

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 610 OF 2016**

**DISTRICT : MUMBAI**

Smt Anita Nagraj Kolhe, )  
Occ : Service as Panchkarma Vaidya, )  
R/o: M.A Podar Hospital, Worli, )  
Mumbai 400 018. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through the Secretary, )  
Medical Education & Drugs Dept. )  
Mantralaya, Mumbai 400 032. )
2. The Director of Ayurved, )  
Govt. of Maharashtra, )  
Govt. Dental College & Hospital )  
Bldg, St. Georges Hospital Compound )  
C.S.T, Mumbai 400 001. )
3. The Dean, )  
M.A Podar Govt. Ayurved Hospital, )  
Worli, Mumbai 400 018. )...**Respondents**



Smt Kalpalata Patil with Shri V.P Potbhare, learned advocate for the Applicant.

Ms Savita Suryavanshi, learned Presenting Officer for the Respondents.

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

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

**RESERVED ON : 23.02.2017**

**PRONOUNCED ON : 29.03.2017**

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

### **ORDER**

1. Heard Smt Kalpalata Patil with Shri V.P Potbhare, learned advocate for the Applicant and Ms Savita Suryavanshi, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 1.7.2015 passed by the Respondent no. 2 imposing certain penalties on the Applicant and order dated 24.5.2016 passed by the Respondent no. 1, maintaining the aforesaid order of the Respondent no. 2 in appeal.

3. Learned Counsel for the Applicant stated that the Applicant was married to late Shri Nagraj Kolhe, who was working as Extension Officer, Zilla Parishad, Beed.

It was a intercaste marriage and Shri Kolhe belonged to Scheduled Caste (S.C) category. Her husband died on 18.8.1996. The Applicant, who holds degree of B.A.M.S applied for appointment on compassionate basis on 4.9.1996. As per G.R dated 12.8.1958, an upper caste woman married to S.C category man was entitled to get the benefit available to S.C category. A Certificate was issued to the Applicant in 1988 accordingly which entitled her to claim benefits available to S.C category. The Respondent no. 2 appointed the Applicant to the post of Panchkarma Vaidya by order dated 1.7.1997 in a Class-III post on compassionate grounds. A corrigendum was issued on 11.7.1997 clarifying that the Applicant was appointed to the post of Sahyak Panchkarma Vaidya. Learned Counsel for the Applicant contended that the Applicant was not appointed on a post reserved for S.C category. The Applicant was given permanency Certificate on 25.8.2009 in the post of Assistant Vaidya. The Applicant applied for M.D course for a seat reserved for Government Medical Officers. Though the Applicant had a Certificate which entitled her to claim benefits of S.C category, she had applied for M.D seat from open category in the subject 'Rasa-Shastra' but she was not selected. She was informed that for the seat in the subject of 'Sharir Kriya' reserved for S.C category, no suitable candidate was available. She applied for the seat and was selected for the same. She completed M.D in 'Sharir Kriya'. Thereafter, Applicant was given charge



of the post of Resident Medical Officer (R.M.O) which ruffled many feathers. One Shri Rajendra Patil made a complaint against the Applicant on 18.7.2011. The Applicant was asked to give explanation on the issues like her appointment and also her selection for M.D course, which she submitted on 2.8.2011. A two Member Committee was appointed, which submitted its report on 11.8.2011. The Committee did not find any substance in the complaint against the Applicant. Though no charge was proved against the Applicant, that her selection for M.D course was irregular, she was asked by the Respondent no. 2 to give an undertaking that she will not take any benefit of her post graduate qualification (M.D) in future for any purpose. She gave such an undertaking to avoid further disputes. This should have been the end of the matter. However, a complaint was received from one Shekhar Meshram, against the two Member Enquiry Committee stating that the Committee did not conduct enquiry against the Applicant correctly. The Respondent no. 1 asked the Respondent no. 2 to take necessary action on the complaint of Shri Meshram. The Respondent no. 2 called for explanation from the members of the two members of the Committee, though the Respondent no. 1 had accepted the report of two member Committee by letter dated 13.2.2012.

