

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.11320 OF 2015**The Maharashtra Public Service Commission through its
Secretary Vs. Vd.Jatwed Janardhanrao Pawar and another**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.M.S.Kulkarni, advocate for the petitioner.

Ms.S.S.Raut, A.G.P. for the State.

Mr.Avinash Deshmukh, advocate for Respondent No.1.

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**

Date : 05.12.2016.

PER COURT :

1. Heard.

2. The present Respondent No.1 has filed Original Application bearing No.561/2013, thereby seeking directions against the present petitioner to modify criteria of short-listing in such a manner so as to make five candidates eligible for interview for one post of Associate Professor in Sharir Kriya advertised on 22.7.2012. The Tribunal in the said Original Application passed an interim order, directed the present petitioner to ensure that five candidates were called for interview for the solitary unreserved post of Associate Professor. The Original Application is subsequently disposed of as

the present Respondent – original applicant was selected. The said order is assailed in the present Writ Petition.

3. Mr.Kulkarni, learned counsel for the petitioner submits that the final order ought to have been passed by the Division Bench and not by the learned Single Judge. The learned counsel submits that while passing the interim order directing the M.P.S.C. to call five (5) candidates for the interview for one unreserved post, the Tribunal relied upon the amended Rule which came into effect in the year 2013, whereas the advertisement was issued on 22.7.2012. The Rules as applicable on the date of advertisement will be applicable and not the subsequent amended Rules. On the date when the advertisement was published as per the Rules only three (3) candidates are required to be called for interview for one post. The order of the Tribunal, as such is erroneous.

4. The learned counsel further submits that in fact, three (3) candidates were already called for interview for one unreserved seat as one candidate Mr.Mojes Eric was found to be more meritorious, as such though he belongs to S.T. category, he was considered from the open category. The M.P.S.C. did not flout the Rules. The same was as per the prescribed criteria and the Rules prevailing as on the date of advertisement. The learned counsel further submits that large number of applications were received, as such the petitioner for short-listing the candidates had evolved criteria that the person

should at least possess experience of 14 years, whereas the Respondent No.1 possess the experience of only 12 years 6 days. As such was ineligible to be called for interview. All these aspects were required to be gone into by the Tribunal as they were raised by the present petitioner. The order of the Tribunal is illegal.

5. Mr.Deshmukh, learned counsel for Respondent No.1 – Original Applicant submits that pursuant to the interim orders passed by the Tribunal, directing the M.P.S.C. to call five (5) candidates for interview for the unreserved seat, the present Respondent No.1/Original Applicant was called for interview and eventually the Respondent No.1 has been selected as the result has been declared and upon considering the same the Original Application is disposed of by the Tribunal. The learned counsel submits that as on the date when the candidates were called for interview, the Rules were amended and criteria prescribed was 5 candidates to be called for one unreserved post. The learned counsel further submits that on merits the Respondent No.1 has been selected. Mr.Mojes Eric had applied from the S.T. Category and was considered from S.T. Category and the said declaration of he being selected from S.T. Category was also issued on 12.11.2013. Eventually, he did not join as he was already promoted. The learned counsel submits that the short-listing had to be done in a manner that required number of eligible candidates are called for

interview. As per Rules, only three years experience as Assistant Professor is sufficient.

6. We have also heard learned A.G.P.

7. The Tribunal on 3.9.2013, had passed an interim order thereby, directing the M.P.S.C. to proceed with the interview of two candidates after calling three more candidates i.e. by calling five (5) candidates for the interview for unreserved post. Pursuant to the interim order, the M.P.S.C. called five (5) candidates, thereafter it declared the result. M.P.S.C. declared the present Respondent No.1/Original Applicant as selected for the post from unreserved category.

8. The contention of M.P.S.C. that Mojes Eric though belonging to S.T. Category was considered from open category as per merit does not appear to be in consonance with the facts on record. Declaration dated 12.11.2013 shows that said Mojes Eric was considered and selected from S.T.category. It appears that subsequently he did not join and lone candidate from S.T. Category was selected. As such for unreserved one post only two candidates were called. The same was not in consonance with the Rules as appearing on the date of advertisement nor as per the amended Rules at the time of interview. As such the Tribunal had intervened and directed to call five candidates. The M.P.S.C. thereafter complied the said order and proceeded ahead with the selection

process. The Respondent No.1 herein is selected as per the result declared. The same is also not disputed and as the Respondent No.1 herein was selected, the Original Application was disposed of. The purpose of the Original Application was sub-served. In fact, the Original Application came to be decided when the interim order was itself passed and the M.P.S.C. abided by that order.

9. Considering the aforesaid conspectus of the matter, the Writ Petition stands disposed of. No costs.

(K . L . WADANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.05.12.2016.
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