

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
AURANGABAD BENCH, AURANGABAD**

**ORIGINAL APPLICATION 109 OF 2016**

**DISTRICT : BEED**

Shri Pratap s/o Kashinath Chintamani, )  
Occ : General Mechanic, )  
Swami Ramanand Teerth Rural Medical )  
College & Hospital, Ambejogai, )  
Dist-Beed. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through the Secretary, )  
Medical Education & Drugs Dept. )  
Mantralaya, Mumbai 400 032. )  
[copy to be served on the Chief )  
Presenting Officer, Maharashtra )  
Administrative Tribunal, Mumbai )  
Bench at Aurangabad. )
2. The Director, )  
Medical Education & Research, )  
Mumbai. )
3. The Dean, )  
Swami Ramanand Teerth Rural )

Medical College & Hospital, )  
Ambejogai, Distp-Beed. )...**Respondents**

Shri J.B Choudhary, learned advocate for the Applicant.

Shri N.U Yadav, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**  
**Shri B.P Patil (Member) (J)**

**DATE : 16.08.2017**

**PER : Shri Rajiv Agarwal (Vice-Chairman)**

### **ORDER**

1. Heard J.B Choudhary, learned advocate for the Applicant and Shri N.U Yadav, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging orders dated 5.1.2016 and 15.1.2016 reverting him from the post of General Mechanic to that of Sweeper, without giving him any opportunity of hearing.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as a Class-IV employee by the Respondent no. 3 on 12.1.2000 on compassionate ground. The Applicant has passed S.S.C and he holds certificate issued by I.T.I (Welder). He had applied for the post of

General Mechanic on retirement of Shri Kasture, who also had the same qualification and was working as General Mechanic till his retirement. The Applicant was promoted as General Mechanics on 19.4.2011 as per his seniority. On a complaint of one Shri Sudhakar Shinde, against the promotion of the Applicant, the Respondent no. 3 appointed an Enquiry Committee, which submitted its report in 2013, but no action was taken. Again on 17.8.2015, one Shri Arjun Thorat made a complaint against the Applicant due to personal enmity. Another Enquiry Committee was appointed by the Respondent no. 3 which submitted report on 11.12.2015, holding that the Applicant did not have requisite qualification for the post of General Mechanic. Learned Counsel for the Applicant contended that it is an admitted fact that there are no recruitment rules for the post of General Mechanics in the Directorate of Medical Education and Research. The Applicant's predecessor worked as Mechanic for 15 years, till his retirement and he was having the same qualifications as the Applicant. The Applicant was reverted without giving him any opportunity of being heard, which is in violation of the principles of natural justice.

4. Learned Presenting Officer (P.O) argued that the Applicant has produced Certificate of Competency for 'Welder' (Annexure A-2, page 19). This Certificate itself mentions that it is for Level-II of Vocational Education. Higher & Technical Education Department of Government of Maharashtra has issued G.R dated 12.4.2005 for 'Artisan to Technocrat' Scheme. There are six levels of Skill. For the post of Master Craftsman, a candidate must have 3<sup>rd</sup> level skills. The Applicant has skill of 2<sup>nd</sup> level, and he is not qualified for the

post of General Mechanic, which is in the category of Master Craftsman. Learned Presenting Officer argued that this G.R is applicable to all Departments of the Government of Maharashtra, including the Department of Medical Education and Drugs. The claim of the Applicant that his predecessor did not have requisite skill is not correct as Shri Kasture has National Trade Certificate in the trade of Welder issued by National Council for Training in Vocational Trades (N.C.T.V.T). The Applicant does not have Certificate issued by NCTVT, but by the State Government.

5. Learned Presenting Officer argued that the Respondent no. 3 has followed the Recruitment Rules for Trained Mechanic at the J.J Group of Hospitals at Mumbai, which is also under the Respondent no. 2. The argument that every Government Medical College and Hospital in Maharashtra should have separate recruitment rules is not correct. The Respondent no. 3 has rightly followed the Recruitment Rules for J.J Hospitals. Learned Presenting Officer contended that the Enquiry Committee has given full opportunity to the Applicant, before submitting the Report. The Applicant was never eligible for promotion to the post of Trained Mechanic and his promotion has been cancelled after giving him full opportunity of hearing and there has been no violation of the principles of natural justice.

