

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.413 OF 2017

Miss Sunita Baburao Shinde,)
R/o. C/o. Sunil Bhosale, New Hindu Mill,)
MHADA Sankul, Bldg. No.4A, 22nd floor,)
Room No.2206, Ghodapdev, Cotton Green,))
Mumbai.)

....APPLICANT

VERSUS

- 1) The Director of Medical Education)
and Research, M.S., Mumbai having)
office at Government Dental College,))
and Hospital Building, 4th floor, St.)
George Hospital Campus, Mumbai 1)
- 2) Smt. Amrapali Pandhari Aalte,)
Govt. Medical Social Superintendent)
(Vaidya/ Medical Social Worker,)
Having office at Government Medical)
College, Gondiya.)
- 3) Smt. Sonu Shankarrao Kale,)
Occ. Medical Social Superintendent)
(Vaidya / Medical Social Worker,)
Having office at Government Medical)
College, Gondiya.)

4) The State of Maharashtra,)
 Through Principal Secretary,)
 Medical Education and Drugs)
 Department, having office at)
 Mantralaya, Mumbai 400 032) **...RESPONDENTS.**

Mr. Bhushan A. Bandiwadekar, learned Counsel for the Applicant

Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents

Mr. D.N. Karande, learned Counsel for Respondent No.2.

None appearing for Respondent No.3

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
 Smt. Medha Gadgil, Member (A)

DATE : 11th June, 2024

J U D G M E N T

1. Applicant has challenged order dated 05.11.2016 issued by the Respondent No.1, thereby appointing Respondents No.2 and 3 to the post of Medical Social Superintendent / Medical Social Worker. The Applicant prays that he is to be appointed on the vacant post available for Open Category by appropriately interpreting criterion of Tie Breakers as mentioned in Clause 7.1 of the brochure. Respondents No.2 and 3 are working since 2016. The Medical Education and Drugs Department, Information Brochure & Application Form for MEDSS-CWT-2014, Procedure for Recruitment of Technical and Paramedical Staff (Class III), Clause 7, Declaration of Result and Preparation of Medical List reads as below :

“7.1 Tie-breakers

In case of equal marks at the MEDSS-CWT 2014, the following procedure shall be adopted for deciding inter-se merit-

First level (Wherever applicable) : *A candidate holding preferential qualification/ experience as per the recruitment rules.*

Second level : *A candidate with higher marks in Section II of the MEDSS-CWT 2024 examination shall be preferred, if the tie still persists then;*

Third level : *A candidate with higher marks in HSC (or equivalent) Examination shall be preferred, if the tie still persists then;*

Fourth Level : *A candidate with higher percentage of aggregate marks at the SSC (or equivalent) Examination shall be preferred, if the tie still persists, then;*

Fifth Level : *An older candidate shall be preferred over a younger candidate.”*

2. Learned Counsel Mr. Bandiwadekar has submitted that in the examination of MEDSS-CWT 2014 all the candidates i.e. Applicant and Respondents No.2 and 3 have secured equal marks i.e. 70 and so Clause 7.1 of Tie Breakers as mentioned above was applied. The educational qualification of Applicant is M.A. & MSW, Respondent No.2 is BA & MSW and Respondent No.3 is BA & MSW. Learned Counsel Mr. Bandiwadekar has relied on Clause 6 of the G.R. dated 27.06.2008 regarding revised procedure for the recruitment of the candidates to be appointed by nomination in Group-C. Clause 6 states further criteria of tiebreaker is to be followed that in the event candidates secure equal marks. So far as backward class candidates are concerned the candidates who belong to SC Category and sub-Caste in SC Category are to be given preference, thereafter physically disabled, ex-serviceman and thereafter children of freedom fighters are to be considered.

3. The Applicant is having higher educational qualification as she holds Degree in Master of Social Work and Degree in Master of Arts. Learned Counsel has relied on Short Affidavit dated 26.03.2024 filed by

Dr. Vivek Pakhmode, Joint-Director (Dental) of Directorate of Medical Education and Research wherein it is stated that Respondent No.2 was selected on the basis of Preferential Qualification as she had Post Graduation Degree MSW in Psychiatric, Social Work and Respondent No.3 was selected on the basis of higher marks in Section II of MEDSS-CWT 2014 Examination. Learned Advocate Mr. Bandiwadekar has submitted that in the Second level a candidate with higher marks in Section II of the MEDSS-CWT 2024 examination shall be preferred but firstly experience is to be considered. He states that Respondent No.3 does not possess the certificate of experience. However, Applicant is having the certificate of experience. In the Second level Applicant secured 38 marks, Respondent No.2 secured 32 marks and Respondent No.3 secured 40 marks. Hence Respondent No.2 secured less marks in the Second Level so is to be denied.