4. The Applicant was reverted from the post of Resident Medical Office, Government Ayurved Hospital,

Nagpur and was posted as Panchkarma Vaidya at Poddar Hospital, Worli, Mumbai by order dated 29.11.2013 by the Respondent no. 2. A Memorandum of charges / charge sheet was issued to the Applicant on 3.12.2013 on three charges. The Applicant submitted her written statement of defence on 1.1.2014, stating that these charges were already inquired into by the Two Member Committee and no substance was found.

5. Learned Counsel for the Applicant stated that charge no. 2 is that the Applicant took admission in M.D course showing caste of her late husband (S.C) as her own caste. The Applicant had already given an undertaking that she would not take advantage of post graduate degree for any purpose in future, though she was not at fault at all. So this charge should not have been made at all. Charge no. 3 is regarding endorsement of the first page of Service Book of the Applicant. As the Applicant was married to a S.C person, as per G.R then in force, her caste was mentioned as 'Boudha' (S.C) but after that G.R was withdrawn, it was corrected as Hindu Maratha. That was the reason for overwriting in her Service Book. In fact, there was no role played by the Applicant in the aforesaid endorsement. The charge was not based on any misconduct attributable to the Applicant.



6. A Departmental Enquiry was held and the Enquiry Officer (E.O) submitted his report on 13.4.2015. The Enquiry Officer held that charges were not proved against the Applicant. The Applicant was given a show cause notice on 14.5.2015. The disciplinary authority did not agree with the report of the Enquiry Officer and held that charge nos 1 & 2 are proved. It was held that her appointment as Assistant Panchkarma Vaidya was in a Group 'B' post against rules. It was also held that she wrongly took admission in Post Graduate Course in a seat reserved for S.C candidate. The appeal against the order of the Respondent no. 2 dated 1.7.2015 was dismissed by the Respondent no. 1 by order dated 24.5.2016. As a result, the Applicant has been reverted and has been posted as Hostel Superintendent.

7. Learned Counsel for the Applicant argued that both the charges cannot be said to be proved against the Applicant as she had not appointed herself as Assistant Panchkarma Vaidya. She was admittedly eligible to be appointed on compassionate basis. As per G.R dated 26.10.1994 the post of Assistant Vaidya was available for compassionate appointment and as per the Recruitment Rules also, this was a class-III post. The order of the Respondent no. 2 holding that the post of Assistant Panchkarma Vaidya was class-II post is without any legal basis.

8. As regards the charge no. 2, the Applicant had applied for open seat in 'Rasa-Shastra'. She was not selected for that seat. However, as no S.C category teacher was available for the seat in the subject of 'Sharir-Kriya', she was given admission. This was as per the rules for admission to M.D course. The charge has been clearly not proved, as there was no evidence that she has taken advantage of the caste of her husband. She had applied for open seat and not for reserved seat. The seat was offered to her in a different subject as no suitable candidate from S.C category was available. The Applicant has not been found guilty of any fraud or misrepresentation. Learned Counsel for the Applicant argued that the order of the Respondent no. 2 is perverse and it may be quashed and set aside. The Respondent no. 1 has not applied his mind and gone mindlessly by the order of the Respondent no. 2. His order dated 24.5.2016 also deserves to be quashed.

9. Learned Presenting Officer (P.O) argued on behalf of the Respondents that as per G.R dated 27.1.1976, a Government employee married to a backward class employee was also entitled to get benefits available to backward class employee. The Applicant was married to a S.C category employee and was eligible for benefits as if she also belonged to S.C category till this G.R was cancelled by G.R dated 7.5.1999. She took admission in M.D course for a seat reserved for S.C

category after 7.5.1999. The Applicant was given appointment as Assistant Panchkarma Vaidya, which was a Group 'B' non-gazetted post as per G.R dated 29.7.1993 and also as per G.R dated 2.7.2002. As the G.R dated 26.10.1994, allows compassionate appointment only on Group 'C' & 'D' posts, the Applicant was not eligible for appointment to a Group 'B' post. By impugned order, this legal position has been recognized.

