

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5796 OF 2017

Anand S/o Jagdeo Shinde,
Age-38 years, Occu:Nil,
R/o-Nanjawadi, Tq-Bhokardan,
Dist-Jalna.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
(Through its Secretary),
Department of Public Health,
Mantralaya, Mumbai-32,
- 2) The District Selection Committee,
(Through its President),
The Collector, Osmanabad,
- 3) The Chief Executive Officer,
Zilla Parishad, Osmanabad,
- 4) The District Health Officer,
Zilla Parishad, Osmanabad,
- 5) The District Malaria Officer,
Jalna.

...RESPONDENTS

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Mr.U.R. Awate Advocate holding for Talekar and Associates
for Petitioner.

Mr.P.N. Kutti, A.G.P. for Respondent Nos.1, 2 and 5.
Mr. P.P. More Advocate for Respondent Nos.3 and 4.

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**CORAM: SUNIL P. DESHMUKH AND
S.M. GAVHANE, JJ.**

DATE : 28TH AUGUST, 2019

ORAL JUDGMENT [PER SUNIL P. DESHMUKH, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. Pursuant to an advertisement No.01/2014 issued by respondent No.2, the petitioner had applied for the post of *arogya sevak* (male). After passing through the recruitment process, there is no dispute that the petitioner had been selected and placed at serial No.1 in the select list. However, subsequently respondent No.4 purportedly issued a communication dated 30th May, 2016 to respondent No.5 asking him to submit photocopies of MTR-19 register in respect of the petitioner in order to proceed further for appointment of the petitioner. In response to the same, the concerned authority, district malaria officer (DMO), Jalna had issued a certificate. The petitioner had produced the certificate issued by the district malaria officer, Jalna, dated 18th September, 2008 referring to

that the petitioner had been working with zilla parishad, Jalna. In addition to above, said DMO had also, by letter dated 27th June, 2016, communicated to his counterpart at Osmanabad that photocopies of MTR-19 register have been sent along and same be treated as in compliance with the demand made under communication dated 30th May, 2016 by respondent No.4 to respondent No.5. Repeat communication had also been issued on 21st July, 2016 by district malaria officer, Jalna. Yet, a communication dated 27th January, 2017 came to be issued to the petitioner by respondent No.3, informing that as the requirements as referred to under communications, particularly demands are not complied with, the appointment cannot be granted. The petitioner is, thus, before this court.

3. Learned counsel Mr. Umakant Awate appearing for the petitioner contends that the said communication is grossly arbitrary, capricious and is a result of requirement in excess of demands referred to in the advertisement. He submits that experience of 90 days was to be considered before issuing appointment order. In support of his claim the petitioner had produced more than sufficient documents, copies of which are placed on record. Insistence in respect of record being in

particular form is rather over reaching the basic requirement of past experience. He submits that extraneous requirements were being raised regarding experience, not pursuant to the advertisement. In view of the same, according to learned counsel, while sufficient material had been placed before the authorities in compliance of the demand, refusal to issue appointment order is not proper and legal. He therefore, urges to quash and set aside the impugned communication and direct the respondents to issue appointment order in favour of the petitioner.

4. Learned counsel for zilla parishad submits that the insistence for record being in particular form had been with reference to directions issued by the joint director, health services, Pune and thus the impugned communication declining appointment to the petitioner would not be liable to be quashed. He submits that upon scrutiny of documents which had been appreciated, criteria of past experience would not have been said to have been fulfilled by the petitioner. In additional affidavit as well, it has been referred to, it has been found that criteria No.4 under communication dated 6th July, 2013 was

found to be not getting complied with and thus the impugned communication had been issued.

5. Learned counsel for zilla parishad, fairly refers to that incorporation of paragraph No.3 in earlier reply is inadvertently made and as such, statement of non- fulfillment of criteria of 90 days is by mistake and he tenders apology for the same.

6. Having regard to that when the advertisement does not require compliance of the requirement under communication dated 6th July, 2013 while criteria under clause No.4 thereof is claimed to have not been fulfilled, the impugned communication had been issued. Although this is so submitted, it emerges from the correspondence that in respect of said demand, particularly the communication issued by district malaria officer, Jalna on 27th June 2016, annexed to petition at Exhibit-H and the documents and the charts along with the same, and thereafter yet another communication dated 21st July, 2016 between the same officers requesting to treat the documents as supplied to be treated as photocopies of MTR-19 register, are stated to meet with intention underlying requirement. It appears sufficiently bear underlying basic requirement. Experience as required being

possessed by petitioner is not in dispute. Yet, since documents are not in the shape demanded, the appointment is declined.

7. In the circumstances, while the petitioner has been selected and placed at serial No.1 in the select list and it has emerged that zilla parishad, Jalna had not been in a position to issue documents as per clause 4 of the communication dated 6th July, 2013, the situation is clearly out of reach and control of the petitioner, and it should not adversely affect him obviating appointment order in his favour, especially when there is no dispute that petitioner is otherwise eligible and qualified for appointment on the post of *arogya sevak*. In view of the same, we deem it appropriate to allow the petition in terms of prayer clause (A) and (B).

8. Petition, accordingly, stands allowed in terms of prayer clause (A) and (B) if there is no other impediment. Rule is made absolute, accordingly.

(S.M. GAVHANE, J.)

[SUNIL P. DESHMUKH, J.]