

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2767 OF 2000

Walmik Gorakh Chitte and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Mr. S. B. Talekar Advocate for Petitioners.

Mr. S. G. Sangle, A.G.P. for Respondent Nos. 1 to 4.

Mr. A. S. Deshpande Advocate for Respondent Nos. 29, 35, 41 and 42.

**CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.**

DATE : 07TH MAY, 2015.

PER COURT :

. Original Application was filed by the present Respondents challenging the selection process conducted for selection of multi purpose health workers. The Maharashtra Administrative Tribunal quashed and struck down the entire selection process and resultant select list. Aggrieved thereby, the present Petitioners who were the intervenors, have assailed the said Judgment and order before this Court.

2. Mr. Talekar, the learned counsel for the Petitioners strenuously contend that the Tribunal could not have granted

relief not claimed by the original applicants before it. The Tribunal was not exercising the jurisdiction as is vested with this Court under Article 226 of the Constitution of India. The learned counsel submits that the Respondent Authorities took up the selection process for multi purpose health workers as a special drive, to fill in the back log of reserved category candidates. According to the learned counsel, the same is permissible. The relief claimed by the present Respondents/original applicants before the Tribunal was only to the extent that their claim should be considered for being appointed as multi purpose health workers. Thus, original applicants have never prayed for cancellation of selection process nor had challenged the selection process. The Tribunal could not have expanded the scope of the original application. The learned counsel submits that calling for the names from the employment exchange and selecting the candidates from amongst the names received from the employment exchange is permissible recourse. The learned counsel relies on the Judgment of the Apex Court in the case of **Union of India and others vs. N. Hargopal and others** reported in (1987) 3 S.C.C. 308. The learned counsel also relies on the Judgment of the Apex Court in the case of **Nihal Singh and others vs. State of Punjab and others** reported in (2013) 14 S.C.C. 65 and states that the Judgment in the case of **Union of India vs. N. Hargopal and others**, referred supra, has been affirmed in the said

Judgment also. The learned counsel further submits that as per the relevant Government Resolution, such a procedure of calling for the names from the employment exchange and selecting the candidates from the same names, is permissible. The Petitioners are all qualified to be appointed as multi purpose health workers. Considering the merit, the Petitioners were selected and were kept in the select list. According to the learned counsel, the Petitioners belong to reserved class. Even as per the Notification dated 21st January 1997 the Petitioners are eligible and qualified.

3. Mr. Deshpande, learned counsel for Respondents/ original applicants submits that the Tribunal has rightly considered that the rules operating in the field were not considered. The rules are framed on 1st August 1998. Even the Government Resolution dated 27th May 1997 lays down a methodology of giving preference to the candidates. As per the said Resolution, the preference is required to be given to those candidates who have secured more marks on merits after completion of training. If those candidates are not available then the candidates whose training is in progress, they are required to be considered and from amongst them the merit list is to be prepared. If those candidates are also not available, then the seasonal workers who have worked for more than 360 days are to be preferred and only in case all these candidates are not available then only the

candidates on the basis of merit in S.C.C. examination are to be considered. This procedure has been violated and not followed. Learned counsel submits that Petitioners cannot be allowed the back door entry. There is no publication of notification inviting applications for filling up the posts. The criteria laid down, has not been followed. Such a selection process cannot be upheld. Learned counsel relies on the case of **Pankaj Gupta vs. State of Jammu and Kashmir** reported in (2004) 8 S.C.C. 353. The learned counsel submits that considering the candidature of persons by mere calling of names from employment exchange does not meet the requirements of Article 14 and 16 of the Constitution of India. The learned counsel relies on the Judgment of the Apex Court in the case of **State of Madhya Pradesh and others vs. Sandhya Tomar and others** reported in (2013) 11 S.C.C. 357. According to the learned counsel, the Tribunal has considered all the aspects of the matter. No fault can be found in the Judgment of the Tribunal. Learned counsel submits that selection process was very much subject matter of challenge before the Tribunal. Petitioners have annexed only one copy of the original application. There are other original applications filed, wherein challenge to the selection process was very much relevant.

4. We have considered the submissions canvassed by the learned counsel for respective parties and have also gone through

the Judgments referred by them.

5. It is not a matter of dispute that by way of special drive, the posts of multi purpose health workers, meant for reserved category candidates, were sought to be filled in vide the selection process in question. The basic challenge was that the rules have not been followed and only on the basis of the names invited from the employment exchange the selection process was conducted. The rules were very much in force at the relevant time.

6. The petitioners belong to reserved category. As a special drive the posts of the reserved category were to be filled in. The original application was filed challenging the selection list on the ground that the rules though in force are not followed. The posts were only meant for reserved category candidates. The matter before the Tribunal was service matter. The persons interested only could have filed the original application. Today all the original applicants who had filed original application before the Tribunal are age barred. They cannot be considered even if the selection process which was impugned before the Tribunal is set aside. As the posts were meant only for reserved category candidates, it was incumbent upon the Tribunal to consider the persons who had filed the said original application. The said exercise, it appears has not been conducted by the Tribunal. No doubt, when the rules are invoked, the authorities have to follow

the rules. It is submitted that, today also sixteen posts are kept vacant because of pendency of present writ petition. No doubt, the petitioners today also would have become age barred. However, names of the present petitioners were included in the selection list. The Administrative Tribunal ought to have first satisfied itself that the original application was filed only on behalf of those persons who also belong to said reserved category. The posts were filled in by way of special drive to remove backlog. It was only meant for reserved category candidates. The tribunal could not have proceeded further without satisfying itself that the original applicants were from the said reserved category and they have right to assail the said select list. In the light of the fact that, as the said aspect was not considered by the Tribunal, we would have remitted matter back to the Tribunal. However, same would not serve any purpose. In the result we quash and set aside the impugned order passed by the Tribunal.

7. The select list was prepared by the respondents/State. It is for the respondents/State as to whether the applicants can be appointed on the said post or not considering the present day position. In case the respondents/State intend to appoint the petitioners, their service would be counted from the date of issuance of appointment order. However, we make it clear that it is for the State to consider the said aspect as to whether they

would be issuing appointment orders to the petitioners or not. The writ petition accordingly is disposed of. No costs. Rule accordingly discharged.

[A. I. S. CHEEMA, J.]

[S. V. GANGAPURWALA, J.]

bsb/May 15