10. As regards charge no. 2, the Applicant has sought admission in the post graduate course (M.D) in 1999, on the basis of Caste of her husband (S.C). This was done when the G.R dated 7.5.1999 has been issued withdrawing earlier orders. By impugned order, she had been ordered to pay the fee for the course and the qualification of M.D acquired by her was cancelled. Learned Presenting Officer argued that the impugned order dated 1.7.2015 is valid and so is the order in appeal dated 24.5.2016, which has been passed after the Applicant was given opportunity of being heard.

11. The Applicant's husband was working in a Class-III post in Beed Zilla Parishad. He died while in service on 17.8.1996. The Applicant applied on 4.9.1996 for compassionate appointment to the District Health Officer, Zilla Parishad, with a copy to the Respondent no. 2. Copy of the application dated 4.9.1996 (Annexure A-2, page 36 of the Paper Book) and copy of her application to



the Respondent no. 2 (received by the Applicant from the Respondent no. 2 under the Right to Information Act page. 40-41 of the Paper Book) do not disclose that the Applicant had sought appointment to the post of Panchkarma Vaidya. In fact, the office note dated 26.6.1997 (given by the Respondent no. 2 to the Applicant under R.T.I, page 42-43 of the Paper Book), discloses that the Applicant was offered appointment as Panchkarma Vaidya on compassionate grounds by the Respondent no. 2 under terms of G.R dated 26.10.1994. The Applicant was given appointment in the scale of pay of Rs. 2000-3500 in the post of Panchkarma Vaidya by letter dated 1.7.1997, issued by the Respondent no. 2. By letter dated 11.7.1997 order was changed to appointment to the post of Assistant Panchkarma Vaidya. However, as the order dated 11.7.1997 did not modify the scale of pay, it must have remained the same. G.R dated 26.10.1994 has appendix 'A' containing rules for compassionate appointment. Under Rule 3(b), wife of a deceased Government servant is eligible for compassionate appointment. Rule 4(A) of the rules have the following provision:-

“ ४. (अ) अनुकंपा तत्वावर संबंधित नातलगाची शैक्षणिक पात्रता व वयानुसार राज्य शासनांतर्गत कोणत्याही गट “क” व गट “ड” श्रेणीच्या सरळ सेवा प्रवेशाने भरल्या जाणा-या पदावर नियुक्ती करता येईल. हया नियमानुसार सदर पदांवर नेमणुक करण्यासाठी महाराष्ट्र लोकसेवा आयोगाचा सल्ला घेण्याची आवश्यकता नाही. मात्र, लोकसेवा आयोगाच्या कक्षेतील पोलीस उपनिरीक्षक, विक्रीकर निरीक्षक, मोटार वाहन उप निरीक्षक, रेंज वन अधिकारी, कनिष्ठ अभियंता, सहायक वैद्यकीय अधिकारी इ. गट

“क” मधील कार्यकारी (एक्झिक्युटिव्ह) पदांवर तसेच मंत्रालयातील सहायक पदांवर नियुक्ती देता येणार नाही.”

This shows that though the post of Assistant Medical Officer is a Group ‘C’ post, no appointment on compassionate basis is permissible to that post. The Applicant has relied on the Recruitment Rules for the post of ‘Panchkarma Vaidya’, which are appended as Annexure A-18 (P.124 of the Paper Book) to show that it is a Group ‘C’ post. It is seen that these are draft recruitment rules and do not seem to have been notified. In these rules post of Assistant Vaidya in Panchkarma is shown as Class-III post. The Respondents have relied on G.R dated 29.7.1993 (Exhibit R-2, page 301 of the Paper Book). It is clarified that the post carrying pay scale of Rs. 2000-3200 will be Group ‘B’ non-gazetted. From all these facts, it is clear that even if the post of Assistant Vaidya is taken to be in Group ‘C’, the Applicant was not eligible to be given appointment in the post of Assistant Panchkarma Vaidya in the pay scale of Rs. 2000-3500 on compassionate basis. However, the Respondent no. 2 had issued orders dated 1.7.1997 and 11.7.1997 in this regard. No blame can be attached to the Applicant as she had not applied for that post and there was no fraud or misrepresentation by the Applicant in getting appointment in the post of Assistant Panchkarma Vaidya. In this context, let us examine the charge no. 1 in the charge sheet dated 3.12.2013 (Annexure A-16,

