

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 653 OF 2016**

**DISTRICT : MUMBAI**

Shri Rama Hari Dhanapure, )  
Occ : Service, Residing at Sandeep )  
Adinath Chate, Haware Lay Out, )  
Sewagram, Dist-Wardha. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through the Secretary, )  
Medical Education and Drugs )  
Department, Mantralaya, )  
Mumbai 400 032. )  
2. The Director of Medical Education )  
& Research, St. Georges Hospital )  
Campus, P.D Mello Road, Fort, )  
Mumbai 400 001. )...**Respondents**

Shri L.S Deshmukh, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

**CORAM** : **Shri Justice A.H Joshi (Chairman)**  
**Shri P.N Dixit (Member) (A)**

**RESERVED ON** : **16.10.2018**

**PRONOUNCED ON** : **23.10.2018**

**PER** : **Shri Justice A.H Joshi (Chairman)**

**ORDER**

1. Heard Shri L.S Deshmukh, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents

2. Applicant has approached this Tribunal with following prayer:-

“(B) Hold and declare the action on the part of the Respondent in cancelling Applicant’s candidature for the post of staff nurse is illegal and the same be quashed and set aside.”

3. According to the applicant:-

- (a) She belongs to Scheduled Caste category.
- (b) She has secured 90 marks in the written test and has been selected for oral interview for the post of Staff Nurse.
- (c) Candidates were called for submitting their documents on 27.6.2016 and 28.6.2016, and attend the counselling.
- (d) Applicant was present on the date fixed for counselling, however, the Administrative Officer did not allow the applicant to appear for the interview on the ground that applicant is not eligible for being appointed as she has not filled the preference Form.
- (e) On oral enquiry, applicant came to know that her candidature is declined on the ground that she did not attend the Counselling Session and failed to submit the option form.
- (f) Candidate who has secured 90 marks from open category has been appointed and Applicant’s candidature is declined

4. The present Original Application is opposed by the Respondents. Crucial affidavit is that of Respondent no. 2, which is on record at page 128 onwards.

5. The crux of the matter is:

Whether it was mandatory for the candidates to attend for the counselling and submit option form before she was to be admitted for interview.

6. The affidavit of the Respondent no. 2 contains answer to crucial averments. Instead of narrating the same, it would be useful to quote the averments at verbatim.

“10. I say and submit that as per schedule in the booklet of Information Brochure of Counselling/Preference the present applicant must have attended and completed the formalities verification of documents and submission of preference form for Counselling/Preference at on 13.3.2015 at any of the Nagpur, Aurangabad or Pune Centre. However, it is humbly submitted that the applicant did not remain present for this session and failed to complete the required procedure. It will be worthy to note that the total 9,830 candidates attended the session and submitted their preference forms. The selection process continued as per schedule and on the basis of preference forms submitted, a merit of 504 candidates was published on 29.6.2015 on the website of the Respondent and also appointment letters were posted to the selected candidates. Further, in this fashion, second merit list for 501 candidates and third merit list for 488 candidates were published on 29.8.2015 and 30.11.2015. In this way, all the 1493 vacant posts were duly filled in by 30.11.2015.

11. It is submitted that there was necessity to fill in 72 vacancies in the Government Medical Colleges and Hospitals at Nanded and Yavatmal and in order to fill in these vacancies it was decided to operate waiting list under MHN-CWT-2014 examination. A notification dated 21.1.2016 for the purpose was published on the website of the Respondent no. 2 and also an advertisement dated 24.1.2016 was published in various news papers (copies of notification and advertisement are annexed hereto and marked as Exhibit R-7 colly. It will be pertinent to note that in the said notification, it was again made clear in para no. 4 that only those candidates who had submitted their preference form earlier need to be present in the office of Respondent no. 2. After completing the required process these vacancies were filled in.

Similarly, in the same way subsequently 36 vacancies at Government Medical College, Chandrapur and 56 vacancies at Government Medical College, Nanded were filled in on 15.3.2016 and 9.5.2016 respectively.

11.1 It is further submitted that the Respondent no. 2 issued again a notification on 22.6.2016 and also published advertisement on 23.6.2016 in various news papers to fill 418 vacancies at 10 various Government Medical Colleges and Hospitals under the Respondent no. 2 and in the said notification it was mentioned that only those candidates who had submitted their preference form earlier need to be present in the office of Respondent no. 2. It is pertinent to note that the applicant is aware that she did not fill preference form but still she remain

present for the said round which is contrary to the procedure and declaration made at time of filling of preference form. It shows that as soon as her SML no coming near to recruitment then the applicant woke up and trying to participate in recruitment process, hence same is not admissible.

12. I say and submit that since the applicant had failed to comply the process by submitting her preference form in the month of March, 2015, the applicant was not considered for the entire selection process and the applicant herself is solely responsible for this act of omission. While submitting the application, the applicant had signed the declaration that required documents will be produce for verification and that necessary preference form would be submitted.”

(Quoted from pages 133 to 135 of O.A).

7. In order to cross check the factual aspect contained in the affidavit in reply, the annexures to the O.A have to be seen.

8. It is seen from the information broucher of Counselling/Preference system, copy whereof is at page 182 that furnishing a Preference Form in the process of Counselling is imperative. Relevant portion is seen at page 189, text whereof is quoted below for ready reference.

“11. Result of MHN-CWT 2014 includes the mark list of reserved category candidate along with state merit list number, category and merit list number is also mentioned. All the candidate should note that they should attend this process as per their state merit list no and as per schedule, for the counselling and filling up of the “Preference Form”.

