

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

90 WRIT PETITION NO. 2144 OF 2017

MAHENDRA RAJENDRA DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr.Jadhavar Pratap V.
AGP for Respondents 1 and 2 : Mr. A.V.Deshmukh
Advocate for Respondents 3 to 5 : Mr. Pulkundwar Santosh B.

CORAM : S.V.GANGAPURWALA
AND
SUNIL K.KOTWAL, JJ.

DATE : JULY 23, 2018

O R D E R :

Mr. Jadhavar, learned counsel for petitioner submits that pursuant to the advertisement, issued by the respondent, the petitioner applied for the post of Arogya Sevak. The petitioner was selected by duly constituted selection committee. The doubt was created in the mind of employer about the experience certificate of the petitioner. The petitioner was not given the appointment order. The employer thereafter verified the experience certificate and the certificate is found to be true and genuine. The report was submitted by the Chief Executive Officer to the

Government, however, as yet the appointment order is not given to the petitioner.

2. Mr. Pulkundwar, learned counsel for Zilla Parishad submits that the selection process was initiated in the year 2013. The select list was also published in the year 2013. The select/wait list is valid only for one year. However, the certificate of the petitioner could be verified only on 4.8.2015 i.e. after lapse of one year and as such the said select list is lapsed. The advertisement is issued for filling in the vacant posts at the relevant time at the date of advertisement. In view of that, the case of the petitioner cannot be considered.

3. It is not disputed that the petitioner had applied from open (general) category. The petitioner had undergone the selection process. The petitioner was found to be eligible and his name also appeared in the select list. The employer carried doubt about

the experience certificate and it was referred for inquiry. The inquiry report was received from the office of the Assistant District Health Officer and the District Malaria Officer on 4.8.2015 certifying that the certificate is true and genuine. Thereafter the proposal is submitted by the Chief Executive Officer to the Government on 17.11.2015 for directions as to the further steps. The Government has replied as per the affidavit filed by the respondent that now after one year the case of the petitioner cannot be considered.

4. It is not disputed that the petitioner upon undergoing selection process was found eligible and competent. Doubt was raised about his experience certificate. Respondent did not take decision immediately. They referred it to the inquiry officer. Inquiry was conducted and the report was submitted on 15.8.2015 certifying that the certificate is genuine. It was not the fault of the

petitioner for his certificate not being examined immediately or within reasonable time. The petitioner was kept waiting for more than two years and eventually he had to approach this Court. We would not have considered the case, had the inquiry report been against the petitioner, but the facts are otherwise. The inquiry report very categorically states that the certificate appears to be true and genuine.

5. The petitioner cannot be penalized for the default of the respondent and for no fault of the petitioner. We had asked learned counsel for the respondent about the vacant post being available. Learned counsel for respondent, on instructions, submits that the posts are vacant.

6. To adjust equities, we direct the respondent to consider the petitioner for appointment as Arogya Sevak on the vacant post from open (general) category

in case there is no other impediment. The same shall be done expeditiously, preferably within two months.

7. Writ Petition is accordingly allowed in above terms and disposed of. No costs.

[SUNIL K.KOTWAL, J.] [S.V.GANGAPURWALA, J.]

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