page 115 of the Paper Book). This charge reads as follows:-

“ वैद्य अनिता नागराज कोल्हे, पंचकर्म वैद्य यांची दिनांक १.०७.१९९७ व दिनांक ११.०७.१९९७ च्या अदेशान्वये त्यांचे पती वैद्य नागराज कोल्हे, आयुर्वेद विस्तार अधिकारी यांच्या निधनानंतर अनुकंपा तत्वावर “ सहाय्यक पंचकर्म वैद्य” या पदावर वेतनश्रेणी रुपये २०००-६०-२३००-दरो-७५-३२००-१००-३५००/- या वेतनश्रेणीमध्ये करण्यात आली आहे.”

In fact, plain reading of this charge does not disclose any misconduct on the part of the Applicant. In the imputation of misconduct also there is no mention of any wrong doing by the Applicant. The charge no. 1 and imputation of misconduct only give the factual position regarding the appointment of the Applicant to a Group 'B' non-gazetted post. It is not stated that the Applicant was not eligible for compassionate appointment. It is stated that she was not eligible for appointment in a Group 'B' non-gazetted post. In fact, no misconduct of any kind is imputed to the Applicant. Mistake, if any, was on the part of the Respondent no. 2, who had issued wrong order of appointment and the Applicant cannot be accused of any misconduct or wrongdoing. The Enquiry Officer in his report dated 13.4.2015 (pages 167-213 of the Paper Book) has also held that:-

“ अशाप्रकारे वैद्य अनिता नागराज कोल्हे यांची अनुकंपा तत्वावर शासकीय सेवेतील प्रथम नियुक्ती नियमबाह्य करण्यात आल्याचे निदर्शनास येत आहे असा आरोप आहे.



यात अपचारीने गैरवर्तन काय हे नमूद नाही. तसेच नेमणूक तत्कालीन संचालक, आयुर्वेद यांनी दिली आहे. अपचारीने दि.४/९/१९९६ च्या अर्जान्वये दि.८.५.१९८५ च्या आदेशानुसार पतीच्या जागेवर किंवा समान कोणत्याही पदावर नेमणूक कराव अशी विनंती, आरोग्य अधिकारी, जि.प.बीड यांना केली होती. त्यात त्यांनी जुना आदेश नमूद केला, हे गैरवर्तन ठरत नाही.”

This conclusion of the Enquiry Officer that there was misconduct on the part of the Applicant has not been accepted by the Disciplinary Authority, viz. the Respondent no. 2. The conclusion of the Respondent no. 2 is:

“वरील विवेचन विचारात घेता, वैद्या अनिता नागराज कोल्हे यांची सन १९९७ मधील अनुकंपा तत्वावरील शासकीय सेवेतील प्रथम नियुक्ती गट -क व गट-ड मध्ये होणे आवश्यक असूनही त्यांची नियुक्ती गट-ब अराजपत्रित पदावर चुकीची झाली असल्याचे निदर्शनास येत आहे. म्हणजेच वैद्या अनिता कोल्हे यांची अनुकंपा तत्वावरील प्रथम नियुक्ती चुकीची असल्यामुळे बाब क्रमांक १ अपचारीविरुद्ध सिद्ध होत आहे.”

It is admitted that the Applicant was given appointment in a Group ‘B’ by mistake. The mistake was committed by the Respondent no. 2. There is no mention at all as to how there was any misconduct on the part of the Applicant. In fact, the Applicant did not appoint herself in violation of rules. The conclusion of the Respondent no. 2, that the charge no. 1 is proved is without any foundation and is perverse. Charge no. 1 itself did not disclose any misconduct on the part of the Applicant.

