

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9117 OF 2016

Dr. Dhananjay Vithal Hange
Age 44 years, residing at C/o
Nalasopara Ayurvedic Medical
College, MumbaiPetitioner

Versus

1 The State of Maharashtra
Through the Secretary,
Medical Education and Drugs
Department, Mantralaya,
Mumbai 400 032.

2 Maharashtra Public Service
Commission through its
Secretary
Having office at Bank of India
Building, M.G.Road, Fort, Mumbai

3 Dr. Santosh Gulabrao Chavan
Age 37 years, Occupation Service
Residing at Manas Sarovar Complex
Building No.13-B, Room No.302,
Sector 34, Kamothe,
Navi Mumbai-410 209Respondents

**WITH
WRIT PETITION NO.467 OF 2017**

Maharashtra Public Service Commission,
Mumbai (Through the Secretary)
Having office at 5½, 7th & 8th
Floor, Cooperage Telephone Nigam
Building, M.K.Road,
Cooperage, Mumbai-400 021. ...Petitioner.

Versus

1 Shri Dr. Santosh Gulabrao Chavhan,
Age: 38 years, Occupation: Service,
Residing at Manas Sarovar Complex
No.13-B, Room No.302, Sector 34,
Kamothe, Navi Mumbai 410 209.

2 The State of Maharashtra
Through the Secretary,
Department of Medical Education and Drugs,
Mantralaya, Mumbai-400 032.

3 Dr. Dhananjay Vitthal Hange,
Matoshree Hospital, Ahead Satara
Police Station, Behind Madhumangal
Karyalaya, Aurangabad

....Respondents.

Mr. M.D.Lonkar i/by Ms. Leena Patil , Advocates for Petitioner
in WP No.9117/2016.

Mr. N.C.Walimbe , APP for Respondent No.1-State.

Mr. S.R.Ganbavale, Advocate for Petitioner in WP
No.467/2017.

Mr. C.T.Chandratre, Advocate for R.No.3 in WP
No.9117/2016.

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

RESERVED ON : July 24, 2017.

PRONOUNCED ON : August 4, 2017.

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

Both these petitions are preferred against the order
dated 21.7.2016 passed by the Maharashtra Administrative

Tribunal (In short '**MAT**') in the Original Application No.885 of 2015, which was preferred by the respondent no.3 in Writ Petition No.9117 of 2016 as well as in Writ Petition No.467 of 2017 (Hereinafter referred to as '**Original Applicant**').

2 Both the petitions are taken up for final hearing together and disposed of by this common judgment.

3 The Maharashtra Public Service Commission (In short '**MPSC**') invited applications to fill in two posts of the Assistant Professor, Nidan Panchak on the establishment of the Government Ayurved Colleges. These posts are pertaining to the Maharashtra Ayurvedic Services, Group-B. Out of two posts, one post was reserved for NT(B) and another for non-reserved class, i.e, open category. The original applicant, who is respondent no.3 herein (hereinafter referred to as the '**Original Applicant**') belongs to DT (A) and submitted the application from that category. The original applicant would claim that as per Section 4(3) of the Maharashtra State Public Services (Reservation for SC, ST, DT(VJ), NT, SBC and OBC Classes) Act, 2001, the posts reserved for DT (A) and NT (B,C,D) are inter transferable/changeable. Since fifty-seven applications were received by the MPSC, short-list of 5 candidates was drawn. The original applicant and the petitioner herein were

amongst the candidates short-listed. The original applicant had secured highest marks amongst the short-listed candidates . He had secured 60 marks and the petitioner herein (Original Respondent No.3) had secured 57 marks. The MPSC did not recommend the original applicant for the subject post; however, name of the original respondent no.3, i.e., the petitioner herein was recommended. It was the case of the original applicant that he has secured more marks than the petitioner herein and the MPSC ought to have recommended his name. In the circumstances, he had challenged the selection process and particularly, letter of recommendation dated 17.10.2015 whereby petitioner's name was recommended for the subject post from open - category.

4 The Tribunal after hearing the original applicant and the contesting respondents accepted the claim of the original applicant and by judgment and order dated 21.7.2016 quashed and set aside the recommendation dated 17.10.2015 which was in favour of the petitioner herein and further directed the MPSC to recommend the name of the original applicant for the post in question.

5 That aggrieved by the judgment and order of the MAT

as aforesaid, the MPSC as well as the original respondent no.3 before the MAT have preferred these petitions.

6 Heard learned counsel appearing for the respective parties.

7 Admittedly, out of two posts, one was reserved for NT(B) and another was for open category. The petitioner herein belongs to NT(D) category and the original applicant belongs to DT(A) category. In the advertisement, it was provided that if suitable candidates in NT (B) category were not available then by interchangeability, the candidates from VJ(A), NT(C) and NT(D) could be considered.

 The original applicant after passing his BAMS in 2000 did his post graduation (M.D. Nidan Panchak) in the year 2005. He worked as 'Assistant Professor' in Ayurvedic College at Sangamner, Navi Mumbai and as such, he was answering required qualification in terms of advertisement for the subject post. His total experience was eight years.

