

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.1143/2021(D.B.)

Sachin S/o Ashokarao Katgale
R/o Maharana Pratap Nagar,
Gadge Temple, Maharana Pratap
Nagar, Yavatmal. 445001

Applicant

Versus

1. State of Maharashtra
Through its secretary for
Public Health Department,
Having his office at Mantralaya Mumbai.

2. State of Maharashtra through
Deputy Director, Health
Services Akola Board/CIRCLE, having
his office at New Radhakishan Plots,
Akola, Maharashtra.

Respondents

Shri N.B. Rathod, Ld. Counsel for the applicant.
Shri M.I. Khan, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri Justice M.G. Giratkar, Vice Chairman &
Hon'ble Shri Nitin Gadre, Member (A).

Dated: - 28/08/2024

JUDGMENT

Heard Shri N.B. Rathod, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The case of the applicant in short is as under-

The respondents have issued advertisement to fill the post of Pharmacist in the year 2018. The applicant applied for the post of Pharmacist in response to advertisement in OBC quota. Applicant had filled his nomination for the post of Pharmacist. The respondent vide order dated 12.12.2020 communicated a decision to public at large whereby only 50% of the advertised seats were decided to be filled. The exam of Pharmacist came to be held on 28.02.2021. The applicant appeared and was able to secure 148 marks out of 200. Merit lists of 32 candidates were published. The respondents converted reservation for Part Time Employee. In short, the applicant is entitled for the post which was advertised for Ex-serviceman. The Ex-serviceman was/is not available and therefore that post should be given to the applicant.

3. The O.A. is strongly opposed by the respondents. It is submitted that the applicant is not in the category of Ex-serviceman therefore the O.A. is liable to be dismissed.

4. During the course of submission, the learned counsel for the applicant has pointed out advertisement. As per the revised G.R.

dated 04.07.2019, one post in OBC category was reserved for Ex-serviceman. The learned counsel for the applicant has pointed out (P.58) letter issued by Director Health Department, Pune to the Additional Chief Secretary (Mantralaya, Mumbai). As per this letter, one post of Ex-serviceman is vacant. Hence, the applicant prayed to direct the respondents to appoint him in the vacant post of Ex-serviceman.

5. The learned counsel for the applicant has pointed out the Judgment in O.A.No.416/2022 and also in other O.As.. He has pointed out the Judgment of the Hon'ble High Court, Bench at Aurangabad in the case of **Nikhil Santosh Chaudhari Vs. the State of Maharashtra and Others decided on 05.09.2018.**

6. The Hon'ble High Court, Bench at Aurangabad has held that Government has issued G.R. dated 16.03.1999 after the Judgment of Apex Court. As per this G.R., the Government has to fill the vacant posts giving opportunity to the other candidates belongs to other category, when the Ex-serviceman candidate is not available. The learned counsel for the applicant has filed the copy of G.R. dated 16.03.1999.

7. The same issue was before the Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Nikhil Santosh Chaudhari Vs. the State of Maharashtra and Others decided on**

05.09.2018.The issue before the Hon'ble High Court was that persons from the OBC Ex-serviceman and OBC Part Time were not available, therefore, the respondents / Government were directed to consider the petitioner and respondent no.3 for appointment to the post of Measurer from the OBC category.

8. In the present O.A., as per the submission of learned counsel for the applicant, the Ex-serviceman candidate in OBC Category was / is not available. The applicant applied in OBC Category and he is having 148 marks. He is meritorious candidate. All other candidates who were having more marks are already appointed by the respondents.

9. As per the submission of learned counsel for the applicant, the post is vacant and therefore prayed to direct the respondents to give the appointment to the applicant as the candidate from OBC Ex-serviceman Category is not available.

10. In view of the Judgment of the Hon'ble High Court in the case of **Nikhil Santosh Chaudhari Vs. the State of Maharashtra and Others**, respondents may consider the claim of applicant for the post claimed by him. Hence, the following order -

ORDER

1. The O.A. is allowed.

2. The respondent no.2 shall consider the applicant for appointment to the post of Pharmacist from OBC Category as the person from OBC Ex-serviceman Category is not available.
3. The respondents may consider for appointment of applicant, if the post is vacant and available.
4. No order as to costs.

(NitinGadre)
Member(A)

(Justice M.G.Giratkar)
Vice Chairman

Dated – 28/08/2024.
dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N.Kadam.
Court Name : Court of Hon'ble Vice Chairman
&Hon'ble Member (A).
Judgment signed on : 28/08/2024.