12. The Applicant has been posted as Hostel Superintendent by consequent order dated 31.5.2016

(Annexure A-25 on page 263 of the Paper Book), which is also impugned in this Original Application. The Applicant was appointed as Assistant Panchkarma Vaidya by order dated 1.7.1997/11.7.1997. She was confirmed by order dated 25.8.2009 (Annexure A-4, page 54 of the Paper Book) in the post of 'Panchkarma Vaidya' by the Respondent no. 2 himself. In fact, the Applicant's case should have been considered in the light of the judgment of Hon'ble Supreme Court in the case of **AMARENDRA KUMAR MOHAPTRA & ORS Vs. STATE OF ORISSA & ORS reported in 2014(3) SLR 496 (S.C)**. It is held by Hon'ble Supreme Court that:-

“As to what would constitute an irregular appointment is no longer res integra. The decision of this Court in State of Karnataka v. M.L. Kesari and Ors. (2010) 9 SCC 247, has examined that question and explained the principle regarding regularisation as enunciated in Umadevi's case (supra). The decision in that case summed up the following three essentials for regularisation (1) the employees worked for ten years or more, (2) that they have so worked in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal and (3) they should have possessed the minimum qualification stipulated for the appointment. Subject to these three requirements being satisfied, even if the

appointment process did not involve open competitive selection, the appointment would be treated irregular and not illegal and thereby qualify for regularization.”

In view of the law laid down by Hon'ble Supreme Court, the Applicant's appointment as Assistant Panchkarma Vaidya, even if irregular, was not illegal and after 10 years, she was eligible to be regularized. The punishment of reduction in rank, is totally unsustainable as the charge no. 1 was not proved, in fact it was not a charge of misconduct against the Applicant at all. The order dated 1.7.2015, 24.5.2016 and 31.5.2016 are clearly unsustainable as regards this issue.

13. Let us now examine the charge no. 2. This charge reads as follows:-

“वैद्या अनिता नागराज कोल्हे, पंचकर्म वैद्य यांनी सन १९९९ मध्ये आंतरजातीय विवाहाचा लाभ अनुज्ञेय नसताना पतीच्या अनुसूचितजातीचा फायदा घेऊन पदव्युत्तर पदवी अभ्यासक्रमास प्रवेश घेतला आहे.”

It is an admitted fact that the Applicant belongs to 'Maratha' caste and her late husband belonged to S.C category. As per circular dated 27.1.1976, a person who does not belong to Scheduled Caste (etc) can be deemed to be a member of a Scheduled caste because he or she has married a person belonging to a Scheduled Caste

(etc). Such a person was held eligible to get a 'Couple Certificate' to enable him/her to get benefits available to S.C (etc) category to whom he/she was married. This circular along with other G.Rs /Circular in this regard was cancelled by G.R dated 7.5.1999. Till then the Applicant was eligible to get benefits of S.C category. The moot question is whether she availed of S.C benefit when she sought admission to M.D course. In the Enquiry Report dated 13.4.2015, the Enquiry Officer has concluded that this charge was not proved against the Applicant. The conclusions of the Enquiry Officer are as follows:-