 It may also be stated that the petitioner herein belongs to 'Vanjari' caste, who after passing 'BAMS' Degree in the year 1999, completed his post graduation in Nidanpanchak in the year

2003 and joined services as 'Assistant Professor' at Chhatrapati Shahu Maharaj Shikshan Sanstha's Ayurved Mahavidyalaya, Aurangabad in June, 2003. As on the date of advertisement, he was working as 'Associate Professor' at N.K.Dubey Charitable Trust's Nalasopara Ayurved Medical College, Mumbai. His total experience was 10 years and 10 months.

That so far as the experience is concerned, advertisement would prescribe experience of 'not less than three years'. Neither the petitioner nor the original applicant was selected from reserved category.

8 That since large number of eligible candidates were available for the open category posts, the MPSC had short-listed 5 candidates including the petitioner and the original applicant for interview. The performance details of those five candidates are as under:

Sr. No.	Name	Category of the candidate	Category for which called for interview	Recommendation	Marks scored in interview
1	CHAVAN SANTOSH GULABRAO	DT(A)	NT(B)	No Post Available	60
2	KALE SANDEEP DHANAJI	NT(B)	NT(B)	NT(B)-1	58
3	HANGE DHANANJAY VITHAL	NT(D)	Open/ NT(B)	Open-1	57

4	LAHOTI VIJAYALAXMI	Open	Open	No Post available	41
5	KHANDARE SUNIL RAMCHANDRA	Open	Open	No post available	41

9 Short-listed criteria prescribes the experience of '**not less than 10 years**'. Admittedly, the experience of original applicant falls short of short-listed criteria though he had secured 60 marks and topped merit list. That on the other hand, the petitioner herein though had secured 57 marks; his total experience was 10 years and 10 months on the date of advertisement which fulfills and meets the short-listing criteria prescribed by the MPSC. It is for this reason, the case of the original applicant was not considered from the open category though he had secured more marks than the petitioner herein.

10 The question, therefore, falls for consideration as to whether the Tribunal was justified in issuing the directions to the MPSC to recommend the name of the original applicant to the subject post though he was not meeting with the short-listing criteria of experience.

 The learned counsel for the petitioner would contend that one post was reserved for 'NT(B) where suitable candidate was available and accordingly, Dr. Sandeep Kale came to be appointed. The learned counsel would further submit that once candidate

applies for given post from a particular category, which is NT-B, herein and even if such candidate is competing amongst candidates from the open category, a short-listed criteria adopted/prescribed for the post from the open category cannot be applied to such candidate and he would be governed by criteria applicable to candidates from reserved category. The learned counsel would submit that the original applicant belongs to DT(A) category. One post was reserved for candidate belonging to NT(B). The original applicant was not appointed on the reserved post since suitable candidate was available and, therefore, the MPSC ought to have selected the original applicant for a post from the open category even though his experience was falling short of 10 years.

11 We have considered the submissions. Perused the judgment and order passed by the Tribunal. Perused the petition filed by the MPSC and the pleadings of the respective parties. We hold in this case, the MPSC, since had received more applications from eligible candidates for one post from the open category was justified in applying short-listing criteria of experience of 'not less than 10 years'. The original applicant though belongs to DT(A) category, was not eligible to claim a post from open category merely because he had secured highest marks. That once a candidate from

reserved category competes for a post from open category, he cannot assert privileges attached to his caste and claim he would be governed by experience as prescribed in advertisement. This claim of original applicant is illogical and sounds absurd. That once candidate irrespective of category and caste competes and lays claim from open category, he has to fulfill all required criteria either short-listed or otherwise, to qualify himself for the said post.

In the case in hand, the original applicant was not possessing required experience. On the other hand, the petitioner herein had secured 57 marks and was possessing required experience as short-listed by the MPSC. In the circumstances, the communication dated 17.10.2015 issued by the MPSC recommending the name of the petitioner for appointment cannot be faulted with. We do not find any reason to accept the contention of the original applicant as canvassed. That in the fact situation and in the circumstances, finding recorded by the MAT that the short-listing criteria was quite unnecessary and without there being any occasion for it subordinates merit to the lack of it and is unreasonable is not correct and the same is, accordingly, set aside. That even otherwise the original applicant had challenged the communication dated 17.10.2015, i.e., recommendation by the MPSC in favour of the petitioner herein. The MAT, however, held the original applicant, eligible for the subject post by recording the

finding that the short-listing criteria was invoked for no reason and it was unreasonable. We have perused the original application of the respondent no.3 herein where he had not challenged the short-listing criteria adopted by the MPSC for the subject post. More so, we find that the MAT has not recorded any reason as to why and how short-listing criteria subordinates merit and was unreasonable. That in the circumstances, we are inclined to set aside the judgment and order dated 21.7.2016 passed by the MAT in the Original Application No.885 of 2015. Resultantly, the petitioner succeeds. We uphold the communication of the MPSC dated 17.10.2015 inter-alia recommending the name of the petitioner for his appointment to the subject post as a valid recommendation. The petitions are allowed in terms of prayer clause (a).

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