

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 395 & 1369 OF 2023
DISTRICT : SATARA**

1. ORIGINAL APPLICATION NO 395 OF 2023

1. Dr Yogita Shah)

Age: 33,
Residing At: Subhadra Bunglow,)
% Mahavir Collection,)
At post Nagthane,)
Tal & District - Satara - 415519)
Mob-7304303303)
Email- docyogita5545@gmail.com)

2. Dr. Sudha Meshram)

Age- 36)
Address -c/of Sandeep D. Borkar,)
vidyanagar, behind indralok)
sabhagruha,)
Bhandara - 441904)
Mob-9511665652)
Email sandiparisudha29jan)
@gmail.com)

3. Dr Smita Wanje)

Age- 41)
Address- House no.1-82,)
Abhinav Nagar, Kandhar)
Tq .Kandhar Dist- Nanded 431714)
Mob: 7057372590)

Email: drsmita.wanje81@gmail.com)

4. Dr. Dipakshi Kolhatkar)

Age- 31)

Address -at post mundipar,)

Near bazar chowk,)

Tah. Goregov,)

District- Gondia- 441801)

Mob-9922221451)

Email dipakshikol4@gmail.com)

5. Dr Manjusha Warade)

Age- 29)

Address- 5 Jayguru, Anand Society,)

Malkapur, District - Buldhana- 443101)

Mob- 7588804256)

Email- manujwarade93@gmail.com)

6. Dr. Yogesh fegade)

Age: 42)

Residing At: HN1067,)

Dahanu jawhar road,)

near bank of maharashtra,)

vitthal nagar, at post - kasa khurd)

District Palghar 401607)

Mobile 9503237630)

Email yogesh8866@gmail.com) ... Applicants

Versus

1. Maharashtra Public Service Commission)

Through its Chairman,)

MTNL, 5th, 7th, 8th Floor,)

- Maharshi Karve Rd, Cooperage,)
Mumbai - 400021)
2. The State of Maharashtra)
Through its Principal Secretary,)
Public Health Department,)
10th Floor, GT Hospital,)
New Mantralaya,)
Mumbai - 400001)
3. Dr Dnyaneshwar Angadrao Karad)
At.Saygaon, Post. Satala,)
Tq.Renapur, Dist.Latur)
Maharashtra 413523)
4. Dr Radha Kantilal Rathod)
507 Orbit Heights 2,)
Javji Dadaji marg,)
Tardeo, Nana Chowk,)
Grant road (W),)
Mumbai 400007)
5. Dr Sayali Anuj Patil)
At. Kokarud, Tal:Shirala,)
Dist: Sangli Pin- 425405)
6. Dr Sandip Sudam Gaikwad)
At. Kurundwad, Tq.Shirol,)
Dist. kolhapur Pin- 416102)
7. Dr Atulkumar Patil)
Rutuja nivas pise colony Gargoti)

- Tal Bhudargad Dist Kolhapur)
 Maharashtra 416209)
8. Dr Pallavi Sunil Bhailume)
 K 46/6, Navjeevan Colony, N-11,)
 Near Hanuman Mandir, Hudco,)
 Chhatrapati Sambhaji Nagar,)
 Maharashtra -431001)
9. Dr Tejas Mukund Kulkarni)
 flat no-103 Building-h2)
 manikmoti complex.)
 Katra, Chowk, more bagh Katraj.)
 Pune City, Pune, Katraj,)
 Maharashtra. - 411046)
10. Dr Ashishkumar Patil)
 At/post ashvibk, Tq.Sangamner,)
 Dist.Ahmednagar, Pin-413714))
11. Dr Sachin Sopan Kandalkar)
 At/Post- Jorwe, Tal- Sangamner,)
 Dist- Ahmednagar - 422605.)
12. Dr Jayshri Sachin Makne)
 Room No. 3 parmardh Niketan)
 shinde bai)
 chawl mohan nagar chinchwad,)
 Pune 411019)
13. Dr Abhishek Sanjay Ghule)
 Plot No 17 Gurukrupa Sadan,)