“ शासन निर्णय दिनांक ०७.०५.१९९९ अन्वये आंतरजातीय विवाह सवलतीचे फायदे रद्द केले होते. त्यामुळे वैद्य अनिता नागराज कोल्हे यांना आंतरजातीय विवाहामुळे मिळणा-या सवलतीचा फायदा पदव्युत्तर पदवी प्रवेशाच्यावेळी देणे अपेक्षित नव्हते. हा दोषारोप अपचारीवर नसून प्रशासनावर ठरतो. जर प्रशासनाला दि.७.५.१९९९ चा शा.नि. माहित नाही, त्याबाबत अपचारीला दोषी धरणे नैसर्गिक न्यायाच्या विरुद्ध होईल. त्यांची निवड अ.जा. साठी राखीव जागेवर झाली हे अभिलेखावरून दिसून येते, परंतु त्यांनी तो प्रवेश फसवून घेतला हे सिद्ध होत नाही. कारण प्रवेशासाठी आलेल्या अर्जाची छाननी केली होती. हरकती मागविल्या होत्या. अपचारीच्या अर्जावर वैद्य वि.वि. बोंडादे यांचा आक्षेप होता. त्यावर असा खुलासा आहे की, वैद्य कोल्हे यांनी वे.अ.असल्याने व त्यांनी रसशास्त्र विषयासाठी अर्ज केला आहे असे त्यात नमूद केले आहे. त्यापुढील प्रक्रिया ही समितीची प्रक्रिया ठरते. त्याला अपचारी कसे जबाबदार हे चौकशीत सादर झाले नाही. साक्षीदाराने असे नमूद केले आहे की, अपचारीने शिक्षकेतर खुल्या प्रवर्गासाठी आरक्षित जागेवर प्रवेश न घेता हेतुपुरस्कर मागासवर्गासाठी राखीव असलेल्या शारिरकिया या विषयात अनु. जातीच्या फी माफीच्या सवलतीसाठी प्रवेश घेतला. परंतु अपचारी प्रवेश प्रक्रियेनुसार फक्त अर्ज करू शकतात. प्रवेश घेणे हे त्याच्या अधिकारात नाही. हा अधिकार प्रवेश समितीचा आहे. त्याला अपचारीला जबाबदार धरता येत नाही. अपचारीने चौकशीत आपले निवेदन



नोंदविले त्यात असे नमूद केले आहे की, मी १९९९ मध्ये तीन विषयांचा प्राधान्यक्रम देवून खुल्या प्रवर्गातून अर्ज केला होता. माझी निवड केल्याचे मला नोटिस बोर्डावरील यादीवरून समजले. माझे शिक्षण पूर्ण झाले, पदवी मिळाली २०११ मध्ये तक्रार आल्यानंतर संचालक, आयुर्वेद दोन-तीन पत्र पाठवून माझ्याकडून रु.१०० च्या स्टॅप पेपर वर एम.डी चा भविष्यात फायदा घेणार नाही असे प्रतिज्ञापत्र लिहून घेतले. ही कार्यवाही बरोबर आहे कि नाही चौकशीचा विषय नाही, परंतु त्यावरून अपचारी विरुद्ध आरोप सिध्द होण्याआधी शिक्षा केल्यासारखे ठरते हे नमूद करण्यात येते. ही कार्यवाही नैसर्गिक न्यायविरुद्ध आहे. चौकशीत या आरोपाच्या पृष्ठयर्थ प्रक्रियेचे सर्व कागदपत्र सादर करणे व प्रवेश समितीच्या सदस्यांना साक्षीदार करणे आवश्यक होते. तसे न झाल्याने हा आरोप अनुमानावर आधारित ठरतो. विभागीय चौकशीत अनुमानाने आरोप सिध्द झाला असे मानता येत नाही. म्हणून राखीव जागेवर प्रवेश दिला हा आरोप अंशतःसिध्द होतो. परंतु त्याला अपचारी जबाबदार आहे हे सिध्द होत नाही.”

It is clear that the Applicant was not responsible for getting admission in a seat which was reserved for S.C. The Respondent no. 2 as disciplinary authority has registered his disagreement with this finding in the following terms:-

