

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

WRIT PETITION NO.6032 OF 2012

The Maharashtra Public
Service Commission
Through its Secretary
3rd Floor, Bank of India Building,
Mahatma Gandhi Road,
Fort, Mumbai.

..PETITIONER

VERSUS

1. Amol Arjun Nagargoje
Age : 24 years, Occ : Student,
R/o 219, Avishkar Colony,
N-6, CIDCO, Aurangabad.
2. Govind Sudhakar Bhosale
Age : 24 years, Occ : Student,
R/o House No.219, Avishkar Colony,
N-6, CIDCO, Aurangabad.
3. The State of Maharashtra
Through its Secretary,
Home Department,
Mantralaya, Mumbai.

..RESPONDENTS

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Mr.M.S. Kulkarni, Advocate for Petitioners
Mrs.V.S. Chaudhari, AGP for Respondent/State.
Mr. P.J. Bharad, Advocate for Respondent
Nos.1 and 2.

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

DATE : 11.04.2018

JUDGMENT : (Per S.S.Shinde, J.):

Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. This Petition is filed with following substantive prayer :-

"A. The Hon'ble High Court may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction in the nature of writ and thereby quash and set aside the judgment and order passed by the Maharashtra Administrative Tribunal, Aurangabad in Original Application No. 433 of 2011 dated 29.09.2011 and may further be pleased to reject the said Original Application and issue

necessary orders for that purpose."

3. The background facts for filing the present Petition, as disclosed in the memo of Petition in brief, can be stated as under:

(A) It is the case of the petitioner that, the petitioner issued Notification/advertisement on 8th June, 2010 for filling in the posts of Assistant Chemical Analyzer, Forensic Laboratory, Group B. By the said advertisement, the petitioner had invited the applications from the candidates, who are eligible for the appointment on the post of Assistant Chemical Analyzer, Forensic Laboratory, Group B. As per the advertisement, the last date for submission of the applications was 6th July, 2010. According to the petitioner, on said date, an eligibility as mentioned in the said advertisement was necessarily required to be

possessed by the respective candidates desirous to apply for said posts.

(B) It is the case of the petitioner that, present respondent nos.1 and 2 were studying in M.Sc. with Dr. Babasaheb Ambedkar University at Aurangabad. The results of the M.Sc. examination were declared by the University, and thereafter the mark-sheets were distributed to the students and on the said mark sheets, the date was printed as 21st July, 2010. Present respondent nos.1 and 2 submitted their applications with the Commission before the cut off date i.e. 6th July, 2010. It is the case of the petitioner that, as per the procedure of the Commission, all the applications received by the Commission are scrutinized at the time of interview. When the respondents appeared for the interviews and produced their mark-sheets, it was noticed that the date on the

said mark sheets was subsequent to the cut off date i.e. 6th July, 2010. Respondents however submitted that they will produce the declaration to the effect that the results were declared prior to the cut off date from the competent authority. The present respondent nos.1 and 2 submitted written undertaking to that effect at the time of interview.

(C) It is the case of the petitioner that, the petitioner Commission held that since the date mentioned in the mark sheet is subsequent to the date of submission of the applications, the present respondent nos.1 and 2 are not eligible and hence their candidature was cancelled. The petitioner Commission also considered that, the declaration submitted by the respondents is signed by the Head of the Department, and the said authority is not competent authority,

and hence the said declaration cannot be considered. As a rule, the date mentioned on the mark sheet is presumed to be the date of declaration of the result. It is further the case of the petitioner that, the petitioner Commission intimated their decision to the present respondent nos.1 and 2 by separate communications dated 8th June, 2011. The petitioner Commission also forwarded the list of the recommended candidates to respondent no.3 – State of Maharashtra on 7th June, 2011. Present respondent nos.1 and 2 were also aware about the recommendations made by the petitioner Commission to the State Government.

(D) It is the case of the petitioner that, present respondent nos.1 and 2 approached the Maharashtra Administrative Tribunal at Aurangabad on 2nd July, 2011, by filing Original Application No.433 of 2011

challenging the communications dated 8th June, 2011. The Maharashtra Administrative Tribunal has passed the orders from time to time in the Original Application and lastly on 29th September, 2011, the Tribunal had directed the petitioner to reconsider the claim of the respondents and to keep posts vacant. It is pertinent to note that the Commission had recommended 71 candidates to the State Government and present respondent nos.1 and 2 did not implead them as party respondents in the Original application. It is pertinent to note that, the advertisement was issued for filling up 71 posts only and the Commission had already recommended the 71 candidates to the State Government.

