

ssp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 620 OF 2015

Bhagwat S/o Bhagwan Garje,	
And Ors.	Petitioners
V/S	
The State Of Maharashtra	
And Ors.	Respondents

WITH

WRIT PETITION NO. 5544 OF 2014

Shri. Sunil Narayan Lawand	...Petitioner
V/S	
State Of Maharashtra Through	
Additional Chief Secretary	
Public Health Dept. And Ors.	Respondents

WITH

WRIT PETITION NO. 5727 OF 2014

Miss. Ashwini Aabaso Mahamuni @ Mrs.	
Ashwini Vikas Kharmate And Ors.	Petitioners
V/S	
State Of Maharashtra Through	
Secretary, Public Health Dept.	
And Ors.	Respondents

WITH

WRIT PETITION NO. 4917 OF 2014

Shri. Asaram Parameshwar Tupe	Petitioner
V/S	
Shri. Mehmud Khajebhai Subhedar	
And Ors	Respondents

WITH

WRIT PETITION NO. 4931 OF 2014

Shri. Madhukar Sopanrao Jadhav	Petitioner
V/S	
Shri. Mehmud Khajebhai	

Subhedar And OrsRespondents

**WITH
WRIT PETITION NO. 4932 OF 2014**

Smt. Sangita Mahadev Darade,
Through Shri.Dattatray Mahadev GorePetitioner
V/S
Shri. Mehmud Khajebhai Subhedar
And OrsRespondents

**WITH
WRIT PETITION NO. 4933 OF 2014**

Shri. Mahadev Gopinath Dhapate
And OrsPetitioners
V/S
Shri. Mehmud Khajebhai Subhedar
And OrsRespondents

**WITH
WRIT PETITION NO. 4942 OF 2014**

Pradeep Dinkar SakharePetitioner
V/S
The State Of Maharashtra, Through
Addl. Chief Secretary, Public
Health Dept And OrsRespondents

**WITH
WRIT PETITION NO. 5679 OF 2014**

Smt. Vrushali Narsingrao Deshmukh
And OrsPetitioners
V/S
The State Of Maharashtra, Through
Public Health Dept And OrsRespondents

**WITH
WRIT PETITION NO. 5681 OF 2014**

Manish Damodar Thorat And OrsPetitioners
V/S
The State Of Maharashtra, Through
Public Health Dept And OrsRespondents

Seema Vikas Gaikwad And OrsPetitioners
V/S
The State Of Maharashtra, Through Public
Health Dept And OrsRespondents

Pramila Dashrath JagtapPetitioner
V/S
The State Of Maharashtra, Through
Public Health Dept And OrsRespondents

Smt. Manisha Shankar SalunkhePetitioner
V/S
State Of Maharashtra, Through
Additional Chief Secretary,
Public Health Dept And OrsRespondents

Mr.Jagan Pandurang DinkarPetitioner
V/S
The State Of Maharashtra, Through
Addl. Chief Secretary,
Public Health Dept And OrsRespondents

Husenbasha Kadarsab ShaikhPetitioner
V/S
The State Of Maharashtra, Through
Public Health Dept And OrsRespondents

WITH
WRIT PETITION NO. 4970 OF 2014

Kum.Bhalerao Shubhangi Chandrakant
And OrsPetitioners
V/S
Shri.Mehmud Khajebhai Subhedar
And OrsRespondents

WITH
WRIT PETITION NO. 618 OF 2015

Kishor Murlidharrao NikamPetitioner
V/S
The State Of Maharashtra And Ors.Respondents

