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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12059 OF 2017

Maharashtra Public Service Commission

.. Petitioner

Vs.

1. Dr. Mohan Apparao Jadhav and ors.

.. Respondents

WITH
WRIT PETITION NO. 202 OF 2017

Maharashtra Public Service Commission

.. Petitioner

Vs.

1. The Civil Surgeon Cadre Group A (Doctor's)
Association and ors.

.. Respondents

WITH
WRIT PETITION NO. 203 OF 2017

Maharashtra Public Service Commission

.. Petitioner

Vs.

1. Dr. Ratna Dinkar Raokhande and ors.

.. Respondents

WITH
WRIT PETITION NO. 20 OF 2017

The State of Maharashtra .. Petitioner

Vs.

1. Dr. Mohan Apparao Jadhav and ors. .. Respondents

WITH
WRIT PETITION NO. 8278 OF 2017

The State of Maharashtra & anr. .. Petitioners

Vs.

1. Dr. Mohan Apparao Jadhav and anr. .. Respondents

WITH
WRIT PETITION NO. 7272 OF 2017

The State of Maharashtra & anr. .. Petitioners

Vs.

1. The Civil Surgeon Cadre Group A (Doctor's)
Association and anr. .. Respondents

Mr. N. P. Dalvi i/by Mr. Ashutosh M. Kulkarni for petitioner – MPSC in
WP Nos. 12059/17, 202/17 and 203/17.

Mr. A. B. Vaghyani, Govt. Pleader with Mr. P. P. More, AGP for State in
WP Nos. 20/17, 7272/17 and 8278/17.

Mr. Yashodeep Deshmukh i/by Sharayu S. Shinde for respondent No.1 in
WP No. 12059/17.

Mr. Narendra D. Thombare for respondent no.1 in WP No. 203/17.

CORAM: NARESH H. PATIL &
R. G. KETKAR, JJ.

RESERVED ON : DECEMBER 06, 2017

PRONOUNCED ON : JANUARY 12, 2018

JUDGMENT [Per Naresh H. Patil, J.] :

1. Rule. Rule is made Returnable forthwith. Heard finally by consent of the parties.

2. The petitioner – Maharashtra Public Service Commission has filed Writ Petition Nos.12059 of 2017, 202 of 2017 and 203 of 2017 challenging the impugned Judgment and Order dated 23/11/2016 passed by the Maharashtra Administrative Tribunal (for short MAT) in Original Application Nos.800, 815 and 816 of 2016. The State of Maharashtra has also preferred Writ Petition Nos.8278 of 2017 and 7272 of 2017 against the same Judgment and Order passed by the MAT. The State of Maharashtra has filed one more Writ Petition No. 20 of 2017 for quashing and setting aside short-listing criteria and the list of shortlisted candidates prepared pursuant to the Advertisement No. 6/16 dated 17/2/2016.

3. This is the second round of litigation in respect of recruitment to the post of Director of Health Services, Maharashtra Medical & Health Services, Group – A. We find it necessary to give brief narration in respect of the earlier round of litigation.

(a) The Original Application Nos.360/2012, 94/2013 and 95/2013 were filed respectively by Dr. Mohan Apparao Jadhav, Dr. Abhay Shaligram Gajbhiye and Dr. Ratna Dinkar Raokhande. An Advertisement bearing No. 184 of 2012 dated 20/1/2012 was issued for selecting suitable persons to fill up post of Director, Health Services, Maharashtra State. The Recruitment Rules for the post of Director, Health Services, Maharashtra State were framed by the concerned department on 14/12/1971. The appointment to the said post was to be made by nomination. A short-listing method was applied, in which six candidates were shortlisted for conducting interview. The said list of shortlisted candidates was got reduced from 6 to 3. Two candidates, out of three, were related *inter se* as husband and wife (i.e. Dr. Satish Dhanaji Pawar and Dr. Archana Vasant Patil). The then original applicants challenged the procedure adopted by the MPSC in short-listing candidates. On 27/1/2014, the MAT allowed

the Original Applications and set aside short-listing criteria adopted by the MPSC. Consequently, the selection of Dr. Satish Dhanaji Pawar (at present holding charge as Director, Health Services, State of Maharashtra) was set aside. The State and the MPSC was directed to initiate the recruitment procedure afresh within one month from the date of the judgment and order i.e. 27/1/2014 by the MAT.

(b) Against the said judgment and order dated 27/1/2014, Dr. Satish Dhanaji Pawar and the MPSC preferred Writ Petition Nos.1936 of 2014 and 5951 of 2014 respectively.

