

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7960 OF 2016

1 Sandeep Shriram Warade
Aged 32 years, having address at
Vrindavan B CHS, Plot No.29/41,
Flat A-103, Sector-09, Khanda
Colony, New Panvel (W), Pin 410206

2 Amol Subhash Rasal,
Aged 32 years, having address at
Digambar Saw Mill, Yogeshwar
Colongy, Vinchur, Tq. Niphad,
Dist. Nashik, Pin 422315

3 Jayvant Vishnu Kurane
Aged 31 years, having address at
A/P Kale Tq Panhala,
Dist. Kolhapur, Pin 416205

4 Ganesh Shashikant Khamkar
Aged 29 years, having address at
Plot No.73/B, Near ZP School,
Bhushan Nagar, A/P Kedgaon (Devi)
Tq./Dist. Ahmednagar, Pin 414001

5 Nikhil Shripad Warghade
Aged 28 years, having address at
1101, Powai lake heights CHS,
Mhada deluxe 6, Rambaug, Powai,
Mumbai, Pin 400076

6 Dnyaneshwar Pawar,
Aged 32 years, having address at
Flat No.703, 7th floor, Building no.1
Water ford, Panvelkar Classic
Investment, Green city, Morivali,
Tq. Ambernath (E), Kalyan,
Pin 421501

7 Nandkumar Dharmraj Shivgan
Aged 30 years, having address at
Prerana Colony, Tirupati Nagar,
Pimpargavan Road, Beed, Pin 431122

8 Vishal Tatyasaheb Kachare
Aged 32 years, having address at
Sanco Elegance, Flat No.A09,
Plot No.97/15, Sector-06, Sant Nagar,
Moshi Pradhikaran, Near PCNTDA
Traffic Park, Pune, Pin 412105

9 Vikram Popat Jadhav
Aged 33 years, having address at
SS-2, Room No.498 (3rd Floor),
Sector-07, Koparkhairane, Navi
Mumbai Pin 400709.

10 Shoeb Bismilla Khan
Aged 27 years, having address at
136/1, Islampura, A/p Amalner,
Dist. Jalgaon, Pin 425401

11 Deepak Anandrao Pokale
Aged 29 years, having address at
A/p Nira Shिवtakrar, Tq. Purandar,
Dist. Pune, Pin 412102.

Petitioners.

Versus

1 The Maharashtra Public Service
Commission, through its Secretary,
having office at 3rd Floor, Bank of
India Building, M.G.Road, Hutatma
Chowk, Mumbai-400 001.

2 The State of Maharashtra
Through the Secretary, Medical
Education and Drugs Department,
Mantralaya, Mumbai.

3 The Commissioner, Food and Drugs
Administration, Survey No.341,
Bandra Kurla Complex, Bandra (E),
Mumbai-51

4 Drug Controller General of India
DCG(I)
Central Drugs Standard Control
Organization (CDSCO)
FDA Bhavan, ITO, Kotla Road,
New Delhi-110002

.....Respondents

Ms. Firdaus Moosa i/by Mr. Prakash Mahadik , Advocates for
Petitioners.

Mr. Vishal Thadani, AGP for Respondent Nos.2 and 3.

**CORAM : SMT. V.K. TAHILRAMANI, &
SANDEEP K. SHINDE, JJ.**

DATE : July 17, 2017.

ORAL JUDGMENT : [Per Sandeep K. Shinde, J.]

Rule. Rule made returnable forthwith. With
consent of the learned counsel for the parties, the matter is
taken up for final hearing immediately.

2 The Maharashtra Public Service Commission (In
short 'MPSC') invited applications for the post of Drug
Inspectors, Food and Drugs Department, Group-B by issuing

advertisement on 31.3.2015, wherein it prescribed the following qualifications and the experience:

“Clause 4.5-*Degree in Pharmacy or Pharmaceutical Chemistry or in medicine with specialization in clinical Pharmacology or Microbiology from a university established in India by law; and*

Clause 4.6-*Practical experience gained after acquiring qualification [above in clause (i) in the manufacture or testing of drugs or enforcement of the provisions of the Act for a period of not less than three years;*

Clause 4.7-*Preference may be given to candidates having a post graduate degree in a subject mentioned in clause 4.5 or research experience in the synthesis and testing of drugs.”*

3 Since large number of applications were received, screening test was conducted by the MPSC, of which the results were declared on 30.4.2016. Seventy-one successful candidates were called for interview, which was scheduled on 18.5.2016. Petitioners were amongst those successful candidates.

4 Petitioners pleaded that all of them are post-graduates (M.Pharma) having more than 3 years experience in the Research and Development, which is in the nature of manufacture and/or testing of the drugs and as such, were eligible to be considered to the post of 'Drug Inspectors'. That out of 71 successful candidates, 27 were from Research and Development Units and remaining were from Production Unit. All the petitioners herein are from Research and Development Unit of pharmaceutical companies. It is the petitioners' case that before interview, they were required to submit and show their original documents to the two panels constituted by the MPSC; one panel was administrative panel of MPSC which was entrusted with the work of verification of original documents; whereas the other panel consisting of experts (in Food and Drugs) was entrusted with the work of verifying experience certificates of the candidates. After verification of the documents, the petitioners were not allowed to appear for the interview. They were informed by letter dated 1st and 2nd June, 2016, that they do not hold/possess experience in manufacture and testing of drugs. (*emphasis supplied*) Petitioners were informed that experience in Research & Development cannot be considered as experience

in manufacturing and testing of drugs and as such were eliminated from the process of selection.