(E) It is the case of the petitioner that, the petitioner Commission submitted its affidavit in reply before the Tribunal and resisted the claim of the respondents. It was

pointed out that, the mark-sheet was issued after the last date for the submission of the forms and hence respondents cannot be held to be qualified. It was also pointed out that, the recommendations are already made by the petitioner Commission. The petitioner Commission had also placed on record the mark sheets produced by the respondents.

4. Learned counsel appearing for the petitioner submits that, the mark sheets of M.Sc., which have been received by respondent Nos.1 and 2, are after the last date of submission of the applications, and therefore, the same cannot be considered within time as per the advertisement. It is submitted that, the Tribunal has erred in placing reliance on the certificate issued by the Head of Department in respect of the declaration of the result by the University. It is submitted that, the certificate dated

7th April, 2011, only bears the stamp of the Controller of Examinations, however, there is no signature of the said authority on the same. Despite this, the very certificate has been accepted by the Tribunal, as having been endorsed by the Controller of Examinations. It is also submitted that, the procedure and criteria for selection is the prerogative of the appointing authority, unless and until malafides are shown the selection process should not have been interfered with by the MAT. Learned counsel placed reliance on the ratio laid down in reported judgments in the cases of **Ashok Kumar Sharma and another V/s Chander Shekher and another¹** and **Bhupinderpal Singh and others V/s State of Punjab and others²**. Learned counsel therefore submits that, the Petition may be allowed.

5. Learned counsel appearing for

1 1993 Supp(2) SCC 611

2 (2000) 5 SCC 262

respondent nos.1 and 2 submits that, as mark sheets of result of M.Sc. submitted by respondent nos.1 and 2, is signed by the Head of Department, the petitioner Commission ought to have been safely relied upon the said certificate, as the proof regarding the date of declaration of results. Therefore, the said certificates have been rightly considered by the Tribunal. It is submitted that, even though the date on the mark sheets of respondent nos.1 and 2 is subsequent to the cut off date for the submission of the application with the Commission, but the result has been declared before the cut off date i.e. on 6th July, 2010. It is submitted that, respondent no.1 has already joined as Assistant Professor, Department of Chemistry at KTSP Mandals KMC College Khopoli, Raigad on 27th January, 2012, and respondent no.1 is not interested to prosecute this Petition. Hence the Petition qua respondent no.2, only

survives and needs adjudication. It is submitted that, respondent No.2 was continuously approaching with petitioner's office from the date of order passed by the MAT. Respondent No.2 persuaded the petitioner and requested to comply the directions contained in the order of the MAT, but every time the office of the petitioner gave assurance of compliance of the order passed by the MAT, however, never complied the same. It is submitted that, the petitioner has willfully disobeyed the directions given by the MAT and therefore, the said act of the petitioner amount to contempt, which needs to be dealt with by iorn hands. Learned counsel appearing for respondent Nos.1 and 2, therefore, submits that, the Petition may be rejected.

6. We have heard the learned counsel appearing for the petitioner, learned A.G.P.

appearing for Respondent No.3 and learned counsel appearing for respondent nos.1 and 2. With their able assistance, we have carefully perused the pleadings in the Petition, grounds taken therein, annexures thereto, reply filed by the respondent nos.1 and 2 and the observations made and findings recorded by the Tribunal in the judgment and order impugned in this Petition.

During the course of hearing, learned A.G.P. has tendered across the Bar the letter written by the Under Secretary, Home Department Government of Maharashtra to the Government Pleader and the same is taken on record and marked "X" for identification. The said letter contains the information that there are 104 sanctioned and vacant posts of Chemical Analyzer Forensic Laboratory, Group-B. Out of 104 sanctioned posts, the M.P.S.C. had advertised 83 posts. Pursuant to the

said advertisement, candidates have participated in the examination and even the said candidates have been interviewed.