(c) By a judgment and order dated 1/8/2014, the Division Bench of this court, to which one of us (Naresh H. Patil,J.) was party, disposed of the petitions finally by partly allowing the same. The short-listing method adopted by the MPSC was held to be lacking rational basis and directions issued by the Tribunal to issue a fresh process was upheld.

(d) Against the said judgment and order dated 1/8/2014 delivered by this court, Dr. Satish Dhanaji Pawar preferred SLP before the Hon'ble Supreme Court bearing Petition(s) for Special Leave to Appeal (C) Nos.22792-22793 of 2014.

(e) By an order dated 9/12/2015, the Apex Court disposed of the SLP by passing following order :-

“ Delay Condoned.

Heard Mr. K. V. Vishwanathan, learned senior counsel for the petitioner, Mr. Anish R. Shah, learned counsel for the respondent Nos.1 and 5, Mr. Kunal Cheema, learned counsel for the State of Maharashtra and Mr. Satyajit A. Desai, learned counsel for the Maharashtra Public Service Commission.

Having heard learned counsel for the parties, we are of the considered opinion that there is no error in the order passed by the High Court to interfere. Hence, we decline to interfere. However, we direct that the directions issued by the High Court shall be complied with within a period of four months and till the selection process is complete, the petitioner shall continue. Needless to say, if the petitioner comes within the criteria, his case will be considered. Neither the order passed by the High Court, nor our non-interference would weigh with the authorities while proceeding with the selection process.

The special leave petitions are, accordingly, disposed of. No order as to costs.”

4. Thereafter the fresh Advertisement No. 6 of 2016 was issued on 17/2/2016 by the MPSC for initiating selection process to fill up the post of Director, Health Services, Maharashtra State. The relevant conditions as reflected in the Advertisement in clause 4.4 are as under :

4.4 Education Qualification :-

Candidate must possess :

4.4.1 Possess the M.B.B.S. Degree of a statutory University or any other qualification specified in the First or Second Schedule of the Indian Medical Council Act, 1956:

4.4.2 Possess a post-graduate degree in any of the clinical subjects or in Preventive and Social Medicine as specified in the First or Second Schedule to the Indian Medical Council Act, 1956 or any other qualification recognized as equivalent by the Medical Council of India.

4.4.3 Possess experience of Health Administration, Medical Relief or Family Planning in Government, Zilla Parishad or a Local Body of not less than ten years after acquiring post-graduate qualification mentioned in 4.4.2.

4.4.4 Provided that in the case of candidates possessing

a post graduate degree in any clinical subject, those possessing a Diploma in Public Health or equivalent in addition, will be given preference.

4.5 Selected candidate will have to sign an agreement embodying the conditions of his service including the condition to serve Government for a period of 5 years or to penalty of Rs.500/- or such other sum as may be prescribed by Govt.

4.6 Selected candidate will have to get himself / herself registered under Maharashtra Medical Council Act, 1956, before joining of his / her name should be borne in Indian Medical Council Register.

4.7 Selected candidates will be debarred from doing any private practice but will be paid compensatory allowance in lieu according to the rules.

4.8 Period of probation two years.

5. In the meanwhile, the MPSC had framed MPSC Rules of Procedure 2014, which came into force. For the purposes of convenience, we may reproduce herein below the relevant Rule 9 of the MPSC Rules of Procedure 2014 :

9. Direct Recruitment -

(i) The number of the candidates to be shortlisted for the interview shall be as follows:-

No. of post advertised	No. of candidates to be called for interview
1	3
2	8
3 and more	3 times

However, in cases of isolated posts at the State Level i.e. Director of field department etc. which are equivalent to the grade of Joint Secretary in Mantralaya or above the commission may decide from time to time, the number of candidates to be called for the interview. The number of the candidates to be shortlisted for interview shall not exceed 10 times the number of such vacancies, in any case.

(ii)

(iii)

(iv)

(v) In case the response to the advertisement exceeds the proportion laid down in Rule 9(i) above, the commission may apply criteria for short-listing of the candidates for interview as follows:-

(a) Whenever there is provision for a preferential academic qualification or experience in the rules of recruitment of the post it shall be accorded highest priority while short-listing the

candidates for interview.

(b)

(c)

(d) For the posts prescribing minimum academic qualifications together with minimum experience, the criteria of higher experience than the minimum prescribed shall be applied after the preferential qualification for short listing and of the ratio is not reached, then only the criterion of higher academic qualification as provided in clause (b) above shall be invoked.