“तसेच वैद्या अनिता कोल्हे यांच्याकडे तत्कालीन अधिष्ठाता, शासकीय आयुर्वेद महाविद्यालय, नागपूर यांनी सन २००५ मध्ये जात वैधता प्रमाणपत्राची मागणी केली असता, वैद्या अनिता कोल्हे यांनी दिनांक २३.०२.२००५ च्या निवेदनामध्ये असे नमूद केले आहे की, “माझ्या सेवापुस्तकामध्ये शाळा सोडल्याच्या दाखल्याची झेरॉक्स प्रत जोडलेली आहे. त्यात माझी जात हिंदू (मराठा) ही आहे. यावरूनच माझी जात हिंदू (मराठा) ही समजली जावी. त्यामुळे व्हॅलीडीटी प्रमाणपत्र देण्याचा प्रश्नच उद्भवत नाही. “म्हणजेच सन १९९९ मध्ये वैद्या अनिता कोल्हे यांनी पदव्युत्तर पदवी अभ्यासक्रमाच्या प्रवेशाच्यावेळी जातीचे प्रमाणपत्र कार्यालयास सादर करीन असे लिहून दिलेले आहे व तदनंतर सन २००५ मध्ये त्यांनी शाळा सोडल्याच्या दाखल्यावरील जात विचारात घ्यावी असे परस्पर विरोधी विधान केलेले आहे. वैद्या अनिता कोल्हे यांना सन १९९९ मध्ये पदव्युत्तर पदवी अभ्यासक्रमाच्यावेळेस शाळा सोडल्याच्या दाखल्याची आठवण झालेली



नाही. यावरून वैद्या अनिता कोल्हे यांनी स्वतःच्या सोयीनुसार व हेतुपुरस्पररित्या अनुसूचित जातीचा लाभ घेऊन पदव्युत्तर पदवी अभ्यासक्रमासाठी अनुज्ञेय नसतानाही लाभ/फायदा घेतला आहे. त्यामुळे सदर दोषारोप अपचारीविरुद्धच सिद्ध होत आहे.”

The Enquiry Officer has clearly concluded that the authorities were not aware of the G.R dated 7.5.1999, when the Applicant was given admission to M.D course later in the year. There is nothing on record that the Applicant was aware that her deemed caste status as S.C due to marriage was not valid when she wrote letter dated 1.11.1999 to Dean, Government Ayurved College, Nagpur. That fact should have been imputed in the charge no. 2 if the Applicant was to be held guilty of any misconduct. In fact, there was no contradiction in her letter in 1999 and in 2005, which were based on circumstances prevailing at the relevant time. The finding of the Respondent no.2 regarding charge no. 2 is clearly perverse. The punishment imposed on the Applicant in respect of this charge is as follows:-

“(अ) पदव्युत्तर पदवी अर्हता काढून घेण्यात/रद्द करण्यात येत आहे.

(ब) पदव्युत्तर पदवी अर्हतेचा भविष्यात कोटेही उपयोग/वापर करण्यापासून प्रतिबंधित करण्यात येत आहे.

(क) मागासवर्गीयांना अनुज्ञेय असणारी संपूर्ण फी माफीची रक्कम वसूल करण्यात येत आहे. सदर वसूलीची कारवाई अधिष्ठाता, शासकीय आयुर्वेद महाविद्यालय, नागपूर यांनी करावी.”

It is presumed that degree of M.D is awarded by a University established under the law. The Respondent no. 2 has no authority to cancel the qualification of M.D



acquired by the Applicant. In any case, when the order of the Respondent no. 2 holding charge no. 2 is held as perverse, the resultant punishment is also unsustainable. Whether she was eligible to get fee concession for M.D studies or not, can be decided by the Respondents separately.

14. We have concluded that the order dated 1.7.2015 issued by the Respondent no. 2 holding that charges no 1 & 2 in the charge sheet dated 3.12.2013 against the Applicant is unsustainable as the aforesaid order is perverse since the finding of competent authority that misconduct proved is set aside being perverse, punishment whatsoever, based thereon, has to be set aside as a necessary corollary. Hence order is hereby quashed and set aside. The order of the Respondent no. 1 dated 24.5.2016 confirming the order dated 1.7.2015 and order of the Respondent no. 2 dated 31.5.2016 are also quashed and set aside. This Original Application is allowed accordingly with no order as to costs.

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

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

**Place : Mumbai**  
**Date : 29.03.2017**  
**Dictation taken by : A.K. Nair.**