

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 249 OF 2023**

DISTRICT : SOLAPUR

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|----|----------------------------------|------------------------|
| 1. | Ajay Ashok Kale, |) |
| | Occ-Private Service, |) |
| | R/o Dadsinge, Post-Soundare, |) |
| | Tal-Barshi, Dist-Solapur. |) |
| 2. | Rebecca Philip Londhe, |) |
| | Occ-Private Service, |) |
| | R/o: House No. 4409, |) |
| | Kuntawali Varcha Pada, |) |
| | Ganesh Nagar, Ambernath [W], |) |
| | Dist-Thane. |) |
| 3. | Nikhil Purushottam Ganage, |) |
| | Occ-Private Service, |) |
| | Shiv Shankar Nagar, Chikhali Rd, |) |
| | Tal & Dist-Buldhana. |) |
| 4. | Pandurang Laxman Tonde, |) |
| | Occ-Private Service, |) |
| | R/at Chopanwadi, Post-Salunkwadi |) |
| | Tal-Ambejogai, Dist-Beed. |)... Applicants |

Versus

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|----|---------------------------|---|
| 1. | The State of Maharashtra |) |
| | Through its Secretary, |) |
| | Public Health Department, |) |
| | Mantralaya, Mumbai. |) |

2. The Commissioner of Health Services)
Public Health Department,)
Govt. of Maharashtra,)
Arogya Bhavan, St. Georges Hospital)
Campus, Fort, Mumbai.)
3. The Director of Health Services,)
Public Health Department,)
Govt. of Maharashtra,)
Arogya Bhavan, St. Georges Hospital)
Campus, Fort, Mumbai.)
4. Pallavi Rajaram Barde,)
Occ-Service,)
Working at District Hospital, Wardha)
Dist-Wardha.)
5. Namrata Ratiram Hume,)
Occ-Service,)
Working at District Woman's Hospital)
Akola, Dist-Akola.)
6. Saroj Ramdas Chaware,)
Occ-Service,)
Working at Daga Memorial Woman's)
Hospital, Nagpur.)
7. Pushpa Shravan Pode,)
Occ-Service,)
Working at District Hospital,)
Chandrapur.)
8. Rekha Madhusudan Meshram,)
Occ-Service,)
Working at District Hospital,)
Bhandara, Dist-Bhandara.)
9. Prashant Maloji Sontakke)
Occ-Service,)

- Working at District Hospital,)
Aurangabad.)
10. Gayatri Chrianjivlal Sindhi,)
Occ-Service,)
Working at Civil Surgeon Office,)
Akola, Dist-Akola.)
11. Trupti Vinod Raje,)
Occ-Service,)
Working at District Hospital,)
Satara, Dist-Satara.)
12. Sanjivani Shyam Adatkar,)
(Sanjivani R. Sakhare),)
Occ-Service,)
Working at District Hospital,)
Satara, Dist-Satara.)
13. Manisha Gajanan Band Talpate)
Occ-Service,)
Working at District Woman's Hospital))
Akola, Dist-Akola.)
14. Zarina Ramzan Patel,)
Occ-Service,)
Working at District Hospital,)
Jalgaon, Dist-Jalgaon.)
15. Savita Bhagwanrao Sarkate,)
Occ-Service,)
Working at District Hospital,)
Beed, Dist-Beed.)
16. Sangita Ratandas Vaishnav,)
Occ-Service,)
Working at District Hospital,)
Ahmednagar, Dist-Ahmednagar.)
17. Smt Sunita Madhukar Kumavat)

Occ-Service,)
Working at District Hospital,)
Dhule, Dist-Dhule.)...**Respondents**

Shri L.S Deshmukhk, learned advocate for the Applicants.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

None present for the private Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)
Shri A.M Kulkarni (Member) (A)

RESERVED ON : 16.01.2025
PRONOUNCED ON : 03.02.2025

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicants pray that the order dated 26.2.2021 passed by this Tribunal in O.A 1133/2018 be recalled. They also challenge the order of promotion dated 18.8.2021 issued by Respondent No. 2 in favour of Respondents No 4 to 17 and claim that they are to be appointed on the post of Public Health Nurses on the basis of merit on the written examination held by Respondent No. 2, pursuant to the advertisement dated 21.2.2019.