- Bhigwan Road,)
 Utkarshnagar, Baramati,)
 Pune, Maharashtra - 413102)
14. Dr Vijay Bade)
 Flat no 121, D wing, fifth floor,)
 Sawant vihar phase 1,)
 Katraj 411037)
15. Dr Chaitali Sargar)
 Flat no.302 (A wing) Paradise park)
 Vishram Nagar Malakapur,)
 Tal karad.dist Satara. 415539)
16. Dr Pragati Baliram Pakle)
 E- 96, V. H. B colony,)
 Akola 444001.)
17. Dr. Satyajit palave)
 Flat no 13 . saisankalp residency,)
 near NSG complex,)
 Pune - 411046)
18. Dr.RamPrasad Dighole)
 At Post- Jorwe, Tal- Sangamner)
 Dist- Ahmednagar 422605)
19. Dr Ruchika Agrawal)
 At. Tagore chowk Sabanpura)
 Amravati - 444601)... Respondents

2. ORIGINAL APPLICATION NO 1369 OF 2023

1. Dr. Amit Mohan Naik)
 Age: 32)
 Occupation: Dental Surgeon)
 Residing at Railway Kolhapur Chal,)
 Miraj, Sangli- 416410)
 Through POA holder)
 Dr. Akshay Tugnayat)
 Mob- 7276667542)
 Email ID- amitnaik17as@gmail.com)

2. Dr. Satvik Harish Kulkarni)
 Age: 30)
 Occupation: Dental Surgeon)
 Residing at Rukmini Nagar,)
 Plot No. 3, Meenashree Bunglow)
 Kolhapur 416005.)
 Mob- 7887906922)
 Email ID- ksativik11ak@gmail.com)

3. Dr. Chanchal Apparao Padalkar)
 Age: 36)
 Occupation: Dental Surgeon)
 Residing at Apparanjan Nivas,)
 Vithal Nagar, At Post,)
 Tal. Atpadi, Sangli- 415301)
 Through POA holder)
 Dr. Akshay Tugnayat)
 Mob- 7028370763)
 Email ID- dr.jeevanlavate@gmail.com)

4. Dr. Namrata Dhume)

Age: 36)
 Occupation: Dental Surgeon)
 Residing at 201, Sarvesh Panorama,))
 Near Mango Sweets Baner Road,)
 Pune - 411007)
 Through POA holder)
 Dr. Akshay Tugnayat)
 Mob- 8805012271)
 Email ID- dhumenamrata@gmail.com)

5. Dr. Kedar Patil)
 Age: 32)
 Occupation: Dental Surgeon)
 Residing at 1252, Somwar Peth,)
 Saraf Katta, Miraj- 416410.)
 Through POA holder)
 Dr. Akshay Tugnayat)
 Mob- 9175527884)
 Email ID- dr.kedarspatil@gmail.com)

6. Dr. Akshay Tugnayat)
 Age: 31)
 Occupation: Dental Surgeon)
 Residing at Behind Shrikrishna)
 Bhavan, Maharashtra Bank)
 Square, Wani)
 Yavatmal - 445304.)
 Mob- 8888037903)
 Email ID- tugnayt@gmail.com)

7. Dr. Sweta Wagde)
 Age: 40)

Occupation: Dental Surgeon)
 Residing at 63, near Buddha Vihar,)
 Ramnagar Ward, Prabuddha Nagar,)
 Hinganghat, Wardha- 442301.)
 Through POA holder)
 Dr. Akshay Tugnayat)
 Mob- 9665759123)
 Email ID- drwagdesweta@gmail.com)

8. Dr. Antima Bhimrao Gawai,)
 Age: 31)
 Occupation: Dental Surgeon)
 Residing at Tirupati Nagar,)
 Near Bobade Colony,)
 Aadarsh Nagar Road,)
 Khamgaon, Buldhana- 444303.)
 Through POA holder)
 Dr. Akshay Tugnayat)
 Mob- 9284970710)
 Email ID- drantimagawai@gmail.com)

9. Dr. Venilal Dnyaneshwar)
 Age: 38)
 Occupation: Dental Surgeon)
 Residing at Opposite Old)
 Municipal Corporation,)
 Main Road, Taloda,)
 Nandurbar- 425413.)
 Through POA holder)
 Dr. Akshay Tugnayat)
 Mob- 7387320360)
 Email ID- venilalchaudhari@gmail.com)

10. Dr. Shubhangi Mohan Rane)
 Age: 31)
 Occupation: Dental Surgeon)
 Residing at Ganpati Nagar, Phase 1,)
 Near Ganpati Temple,)
 Malkapur, Buldhana- 443101.)
 Through POA holder)
 Dr. Akshay Tugnayat)
 Mob- 8180926140 / 7887795742)
 Email ID- shubhangirane92@gmail.com)