12. Candidate should refer Rule no. 4.9 give in the MHN-CWT 2014 brochure for the eligibility related to age. Those who will be fulfilling these conditions will be considered for the process.

13. If a candidate remains absent for this preference form filling process then he/she will not be considered for the appointment. No application/request will be entertained afterwards.”

(Quoted from page 189 of O.A)

9. Marathi translation of English text quoted in foregoing para is at page 192, which is quoted below for ready reference.

- “११) सदर परीक्षेच्या गुणपत्रिकेमध्ये (State Merit Lists) राज्यस्तरीय गुणवत्ता क्रमांकाबरोबरच राखीव संगर्बनिहाय (Category State List No) गुणवत्ता क्रमांक देण्यात आलेला आहे. प्रवर्गनिहाय गुणवत्ता क्रमांकानुसार उमेदवारांना बोलविण्यांत आलेले नाही. याची विशेष नोंद घ्यावी.
- १२) उमेदवाराने MHN-CWT-2004 माहिती पुस्तिकेतील नियम क्र.४.९ चे अवलोकन करावे. या नियमात नमूद केल्याप्रमाणे वयोगटात पात्र ठरणा-या उमेदवारांचाच विचार करण्यात येईल.
- १३) या संचालनालयाच्या संकेतस्थळावर जाहिर करण्यांत आलेल्या राज्यस्तरीय गुणवत्ता क्रमांकाचे उमेदवार दिलेल्या दिवशी/वेळेत अनुपस्थित राहिल्यास त्यांची निवड करण्यात येणार नाही तसेच त्यांचा अधिपरिचारीका पदाच्या नियुक्तीसाठी विचार करण्यात येणार नाही याची नोंद घ्यावी.”

(Quoted from page 192 of O.A).

10. It is seen from notifications dated 1.1.2015 at Exh. R-5, page 148 that it contains a stipulation which reads as follow:-

“(१०) उमेदवारांना रिक्त जागावर प्राधान्यक्रम भरून घेण्यासाठी व प्रमाणपत्र पडताळणीसाठी दिनांक २४/०२/२०१५ पासून वर नमुद अ.क.५ मधील ४ अधिसेविकांच्या कार्यालयात बोलाविण्यात येईल. याबाबत सविस्तर वेळापत्रक संचालनालयाच्या संकेतस्थळ [www.dmer.org](http://www.dmer.org) वर जाहिर करण्यात येईल.

उमेदवारांच्या पसंतीक्रमानुसार व गुणवत्तेनुसार रिक्त जागांवर त्यांना नियुक्ती आदेश निर्गमित करण्यात येतील. उमेदवारांनी स्वसर्चाने वरील सर्व प्रक्रियेस हजर राहावयाचे आहे. या प्रक्रियेसंदर्भात तांत्रिक अडीअडचणीसाठी डीएमईआर मदत केंद्र भ्रमणध्वनी क्रमांक ९७६९४४९६४४ address [dmermhnewt@gmail.com](mailto:dmermhnewt@gmail.com) व वर संपर्क साधावा.”

(Quoted from page 149 of O.A).

11. It is seen that after completing the process of selection, various orders of appointment were issued for which notifications were published, which are dated 21.1.2016 (page 197), 8.3.2016 (page 200), 28.4.2016 (page 203) and 22.6.2016 (page 206).

12. It is an admitted fact that applicant has submitted representation dated 28.6.2016, which is at Exh. N, pages 64 & 65 and has filed the present O.A on 29.6.2016.

13. Considering these two dates, it is wholly unnecessary to observe as to whether subject matter representation could be adverted to by the authorities.

14. From the narration of pleadings and facts what emerges is as follows:-

- (a) It is an admitted fact that Recruitment Rules do not provide for stage of Counselling and it is a matter of procedure to be

followed in the matter of implementation of the process of recruitment.

- (b) The Application Form comprising of the details of procedure of examination and subsequent procedure, all were available on official website and were published by the Government.
- (c) Applicant has not disputed that the broucher was available and she does not say that she was unaware of mandatory stipulation requirement of attendance of counselling.
- (d) The Original Application does not contain any explanation showing the reason as to why applicant could not attend the Counselling on the dates fixed for that purpose.
- (e) It is also not shown that applicant had made any efforts or request for any supplementary counselling session on account of any circumstances which may have precluded her from appearing for the counselling session.

15. The affidavit in reply filed by the State is not countered by filing any rejoinder.

16. In the result, this Tribunal reaches a conclusion that:-

- (a) The candidates were put to notice that participating in the counselling process was imperative for participating in the process of selection after passing the written test.
- (b) Applicant was fully aware of need of such counselling.
- (c) Applicant has failed to attend during the counselling session and therefore did not qualify for participating in the process of interview.
- (d) The fact that applicant has failed to participate in the process of counselling on her own and without her excuse emerges to be the fact of the matter and the applicant has not claimed any exception or concession in that regard.
- (e) Applicant's representation dated 28.6.2018 appears to be an act of artifice considering that it is formally dispatched and on the next date O.A is filed.
- (f) Hence the version contained in the said representation is far trustworthy and does not deserve any consideration.

- (g) Therefore, the aspect of Counselling and furnishing option form cannot be held to be contrary to rules, or absence being beyond applicant's control.

17. Original Application has no merit and is dismissed. No order as to costs.

**Sd/-**  
**(P.N Dixit)**  
**Member (A)**

**Sd/-**  
**(A.H. Joshi, J.)**  
**Chairman**

**Place : Mumbai**  
**Date : 23.10.2018**  
**Dictation taken by : A.K. Nair.**