2. Learned counsel for the applicants has submitted that though the private Respondents 4 to 17 were served none of them are present.

3. Learned counsel for the applicants relied on the interim order of this Tribunal dated 26.2.2021 in M.A 63/2021 in O.A 1133/2018. Learned counsel has submitted that pursuant to the advertisement dated 21.2.2019, the applicants have appeared for the Written Examination for the post of Public Health Nurse. Learned counsel has submitted that the examination was held on 28.2.2021 and result of the examination was declared in March, 2021 and as the applicants fulfill all the eligible criteria and they have cleared the written examination so they are entitled for appointment as Public Health Nurse. The applicants are waiting for appointment as Public Health Nurse since then. However, they are not given appointment. Learned counsel has further submitted that the appointments are not given because the Respondent-State has erroneously interpreted the interim order dated 26.2.2021 of this Tribunal in M.A 63/2021 in O.A 1133/2018. Learned counsel has further pointed out that at the relevant time the Government had adopted the policy of not filling up 50% of the total vacant posts. Learned counsel has pointed out that the total 126 posts of Public Health Nurse were declared in the advertisement. However, the Government after the issuance of the advertisement has come out with Cabinet decision dated 5.11.2020 that considering the financial condition of the Respondent-State due to Covid-19 Pandemic, policy decision was taken to fill up only 50% of the total vacant posts. As the post of Public Health Nurse are essential, promotion was given to fill as policy decision was taken by the Government. Total 126 posts were advertised but the Government took decision to fill up only 57 posts of Public Health Nurse.

4. Learned counsel has submitted that the rules of the game were changed after the advertisement was issued for the post of Public Health Nurse were prevailing in the year 1964 shall cover the entire process. Learned counsel has pointed out to the interim

order dated 26.2.2021 in M.A 63/2021 in O.A 1133/2018, wherein the Tribunal granted the Respondents to fill up to 75% of the total vacancy by way of promotion. However, the Respondents have promoted 110 persons to the post of Public Health Nurse which is more than 75% of the total vacancy. Learned counsel further submitted that if by way of ad interim relief if the promotions are given and finally Original Application is dismissed on merit then the persons given promotion cannot be continued on the said post.

5. Learned counsel for the applicants relied on the following case laws in support of his contentions.

- (a) **Assam Public Service Commission Vs. Pranjal Kumar Sarma & Ors, (2020) 20 SCC 680.**
- (b) **Amarjeet Singh & Ors Vs. Devi Ratan & Ors, (2010) 1 SCC 417.**
- (c) **State of Gujarat & Ors Vs. Dilipbhai S. Patil, (2006) 8 SCC 72.**

6. Learned C.P.O has submitted that exact 50% of 126 posts comes to 63 posts. But as there was change in the vacancy position and considering the exigencies of services, 77 posts were required to be filled up and Corrigendum was issued on 18.1.2021. It is necessary to mention that before the advertisement of 2019 was issued, O.A 1133/2018 was filed by Respondents No. 4 to 16 and other employees who were working as Staff Nurse, i.e., the present private Respondents claiming that they should be promoted to the post of Public Health Nurse and the vacant posts are not to be filled up by direct recruitment.

7. Learned C.P.O relied on the affidavit in reply dated 3.1.2024 filed by Nagnath S. Mudam, Deputy Director in the office of Director of Health Services, Mumbai. Learned C.P.O relied on the

Chart showing the details of advertisement, sanctioned post, filled up post and vacancies available in the Public Health Department.