Mr.Anil V. Anturkar, Sr. Adv. A/w Mr. Sandeep Madhukar Phatak and Mr Sugandh B. Deshmukh and Mr. Amol A. Gatne I/by For Petitioners in WP/620/2015, WP/618/2015, WP/4932/2014, WP/4933/2014 and WP/5681/2014 AND EXCEPT For Petitioner No.2 in WP/5681/2014 AND Petitioner No.28 in WP/4933/2014.
Mr.Sandeep Madhukar Phatak, for Petitioner in WP/4917/2014 and WP/4931/2014
Mr.Prashant Daulatrao Patil for Petitioner in WP/4942/14
Mr.Vijay Patil I/by Mr. Sandeep Kocharekar for Petitioner in WP/5149/2014, WP/5678/2014, WP/5679/2014, WP/5680/2014 And For Petitioner No.2 in WP/5681/2014 AND Petitioner No.28 in WP/4933/2014.
Mr.Balasaheb R. Deshmukh for Petitioner in WP/5544/2014 and WP/5792/2014
Mr.Pratap Patil for Petitioner in WP/4970/2014
Mr.Prashant D. Patil for Petitioner in WP/4942/2014
Mr. Hanmant Govind Wakshe for Petitioner in WP/5727/2014 EXCEPT for Petitioner No.3
Mr.R.M. Patil for Petitioner No.3 in W[5727/2014
Mr.Ashutosh M. Kulkarni, Spl. Counsel a/w Mr. Gaurav Sharma and Mr. P.G. Sawant,A.G.P. for Respondent/State in All Matters.
Mr.Narendra V. Bandiwadekar a/w Mr Sagar Ashok Mane for R.No. 5 in
WP/620/2015,WP/4942/2014,WP/5149/2014, WP/5678/2014, WP/5679/2014,WP/5680/2014, WP/ 5681/ 2014,

WP/5727/2014, WP/5792/2014, AND For R.No.1 in
WP/4931/2014, WP/4932/2014, WP/4933/2014, WP/ 4917/
2014

CORAM : A.S.OKA, &

M.S.SONAK, JJ.

DATE : OCTOBER 29, 2018

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 Heard the learned senior counsel for the petitioners, the learned counsel for the respondent Nos.1 to 4 and the learned counsel for the respondent No.5.

2 We issue Rule. The learned counsel for the applicant in Original Application No.1355 of 2009 waives service. The learned Special Counsel appearing for the State of Maharashtra waives service for the Deputy Director of Health Services at Pune and the Deputy Director of Health Services at Kolhapur.

3 Considering the controversy involved in these petitions, by consent of the parties, the petitions are forthwith taken up for final disposal.

4 Except Writ Petition Nos.4917, 4931 and 5678 of 2014, the petitioners in other petitions were not parties to the Original Application No.1355 of 2009. The Original Application was filed by the respondent No.5 in Writ Petition No.620 of 2015. The dispute involved in the Original Application is about the selection process conducted on the basis of the

advertisement dated 22nd March 2008. The advertisement was for inviting applications for the posts of Junior Clerks. The respondent Nos.4,5 and 6 in the Original Application (petitioners in Writ Petition Nos.4917, 4931 and 5678 of 2014) were appointed as Junior Clerks. Essentially, the challenge was to the selection of the respondent Nos.4,5 and 6 in the Original Application and to the non selection of the respondent No.5 in Writ Petition (applicant in the Original Application). By the impugned Judgment and order dated 2nd April 2014, the Maharashtra Administrative Tribunal (for short "the said Tribunal") not only proceeded to set aside the appointments of the respondent Nos.4,5 and 6 in the Original Application but the entire selection process held pursuant to the advertisement dated 22nd March 2008 was quashed. The Tribunal observed that there were large scale irregularities in the entire selection process. As a consequence of setting aside the entire process of selection, not only the appointments of the respondent Nos.4,5 and 6 in the Original Application were terminated, as per the directions of the Director of Health Services contained in the letter dated 7th May 2014, the employment of the other employees who were appointed on the basis of the selection process was sought to be terminated. Thus, the writ petitioners who were not parties to the Original Application filed writ petitions challenging the Judgment and Order dated 2nd April 2014. In all these petitions, ad-interim relief of

stay to communication dated 7th May 2014 (Exhibit-J to Writ Petition No.620 of 2015) was granted by which communication the Director of Health Services directed the Deputy Director of Health Services, Pune to terminate the employment of all the candidates who were appointed by virtue of the subject selection process.

4 The learned counsel for the applicant in the Original Application on instructions of the applicant who is personally present in the Court stated that he has no objection for setting aside the impugned order dated 2nd April 2014 and for remanding the Original Application to the Tribunal for a fresh hearing. He states that after the remand of the Original Application to the Tribunal, he is willing to implead the petitioners who were not parties to the Original Application. He pointed out that the applicant in the Original Application was not aware of the names of all the affected persons. He also pointed out that the Original Application is not for setting aside the entire selection process.