Aggrieved by their elimination, this petition is preferred under Articles 226 and 227 of the Constitution of India wherein, following two substantive reliefs were sought;

“a) for a declaration that experience required for selection to post of 'Drug Inspector', is not restricted to experience in manufacture or testing of drugs for sale and distribution only;

b) for an appropriate writ, order and direction quashing and setting aside the rejection letter dated 1.6.2016 & 2.6.2016, issued by MPSC; “

5 Petitioners amended the petition and sought declaration that the judgment of the MAT dated 1.4.2014, inter-alia holding, that only experience in Research & Development or testing in R & D laboratory cannot be termed as experience under Rule 4(B)(b)(ii) of Recruitment Rules may kindly be quashed and set aside.

6 Be that as it may, on notice the MPSC resisted the petitioners' claim by filing counter in December, 2016. The

MPSC in paragraph 17 of its reply contended that the candidates who have only/exclusive experience in Research & Development but not having experience in the manufacture or testing of drugs were ineligible as it falls short of requirement of Recruitment Rules. The MPSC pleaded and contended findings recorded by MAT in Original Application No.820 of 2013 on the very issue dis-entitles petitioners from claiming appointment to the post of 'Drug Inspectors'. In the said judgment, Tribunal held that experience of manufacture or testing in Research & Development laboratory cannot be termed as experience under Rule 4(B)(b)(ii) of Recruitment Rules. Tribunal further held that it is an experience which can entitle candidate for giving him preference provided he has basic experience as per Rule 4(B)(b)(ii) of Recruitment Rules.

7 The point for determination is whether experience gained by candidates in Research and Development could be treated as relevant experience for the post of 'Drug Inspectors'.

8 The very point fell for consideration before the MAT in Original Application No.820 of 2013 wherein the

selection process for the post of 'Assistant Commissioner, Drugs' was challenged. Eventually for the post of 'Assistant Commissioner, Drugs', prescribed qualification was “experience gained after acquiring qualification in the manufacture or testing of drugs or enforcement of provisions of the Act” for the minimum period of 5 years. Thus, the experience prescribed for the post of Assistant Commissioner, Drugs and the 'Drug Inspectors' is one and the same. It was contended before the MAT that the experience in respect of manufacturing of drugs shall be within the meaning of definition provided under Section 3(f) of the Drugs and Cosmetics Act, 1940. The Tribunal after hearing the parties, held that the experience gained by candidates in laboratories cannot be considered because their experience relates to clinical tests and the licence to such laboratories did not permit manufacturing of drugs. On this analogy, the Tribunal was pleased to dismiss the applicants' claim. In the result, candidates, who gained the experience in laboratories and/or in Research & Development were held not having experience in manufacturing or testing of drugs. The MAT rendered its judgment on 1.4.2014. It, therefore, appears the MPSC in its reply pleaded that petitioners were not eligible to be selected

for want of requisite experience.

9 It may be stated that the judgment and order of the MAT dated 1.4.2014 in Original Application No.820 of 2013 was challenged in Writ Petition No.6637 of 2014.

10 We have perused the judgment of MAT and the judgment of Division Bench of this Court in the Writ Petition No.6637 of 2014, wherein it is held, “that to deny an opportunity to the candidate who does possess a research experience in synthesis and testing of drugs on the ground that such research experience in synthesis and testing of drugs cannot be linked with manufacturing, would be perverse interpretation.” It is further held that when a candidate having research experience needs to be preferred in view of proviso and he cannot be denied opportunity by misinterpreting Sub-rule (ii) of Rule 4(B)(b) in isolation. It is further held, that it must be understood that the research work carried out in well reputed laboratories is for the purpose of manufacturing drugs. In paragraph 11 of the said judgment it is thus concluded that the finding recorded by the Tribunal in regard to experience gained by the candidates in

research laboratories being not within contemplation of Rules is devoid of merit and the said finding does not deserve to be upheld.

11 In the case in hand, the MPSC vide communication dated 2.6.2016 eliminated petitioners from process of selection on the ground that their experience in research laboratories cannot be treated as relevant experience. More so, in the affidavit-in-reply and in particular paragraph 23 thereof, the MPSC reiterated its stand by making reference to the judgment of the MAT in Original Application No.820 of 2013. The impugned communication is dated 2.6.2016; whereas judgment in the Original Application No.820 of 2013 was quashed and set aside by this Court in Writ Petition No.6637 of 2014 by the judgment and order dated 4.5.2017. That as such finding recorded by MAT of which recourse was taken by MPSC to deny the petitioners' claim is no more available since Division Bench of this Court set aside the subject findings.

12 That considering the facts of the case and the law laid down in Writ Petition No.6637 of 2014, decision of the

MPSC inter-alia holding petitioners ineligible for appointment as 'Drug Inspectors' for want of requisite experience as communicated on 2.6.2016 needs to be quashed and set aside, hence, the following order;

(i) The impugned communication dated 2.6.2016 issued by the MPSC whereby petitioners were held ineligible for the post of 'Drug Inspectors' is hereby quashed and set aside.

(ii) The MPSC is directed to take a decision afresh on the subject issue in view of law laid down in the judgment and order rendered in Writ Petition No.6637 of 2014 in the case of **Suhas S. Lavhekar and Others v. MPSC & Others** within two months from today and proceed with the subject selection process in accordance with law.

13 Writ petition is allowed only in the aforesaid terms and the same is disposed of.

14 Rule is made absolute in the aforesaid terms.

(SANDEEP K. SHINDE, J) (SMT. V.K. TAHILRAMANI, J)