Category	Sanctioned post	Filled up post	Vacant post	Post given in advertisement	Year of the advertisement
Public Health Nurse	249	133	1161	126	2019

8. Learned C.P.O has submitted that as per the order of the Tribunal dated 26.2.202 in M.A 63/2021 in O.A 1133/2018, the department has to fill up only 75% of the total vacancy by promotion for Psychiatric Nurses, Pediatric Nurses and Public Health Nurses. Learned C.P.O has further submitted that the Respondents applied the ratio of 75% for promotion to the total cadre strength of 267 posts and it comes to 200 posts and remaining 25% posts by nomination comes to 67 posts. Out of the 67 sanctioned posts, 58 posts are already filled. Therefore, there was only 9 posts left for recruitment and as per directions of the Government to fill up 50% posts only 5 posts are available for direct recruitment. Learned C.P.O submitted that promotion orders were issued on 18.8.2021. The result of the examination was declared in March, 2021 and the appointments were given on 27.10.2021 to direct recruits and therefore the select list lapsed in March, 2022 and the Original Application is filed on 28.2.2023. Merely because your name is in the select list the candidate cannot have right to get appointment to the post of Public Health Nurse.

9. Considered submissions. In the advertisement issued on 21.2.2019 the Respondents have specifically mentioned that all the 126 posts of Public Health Nurses are going to be filled up, that is 100% by way of nomination, because as per 1964 Recruitment

Rules no promotional avenue was available for the appointment to the post of Public Health Nurse. Thus, the persons working as Staff Nurse could not be promoted to the post of Public Health Nurse. The said advertisement of 2019 is consistent with the Recruitment Rules of 1964. However, in between the Respondent-State has prepared the draft Recruitment rules where it decided to fill up the post of Staff Nurse in the ratio of 75 : 25, that is 75% by promotion and 25% by nomination. By way of practice and requirement, the Respondents have appointed the Staff Nurses by way of promotion to the post of Public Health Nurse till 2006. After 2006 no promotion was given to the Staff Nurse to the post of Public Health Nurse.

10. In the year 2014 the Respondent-State recruited and filled up 100% of the post of Public Health Nurse by way of direct recruitment. Hence O.A 1133/2018 was filed by some of the Staff Nurses seeking promotion to the post of Public Health Nurses. After issuance of the Corrigendum in January, 2021, the Original Application was amended to challenge the said Corrigendum and relief was sought not to fill up the vacant posts available by way of nomination which is pursuant to the advertisement issued on 21.2.2019. Again M.A 63/2021 in O.A 1133/2018 was filed seeking interim relief. In the said Misc Application following order was passed:-

- (i) The Respondents shall consider these applicants for their respective higher posts as per their educational qualification and seniority within a period of 3 months in accordance with law and as per the Revised Rules, which states specifically 75% of the total vacancy to be filled up by promotion for Psychiatric Nurses, Pediatric Nurses and Public Health Nurses.
- (ii) The seniority of the eligible applicants for promotion is to be maintained from the date of the publication of the rules above, qua the candidates who are going to be selected pursuant to the advertisement dated 18.1.2021.

- (iii) The promotion of the applicants if they are found eligible to be issued before the appointment of the candidates who are going to be selected pursuant to advertisement dated 18.1.2021.

Finally, the said O.A No. 1133/2018 was dismissed by this Tribunal by order dated 6.6.2022 refusing to fill up the posts by new rules with ratio of 75% & 25%. Learned counsel has submitted that the interim relief 26.2.2021 granted in M.A 63/2021 in O.A 1133/2018 has become a hurdle for the present applicants for appointment by way of direct recruitment as they have cleared the written examination pursuant to the advertisement dated 21.2.2019.

11. In **Assam Public Service Commission's case** (supra) the result was declared on the basis of the change of the norms of selection in an ongoing process of recruitment by the Assam Public Service Commission. The Procedure and Conduct of Business Rules, 2010 of the Assam Public Service Commission were in operation when the selection process started. The Rules of 2010 were repealed and new set of Rules was replaced by Assam Public Service Commission (Conduct of Business) Procedure, 2019, which came into effect from 1.4.2019. The advertisement for the post were issued on 21.12.2018 for filling up the post of Assistant Engineer (Civil). The Hon'ble High Court upheld that the procedure of recruitment shall be governed by the new Rules, i.e., Assam Public Service Commission (Conduct of Business) Procedure, 2019. The Writ Petition was allowed. The Hon'ble Supreme Court relied on the ratio laid down in the case of State of Bihar Vs. Mithilesh Kumar (2010) 13 SCC 467 and held that the 2019 Procedure can have no application particularly when the first phase of selection, i.e., the screening test was conducted under the

