

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.716/2022

DISTRICT:- BEED

Dr. Pravinkumar s/o. Chandramani Govande,
Age : 35 years, Occ. Service: Assistant Professor,
R/o. Bhagwan Buddha Nagar,
Near Kirmani Durga, Chanai, Dharur Road,
Tq. Ambajogai, Dist. Beed.

...APPLICANT

V E R S U S

1. The Secretary,
Director, Medical Education and Research,
Mantralaya, (GT Hospital Compound)
CST, Mumbai-400 001.
2. The Secretary,
Maharashtra Public Service Commission,
5, 7 & 8 Kuprez Telephone Nigam Building,
Maharshi Karve Road, Kuprez, Mumbai – 400 021.
3. The Selection Committee Constituted by
the Secretary, Maharashtra Public
Service Commission, 5, 7 & 8 Kuprez
Telephone Nigam Building, Maharshi Karve Road,
Kuprez, Mumbai – 400021.
4. Dr. Milind s/o. Vishwas Patil,
Age : 38 years, Occ : Service, R/o. Flat No.202,
Devashish Tower, 30, Pratapganj, Vadodara,
Gujrat-390 002.

...RESPONDENTS

APPEARANCE : Shri A.D.Sugdare, Counsel for the
Applicant.
: Shri V.R.Bhumkar, Presenting
Officer for respondent authorities.
: Shri A.S.Deshmukh, Counsel for
respondent no.4.

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

Date : 27-02-2024

ORAL ORDER

1. Heard Shri A.D.Sugdare, learned Counsel for the Applicant, Shri V.R.Bhumkar, learned Presenting Officer for the respondent authorities and Shri A.S.Deshmukh, learned Counsel for respondent no.4.

2. On 11-10-2021 Maharashtra Public Service Commission (MPSC) had issued an advertisement for the posts of Associate Professor (Surgery) in Government Medical College, Sindhudurg and Government Medical College, Nandurbar. The post at Sindhudurg was to be filled in from Open category and the post at Nandurbar was reserved for Scheduled Caste (SC). The candidates were to be selected by interview. It is the contention of the applicant that for both the posts advertised as above, though only one interview was conducted so far as the post to be filled in at Sindhudurg is concerned, applicant is given 63 marks whereas for the post at Nandurbar, he has been given 61 marks.

3. Shri A.D.Sugdare, learned Counsel appearing for the applicant submitted that the manner of giving

marks by the Selection Committee conducting interview is arbitrary. Learned Counsel submitted that when for testing ability of the candidates or assessing their performance, only one interview was taken, that cannot result in giving different marks because two posts at different places were to be filled in. In the circumstances, it is the contention of the learned Counsel that, such selection which is in shadow of doubt deserves to be quashed and set aside. Learned Counsel for the applicant submitted that the applicant is not denying the fact of issuance of 2 different tokens and acknowledgments received in that regard, however, he maintains that no separate two interviews were held. Applicant has, therefore, prayed for allowing the O.A.

4. Neither the said authority nor the MPSC has filed affidavit in reply despite giving them due opportunities. Record shows that at least 4 to 5 times adjournments were granted for filing the affidavit in reply. Despite providing such opportunities respondent authorities failed in filing their affidavits in reply. Hence, the Tribunal was constrained to place the matter for hearing without reply of the respondents. Though the matter was kept for hearing, it was open for the respondent authorities to make endeavor for filing affidavit in reply and

to make a request seeking leave to file the affidavits on record. Such course has not been adopted by any of the respondent authorities.

5. Shri V.R.Bhumkar, learned Presenting Officer (PO) appearing for the respondent authorities, however, submitted that no error has been committed by the respondents in selecting the candidates at Sindhudurg and Nandurbar, respectively. As such he submits that no interference is required in the recommendation so made by the MPSC.

6. Shri A.S.Deshmukh, learned Counsel appearing for respondent no.4 submitted that in the affidavit in reply filed on behalf of respondent no.4, it is specifically averred that, for two separate interviews two different tokens were issued for each of the said interviews of which acknowledgements were also obtained from the candidates. Learned Counsel pointed out that the contentions as raised by respondent no.4 in the affidavit in reply have gone unchallenged since the applicant did not file any counter or rejoinder to the averments raised in the affidavit in reply of respondent no.4. In the circumstances, it is the contention

of the learned Counsel that inference is to be drawn in favour of respondent no.4.

7. Learned Counsel for respondent no.4 further argued that, in fact the O.A. filed by the applicant is not liable to be entertained by this Tribunal for want of necessary parties. Learned Counsel pointed out that from the averments in the O.A. it is quite evident that the applicant was quite aware that respondent no.4 was likely to be given appointment at Nandurbar. In the circumstances, according to him, he was the necessary party to the present O.A. and for want of adding him as party respondent, the O.A. deserved to be dismissed on that count alone.

8. Learned Counsel for respondent no.4 further submitted that two different stories have come on record. Applicant has come out with the case that there was only one interview for both the posts. As against it, respondent no.4 has taken a plea that two different and separate interviews were held for each of the posts to be filled in, one at Sindhudurg and another at Nandurbar. The averments in that regard in paragraph 2 of the affidavit in reply of respondent no.4 are brought to our notice by the learned

Counsel. It is also contended by the learned Counsel Shri Deshmukh that because of the interim relief granted by this Tribunal in the present O.A., post of Associate Professor (Surgery) is still lying vacant at Government Medical College, Nandurbar. Learned Counsel in the circumstances has prayed for dismissal of the O.A.