5 The learned Special Government Pleader pointed out that after the impugned order was passed by the Tribunal, a Committee was appointed by the State Government. The Committee submitted a report on 30th April 2014, a copy of which is annexed to the affidavit in reply of Shri Hanumant Hari Chavan, Deputy Director, Health Services, Pune Circle, Pune

in Writ Petition No.620 of 2015. He submitted that in the Enquiry, it was found that there were large scale illegalities in the process of selection. He accepted that the employment granted to the petitioners is sought to be terminated only on the basis of the order dated 2nd April 2014 passed by the Tribunal. He submitted that considering the large scale illegalities and irregularities, it was not necessary for the Tribunal to have served notices to the persons who will get affected as a result of setting aside of the entire selection process.

6 We have perused the impugned Judgment and Order. As stated earlier, in the Original Application filed by the respondent No.5 in Writ Petition No.620 of 2015, there was no prayer for quashing and setting aside the entire process of selection. This was not a case where any Authority had done a fact finding exercise to ascertain whether there were large scale illegalities or irregularities in the process of selection. In fact, the State Government seems to have done the said exercise after passing of the impugned order by the Tribunal. It appears that the Tribunal called for the record of the selection process and in paragraphs 13 and 14 of the impugned Judgment and Order, seems to have taken a view that there appear to be large scale illegalities in the entire selection process. In paragraph 14, the only finding recorded is that though prima facie evidence was produced of tampering of the official record, no action was taken by the State Government.

7 Thus, this was not a case where any fact finding enquiry was ordered or after a detailed scrutiny of the entire record of the selection process, a categorical finding was arrived at regarding large scale illegalities in the selection process.

8 Therefore, in our view, when the Tribunal intended to set aside the entire selection process, at least the procedure analogous to Rule 8 of Order I of the Code of Civil Procedure, 1908 (for short "the said Code") ought to have been followed by the Tribunal. Even to the respondent Nos. 4, 5 and 6 in the Original Application, there was no proper notice in the sense in the Original Application, there was no prayer made for setting aside the entire selection process. Therefore, by accepting the statement made by the learned counsel for the applicant in the Original Application, the impugned order passed by the Tribunal deserves to be set aside.

9 We have perused the impugned communication dated 7th May 2014 issued by the Director of Health Services. The direction to terminate the employment of the petitioners was issued on the basis of the impugned order dated 7th May 2014. Effect has not been given to the communication dated 7th May 2014 and the termination of the petitioners has not taken effect. In some cases, termination orders were issued which have not become operative by virtue of ad-interim order of this Court.

10 Accordingly, we dispose of the petitions by passing the following order:

(I) Impugned Judgment and order dated 2nd April 2014 passed by the Maharashtra Administrative Tribunal is hereby set aside and the Original Application No.1355 of 2009 is restored to the file of the Tribunal;

(II) We direct the petitioners in these petitions and the applicant in the Original Application to appear before the Tribunal on 30th November 2018 at 11.00 a.m. On that day, on a formal application being made by the applicant in the Original Application, the Tribunal will permit him to amend the Original Application for impleading the petitioners in these petitions who were not parties to the Original Application as party respondents. The Tribunal will also permit consequential amendment to be carried out to the Original Application by adding averments as well as prayers and for annexing documents;

(III) We make it clear that it will not be necessary for the Tribunal to issue notices to the petitioners in these petitions who will be added as party respondents and that the said petitioners will be entitled to appear and file a reply to the amended Original Application;

(IV) It will be open for the State Government to produce additional documents on which reliance is placed by the State in these petitions;

(V) The Tribunal will follow the procedure analogous to Rule 8 Order I of the Code of Civil Procedure, 1908 by issuing necessary public notice at the cost of the petitioners in the Original Application;

(VI) As the Original Application which is restored to the file of the Tribunal is of the year 2009, we are sure that the Tribunal will give necessary priority to the disposal of the Original Application;

(VII) We make it clear that we have made no adjudication on the merits of the controversy involved in the Original Application and all questions are left open for determination of the Tribunal;

(VIII) Needless to add that as the decision of terminating the employment of the petitioners is based only on the impugned order dated 2nd April 2014 which is set aside under this Judgment and Order, orders of termination issued to the petitioners also stand quashed and set aside;

(IX) Rule is made partly absolute on above terms;

(X) On 30th November 2018 at 11.00 a.m., the parties will produce an authenticated copy of this Judgment and Order.

(M.S.SONAK,J.)

(A.S.OKA,J.)