

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1236/2016

Maharashtra Public Service Commission, through its Secretary,
Mumbai - 400 021

...Versus...

The State of Maharashtra, through its Secretary, Department of Medical
Education, Medicines & Drugs, Mumbai – 400 009 and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Abhay Sambre, Advocate for petitioner
Shri A.M. Balpande, AGP for respondent no.1
Shri S.K Verma, Advocate for respondent no.2

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : 28.07.2016

By this petition, the petitioner challenges the order of the Maharashtra Administrative Tribunal, dated 6.10.2015, allowing the original application filed by the respondent no.2 and directing the petitioner – Maharashtra Public Service Commission (MPSC) to recommend the candidature of the respondent no.2 for appointment on the post of Assistant Professor – Lecturer in paediatrics in the OBC – General category. By the said order, the Tribunal has clarified that the respondent no.2 shall not claim any seniority over a candidate that was already recommended and appointed.

The respondent no.2 had applied in pursuance of an advertisement issued by the petitioner – MPSC for appointment on the post of Assistant Professor – Lecturer in paediatrics. The respondent no.2 had applied for the post reserved for the OBC – General. The respondent no.2 was eligible for appointment as per his merit and was asked to produce the documents on the date of interview i.e. 15.5.2014. Although, the respondent no.2 had possessed the requisite non-creamy layer certificate on the date of interview, he was not able to produce the same at the time of interview, as the same was in the custody of the Government Medical College and Hospital, Yavatmal, where he was taking education in the M.D. course. Since the respondent no.2 was not appointed on the post reserved for OBC - General in the absence of the production of non-creamy layer certificate, the respondent no.2 challenged the action on the part of the MPSC before the Maharashtra Administrative Tribunal in an original application. The original application was allowed by the impugned order, dated 6.10.2015.

Shri Sambre, the learned Counsel for the MPSC submitted that the Tribunal was not justified in directing the Commission to recommend the candidature of the respondent no.2 for appointment on the post of Assistant Professor – Lecturer in paediatrics though the respondent no.2 had failed to produce the non-creamy layer certificate at the time of interview. It is stated that a non-creamy layer certificate that was not valid for the relevant year was produced by the respondent no.2 at the time of interview. It is stated that as per the condition in the advertisement, it was necessary for a candidate to produce the

necessary certificates only at the time of interview and not later. It is stated that merely because the non-creamy layer certificate of the respondent no.2 was in possession of the Government Medical College and Hospital, Yavatmal, the respondent no.2 could not have sought the appointment as the conditions in the advertisement required the production of documents only at the time of interview. It is stated that the relevant non-creamy layer certificate was produced by the respondent no.2 before the Tribunal for the first time. It is stated that in the circumstances of the case, when the Tribunal has held that the respondent no.2 was not justified in not producing the non-creamy layer certificate at the time of interview and that he did not have a right to seek the appointment, the Tribunal could not have directed the appointment of the respondent no.2 only because there was a vacancy in the post of Assistant Professor - Lecturer in paediatrics in OBC - General category. It is stated that the judgments, on which the Hon'ble Tribunal relied on, while granting the relief, are distinguishable on facts.

Shri Verma, the learned Counsel for the respondent no.2 supported the order of the Tribunal and submitted that in the peculiar circumstances of the case, specially when a post of Assistant Professor – Lecturer in paediatrics remained vacant and could not be filled in pursuance of the advertisement, the Tribunal rightly directed the MPSC to recommend the case of the respondent no.2, as the respondent no.2 possessed the non-creamy layer certificate even while he was interviewed but the same was not released in favour of the respondent no.2 by the Government Medical College and Hospital, Yavatmal, where he

was studying. It is submitted that the view expressed by the Tribunal is a possible view and this Court may not interfere with the same, in exercise of the writ jurisdiction.

Shri Balpande, the learned Assistant Government Pleader appearing on behalf of the respondent no.1 submitted, on a query made by this Court, on instructions, that the non-creamy layer certificate that was valid for the relevant period was issued in favour of the respondent no.2 on 11.10.2010, i.e., much before the interview. Some documents are placed by the learned Assistant Government Pleader on record to point out that the non-creamy layer certificate was issued in favour of the respondent no.2 on 11.10.2010 and it was extended from time to time till 31.3.2015. It is stated that it is clear from the documents that even at the time of interview the respondent no.2 had the non-creamy layer certificate for the relevant year but as stated on behalf of the respondent no.2 it must be in possession of the Government Medical College and Hospital at Yavatmal.

On hearing the learned Counsel for the parties and on a perusal of the impugned order as also the documents tendered by the learned Assistant Government Pleader in the Court today, it appears that there is no scope for interference with the impugned order in exercise of the writ jurisdiction. The view expressed by the Tribunal is a possible view. The Tribunal came to a conclusion and rightly so that though the respondent no.2 did not have a right to seek his appointment on his failure to produce the non-creamy layer certificate, which was in the custody of the Government Medical College and Hospital, Yavatmal, at the time of interview as it was necessary for the

respondent no.2 to produce it at the time of interview, a direction to the petitioner to recommend the case of the respondent no.2 for appointment on the post of Assistant Professor – Lecturer in the subject of paediatrics would be appropriate, as the post could not be filled. The Tribunal found that the respondent no.2 did possess the requisite certificate at the time of the interview, though he could not produce it due to the aforesaid difficulty. In the circumstance of the case, the Tribunal was justified in directing the MPSC to recommend the case of the respondent no.2 for appointment on the post of Assistant Professor – Lecturer in paediatrics from OBC – General category. The approach of the Tribunal in deciding the matter cannot be faulted with. The Tribunal rightly referred to some of the judgments of the Hon'ble Supreme Court while granting the relief to the respondent no.2. The Tribunal has further rightly held that the respondent no.2 would not be entitled to claim seniority over the candidates, that are appointed in pursuance of the advertisement, earlier in point of time.

Since the order of the Tribunal is just and proper, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE

C E R T I F I C A T E

I certify that this order uploaded is a true and correct
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