

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.489 OF 2014

DISTRICT : THANE

Mr. Mohan Nivrati Navghade,)	
R/o. C/o. "Shivam Classic", 201/A,)	
Sector 23, Nerul (E), Navi Mumbai)	..APPLICANT

VERSUS

- | | | | |
|----|---|---|--|
| 1. | The Director, |) | |
| | Directorate of Ayush, |) | |
| | Government Dental College & |) | |
| | Hospital Building, 4 th floor, |) | |
| | St. Georges Hospital Campus, |) | |
| | Mumbai CST, Mumbai 1. |) | |
| 2. | Mr. Tripude Praveen Udamram, |) | |
| | C/o. Directorate of Ayush, |) | |
| | Government Dental College & |) | |
| | Hospital Building, 4 th floor, |) | |
| | St. Georges Hospital Campus, |) | |
| | Mumbai CST, Mumbai 1. |) | |

....RESPONDENTS

Shri K.R. Jagdale, learned Counsel for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondent No.1. None for the Respondent No.2.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN
SHRI R.B. MALIK, MEMBER (J)

DATE : 29.08.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

J U D G M E N T

1. Heard Shri K.R. Jagdale, learned Counsel for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondent No.1. The Respondent No.2 remained absent though served.

2. This Original Application is filed by the Applicant challenging the appointment of the Respondent No.2 for the post of Driver, as per the select list dated 30.05.2014 published by the Respondent No.1. The Applicant claims that he should have been selected for that post.

3. Learned Counsel for the Applicant argued that the Respondent No.1 had issued an advertisement on 13.11.2013 to fill various posts, including two posts of Driver, which were reserved for O.B.C. and S.C. categories. The Applicant had applied for the post. Written, practical and oral examinations were held and the Applicant secured 81 marks. The Respondent No.1, however, selected the Respondent No.2, who is only 8th class pass and did not have requisite experience as per advertisement. G.R. dated 27.06.2008 provides that a candidate having better educational qualifications should be preferred. The Applicant is H.S.C. pass and was eligible to be

preferred over the Respondent No.2. Learned Counsel for the Applicant stated that the total marks for the examination were 200, 100 for written examination, 90 for professional test and 10 for interview. The select list published on 30.05.2014, shows combined total marks of interview and professional test. However, separate marks for professional test and interview have not been shown. Learned Counsel for the Applicant stated that the selection process was not transparent. The Respondent No.2 did not have requisite experience and he does not appear to have the domicile certificate for Maharashtra. However, he was selected. He prayed that the entire selection process may, therefore, be quashed.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent No.1 that on the one hand, the Applicant is questioning the selection process itself and in the same breath, he is seeking his own appointment. The Applicant had admittedly scored a total of 81 marks in the selection process while the Respondent No.2 had scored 82 marks. The break up marks in professional test and interview, will not make any change in this position, though it is disclosed in the select list. Similarly, whether the total marks were 200 or 100, will not make any difference, though it has been clarified that total marks were 100 and 200, shown in the merit list dated 30.05.2014 was a mistake. Learned P.O. argued that the Applicant has not placed any material on record to show that experience certificate / domicile certificate of the

Applicant were not genuine. Learned P.O. argued that there is no merit in this O.A. and it may be dismissed.

5. It is seen that the advertisement to fill various posts was issued by the Respondent No.1 on 13.11.2013. Two posts of drivers, one each from O.B.C. and S.C. categories were to be filled. The Respondent No.1 has stated in the affidavit-in-reply to amended O.A. dated 29.02.2016, that a total of 219 on-line applications for 2 posts of drivers were received. Regional Transport Officer (R.T.O.) Mumbai expressed inability to conduct screening test of these candidates. A written (screening) test was conducted by the Respondents, in which 75 candidates appeared. A total of 19 candidates (100 O.B.C. + 9 S.C.) were selected for further examination (i.e. Professional Test + Interview). The result of professional test and interview are given in Exhibit- R3A on page 81 of the paper book in respect of candidates belonging to S.C. category. It is seen that the Respondent No.2 scored a total of 82 marks, while the Applicant scored 81 marks. In the affidavit-in-rejoinder dated 21.03.2016, these facts have not been denied by the Applicant.

6. The Applicant has raised two issue, viz :-

- (a) Total marks shown in the merit and waiting list dated 30.05.2014 were 200. However, the same has been corrected after 16 months. However, it is seen that the corrigendum at Exhibit-R2 (page 80 of the paper book) is dated 03.07.2014 i.e. it has been issued after about a month and not 16 months as claimed by the Applicant. It is clarified that written examination of 100 marks was only for screening.

This issue has been satisfactorily explained by the Respondents.

- (b) It is stated that as per paragraph 3 of the advertisement dated 13.11.2016, the caste and domicile certificates were to be submitted along with the application form. However, the Respondent No.2 submitted domicile certificate dated 30.08.2014, after his appointment. He was, therefore, not eligible for appointment.

The copy of the advertisement dated 13.11.2013 is at page 30 of the paper-book. As regards domicile certificate, paragraph 3 in the advertisement reads as follows :-

- “३) अर्जदार हा भारताचा नागरिक व महाराष्ट्र राज्याचा रहिवासी असावा. अर्जदाराकडे महाराष्ट्र राज्याचा रहिवाशी असल्याचे शासनाने प्राधिकृत केलेल्या सक्षम अधिका-याचे प्रमाणपत्र (डोमिसाईल) असणे आवश्यक आहे.”

This paragraph does not indicate that such a certificate was required to be submitted along with the application as claimed by the Applicant. Similarly, the caste validity certificate was required to be produced within 6 months from the date of appointment. In fact, paragraph 16 of the advertisement makes it clear that no documents were to be submitted along with online application form. The claim of the Applicant that Respondent No.2 did not have a valid Domicile certificate is not substantiated. If the Respondent No.2 submitted domicile certificate dated 30.08.2014, that did not, in any way, was contrary to any of the conditions of the advertisement. The experience certificate of the Respondent No.2 has also been challenged on the ground that the companies, where he worked did not have registration with Employees State Insurance Corporation. The experience requirement was :

“तसेच ५ वर्षांच मोटर गाडी चालविण्याचा अनुभव”. Even if the Respondent No.2 had experience of driving with a private person, that would have been admissible. The objection raised by the Applicant about experience of the Respondent No.2 appears to be frivolous and does not deserve any consideration.

7. The grounds raised by the Applicant for challenging selection of the Respondent No.2 to the post of driver from S.C. category have no foundation. There was no irregularity in the selection process. The Respondent No.2 had admittedly scored more marks than the Applicant in the selection process. Considering all these facts, this O.A. is dismissed with no order as to costs.

SD/-

**(R.B. MALIK)
MEMBER(J)**

SD/-

**(RAJIV AGARWAL)
VICE-CHAIRMAN**

**Place : Mumbai
Date : 29.08.2016
Typed by : PRK**