6. We find that the Applicant has claimed that the person who was working as Trained Mechanic (General Mechanic) viz. Shri Kasture had the same qualifications as the Applicant. The Respondents have produced copy of the

Certificate of Shri Kasture (Exh. R-5 page 44). The Certificate is issued by National Council for Training in Vocational Trade in the Trade of Welding. The Certificate of the Applicant is issued by Directorate of Vocational Education & Training. By G.R dated 12.4.2005, Government has started a 'Artisan to Technocrat' Scheme. There are six levels of skills under the scheme. Third level is of Craftsman, while fourth level is of Master Craftsman. The Respondents have claimed that the post of 'Trained Mechanic' is of level IV and a candidate must have a certificate issued by National Council for Training in Vocational Trades. The Skill Testing Examination for 1<sup>st</sup> to 3<sup>rd</sup> level are held at Industrial Training Institutes (I.T.Is). However, for IVth level, the G.R provides:

“चतुर्थ स्तरामध्ये जे उमेदवार राष्ट्रीय व्यवसाय प्रशिक्षण परिषदेच्या खाजगी उमेवाराकरीता असलेल्या परिक्षेस बसण्यासाठी शैक्षणिक अर्हता व अनुभवाची अट पूर्ण करित असतील त्यांना त्या परिक्षेला बसण्याची संधी देऊन विद्यार्थ्यांना राष्ट्रीय व्यवसाय शिक्षण परिषदेचे प्रमाणपत्र उपलब्ध होईल”.

It is clear that a person will be eligible for Level IV, after obtaining a Certificate from the National Council for Training in Vocational Trade. Shri Kasture had such a Certificate, while the Applicant does not have that Certificate. The claim of the Applicant that Shri Kasture was promoted as Trained Mechanic and he held the same qualification as the Applicant is not correct.

7. Coming to the issue of the Recruitment Rules, the Respondents claim that they are following the Recruitment Rules applicable for the post of Trained Mechanic in J.J

Hospitals, Mumbai. It is an admitted fact that all the Medical Colleges and Hospitals are under the control of the Respondent no. 2. It is logical that Recruitment Rules in one Medical College/ Hospital are applied in other colleges/hospitals. It is not the case that the post in J.J Hospital is in higher grade than that on the establishment of the Respondent no. 3. The argument of the Applicant that any senior Class-IV person can be promoted as Trained Mechanic, in absence of Recruitment Rules, has to be rejected, when the Recruitment Rules for identical post are available in other institutions.

8. The Applicant claims that he has not been given opportunity of being heard and he has been reverted with retrospective effect. We find that the Applicant was called by the Enquiry Committee appointed by the Respondent no. 3. He was asked to produce all documents/evidence to show that he was eligible for promotion to the post of Trained Mechanic. It is clear that the Applicant could not do so. The Committee reported that the Applicant was not eligible for promotion to the post of Trained Mechanic. As the Applicant was not accused of any misconduct, it was not necessary to hold a departmental enquiry. However, he was given opportunity of being heard. The decision of the Respondent no. 3 that the Applicant was not eligible for promotion cannot be faulted.

9. The only issue remains as to whether the promotion can be cancelled retrospectively. It is seen that the Applicant did not hold requisite qualification for promotion,

so he was not eligible for promotion. However, it cannot be said that the Applicant was promoted due to any misrepresentation or fraud. No such claim is made by the Respondents. The Applicant considered himself eligible for promotion to the post of Trained Mechanic. It was he lapse on the part of the Respondent no. 3 to promote him though the Applicant did not hold requisite qualification. In the circumstances the order of reversion cannot be made retrospectively and there shall be no recovery from the Applicant for the period he was wrongly promoted. However, the period spent as Trained Mechanic will not be treated as valid experience on that post.

10. This Original Application is disposed of accordingly with no order as to costs.

**Sd/-**  
**(B.P Patil)**  
**Member (J)**

**Sd/-**  
**(Rajiv Agarwal)**  
**Vice-Chairman**

**Place : Mumbai**  
**Date : 16.08.2017**  
**Dictation taken by : A.K. Nair.**