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IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.11645 OF 2019

1. Shaikh Roshanbi Chanpasha
Age 32 years, Occu. Staff Nurse,
R/o Karepur, Tq. Renapur,
District Latur
2. Sunil s/o Sundar Kudale,
Age 28 years, Occu. Staff Nurse,
R/o Limbaganesh, Tq. & Dist. Beed.
3. Pilali s/o Prakash Shahane,
age 21 years, Occu. Staff Nurse,
R/o SBI Colony, Near Vithal Mandir,
Jalna Road, Beed.
4. Sadhna Vikramrao Karande,
Age 27 years, Occu. Staff Nurse,
R/o Gadi, Tq. Georai,
District Beed.
5. Monika Ashok Katore,
Age 27 years, Occu. Staff Nurse,
R/o Wadwani, Tq. Wadwani,
District Beed
6. Meera Tulshiram Takik,
Age 27 years, occu. Staff Nurse,
R/o Umard (J), Tq. & Dist. Beed
7. Snehal Madhukar Raut,
Age 26 years, Occu. Staff Nurse,
R/o Adiya Nagari, Ganesh Row House-17,
Beed, Tq. & Dist. Beed.
8. Chandrabhaga Ramhari Hange,
Age 27 years, Occu. Staff Nurse,

R/o Tandulwadi Road, Kallamb,
Tq. Kallamb, Dist. Osmanabad

9. Pratibha Govindrao Andhare,
Age 28 years, Occu. Staff Nurse,
R/o Kangara, Tq. & Dist. Osmanabad
10. Bhagyashri Ashok Dhalgade,
Age 28 years, Occu. Staff nurse,
R/o Washi, Tq. Washi, Dist. Osmanabad
11. Shital Udhav Jaybhaye
Age 29 years, Occu. Staff Nurse,
R/o Shirur (Ka), Tq. Shirur,
Dist. Beed
12. Seema Bansi Anapat
Age 29 years, Occu. Staff Nurse,
R/o Anapatwadi, Tq. Patoda,
District Beed
13. Shridevi Hanumant Jabhale,
Age 34 years, Occu. Staff Nurse,
R/o Kashinath Parshuram Colony,
PVR Road, Latur, Dist. Latur
14. Jyoti Abhimanyu Bahir,
Age 28 years, Occu. Staff Nurse,
R/o Rajurinagvan, Tq. & Dist. Beed
15. Dipak Shantapa Mali,
Age 28 years, Occu. Staff Nurse,
R/o Mulaj, Tq. Umerga,
District Osmanabad
16. Varsha Ramkishan Panchal,
Age 28 years, Occu. Staff Nurse,
R/o Shivaji Nagar, Aurangabad
Tq. & Dist. Aurangabad
17. Dhammashila Sudamrao Modak,
Age 27 years, Occu. Staff Nurse,
R/o Bhim Nagar, Hatai Pura,

Kandhar, Tal. Kandhar,
District Nanded

18. Sayyed Shabana Imamsab,
Age 27 years, Occu. Staff Nurse,
R/o Shelgaon, Tal. Naygaon,
District Nanded
19. Anita Ashok Swami,
Age 27 years, Occu. Staff Nurse,
R/o Barbada, Tal. Naygaon,
District Nanded
20. Omkareshwari Bandurao Katkar,
Age 28 years, Occu. Staff Nurse,
R/o ND4/A-1, Dnyaneshwar nagar,
CIDCO, Nanded,
Tal. & District Nanded
21. Sharda Manikrao Urade,
Age 29 years, Occu. Staff Nurse,
R/o Dagadgaon, Tal. Loha,
District Nanded
22. Sangeeta Rajenna Tatewad,
Age 27 years, Occu. Staff Nurse,
R/o Lohgaon, Tal. Biloli,
District Nanded
23. Pushpalata Yuvraj Swami,
Age 29 years, Occu. Staff Nurse,
R/o 17, Sangmeshwar Society,
Old Ausa Road, Latur,
Tal. & District Latur
24. Ramdas Prabhu Jadhav,
Age 29 years, Occu. Staff Nurse,
R/o Tiruka, Tal. Jalkot,
District Latur
25. Dipali Bhimrao Kamble,
Age 31 years, Occu. Staff Nurse,
R/o Bhimnagar, Kranti Chowk,

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Osmanabad, District Osmanabad

26. Swati Lahurao Bargaje,
Age 29 years, Occu. Staff Nurse,
R/o Mauli Nagar, Takadgaon Road,
Georai, Tal. Georai, Dist. Beed
27. Tatwashila Dnyanoba Kamble,
Age 29 years, Occu. Staff Nurse,
R/o Daithana, Tal. Shirur Anantpal,
District Latur
28. Vijay s/o Shivaji Konapure,
Age 28 years, Occu. Staff Nurse,
R/o Mukhed, Tal. Mukhed,
District Nanded