7. As a matter of fact, the petitioner – Commission had issued the notification/advertisement on 8th June, 2010, calling applications from the eligible candidates for the post of Assistant Chemical Analyzer, Forensic Science Laboratory Group-B, and the last date for submission of the applications was 6th July, 2010. Accordingly, present respondent nos.1 and 2 have submitted their applications in prescribed format before the cut off date i.e. before 6th July, 2010. At the time of filling in the application forms, respondent nos.1 and 2 did not possess the actual marks sheet. However, the material placed on record shows that, the results were declared by the University on 25th June, 2010, and respondent

nos.1 and 2 had successfully passed their M.Sc., even before the cut off date. However, while issuing the mark sheets to respondent nos.1 and 2, the University has printed the date on the said mark sheets as 21st July, 2010. At the time of interview, respondent nos.1 and 2 were granted time of 10 days to produce proof regarding respondent nos.1 and 2, having acquired the eligibility qualification before the cut off date. Thereafter, on 8th April, 2011 respondent nos.1 and 2 produced the certificates, which were dated 5th April, 2011. So also respondent nos.1 and 2 had also produced a certificates issued by the Professor and Head of Department of Chemistry countersigned by the Controller of Examinations certifying that, respondent nos.1 and 2 had appeared for the examination of M.Sc., which were held in the month of March/April, 2010 and the results were declared on 25th June, 2010, and only

mark sheets were issued to the students belatedly i.e. on 21st July, 2010 by the University. The petitioner – Commission ought to have accepted the said certificates thereby confirming the date of declaration of result as the said certificates were countersigned by the Controller of Examination, thereby endorsing correctness of the certificates issued by the Head of the Department. Therefore, in this view of the matter, the petitioner – commission has erroneously not considered the said certificates, which have been issued by the Head of Department and countersigned by the Controller of Examination.

8. It would be pertinent to note that, respondent nos.1 and 2 have passed their M.Sc. examination on 25th June, 2010 i.e. before the last date of submission of the applications. For late issuing mark sheets

and the provisional passing certificates by the University, the candidates like respondent no.2 cannot be penalized and they cannot be made to suffer due to fault of University. Therefore, petitioner – Commission ought to have considered the cases of respondent no.2, thereby recommending his name to the State Government for the appointment on the post of Assistant Analyzer, Forensic Science Laboratory.

9. The Maharashtra Administrative Tribunal has properly considered the evidence on record to hold that, as the certificates were countersigned by the Controller of Examinations in confirmation of the certification as done by the Head of the Department, Commission could have safely relied upon those certificates as the proof regarding the date of declaration of result. The Tribunal has also rightly held that, from

perusal of the mark list published by the Head of the Department of Chemistry of Dr.Babasaheb Ambedkar Marathwada University, it is evident that mark list was published on 25th June, 2010 and in view of the publication of mark list on 25th June, 2010 by the Professor and Head of the Department of Chemistry, the said authority had every right to certify the date of declaration of result, and petitioner Commission could not have been at error had they relied upon said certificate. After considering the entire evidence produced on record, the Maharashtra Administrative Tribunal has arrived at correct conclusion and has rightly allowed the Original Application vide judgment and order dated 29th September, 2011. The findings recorded by the Maharashtra Administrative Tribunal are in consonance with the documents/material brought on record, and there is no perversity or error as such.

Hence, the Petition deserves to be rejected.

10. As observed earlier, learned A.G.P. has tendered across the Bar the letter written by the Under Secretary, Home Department to the Government Pleader, High Court, bench at Aurangabad, and wherein it is stated that there are 104 sanctioned vacant posts of Chemical Analyzer Forensic Laboratory, Group-B. Out of 104 sanctioned posts, the M.P.S.C. had advertised 83 posts. Pursuant to the said advertisement, candidates have participated in the examination and even the said candidates have been interviewed. Even keeping in view the said position still there are 21 vacant posts. It is submitted by learned counsel appearing for respondent nos.1 and 2 that respondent no.1 has already joined as Assistant Professor, Department of Chemistry, at KTSP Mandals KMC College Khopoli, Raigad

on 27th January, 2012 and now not interested for the appointment on the post of Chemical Analyzer Forensic Laboratory, Group-B.

11. In the result, the Writ Petition stands dismissed. However, we reiterate the directions given by the Maharashtra Administrative Tribunal and direct the petitioner MPSC to recommend the name of respondent no.2 for the appointment on the post of Chemical Analyzer Forensic Laboratory within two weeks from today. On the basis of said recommendations, Respondent/State and Maharashtra Public Service Commission to take steps to appoint respondent no.2 on the post of Chemical Analyzer Forensic Laboratory, Group-B. The entire procedure is to be done within three weeks from today. Respondent No.3 – State of Maharashtra, Department of Home is directed to keep one post as aforesaid vacant and take steps to fill up

the same forthwith on receiving recommendation of the name of respondent no.2.

12. Rule stands discharged accordingly.

13. List for compliance on 02.05.2018 under caption "For Compliance".

14. In view of disposal of Writ Petition, the Civil Application No.10143 of 2016 stands disposed of.

15. The parties shall act upon authenticated copy of this order.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE

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