2010 Rules. In the present case examination was conducted on 28.2.2022 and the results were declared in March, 2022.

12. On the point of continuation of interim relief after final order is dismissed, in **Amarjeet Singh's case** (supra), it was held that if the Writ Petition was dismissed, interim order automatically stands nullified. In the said case Writ Petition was filed by some employees challenging the seniority and promotion of the other employees in which by way of interim order some employees were given promotion. Subsequently the petition was dismissed and the officers who were promoted were not reverted. However, in the case of Amarjeet Singh, there was a challenge by one set of promotees to the other set of promotees. So it was a different situation and therefore the facts of the present case are distinguishable and hence we cannot apply the ratio in the present case.

13. The Hon'ble Supreme Court in **Dilipbhai S. Patil's case** (supra), held that interim order goes away when the final order is dismissed. In the said case the Government employee was reinstated by way of interim order. Finally, the Writ Petition filed by him was dismissed and it was indicated in the order that the interim relief stood vacated. The Hon'ble Supreme Court set aside the decision of the Division Bench of the Hon'ble High Court by allowing the original Petitioner to continue in service and the matter was remanded.

14. The relevant paragraphs of the interim order dated 26.2.2021 are necessary and reproduced below:-

“6. Learned C.P.O on instructions from Mrs Archana Valzade, Under Secretary, Public Health Department, has submitted that in 2019, they have issued advertisement which is based on 1964

Rules and total vacancy sanctioned was 799. Out of which, for Tutors post were mentioned as 142, Public Health Nurse 126, Psychiatric Nurses 89 and 94 for Pediatric Nurses posts. However, it was revised as the Government has taken policy decision to fill up only 50% of the total revised vacant posts 681 out of sanctioned post 1028. Therefore, the 50% posts of the total vacant posts, which come to 350, with break up the vacancies considering the roster are as follows were advertised on 28.1.2021.

Tutor-151 posts, Public Health Nurse-77 posts,
Psychiatric-49 posts and Pediatric Nurses-73 posts.

7. Learned C.P.O submits that His Excellency has given assent to the new rules of 2021 and Government is going to publish the said rules within couple of days, the present applicants will be promoted as per their seniority and educational qualification in accordance with law, as per the new rules, wherein the 75% vacancies of the total vacant posts are to be filled in by promotion and 25% of the total vacant posts by nomination for Psychiatric Nurses, Pediatric Nurses, Public Health Nurses and for Tutor 50% by promotion, 25% by Limited Departmental Competitive Examination (L.D.C.E) and 25% by nomination.”

15. The submissions made by the Respondent-State are to be taken into account. Similarly it is necessary to point out that while passing the interim order on 26.2.2021 we were facing Covid-19 Pandemic and the world was at the threshold of the second wave of the Pandemic. Thus, there was a medical emergency and more and more persons in all the branches of Medical Services were required. Thus, in order to meet the exigency interim order was passed and 75% appointment of the Staff Nurses by promotion were allowed in 50% of the advertised posts. The foundation of the interim order dated 26.2.2021 was that Government wanted to fill up only 50% of the vacant posts advertised and thus 50% of the vacancies were not to be kept intact. The only Recruitment Rules of 1964 available at the relevant time was by way of nomination. No specific commitment was given by the Respondent-State as and when the Public Health Nurses would be available by way of nomination. Therefore 75% out of the 50% of the total vacancies

were allowed to be filled up by promotion, with a view that 50% vacancies were kept available for the candidates who are going to be recruited by nomination who had appeared for the examination and were waiting for the result. We clarify that out of 50% of the advertised posts, by interim order we have allowed to fill up 75% of the 50% of the posts. It means that 25% of the 50% of the posts, which comes to 12 ½% of the total posts are to be kept vacant. Thus, the applicants who are direct recruits they are to be considered and appointed as Public Health Nurse.

