

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

Writ Petition No. 10166 of 2015

District : Aurangabad

Dhanraj s/o. Balaprasad Chitlangi,
Age : 30 years,
Occupation : Private Service,
R/o. Durgawadi, Taluka : Paithan,
District : Aurangabad. .. Petitioner.

versus

The State of Maharashtra,
Through Secretary,
Medical Education and Drugs
Department,
GT Hospital Compound,
New Gokuldas Tajpal Premises,
9th Floor, Mumbai. .. Respondent.

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Mr. Nitin B. Suryawanshi, Advocate, for the petitioner.

*Mr. V.S. Badakh, Asst. Government Pleader, for the
respondent.*

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**CORAM : S.S. SHINDE &
SANGITRAO S.PATIL, JJ.**

**Date of reserving
the judgment : 6th April 2016**

**Date of pronouncing
the judgment : 13th April 2016**

JUDGMENT *(Per Sangitrao S. Patil, J.):*

1. Heard the learned Counsel appearing for the petitioner and the learned Asst. Government Pleader appearing for the respondent - State.

2. Rule. Rule made returnable forthwith. With consent of the parties, the Writ Petition is heard finally.

3. The petitioner has challenged the vires of the communication dated 06.11.2013 (Exhibit "J") issued by the respondent, as well as the judgment and order dated 14.09.2015, passed in Original Application No. 756 of 2015, by the Maharashtra Administrative Tribunal [**"MAT" for short**], Bombay, Bench at Aurangabad, upholding the correctness of the said communication.

4. In response to advertisement No. 129/2011 dated 06.09.2011, issued by the Maharashtra Public Service Commission [**"MPSC" for short**], the petitioner applied from the open category for the post of Pharmacist (Group 'B'). After holding interview and personality test, MPSC recommended the name of the petitioner for being appointed to the said post vide letter dated 04.01.2013. In response to the letter dated 05.01.2013, the petitioner submitted necessary documents along with the certificates of requisite

experience for verification to the respondent. The respondent informed the petitioner vide letter dated 06.11.2013 that his experience certificates issued by the private Medical Stores cannot be considered as valid and therefore he cannot be appointed to the post of Pharmacist (Group 'B'). Being dissatisfied with the said communication, the petitioner filed Original Application No. 756/2015 before the MAT, Bombay, Bench at Aurangabad. After hearing the petitioner and the respondent, the learned Members of the MAT dismissed the said Original Application as per the impugned judgment and order dated 14.09.2015.

5. The learned Advocate for the petitioner submits that the petitioner is possessing the required educational qualification as well as experience as mentioned in the advertisement dated 06.09.2011. The petitioner possesses Master's Degree in Pharmacy which entitles him to get preference for being appointed to above mentioned post. He submits that as per Clause 4.5 of the advertisement as well as Rule 2(d)(iii) of the Pharmacist General State Service, Class-II in Government Medical Colleges and Attached Teaching Hospitals Under The Directorate of Medical and Research (Recruitment) Rules, 1990 [**"the Rules" for short**], prescribing the eligibility criteria for the above mentioned post, there was no mention at all that the candidate should possess the experience of not less than one year in maintenance and

supervision of Government Medical Stores and not that of private Medical Stores. The learned Counsel for the petitioner further submits that asking the petitioner to submit experience certificate issued by any Government Medical Stores was totally unwarranted. The respondent wrongly rejected the candidature of the petitioner for the above mentioned post on the ground that he did not produce the experience certificate issued by any Government Medical Stores.

6. He then submits that the respondent did not reject the candidature of the petitioner on any other ground including that of his having experience of less than one year as disclosed from the experience certificates produced by him or that the experience certificates produced by him are not genuine. However, the learned Members of the MAT wrongly embarked on the question of genuineness of the certificates produced by the petitioner. The learned Members of the MAT exceeded their jurisdiction and justified the decision of the respondent in refusing to appoint the petitioner to the above mentioned post on that additional ground which was not even taken by the respondent. He submits that the learned Members of the MAT wrongly doubted genuineness of the medical certificate issued by M/s. Samarth Medical & General Stores.

7. The learned Advocate for the petitioner submits that the certificates of experience produced by the petitioner clearly show that the petitioner possesses the experience of maintaining and supervising Medical Stores for a period of more than one year as required under Clause 4.5 of the advertisement. He submits that the impugned communication dated 06.11.2013 issued by the respondent, as well as the judgment and order passed by the learned Members of the MAT are not at all sustainable being not legal and proper. He, therefore, prays that the said communication as well as the impugned judgment and order of the MAT may be quashed and set aside and the petitioner may be ordered to be appointed to the post of Pharmacist (Group 'B') which post has been kept vacant in pursuance of the directions given by this Court.

8. The respondent filed reply and opposed the petition. The learned Asst. Government Pleader submits that the experience certificates produced by the petitioner do not show that the petitioner was maintaining and supervising the Medical Stores for a continuous period of one year. Moreover, the said certificates have not been issued by the Government Medical Stores. Therefore, according to him, the candidature of the petitioner was rightly rejected by the respondent. He further supports the impugned judgment and order passed by the MAT on the same

grounds and prays that the petition may be dismissed.