11. Dr. Ankita Devidas Jadhao)
 Age: 30)
 Occupation: Dental Surgeon)
 Residing at Prof. D S Jadhao,)
 Saoji Layout, Nandura Road,)
 Khamgaon, Buldhana- 444303)
 Through POA holder)
 Dr. Akshay Tugnayat)
 Mob- 7588419831)
 Email ID- jadhaoankita133@gmail.com)...Applicants
 Versus

1. Maharashtra Public Service Commission)
 Through its Secretary,)
 Trishul Gold Field,)
 Plot No. 34, Sector 11,)
 Opp. Sarovar Vihar,)
 Belapur CBD, Navi Mumbai - 400614.)
2. The State of Maharashtra)

Through its Principal Secretary,)
 Public Health Department,)
 10th Floor, GT Hospital,)
 New Mantralaya,)
 Mumbai - 400001)... Respondents

Shri Kranti L.C with Shri Kaustubh Gidh, learned counsel for the Applicants in O.A 395/2023.

Shri S. Chinnappa, learned counsel for the applicants in O.A 1369/2023.

Ms Swati Mancheka, learned Chief Presenting Officer for the Respondents No 1 & 2.

Ms Ankita Katakdhond with Nitin S. Murkute, learned counsel for the Respondents No 3 to 19.

CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)

DATE : 17.04.2024

J U D G M E N T

1. The applicants who are at present working as the Dental Surgeon on contract basis under the National Health Mission have challenged the shortlisting criteria of the M.P.S.C to the post of Dental Surgeon, General State Service, Group-B, Class-II. They further pray that the eligibility of the candidates should be strictly adhered to the Recruitment Rules and particularly the candidates who have experience with the Government of semi-Government Institutions are to be considered. The applicants further prayed by way of amendment that the letter dated 28.7.2023 be quashed and set aside and appropriate directions be issued to M.P.S.C to apply the eligibility criteria as stated in the letter dated 28.7.2023 issued by the Under Secretary, Public Health Department, State of

Maharashtra, in respect of Advertisement No. 014/2022 dated 18th February, 2022.

2. The Respondents have issued advertisement for 289 posts of Dental Surgeon and many applications were received. The Respondent-State by letter dated 28.7.2023 gave opinion that experience in a Private Clinic as Clinical Assistant is to be considered valid thereby relaxing the eligibility criterion in the Recruitment Rules and the advertisement therefore the challenge is raised by the applicants in the present Original Applications. It is to be noted that though the applicants have prayed that the eligibility criterion should be as per the Recruitment Rules dated 31.7.1990, they did not pray that the entire recruitment process pursuant to the advertisement dated 18.2.2022 is to be scrapped.

3. At the outset, it is necessary to reproduce Rule 3 of the Recruitment Rules dated 31st July, 1990.

“3. Appointment to the post of Dental Surgeon in the Directorate shall be made either;

(a) by transfer of a suitable class II officer from any other services under the Directorate, possessing the qualification and experience prescribed for appointment by nomination is sub-clause (b) of this rule, or

(b) By nomination from amongst the candidates who;

- (i) Unless already in the service of the Government are not than thirty-five years of age;
- (ii) Possess a degree of Bachelor of Dental Surgeon as Included in Part I or II of the Schedule to the Dentist Act, 1948 (16 of 1948); and
- (iii) Have experience for not less than two years as a Clinical Assistant in any post, which in the opinion of the Government is equivalent to or higher than, the post of Clinical Assistant,

gained after acquiring the qualification mentioned in sub-clause (ii) above.

Provided that the age limit may be relaxed by the Government on the recommendation of the Commission in favour of candidates possessing exceptional qualifications or experience or both;

Provided further that preference may be given to candidates possessing post-graduate qualification in Dental Science.”