6. During the course of selection process, the MPSC adopted short-listing criteria as according to MPSC it was found that number of applications was large i.e. 45. According to MPSC short-listing criteria was applied in terms of Rules of Procedure No. 9(v)(a) and (d) read with advertisement clause No.4.4.4. The prescribed criteria for short-listing is reproduced as below :

CRITERION – I

Those possessing M. B. B. S. Degree of a statutory University or any other qualification specified in the First or Second Schedule of the Indian Medical Council Act, 1956; And

Possessing a post graduate degree in any clinical

subject or in Preventive and Social Medicine, together with a Diploma in Public Health or equivalent; And

Possessing experience of Health Administration, Medical Relief or Family Planning in Government, Zilla Parishad or a Local Body of not less than 14 years, 1 month, 22 days after acquiring post-graduate qualification.

CRITERION – II

Those possessing M.B.B.S. Degree of a statutory University or any other qualification specified in the First or Second Schedule of the Indian Medical Council Act, 1956; And

Possessing a post graduate degree in any clinical subject or in Preventive and Social Medicine as specified in the First or Second Schedule to the Indian Medical Council Act, 1956 or any other qualification recognized as equivalent by the Medical Council of India; And

Possessing experience of Health Administration, Medical Relief or Family Planning in Government, Zilla Parishad or a Local Body of not less than 27 years, 2 months, 27 days after acquiring post-graduate qualification.

7. According to the MPSC only five candidates were available after applying the short-listing criteria of preferential academic qualification. Therefore, the MPSC applied criteria of higher experience in accordance with Criteria – II. The MPSC short-listed additional five candidates applying short-listing criteria of higher experience.

8. The original applicants challenged the said short-listing criteria as due to short-listing criteria adopted by the MPSC, they were excluded from the zone of consideration along with other candidates who could have otherwise participated in the selection process.

9. The Tribunal by a reasoned Judgment and Order dated 23/11/2016 struck down the short-listing criteria adopted by the MPSC and directed MPSC to commence the process in the light of the observations and the law laid down by the courts in this regard. The MPSC was also directed to consider the cases of original applicants Dr. Mohan Apparao Jadhav and Dr. Ratna Dinkar Raokhande as well as others from amongst those who had applied for the post. Para 35 of the impugned Judgment and Order passed by the Tribunal reads as under :-

“35. The short listing criteria adopted herein and the list of short listed candidates prepared in accordance therewith are both struck down, quashed and set aside. The Respondent – MPSC shall commence the process from the stage such as it was bearing in mind the observations herein which in turn are based on the law laid down by the Hon'ble Constitutional Courts. It is made clear that if short listing becomes absolutely imperative on the facts and the candidates who are already on the list, some of them or anyone of them are / is found qualified for getting their names included again, there shall be no embargo in that behalf. However, upon a proper application of the principles herein enunciated, the Respondents shall also consider the case of the Applicants Dr. Jadhav and Dr. Raokhande as well as the others from amongst those who have applied for the post. The Respondent – MPSC shall act with due dispatch in deference to the mandate of the Hon'ble Supreme Court in the earlier round of litigation and expeditiously take the further steps in the matter. These Original Applications are allowed in these terms with no order as to costs.”

10. The learned counsel appearing for the petitioner – MPSC submitted that the Tribunal committed error in setting aside the short-listing criteria applied by the MPSC. In accordance with the Rules of

Procedure 2014, short-listing criteria, the MPSC had initiated the selection process in a fair and transparent manner. The MPSC was entitled to apply appropriate short-listing criteria for adopting a transparent procedure after noticing that number of applicants were large. The learned counsel submitted that the Tribunal failed to appreciate the term “clinical subject”, “Diploma in Public Health” or equivalent. The principle and purpose of having criteria Nos. I and II were not appreciated by the Tribunal in its proper spirit. The Original Applicants failed to establish any mala fide attributable to MPSC. Short-listing criteria was adopted by applying principle of preference. The Original Applicants failed to produce material on record in respect of the work experience relating to clinical and non-clinical post. The Tribunal ought not to have entered into the territory of expertise which MPSC possesses in selecting candidates. In the absence of any legal opinion of an expert body, the original applicants have no authority to challenge the short-listing criteria relating to the subjects of experience and qualification applied by the MPSC.

11. The learned Government Pleader, while answering issue of locus to the State to challenge the impugned Judgment and Order passed by the Tribunal, submitted that as mala fides were alleged by the applicants,

the State Government decided to file petition. But on the same issue, no finding was given by the Tribunal. The learned Govt. Pleader submitted that consequent to the order passed by the Apex Court, the State had addressed a communication on 1/12/2016 to the counsel for the State in the Apex Court for seeking three months extension for compliance of the order. Thereafter, by communication dated 29/4/2016, addressed to the counsel for the State in the Apex Court, State requested to seek further extension of two months for compliance of the order. However, the learned Govt. Pleader could not place on record any order passed by the Apex Court granting extension of time for compliance of the order passed by the Supreme Court on an application filed by the State Government, if any, in this regard. The learned Govt. Pleader submitted that in view of the order passed by the High Court and the Apex Court, the selection process ought to have been conducted in a time bound manner.

