

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,**  
**BENCH AT AURANGABAD.**

**REVIEW APPLICATION NO. 04/2024**

**IN**

**ORIGINAL APPLICATION No. 360/2019**

**DIST. : CHH. SAMBAJINAGAR**

**Maharashtra Public Service Commission,**

Through its Secretary,

Plot No. 34, In front of Sarovar Vihar,

Sector 11, CBD, Belapur, Navi-Mumbai.

**.. APPLICANT**

(Original resp. No. 05)

**V E R S U S**

- 1) The Principal Secretary,**  
Public Health Department,  
Govt. of Maharashtra,  
G.T. Hospital Complex,  
Opp. Small Causes Court,  
Mumbai-400 032.
- 2) The Commissioner of Health  
Services, And Mission Director,**  
National Health Mission, Public Health  
Department, Maharashtra State,  
Aarogya Bhavan, 3<sup>rd</sup> Floor, Saint  
George Hospital Complex,  
V.T. Mumbai-400 001.
- 3) The Civil Surgeon,**  
Civil Hospital Aurangabad.
- 4) The Medical Superintendent,**  
Rural Hospital, Bidkin, Tq. Paithan,  
Dist. Aurangabad.
- 5) Dr. Atul Ashokrao Deshmukh,**  
Age-40 years, Occu. Doctor,  
R/o. C/o. Shri Sachin Kawali,  
Jagdamba Nagar, Behind Kulkarni  
Hospital, Bidkin, Tq. Paithan,  
Dist. Aurangabad.

**).. RESPONDENTS**

(Resp. Nos. 1 to 4 are ori. Res. Nos. 1 to 4  
and res. No. 5 is Original Applicant)

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APPEARANCE :- S/shri M.S. Kulkarni & M.B. Kolpe,  
learned counsel for the applicants.  
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Shri Mahesh B. Bharaswadkar, learned  
Chief Presenting Officer for the  
respondent authorities.  
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Shri Ajay S. Deshpande, learned counsel  
for private respondent in Review  
Application/ Applicant in O.A.  
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**CORAM : Shri Justice P.R. Bora, Vice Chairman  
AND  
Shri Vinay Kargaonkar, Member (A)**  
**RESERVED ON : 09.08.2024**  
**PRONOUNCED ON : 21.10.2024**  
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**ORDER**

*[Per :- Justice P.R. Bora, V.C.]*

1. Heard S/Shri M.S. Kulkarni & M.B. Kolpe, learned counsel for the applicant in Review Application, Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officer for respondent authorities in Review Application and Shri Ajay S. Deshpande, learned counsel for private respondent in Review Application/applicant in O.A.

2. The Maharashtra Public Service Commission (for short the Commission) has filed the present Application seeking review of the order passed by this Tribunal in O.A. No.

360/2019 on 06.12.2023. In O.A. No. 360/2019 the Tribunal has passed the following order:-

**“O R D E R**

*[i] MPSC is directed to recommend the name of the applicant for his appointment on the post of Dental Surgeon against 16 unfilled vacancies within 8 weeks from the date of this order.*

*[ii] Respondent no.1 shall in turn issue the order of appointment in favour of applicant within 3 weeks after receiving recommendation from MPSC.*

*[iii] O.A. stands allowed in the aforesaid terms, however, without any order as to costs.”*

3.            Learned counsel appearing for the Review Applicant submitted that the order under review has been passed on the basis of the observations made and findings recorded by the Hon’ble High Court in para 52 & 53 of the judgment in W.P. St. No. 9195/2021 with connected WPs decided on 20.03.2023. Learned counsel pointed out that in para 52 of the aforesaid judgment the Hon’ble High Court has clarified that the relief granted by the said order was restricted to the applicants who have approached the Tribunal and who have been litigating since the year 2015 and who were interviewed pursuant to the order of the Tribunal. Learned counsel submitted that the present applicant was not considered even at the initial stage as he did not score the minimum marks prescribed. Learned counsel submitted that when cutoff was provided of 58 marks

the applicant received only 49 marks and, as such, he was rightly not considered by the respondents. Learned counsel further submitted that the relief was restricted by the Hon'ble High Court only to the candidates who have approached the Tribunal challenging the criteria of shortlisting. Learned counsel further submitted that the present applicant did not file any such O.A. and, as such, the benefit of the judgment of the Hon'ble High Court cannot be extended in his favour. Learned counsel submitted that since the Tribunal has lost sight of these facts while passing the order in O.A. No. 360/2019, the said order needs to be reviewed.

4.            Learned counsel Shri Deshpande opposed the contentions raised on behalf of the review applicant. Learned counsel submitted that the Tribunal has considered overall circumstances and has passed the impugned order having regard to the fact that the applicant possesses the MDS qualification and was already interviewed by the Commission and more particularly when the respondents have recommended the candidate from the open category having scored much less marks than the applicant. Learned counsel, therefore, prayed for rejecting the review application.

5. After having considered the submissions made on behalf of the review applicant and learned counsel appearing for respondent No. 5 i.e. applicant in O.A., it does not appear to us that any such ground is made out by the review applicant so as to accept the contention of the applicant and review the order passed in O.A. No. 360/2019 on 06.12.2023. Even at the time of hearing the O.A., the respondents have argued that the case of the applicant in O.A. is not covered under the orders of the Hon'ble High Court. However, by recording reasons the Tribunal has held that the case of the applicant can also be considered having regard to the peculiar facts involved in the said matter. The order passed by the Hon'ble High Court is to be read as a whole. If the order is read with proper perspective it is discernable that the directions given by the Hon'ble High Court are with an object and to ensure that the appointments of the eligible candidates are made on all the 188 seats advertised by the respondents and no post remains vacant. It is the case of the present applicant that though he fulfills both the criteria i.e. he possesses MDS qualification and holds the experience of working in the Government hospitals, he was not considered for the reason that the benchmark for the open candidates was fixed at 58 marks. The applicant received only 49 marks. After having noticed that the Commission has recommended the

candidates to be appointed against open seats who have scored much less marks than the applicant i.e. 41, 42 etc. the Tribunal felt that the Commission ought to have considered the case of the applicant also who had scored 49 marks.

6. After having considered the facts as aforesaid it does not appear to us that any such ground is made out by the applicants for reviewing the order passed in O.A. No. 360/2019. The review application, therefore, deserves to be dismissed and is accordingly dismissed however, without any order as to costs.

**MEMBER (A)**

**Place : Aurangabad**

**Date : 21.10.2024**

**VICE CHAIRMAN**