9. So far as the eligibility of the petitioner in respect of educational qualification is concerned, there is no dispute that he possesses the same. It is also not in dispute that the petitioner is possessing the Master's Degree in Pharmacy and as such is entitled to get preference for being considered for the above mentioned post. The only dispute is in respect of the requisite experience of the petitioner for the said post. As per clause 4.5 of the advertisement as well as Rule 2(d)(iii) of the above mentioned Rules, for being appointed to the above mentioned post, one of the requirements is that the candidate should have experience of not less than one year in maintenance and supervision of Medical Stores.

10. The petitioner produced the certificates of experience dated 21.09.2012 and 04.10.2012 issued by Jagdish Medical & General Stores, Paithan, wherein it is mentioned that the petitioner was working in the said Medical Stores in a supervisory capacity during the period from 25.07.2007 to 19.03.2008 i.e. for 7 months and 24 days. It is mentioned in the certificate dated 04.10.2012 that the petitioner was performing the following duties :-

(1) Maintenance and supervision of medical stores,

- (2) Maintenance of records and book keeping,
- (3) Purchasing of medicines.

It is further mentioned therein that the petitioner had knowledge of the said establishment and was having administrative control thereof for the above mentioned period.

11. The petitioner further produced the certificate dated 09.04.2008 issued by the Assistant Commissioner, Food & Drugs Administration, Maharashtra State, Aurangabad, whereby permission was granted to one Mr. Yogesh Sheshrao Gadhe to run M/s. Samarth Medical & General Stores at Paithan during the period 09.04.2008 to 08.04.2013. The petitioner is shown as the person in-charge of the said Medical Stores. The owner of the said Medical Stores informed the Assistant Commissioner of Food and Drugs Administration, vide letter dated 07.11.2008 that he stopped the said Medical Stores with effect from November 2008. The petitioner has specifically mentioned at page 2 of his application submitted to the MPSC, that he was working as a Pharmacist in M/s. Samarth Medical & General Stores from 09.04.2008 to 30.10.2008 i.e. for a period of 6 months and 21 days.

12. From the above two certificates, it is quite clear that the petitioner had experience of one year, two months and 14 days in maintaining and supervising

the Medical Stores.

13. The petitioner produced one more certificate of experience issued by Encore Healthcare Private Ltd., Mumbai, showing that he served with the said Company as Junior Officer - R.& D., from 15.11.2010 to 10.05.2012. The learned Members of the MAT did not accept this certificate as the basis for holding that the petitioner had the experience of maintaining and supervising Medical Stores during the period from 15.11.2010 to 10.05.2012. Even if this certificate is discarded, from the above mentioned two certificates, it is quite clear that the petitioner was holding experience of maintaining and supervising Medical Stores for a period of more than one year.

14. Clause 4.5 of the advertisement as well as Rule 2(d)(iii) do not prescribe that the candidate should have experience in maintaining and supervising Medical Stores for a continuous period of one year. Therefore, the contention of the learned Asst. Government Pleader, that the certificates of experience produced by the petitioner do not show that he was maintaining and supervising the Medical Stores for a continuous period of one year and therefore he was not eligible for being appointed to the above mentioned post, cannot be said to have any substance. Moreover, the respondent has not rejected the candidature of the petitioner on the ground that

he does not possess the experience of maintaining and supervising any Medical Stores for a continuous period of one year.

15. As stated above, Clause 4.5 of the advertisement as well as Rule 2(d)(iii) of the above mentioned Rules do not mandate that the candidate should have experience of maintaining and supervising Government Medical Stores for a period of one year or more. If the respondent wanted that the candidate should have experience of maintaining and supervising any Government Medical Stores for a continuous period of one year, it should have specifically mentioned to that effect in Clause 4.5 of the advertisement. In the circumstances, rejection of candidature of the petitioner on the ground which was not mentioned in the advertisement cannot be said to be legal and proper.

16. The respondent did not reject the candidature of the petitioner on the ground that one of the certificates produced by him was not genuine. In the circumstances, the finding of the learned Members of the MAT, recorded in para 24 of the judgment, that the certificate issued by M/s. Samarth Medical & General Stores cannot be accepted as genuine, would not stand to reason. The learned Members of the MAT, at their own, assigned one more reason for rejection of the candidature of the

petitioner though the respondent itself had not taken such a ground while refusing appointment to the petitioner for the above mentioned post.

17. In view of the above facts and circumstances of the case, the impugned communication dated 06.11.2013 issued by the respondent, as well as the impugned judgment and order dated 14.09.2015 passed by the learned Members of the MAT cannot be held to be legal, proper and correct. They are liable to be quashed and set aside.

18. As per the order dated 12-10-2015 passed by this Court, one post of Pharmacist (Group 'B') was ordered to be kept vacant. As stated above, the petitioner possesses the requisite experience for the said post. Therefore, the respondent was not justified in refusing to appoint the petitioner to the said post on the ground that he was not having the requisite experience.

19. In the result, the Petition is allowed with the following directions :-

(a) The impugned communication dated 06.11.2013 (Exhibit "J") issued by the respondent, and the impugned judgment and order dated 14.09.2015, passed by the learned Members of the MAT in Original Application No. 756 of 2015, are quashed and set

aside.

(b) The respondent is directed to appoint the petitioner to the post of Pharmacist (Group 'B'), as recommended by the MPSC, within a period of four weeks from today.

20. Rule is made absolute in the above terms. In the circumstances of the case, we leave the parties to bear their own costs.

(SANGITRAO S. PATIL)
JUDGE

(S.S. SHINDE)
JUDGE

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