

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12643 OF 2017

Shri Nagnath Narayan Mungapatil .. Petitioner
Vs.
The State of Maharashtra and anr. .. Respondents

Mr. Y.B.Lengare i/b Mrs.Suman Y. Legare, for the Petitioner.
Mr.O.M.Kulkarni, AGP for State.

**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

19th DECEMBER, 2017

P.C. :

1. By this Petition filed under Articles 226 & 227 of the Constitution of India the petitioner has challenged the order dated 22/07/2016 passed by the Maharashtra Administrative Tribunal, Mumbai (for short 'Tribunal') thereby dismissing the OA filed by the petitioner. Before the Tribunal, the petitioner impugned the communication dated 20/04/2015 from respondent No.2 holding him ineligible for the post of X-ray Technician though he claims eligible to be selected to the said post on the basis of written examination marks in MEDSS-

CWT-2012 and also that he has requisite experience.

2. Learned Counsel for the petitioner submitted that the petitioner had experience of working in a Co-operative Hospital which is run by a Co-operative Society registered under the Maharashtra Co-operative Societies Act. According to him, the Co-operative Societies are run as per the directions of the Registrar and therefore Co-operative Hospitals have to be treated as Government/Semi Government Hospitals. Learned Counsel for the petitioner admits that the petitioner did not have experience of 5 years of working in a Government/ Semi Government Hospital, nevertheless his candidature ought to have been considered as similar situate candidates like who did not have experience of working in a Government Hospital viz. A.A.Ugare and Suraj A.Bhandi who were selected. This according to learned Counsel is discriminatory.

3. The learned AGP invited our attention to the Recruitment Rules dated 11/02/1999 for the post of X-ray

Technician called the X-ray Technician, X-ray Assistant and Dark Room Assistant in the Directorate of the Medical Education and Research (Recruitment) Rules. Rule 3(b)(ii) provides that a candidate must have either a degree in Science with Physics, Chemistry, Biology or have passed Higher Secondary School Certificate Examination in vocational Education in vocation of X-ray Technician and possess 5 years experience as X-ray Assistant or Dark Room Assistant in Government/Semi Government Hospital.

4. Having considered the submissions made by learned Counsel, we are of the opinion that no interference with the view taken by the Tribunal is warranted. It is not in dispute that the petitioner does not have requisite experience of 5 years in Government/Semi Government Hospital as X-ray Assistant or Dark Room Assistant. We do not find any error in the view taken by the Tribunal that the experience in hospital run by Co-operative Society cannot be regarded as experience in Semi Government hospital. The Co-operative Societies are registered

under the provisions of Maharashtra Co-operative Societies Act.

5. Insofar as contention of the petitioner that selection of 2 candidates though they did not have necessary experience of working in Government Hospital, it has been admitted by the respondents that the selection was a mistake and appropriate steps are being taken to rectify the same. The Tribunal was of the opinion that the petitioner cannot claim that if 2 other persons have given appointment illegally, he should also be given such appointment in violation of statutory rules framed under Article 309 of the Constitution of India. We therefore do not find any reason to interfere with the order passed by the Tribunal. The Petition is accordingly dismissed with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)