4. While opposing the OA, Learned P.O. has argued that all the three candidates i.e. Applicant and Respondents No.2 and 3 hold degree in Medical and Psychiatrist Social Work or Family and Child Welfare or both. The Respondent No.2 has two years full experience with Medical Psychiatric Social Work. Learned P.O. has submitted that the qualification of Applicant & Respondent No.3 is Social Work Practice for Mental Health and Respondent No.2's qualification is Medical and Psychiatric. Ld. PO relied on Affidavit dated 26.03.2024 filed by Dr. Vivek Pakhmode, Joint-Director (Dental) of Directorate of Medical Education and Research and pointed out that all the 3 candidates have secured 70 marks each. Ld. PO pointed out that as per the clause 3 of the Annexure-A for the post of Social Worker/Medical Social Superintendent the Recruitment Rules, "Preference will be given to the candidates having above degree (A Master's degree in Social Science) with Medical and Psychiatric or Family and Child Welfare or both." Amongst these 3 i.e. applicant, respondent

no.2 and respondent no.3 only respondent no.2 is holding the requisite preferential qualification as mentioned in Annexure A of the Brochure.

5. Ld. PO pointed out that Master of Social Work certificate of the applicant shows that that applicant has taken subject of Social Work Practice for Mental Health. MSW certificate of respondent no.3 shows that she has chosen Social Work Practice for Mental Health as a subject. As the applicant and respondent no.3 were having educational qualification from the same university i.e. Dr. Babasaheb Ambedkar Marathwada University the State decided to go for second level of Tie Breaker between them. For the Second level of Tie-breaker it is provided that, a candidate with higher marks in Section II of the Medical Education Department Staff Selection Common Written Test MEDSS-CWT 2014 examination shall be preferred (Medical Education Department Staff Selection Common Written Test). Ld. PO submitted that the applicant secured 38 marks whereas respondent no.3 secured 40 marks and therefore respondent was appointed.

6. Ld. Advocate for respondent no.2 states that he is adopting the submissions of Ld. PO.

7. Ld. Advocate for the applicant submitted that as per Tie-breaker First level, a candidate holding preferential qualification/experience is to be given preference. He submit that experience is required to be given weightage if there is no requisite preferential educational qualification. He submit that applicant is having experience of one year and two months. He refer to Exhibit L of the OA and points out Sr. No.8 wherein it is mentioned that applicant is having experience of 9 months in one NGO Janarth and experience of 14 months in National Rural Health Mission (NRHM). Ld. Advocate submit that respondent no.3 does not have any experience and she has not mentioned in her application. As per clause

7.1 firstly there is option of experience and the weightage to be given to this aspect. He state that respondent no.1 has failed to consider the experience i.e. second option for Tie-Breaker, firstly for the purpose of weightage which was required to be given to the applicant. Therefore as respondent no.3 did not have any experience there was no reason to go to second level in Tie-Breaker 7.1. Therefore, Ld. Advocate for the applicant submit that the case of the applicant fits in clause 7.1 firstly and should have been considered and respondent no.3 should not have been appointed. Thus, Tie-breaker 7.1 is wrongly interpreted.

8. Ld. PO while meeting the submission on the point of experience pointed out that Annexure-A states about recruitment rules for the post of MSW. Nothing is mentioned about experience and thus if at all the aspect of experience is absent in recruitment rules, no weightage can be given to the experience.

9. The submissions of Ld. Advocate for the applicant in respect of giving weightage to experience as per 7.1 of Tie-breaker first level, if read in isolation appears correct but it has a rider of Recruitment Rules. So preferential qualification is to be given the first weightage and after qualification there is stroke '/' and the word 'experience' is written and therefore this stroke is always read as sign replacing the word 'or'. There is no dispute. Legislature does not stop on the word 'experience' but had further added the words "as per recruitment rules". It means that 7.1 First-level of Tie-breaker one has to look into the recruitment rules. The word 'experience' cannot be read in isolation but it should go along with the recruitment rules. The Recruitment Rules Annexure-A clause (3) the preference is mentioned about the degree i.e. educational qualification and there is no mention about 'experience'. Thus, the recruitment rules are silent about experience. The submission of Ld. Advocate for the applicant would have been accepted if the word 'as per recruitment rules' would not

have been used. Thus, while reading the Tie-Breaker we need to read the preferential qualification as per the recruitment rules/or as experience as per the recruitment rules. There is some anomaly in the Tie-Breakers when they have mentioned experience as per recruitment rules. However, we are not here to interpret the anomaly when it is not mentioned.

10. No indulgence is required. In the aforesaid facts and circumstances of the case, we do not find any merit in the OA and the same stands dismissed. No order as to costs.

Sd/-
(Medha Gadgil)
Member (A)
11.6.2024

Sd/-
(Mridula Bhatkar, J.)
Chairperson
11.6.2024

Dictation taken by: PRK & S.G. Jawalkar.