12. Mr. Deshmukh, the learned counsel, appearing for the respondent no.1 – Dr. Mohan Apparao Jadhav submitted that the short-listing criteria adopted by the MPSC was against the MPSC Rules of Procedure 2014. Preventive Social Medicine (PSM) is a non-clinical subject whereas according to the State it is clinical subject. The counsel

submits that in fact official document would show that the PSM is a non-clinical subject. The learned counsel referred to the conditions of advertisement i.e. 4.4.4 and 5, the MPSC Rules of Procedure 2014 and the short-listing criteria. A reference was also made to the earlier recruitment criteria applied by the MPSC in respect of same post i.e. Director, Health Services, State of Maharashtra. On having a comparative analysis of these rules and criteria, the counsel submitted that this time the MPSC again created confusion which would ultimately benefit the person holding charge of such a important post of Director, Heath Services. Dr. Satish Dhanaji Pawar is to retire after a year or so. The counsel submitted that State and MPSC were successful in somehow delaying the process due to which Dr. Pawar is successful in the office, though his appointment was set aside by the Courts prior to five years. The counsel made reference to criteria of higher experience and qualification (super speciality). The learned counsel further submitted that Dr. Pawar, who is holding charge of Director was suspended for a period between 13/4/2016 to 20/10/2016 during which period one of the applicants, namely, Dr. Jadhav, who is second in the seniority was handed over the charge of Director of Health Services, State of Maharashtra. The charges levelled against Dr. Pawar were serious according to the learned counsel. In the submission of the

learned counsel, in fact, the order passed by the Apex Court directing the State and MPSC to complete the process within four months was violated in letter and spirit. Instead of completing the process, the State allowed Dr. Pawar to continue to hold the post which is in complete breach of the judgment and order of the High Court and the Apex Court.

13. Mr. Thombare, the learned counsel appearing for respondent no.1 – Dr.Ratna Raokhande submits that the respondents fulfill both the criteria i.e. Criteria Nos.I and II. They are qualified having qualification as PG (Clinical) and Diploma in Public Health Administration. It was pointed out at this stage by the learned counsel appearing for the MPSC that one of the candidates had mentioned in the application having qualification of hospital administration. Mr. Thombare, the learned counsel, submits that in accordance with the second criteria, the candidate has 30 years of experience and on the date of application the candidate had 25 years of experience. The original applicants are to retire somewhere in the next year and inspite of the fact that the process to fill in the post of Director, Health Services was started in the month of January 2012, it is near about more than five years now, the process is still incomplete and the issue is dragged on and on. The learned counsel submits that till the process is

complete finally in the interest of justice and in the interest of administration of the Health Department of the State, directions are required to be issued to the State Government to hand over the charge of post of Director, Health Services, State of Maharashtra to the next senior person keeping in view the letter and spirit of the order passed by the Apex Court.

14. We have perused the record placed before us, considered the submissions advanced.

15. It is really disturbing to note that for selecting a suitable person to an important post of Director, Health Service, State of Maharashtra, process is dragged on for near about six years. This is second round of selection process which too has failed to convince the courts. The Administrative Tribunal, expressing its displeasure, by a reasoned judgment and order set aside the shortlisting criteria adopted by the MPSC. In the earlier round of litigation too, this court had confirmed the view adopted by the Tribunal. On both the occasions, respective applicants established that they were excluded from participating in the selection process.

16. What is more heartening and surprising is that inspite of the order passed by the Apex Court in SLP preferred by Dr. Satish Dhanaji Pawar bearing Petition(s) for Special Leave to Appeal (C) Nos.22792-22793 of 2014, wherein the Apex Court directed that the directions issued by the High Court shall be complied with within a period of four months. The State Government, for reasons best known to it, inspite of the order passed by the Apex Court, continued Dr. Satish Dhanaji Pawar, holding charge as Director, Health Services, State of Maharashtra. The State Government has misinterpreted the letter and spirit of the order passed by the Apex Court. In the facts, we find that continuation of Dr. Satish Dhanaji Pawar, as holding charge of the important post, the State is in breach of the order passed by the High Court and the Apex Court.