16. The Government gave assent to the new Recruitment Rules notified on 27.2.2021. Thereafter, the Government declared the result in March, 2022, wherein the present applicants were found successful. However, the Government filled up the posts of remaining 50% by applying the new rules and the Tribunal by order dated 6.6.2022 dismissed the Original Application. At that time also this fact that remaining 50% posts were filled by the Government by applying the ratio of 75%. It is necessary to produce paras 19 & 20 of the final order dated 6.6.2022 in O.A 1133/2018:-

“19. Moreover the State is in the process of filling up the vacancies. Earlier it was not filled for a long period due to confusion in interpreting Rules of 1964 which of course was not correct and not justified. Thus, we held that pursuant to the advertisement of 2019 and subsequently corrigendum of 18.01.2021 appointments made cannot be cancelled as prayed for by the Applicants. The new rules cannot be made applicable qua recruitment and promotion for the post of Tutor which is the subject matter of this O.A. We further express that earlier as per the State Policy only 50% posts were filled up by promotion and accordingly the

advertisement was issued. Thus as on today, remaining 50% posts are available to the applicants who aspire to become Tutor and they can be appointed under new rules of 27.02.2022.

20. Much was argued about non availability of the promotional channels for the appointment of Tutors. These submissions are correct and hence not convincing. The Applicants are working under the clinical branch and they want to promotion by entering the branch, i.e. teaching. The promotional post for Clinical branch is Matron which is equivalent to Tutor, which is always available. Secondly, as per the advertisement there was no bar for the applicants to appear for examination pursuant to the advertisement of 2019-2021 and compete openly. Thus two avenues for promotion are open and available.”

17. This order was in respect of the post of Tutors and it was not related to Public Health Nurse. However, at the time of securing the interim order the Government has made specific statement that they want to fill up only 50% of the total posts includes Public Health Nurse. We are of the view that calculation given by the Respondent-State of filling up vacancies of 50% as argued by the learned C.P.O is incorrect. Out of 50% posts, 25% posts should have been kept open for direct recruitment.

18. The Respondent-State thus suppressed the fact that they have filled up 75% of the total advertised posts by applying the new Recruitment Rules which was contrary to the stand taken by the Respondent-State and the statements made before this Tribunal while passing the interim order. Though at the time of final hearing the Public Health Nurses did not press for their appointment, the order passed by us that 50% posts in respect of

Tutor was available as reflected in para 19 of the final order dated 6.6.2022 in O.A 1133/2018 is also applicable to the Public Health Nurses.

19. However, considering the erstwhile emergency, the interim order was passed and there was no specific order of vacating the interim relief. Similarly, no protection was also granted to those Nurses who were promoted. However, we reiterate that the erstwhile time was a medical emergency period which is noted down by us in the interim order dated 26.2.2021, which is reproduced below:-

“However, we do not think that giving stay to the advertisement dated 18.1.2021 is a solution to this problem. It will amount to negative action on the part of the Tribunal and therefore, we by way of via media which according to us is a golden mean to this issue and will protect the interest of both the parties.”

20. Thus, today we don't touch the interim relief which will have adverse effect on these Nurses who are promoted by giving the benefit of interim order dated 26.2.2021. However, we make it clear that total 50% of the posts plus 12.5% posts out of earlier 50% of the posts are available for direct recruitment and they are to be filled up by nomination. Thus, total 62 ½% are to be up by nomination, in view of our final order dated 6.6.2022 in O.A 1133/2018. Thus, we find there is substance in the Original Application.

21. In view of the above we pass the following order:-

ORDER

(a) The Original Application is allowed.

(b) The Respondent Nos 1 to 3 are directed to consider the claim of the applicants for being appointed to the post of Public Health Nurses on the basis of the merit of the written examination held by Respondent No. 2 pursuant to the advertisement dated 21.2.2019.

(c) No order as to costs.

Sd/-

(A.M Kulkarni)
Member (A)

Sd/-

(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 03.02.2025
Dictation taken by : A.K. Nair.