9. We have duly considered the submissions made on behalf of the learned Counsel appearing for the parties and learned P.O. appearing for the State authorities. We have perused the pleadings in the O.A. as well as the affidavit in reply and the documents placed on record by the parties. As has been averred by the applicant only one interview was taken for both the posts and no separate interviews were held. As against it, the respondent no.4 has come out with the contrary story which is reflected in paragraph 2 of his affidavit in reply. We deem it appropriate to reproduce hereinbelow the relevant portion in the said affidavit in reply, which reads thus (paper book page 51-52):

“2. That, in support of my above submission that applicant has raised fallacious contentions regarding interviews conducted by MPSC, I say that, as a matter of fact, the applicant is also aware of the fact that on the date of interviews all the candidates who had applied for

the post in question of Associate Professor in the Medical Colleges at Sindhudurg and Nandurbar were issued separate 'tokens' for two separate interviews for those two Medical Colleges. Not only that, but upon issuing those 'tokens' each candidate was required to acknowledge the same and only thereafter interviews were conducted and after that also signatures of candidates were obtained. Hence, I say that all contentions raised by applicant regarding interviews conducted by MPSC are untrue and I am denying all those also because separate lists of eligible candidates and separate merit lists were published. On the said background, in my respectful submission, onus lies on the applicant's to establish before this Tribunal his contentions regarding interviews conducted by MPSC failing which those are incapable of being accepted."

10. Admittedly, the applicant has not filed any rejoinder to the affidavit in reply so filed by respondent no.4. In fact, in the present matter, MPSC must have filed the reply and must have clarified the factual aspects involved in the matter. However, as mentioned hereinabove, MPSC did not file reply despite availing due opportunities.

11. During the course of arguments a specific query was made by us to the learned Counsel for respondent no.4 that in the affidavit in reply though other averments are there, why there is no specific contention that two different interviews were held for two different posts. Learned Counsel with the leave of the Tribunal took instructions

from respondent no.4 who is present before the Tribunal and made a statement that, 2 different interviews were held for 2 different posts i.e. one for Sindhudurg and another for Nandurbar.

12. The learned Counsel then promptly brought to our notice that in paragraph two of the affidavit it is stated that, for two separate interviews two separate tokens were issued. In absence of any denial to the facts stated by respondent no.4 on oath in his affidavit in reply that two separate tokens were issued for two separate interviews and the candidates were required to acknowledge the same, there appears no reason to disbelieve the same.

13. When we perused the record, it is revealed from the result sheet that in the result sheet the numbers were given to the candidates in the sequence their interviews conducted by the interview committee. Said documents demonstrate that so far as the interviews held for the post at Sindhudurg, applicant was interviewed at Sr.No.2, whereas for Nandurbar, he was interviewed at Sr.No.1. For both the posts, respondent no.4 appears to have been interviewed at Sr.No.4. The documents which are placed on record by the applicant himself at Annexure A-6 and

Annexure A-7 make us to accept the contentions raised by respondent no.4. Therefore, it would be unsafe to rely on the averments made by the applicant in O.A. when the documents are showing contrary situation.

14. Another objection which has been raised by the respondent no.4 is in respect of non-joinder of the necessary parties. From the averments in the O.A. there is reason to believe that the applicant was quite aware of the fact that the respondent no.4 was likely to be given appointment at Nandurbar. Only two candidates were for Nandurbar; one was the applicant and another was respondent no.4. The applicant was also aware of the marks given to the said candidate opting for Nandurbar. In the circumstances, the said candidate must have been added as party respondent by the applicant as he was a necessary party for effective adjudication of the present O.A.

15. It is the matter of record that said candidate came to be impleaded as party respondent no.4 on his request after making intervention application. Shri Sugdare, learned Counsel for the applicant sought to contend that when results were declared of the interviews

for the post at Sindhudurg and Nandurbar, a note has been mentioned therein that changes were possible and applicant was *bona fide* believing that the changes will be in his favour. In the circumstances, according to the learned Counsel, applicant did not find it necessary at that juncture to add the said candidate as respondent no.4 whose name was ahead of him, so far as the post at Nandurbar is concerned. However, fact remains that ultimately, the said respondent was made party to the present O.A. and he has contested the O.A. also. In the circumstances, though the O.A. was initially suffering from vice of non-joinder of necessary parties and could have been dismissed on that count alone, now it may not be dismissed on the said ground.

16. Another objection which has been raised as about the disputed facts which have come on record through the pleadings of the parties carries material importance. Undisputedly, two different versions have come on record. When it is the submission made on behalf of the applicant that common interview was held for both the posts, according to the respondents, two different interviews were held for different posts. The original record in so far as the said interviews are concerned is not brought

before this Tribunal. No endeavor has been made by the applicant to bring the said evidence on record. In the circumstances, it would be improper on our part to enter into such controversy as to whose contention is correct. The applicant and respondent no.4 both have made their submission on oath.

17. After having considered the facts and circumstances involved in the matter and after having gone through the material available on record, we have reached to the conclusion that the applicant has failed in substantiating his contentions. The relief claim by him in the O.A., therefore, cannot be granted. In the result, following order is passed:

O R D E R

Original Application is dismissed. No order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 27-02-2024.