondent nos.4 and 6 have argued that once in the advertisement certain qualification is prescribed, appointing authority may not cause any change in the said qualification and cannot consider the candidature of the person not having prescribed qualification.

4. It is brought to our notice that even in the rules also the only qualification prescribed is "B.Sc. (Home Science)". In that context, it has been argued by learned

Counsel Shri Ajay Deshpande appearing for the applicant that rules are framed sometime in the year 1992 and since then no change has occurred in the said prescribed qualification. Learned Counsel has argued that, progression and evolution is an ongoing process with advent of development in the field of science. He further submitted that the aforesaid aspect is always to be taken positively for the betterment of the system. According to him, necessarily therefore, the recruitment rules framed way back in the year 1992 by the Government need not necessarily hold good, and therefore, it was and is incumbent on the part of the Government to take a holistic view and consider candidates having equivalent qualification having more exhaustive course content than the course of B.Sc. (Home Science) for appointment on the post of Dietician. Learned Counsel has made elaborate submissions in this regard and also placed on record all necessary particulars in support of his contention.

5. As against it, learned P.O. and learned Counsel appearing for respondent nos.4 and 6 have with equal force argued that it may not be possible for this Tribunal to lay down the conditions of eligibility nor can this Tribunal enter into the area of desirable qualification etc. Reliance is

placed on the judgment 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]**. Paragraph 9 thereof is read over by the learned Counsel appearing for respondent no.6, wherein the Hon'ble Supreme Court has 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.”

6. One more judgment of the Hon'ble Supreme Court is relied upon by the respondents in the case of **Devendra Bhaskar & Ors. V/s. State of Haryana & Ors. [Civil Appeal No.7031/2021 (Arising out of SLP (Civil)**

No.8670/2007] decided on 24-11-2021, wherein similar view has been taken by the Hon'ble Supreme Court.

7. It has been stated that few months back one O.A. bearing No.1113/2023 was before this Tribunal wherein similar issue in respect of the qualification for the post of Dietician was raised. Though, we have dismissed the said O.A.No.1113/2023 by order dated 11-01-2024 some observations were made by us in respect of reconsideration by the State Government of the prescribed educational qualification restricted to only B.Sc. (Home Science). Learned Administrative Member had added two paragraphs wherein it was expressed that, "recruitment rules and qualification set 30 years ago though served the purpose at that time the dynamic nature of society, technology, education and work environment have rendered them outdated. Adaptability, relevance and inclusivity are crucial factors to be considered for revising rules so that they align with current context and effectively meet the demands of today's rapidly evolving professional landscape."

8. Order passed by us in O.A.No.1113/2023 on 11-01-2024 was challenged before the Hon'ble Bombay

High Court Bench at Aurangabad in Writ Petition No.704/2024. Learned Counsel Shri Deshpande pointed out that the interim order passed by the Hon'ble Division Bench in the said matter has to be read in proper perspective which indicates that there is need of some changes keeping pace with the time in the educational qualification prescribed. In the said matter, it was brought to the notice of the Hon'ble Division Bench that a committee constituted by the respondent no.1 i.e. State has submitted its report concluding that no equivalence to B.Tech. (Food Tech/Food Science) degree vis-à-vis the B.Sc. (Home Science) degree can be given. Even thereafter the Hon'ble Division Bench passed the following order:

"4. The Respondent No.1 constituted committee has also tendered its report, which is at page 77 to 80. The committee has concluded that no equivalence to the B.Tech (Food Tech / Food Science) degree vis a vis the B.Sc (Home Science) degree, could be given.

5. Having considered the above factors, we find that the equities would be balanced by permitting these five Petitioners to be included in the selection process for the posts of 19 Dieticians. This would not create any equities in their favour and no right would be vested in them. After the selection process is concluded and if any of these Petitioners are found to be selected, appointment orders would not be issued to them without the leave of the Court and only to the extent of those selected candidates amongst the Petitioners, the number of posts of Dieticians would be kept

vacant. Rest of the selected candidates would be issued with their appointment orders.”

9. Learned Counsel for the applicant has earnestly urged that similar order can be passed in the present matter. It is difficult to accept the request so made by the learned Counsel. Aforesaid is admittedly an interim order passed by the Hon’ble High Court. It cannot be assumed or speculated that the same would be the final verdict. At this juncture, we have to record our finding on the basis of the material before us and the judicial precedents brought to our notice. Considering the law laid down by the Hon’ble Supreme Court in the case of **Maharashtra Public Service Commission V/s. Sandeep Shriram Warade & Ors.** (cited supra), we are afraid any other view can be taken by this Tribunal. As held by the Hon’ble Apex Court in the said judgment it is the employer who is best suited to decide the essential qualification a candidate must possess and we may not delve into the said issue. In the present matter, though initially the case of the applicant was considered, ultimately, the Government took the decision to appoint the candidate holding qualification as prescribed in the advertisement.

10. In the facts and circumstances discussed above, we are not inclined to interfere in the decision of the respondent no.1 reflected in the communication dated 15-09-2021. In the result, the following order is passed:

ORDER

- [i] The Original Application is dismissed.
- [ii] No order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

LATER ON

11. After the order is pronounced learned Counsel for the applicant has prayed for staying the effect and operation of the order for next four weeks so as to facilitate the applicant to approach the Hon'ble High Court. Learned Counsel pointed out that, throughout the course of hearing the interim relief was in operation. Same be continued for next four weeks.

12. Learned P.O. and the learned Counsel appearing for respondent nos.4 and 6 have opposed for granting any such time stating that already much time has lapsed and as such it may not be just and fair to continue the interim relief henceforth.

13. Having considered the fact that the interim order is operating in favour of the applicant till date, we deem it appropriate to continue the effect of the said order for next four weeks.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 05-08-2024.