17. On behalf of the State, it was submitted that twice the State communicated to its lawyer in Apex Court to get extension of the time for compliance of the order passed by the Apex Court, but, it seems that no steps were taken. At least nothing is placed on record to show that applications were filed in the Apex Court seeking extension for the compliance of the order. We find that even there was a delay by MPSC to

start the selection process as directed by the courts. We are not satisfied with the explanation provided by the learned counsel appearing for the MPSC in this regard.

18. Returning to the merits, we find that the MPSC Rules of Procedure 2014 prescribed that in case the candidate possessing post-graduate degree in any clinical subject, those possessing a Diploma in Public Health or equivalent in addition, will be given preference. In the MPSC Rules of Procedure 2014 proviso to 3.3 sub clause 4 reads as under :-

3.3 The Recruitment Rules lay down the essential qualifications and experience as follows :-

- (1)
- (2)
- (3)
- (4)

Provided that in the case of candidates possessing a post graduate degree in any of the clinical subjects those possessing a diploma in Public Health or equivalent in addition will be given preference.

In complete breach of the Rules of Procedure as stated above, MPSC prescribed a condition that a candidate possessing a post-graduate

degree in any clinical subject or in Preventive and Social Medicine, together with a Diploma in Public Health or equivalent could be selected. In Criteria – I, MPSC expected a candidate to have experience of 14 years, 1 month, 22 days. Criteria – II required a candidate having experience of Health Administration, Medical Relief or Family Planning in Government, Zilla Parishad or a Local Body of not less than 27 years, 2 months, 27 days after acquiring post-graduate qualification. We are not satisfied with the explanation tendered by the learned counsel appearing for the MPSC for prescribing such criteria for shortlisting the candidates.

19. The basic thrust of the original applicants is that the shortlisting criteria is contrary to MPSC Rules of Procedure 2014. The MPSC committed a grave error in seeking requirement of Diploma in Public Health or equivalent along with post-graduation in clinical subject or PSM as one of the requirements in Criteria – I. It is contrary to the conditions of advertisement and Rule 3.3 which requires a candidate having Diploma in Public Health or equivalent to be considered as a matter of preference. But while applying shortlisting criteria, the MPSC made it mandatory to have PG in any clinical subject or in PSM, **together with** a Diploma in Public Health or equivalent. Such a deviation is

contrary to the conditions of advertisement and the Rules framed in that behalf. The Tribunal, therefore, while relying on various authorities, reached conclusion that the shortlisting criteria adopted by the MPSC was in complete violation of the conditions of advertisement and the Rules due to which the original applicants, Dr. Mohan Jadhav and Dr. Ratna Raokhande were excluded from participating in the selection process. We do not find any error in the view adopted by the Tribunal in this regard.

20. The Tribunal noticed in para 34 of the judgment that 7 out of 10 persons having post graduate qualification in PSM and 3 candidates were holding degrees in clinical subjects.

21. In respect of the petitions filed by the State of Maharashtra, we are of the view that there was no cause of action for the State to challenge the impugned judgment and order passed by the Tribunal on merits as the issue canvassed by the original applicants before the Tribunal was in respect of shortlisting criteria adopted by the MPSC.

22. For the reasons stated above, we do not find any unreasonableness or error in the view adopted by the Tribunal.

23. In the facts of the case, we find that it would be highly unreasonable to allow Dr. Satish Dhanaji Pawar to continue to hold charge of the post of Director, Health Services, State of Maharashtra in the teeth of the orders passed by the courts. We are convinced that the continuation of Dr. Satish Dhanaji Pawar in the said post is in breach of letter and spirit of the order passed by the Apex Court on 9/12/2015 in Petition(s) for Special Leave to Appeal (C) Nos. 22792-22793 of 2014. The State has failed to convince us in respect of the continuation of Dr. Satish Dhanaji Pawar as Director, Health Service, State of Maharashtra. During the course of hearing, it was submitted that for a considerable period Dr. Satish Dhanaji Pawar was suspended by the State. We, therefore, find it appropriate to issue directions to the State to make alternate arrangement till the final selection to the post of Director, Health Services, State of Maharashtra is held successfully by the State / MPSC.

24. We direct the State of Maharashtra to issue necessary directions for handing over charge of the post of Director, Health Services, State of Maharashtra from Dr. Satish Dhanaji Pawar to the next senior in the service. We further direct that present Director, Health Services, State

of Maharashtra shall not take any major, financial or administrative decisions.

25. With the aforesaid directions, petitions stand dismissed with costs. Rule is discharged.

26. Parties to act on an authenticated copy of this order.

(R. G. KETKAR,J.)

(NARESH H. PATIL,J.)