4. The entire issue revolves around the experience of the ‘Clinical Assistants’ in a Government Hospital. When the Recruitment Rules were framed on 31.7.1990, at that time 77 posts of Clinical Assistants were approved and available in Government Hospitals. However, in the span of this 23 years now the requirement of more Dental Surgeons increased and it is necessary to note that the Government in the Dental course has introduced a period of one year Internship in the year 1993-94, which was not available in the Recruitment Rules framed on 31.7.1990. Thus, experience that the Clinical Assistant mainly acquires practical experience working with the Dental Surgeons and handling patients that experience is found very valuable for the post of Dental Surgeon. However, as per the submissions of the learned C.P.O the same experience which is acquired as a Clinical Assistant within a period of one year is given and acquired by the Graduate students who undergo Internship of period of one year. It is to be noted that in the Recruitment Rules dated 31.7.1990, earlier the experience required as a Clinical Assistant was for not less than two years. However, by way of amendment dated 6.3.1992, the experience was reduced from two years to one year and it is to be noted that the period of Internship is also one year. Therefore, the period which is required to gain the actual practical experience as a student of Dental Surgery is the same as

per the amended Recruitment Rules and period of Internship. It goes without saying that for the appointment of Surgeon in any faculty the practical experience is required to be gained and that is always considered as an eligibility criterion.

5. Learned counsel for the applicants has submitted that in the Recruitment Rules the word is used as Clinical Assistant and Government has reiterated the nature of experience gained by the Clinical Assistant in the Semi Government or Private Institutions only because of the opinion given by the Government on 1.10.2015 and so also by letter dated 28.7.2023. Thus, it is argued that the scope of the candidates having experience even in the Private Clinics is inconsistent with Rule 3 (iii) of the Recruitment Rules dated 31.7.1990. It is submitted that in Private Clinics if the post of Clinical Assistant is not available then just by way of opinion given by the Secretary, the condition of acquiring experience as Clinical Assistant, cannot be relaxed. Learned counsel submitted that the attempt of the Government to relax the eligibility criterion and consequently affecting the shortlisting criteria by issuing letter dated 1.10.2015 and 28.7.2023 is illegal and therefore objectionable.

6. Learned counsel for the applicants drew our attention to the later part of Rule 3(iii) of the Recruitment Rules dated 31.7.1990 which states that the experience can be relaxed which in the opinion of the Government is equivalent to or higher than the post of Clinical Assistant. Learned counsel has further submitted that the opinion of the Government is not the opinion of the Secretary or any other Officer in the Department, but the opinion of the Government necessarily to be approved by the concerned Minister of the Department and which is to be published in the name of Hon'ble His Excellency The Governor. Learned counsel further

pointed out that in this case no such opinion is given in these two letters and therefore he submitted that these opinions are not valid and cannot be considered. Learned counsel for the applicants relied on the judgment of the Hon'ble Bombay High Court dated 20.3.2023 in Manoj M. Mahind & Ors Vs State of Maharashtra & Ors, W.P St. No. 9195/2021 & Ors, which dealt with a similar issue in respect of the Recruitment process of the year 2015, about higher preferential qualification.

7. In the said judgment of Manoj Mahind, the Hon'ble High Court has held that MPSC has correctly applied the shortlisting criteria of higher preferential qualifications in accordance with Rules of 2014. However, from para 45 onwards the Hon'ble High Court has dealt with the experience gained by the candidates as a Clinical Assistant and the Hon'ble High Court has held that the candidates having preferential experience of MDS and experience of both the Government as private Clinics and prepared the select list, this cannot be faulted. The Hon'ble High Court held as under:-

“50. Detailed submissions have been made by rival parties on acceptance of experience in private hospitals/clinics. There can be no matter of doubt that Recruitment Rules do not specifically bar consideration of experience in private hospitals/clinics. However, at the same time, Recruitment Rules prescribe possession of experience as 'clinical assistant or on a post equivalent or higher than clinical assistant'. It is submitted that the post of clinical assistant is available only in Government hospitals/semi-Government hospitals. We could have delved further in this issue to record our findings about exact experience which could be accepted. However, the 902-WPST-9195-2021 + (1) selection has already been finalized and the State Government has appointed candidates having experience in private hospitals/clinics, who have been serving since the year 2017. It would be too late now to disturb them. Also, in the situation that prevails now, the main thrust of the original applicants is on getting themselves appointed against 67

unfilled vacancies rather than unseating the candidates with private experience who are already appointed. Considering the language employed in the recruitment rules, changing stand of the State Government and factum of appointment of some of the candidates posing private experience, we refrain ourselves from recording any conclusive finding on the issue of acceptance of experience in private hospitals/clinics and leave the same to be decided in an appropriate case.”

