

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

**WRIT PETITION NO. 14295 OF 2019
WITH CA/630/2020 WITH CA/626/2020 WITH CA/628/2020 WITH
CA/629/2020 WITH CA/627/2020 WITH CA/631/2020**

Dattatraya Bhagwatrao Gholap and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Mr. V. D. Sapkal, Senior Advocate i/by Mr. Vithal H. Dighe and S. S. Wagh, Advocate for the Petitioners.
Mrs. M. A. Deshpande, Addl. G. P. for Respondent Nos. 1 to 3.
Mr. Avinash S. Deshmukh h/f Mr. V. V. Ingale, Advocate for Respondent No. 4.

**WITH
WRIT PETITION NO. 2566 OF 2020**

Ashwamedh Balasaheb Jagtap and others .. Petitioners

Versus

The State of Maharashtra and another .. Respondents

Mr. Vishwas B. Wagh and Shrinivas S. Wagh, Advocates for the Petitioners.
Mrs. M. A. Deshpande, Addl. G. P. for Respondent-State.

**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATED : 06th MARCH, 2020.

PER COURT:-

. The petitioners in both these writ petitions have filed original applications. Interim relief is refused, aggrieved thereby the present

petitions.

2. The petitioners in Writ Petition No. 14295 of 2019 are seeking promotion to the post of District Health Officer whereas the same petitioners in Writ Petition No. 2566 of 2020 are seeking appointment to the post of District Health Officer by nomination.

3. We have heard Mr. Sapkal, learned senior counsel for the petitioners in Writ Petition No. 14295 of 2019 and Mr. Wagh, learned counsel for the petitioners in Writ Petition No. 2566 of 2020.

4. The gravamen of the petitioners contention is that the petitioners possess the diploma in post graduation issued by the college of Physician and Surgeon, Mumbai. They are registered with the Maharashtra Medical Council and as such, are eligible for promotion and / or appointment to the post of District Health Officer. The reliance is placed on Rule 3 r/w schedule prescribing qualifications. It is the contention of the petitioners that the post graduate diploma in public health held by them is recognized by the Maharashtra Medical Council, so also same is recognized qualification under the Indian Medical Degrees Act, 1916 (for short 'Act of 1916'). The post graduate diploma certificate issued by the college of Physician and Surgeon of Bombay is recognized and the said institution is empowered to issue the degree and diploma as specified under the Act of 1916. The learned counsel

submits that in all these cases the petitioners are issued with the certificate of diploma in public health by the college of Physician and Surgeon, Mumbai prior to October 2017. On or about 17.10.2017 the Ministry of Health and Family Welfare in exercise of the powers conferred by Section 2 of sub section 11 of the Indian Medical Council Act recognized the diploma in public health granted by the college of Physician and Surgeon, Mumbai. On or about 2009 the petitioners are granted diploma in public health by the college of Physician and Surgeon. The learned counsel further submits that subsequently rescinding of the said notification under notification dated 22.01.2018 would not be of any avail. The petitioners rely on the judgment of the Division Bench of this Court in a case of ***Chandrashekhar Waman Karve and Ors. Vs. State of Maharashtra and Ors.*** reported in ***AIR 1990 Bombay 330***. The petitioners further contend that the schedule of the Maharashtra Medical Council Act, 1965 is amended on 12.03.2010 and diploma in public health issued by the college of Physician and Surgeon, Mumbai is also recognized. The petitioners are registered with Maharashtra Medical Council and are entitled to practice in the State of Maharashtra interalia to be considered for the appointment and promotion to the post of District Health Officer.

5. Mrs. Deshpande, learned Additional Government Pleader and Mr.

Deshmukh, learned counsel for respondent No. 4 submit that the appointment by nomination and promotion to the post of District Health Officer is governed by the recruitment rules viz. Maharashtra Medical and Health Services (Class-I) Recruitment Rules, 1981. 'Diploma' is defined under the rules to mean diploma of statutory university. The college of Physician and Surgeon is not a statutory university. The notification dated 12.03.2010 amending the schedule of the Maharashtra Medical Council Act, 1965 specifies that the said qualification should not be treated as conferring recognized medical qualification under the Indian Medical Council Act, 1956. It is further submitted that the qualification as on date or on the date when the petitioners acquired the diploma was not recognized by the Indian Medical Council. The notification relied by the petitioners dated 17.10.2017 is amended by notification dated 22.01.2018 and the diploma in public health issued by the college of Physician and Surgeon, Mumbai is deleted. In the light of that, the departmental promotion committee as well as the Tribunal have not committed any error.

6. We have considered the submissions canvassed by the learned counsel for respective parties.

7. The persons in employment or seeking employment would be

governed by the relevant recruitment rules. It will be appropriate to refer to the relevant provision providing qualification and experience for the post of District Health Officer.

Sr. No.	Name of the Post	Qualifications and experience required
3.	(A) District Health Officer (B) Assistant District Health Officer (F. P.) (C) Assistant Director of Health Services (except Transport, Nursing, I/c Public Health Laboratory, Vital Statistics) (D) Principal, Health and Family Planning Training Centre. (E) Regional Malaria Officer (F) Zonal Leprosy Officer.	Post-graduate degree in Preventive and Social Medicine or post-graduate Diploma in Public Health (D. P. H.) or a qualification accepted as equivalent by the Medical Council of India and with experience of Health administration, medical relief or family planning, Malaria/Leprosy under Government, Zilla Parishad or a local body for not less than 5 years in the case of those holding post-graduate degree and for not less than 7 years in the case of those holding post-graduate diploma, gained after acquiring the M.B.B.S. degree.

8. Reading the qualification prescribed for the post of District Health Officer, it is manifest that the candidate should possess the post graduate degree in preventive and social medicine or post graduate diploma in public health or a qualification accepted as equivalent by the Medical Council of India. The petitioners herein possess diploma in public health issued by the college of Physician and Surgeon, Mumbai

prior to October 2017.

9. The prima donna consideration would be whether the college of Physician and Surgeon is a statutory university or can be considered to be within the realm of statutory university. The diploma is defined under the Rules. Rule 2 (a) specifies that the 'diploma' means a diploma of a statutory university. The petitioners to buttress their submission that the college of Physician and Surgeon of Bombay is a statutory university rely on Section 3 r/w schedule of the Act of 1916. The factum that whether the same can be brought within the meaning of statutory university is a subject matter of debate and at this stage the conclusive finding cannot be arrived at.

10. At present, the petitioners with all certainty cannot demonstrate that the college of Physician and Surgeon is a statutory university. The diploma possessed by the petitioners is not recognized by Indian Medical Council of India though the same is recognized by the Maharashtra Medical Council.

11. It is not the case that the petitioners acquired the qualification between 17.10.2017 and 22.01.2018 i.e. the period intervening between the first notification bringing the degree within the ambit of recognized degree by the Indian Medical Council and the second notification rescinding the same.

12. The parties would be governed by the recruitment rules and the burden would rest on the petitioners to prove that the diploma certificate in public health granted to them by the college of Physician and Surgeon is by a statutory university. At this stage petitioners cannot conclusively establish that the diploma they have obtained is from statutory university.

13. In the light of the above, we do not find that the Tribunal has committed any error by observing that the prayers made by the applicants would be subject to the final outcome of the original applications.

14. In the light of the above, we observe that the promotion and / or appointment made during the pendency of the original applications filed by the petitioners would be subject to the decision in the pending original applications. The said fact shall be brought to the notice of the candidates who are promoted or appointed.

15. Writ petitions accordingly are disposed of. No costs.

16. In view of the disposal of the writ petitions, civil applications also stand disposed of.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

RS.B.