In the said paragraph in the last portion the Hon’ble High Court has expressed that Bench has not given the conclusive findings on the issue of acceptance of experience in a Private Hospital or Clinic and they have not recorded any conclusive findings on exact experience which could be accepted. Thus, in the case of Manoj Mahind, the issue of experience with Private Clinic or Government Hospital has not been decided.

8. As the Recruitment Rules are not challenged by amendment, in the case in hand, we try to answer this question keeping Rule 3(iii) of the Recruitment Rules as the center point. This Rule has two parts. The experience of one year as Clinical Assistant is required and therefore the persons who are working in Government Hospitals are eligible. Secondly, the lawmakers have given some leeway to the State that the experience in any post which in the opinion of the Government is equivalent to or higher than the post of Clinical Assistant. Thus, the lawmakers have given discretion to the Government to decide the experience acquired on which post or experience acquired on higher post is considered as equivalent to experience as Clinical Assistant. Thus the lawmakers in its wisdom were fully aware that the equivalence is required to be considered in view of the requirement of the Dental Surgeons in future and therefore the choice is left to the Government to decide and add the posts having equivalent experience. The Government cannot restrict the post of Dental Surgeon only to 77 posts in view of the Doctor Patient ratio on the

background of the steep increase in our population. Therefore, the Respondent-State first time by letter dated 1.10.2015 introduced the equivalent experience for the post of Dentist which should be considered. The experience of the Houseman, Assistant Lecturer, Lecturer, Assistant Principal Houseman, in the aforesaid Institutions be considered as equivalent to the post of Clinical Assistant. Secondly in the same letter it is mentioned that the Government of semi-Government or Clinics which have approval of Maharashtra Dental Council and so also the Private Clinics who have approval of the Maharashtra Dental Council, their experience is to be considered as valid experience. In this opinion the Government has given reasoning that every student who is pursuing the Degree in BDS cannot get the admission only in Government and semi-Government Institutions as seats are very limited and therefore students who pursue BDS in Private or Government approved Clinics, their experience is also to be considered valid, otherwise, it will be discriminatory.

9. The second letter was partially withdrawn as per letter dated 17.11.2016 to the extent with the experience of Private Clinics and Individual Clinics are not to be considered valid. That condition was withdrawn. However, the equivalence mentioned in the letter dated 1.10.2015 of the Professor and Assistant Lecturer for other posts was not withdrawn. Similarly, the experience earned in Private Health Institutes which are approved by the Dental Council of India was not withdrawn. Thus, there was partial withdrawal of the eligibility criteria.

10. On these two letters the main objection was taken by the applicants that it is not by the Government as per the requirement of the Rules of Business. Learned C.P.O placed the original record of the approval given by the then Principal Secretary for these two

letters. We have perused the record. Learned C.P.O has fairly admitted that at the relevant time this particular file was not forwarded to the Minister of Health and letter was not issued in the name of Hon'ble His Excellency the Governor as approval was not sought. We make it clear that though as per the Rules the power to decide and give opinion vests with the Government to express the opinion. Thus, according to us when the discretion given by the Legislature to the Government and the Government has formed the opinion, we are of the view that this a curable irregularity while expressing the opinion and this opinion should have been placed before the concerned Minister of the Department and then in a proper manner these letters should have been issued in the name Hon'ble His Excellency the Governor. However, these two letters are not the subject of challenge in these Original Applications. The Principal Secretary and the Department needs to go through the Recruitment Rules and they need to modify the Recruitment Rules so that there will be clarify in respect of the eligibility criterion in all future recruitment process.

11. Further the Respondent-State issued letter dated 28.7.2023 thereby allowing the candidates having experience as Clinical Assistant even in Private Clinics which are not given approval by the Dental Council of India. We do not want to discuss it more as this letter dated 28.7.2023 is subsequent to the advertisement dated 18.2.2022 when the advertisement was already initiated more than 1 ½ years prior to this letter and thus the rules of the game especially on the point of eligibility cannot be changed after the advertisement is issued.

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

ORDER

- (i) The Original Application is partly allowed.
- (ii) The eligibility criteria cannot be relaxed as per letter dated 28.7.2023. The Principal Secretary of the said Department shall put up the file for post-facto approval of the Hon'ble Cabinet Minister and Hon'ble His Excellency the Governor.
- (iii) The interim order dated 13.4.2023 stands vacated.
- (iv) The present recruitment process is to be completed as early as possible.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 17.04.2024
Dictation taken by : A.K. Nair.