... PETITIONERS

VERSUS

1. The State of Maharashtra
through its Principal Secretary,
Public Health Department,
Mantralaya, Mumbai
2. The Commissioner of
Health Services and Project Director,
Health Mission, Mumbai
3. The Director of Health Services,
Directorate of Health Services,
Mumbai – 002
4. The Deputy Director of Health Services,
Arogya Bhavan, Mumbai
5. The Deputy Director of Health Services,
Latur Region, Latur

... RESPONDENTS

.....
Mr. S.S. Thombre, Advocate for the petitioners
Mr. S.B. Yawalkar, A.G.P. for respondent Nos.1 to 3
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WITH

WRIT PETITION NO.11755 OF 2019

1. Shital Vyankatrao Virodhe
Age 26 years, Occu. Staff Nurse,
R/o Indira Nagar, Lohara,
Tal. Lohara, Dist. Nanded
2. Yogeshwari Vasantrao Dhobale,
Age 27 years, Occu. Staff Nurse,
R/o Umarga Retu, Tal. Jalkot,
District Latur
3. Sayyed Bebi Pasha Saheb
Age 29 years, Occu. Staff Nurse,
R/o Kamalwadi, Tal. Deoni,
District Latur
4. Sandhyarani Shivaji Gunjkar,
Age 28 years, Occu. Staff Nurse,
R/o Kasti (Bk.), Tal. Lohara,
District Osmanabad
5. Saraswati Pandurang Pawar,
Age 28 years, Occu. Staff Nurse,
R/o Borol, Tal. Deoni,
District Latur
6. Jayshri Ambadas Kamble,
Age 27 years, Occu. Staff Nurse,
R/o Salgara (Di), Tal. Tuljapur,
District Osmanabad
7. Sajela Baburao Sukre,
Age 30 years, Occu. Staff Nurse,
R/o Abbad Apartment, 1st Floor,
Jalna, Tal. & District Jalna
8. Sachin s/o Shridhar Jadhav,
Age 28 years, Occu. Staff Nurse,

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R/o Rural Hospital, Ghansavangi,
Tal. Ghansavangi, Dist. Jalna

9. Kanchan Ramesh Giri,
Age 24 years, Occu. Staff Nurse,
R/o Rural Hospital, Kannad,
Tal. Kannad, Dist. Aurangabad
10. Sharda Gangadhar Ghogare,
Age 27 years, Occu. Staff Nurse,
R/o Talegaon, Tal. Deoni,
District Latur
11. Sneha Vijay Buchate,
Age 28 years, Occu. Staff Nurse,
R/o Panchshil Nagar, Dhanora Road,
Beed, Tal. & District Beed.
12. Varsharani Shankarrao Rathod
Age 26 years, Occu. Staff Nurse,
R/o Varsha Niwas, Sahyadri Colony,
Latur, Tal. & Dist. Latur.

... PETITIONERS

VERSUS

1. The State of Maharashtra
through its Principal Secretary,
Public Health Department,
Mantralaya, Mumbai
2. The Commissioner of
Health Services and Project Director,
Health Mission, Mumbai
3. The Director of Health Services,
Directorate of Health Services,
Mumbai – 002
4. The Deputy Director of Health Services,
Arogya Bhavan, Mumbai
5. The Deputy Director of Health Services,
Latur Region, Latur

... RESPONDENTS

.....
Mr. S.S. Thombre, Advocate for the petitioners
Mr. S.B. Yawalkar, A.G.P. for respondent Nos.1 to 3
.....

WITH

WRIT PETITION NO.11769 OF 2019

1. Jayshri Madhavrao Gaikwad
Age 28 years, Occu. Staff Nurse
R/o Gajanan Nagar, Naigaon,
Tq. Naigaon, Dist. Nanded
2. Sunita Ragnath Ladekar,
Age 29 years, Occu. Staff Nurse
R/o Talaki, Tq. Naigaon,
District Nanded
3. Jayshri Dnyanoba Kinwad,
Age 29 years, Occu. Staff Nurse
R/o Dharjani, Tq. Bhokar,
District Nanded
4. Soni Silan Funde,
Age 28 years, Occu. Staff Nurse
R/o Wandari, Tq. Renapur,
District Latur.

... PETITIONERS

VERSUS

1. The State of Maharashtra
through its Principal Secretary,
Public Health Department,
Mantralaya, Mumbai
2. The Commissioner of
Health Services and Project Director,
Health Mission, Mumbai

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3. The Director of Health Services,
Directorate of Health Services,
Mumbai – 002
 4. The Deputy Director of Health Services,
Arogya Bhavan, Mumbai
 5. The Deputy Director of Health Services,
Latur Region, Latur
- ... RESPONDENTS**

.....

Mr. S.S. Thombre, Advocate for the petitioners
Mr. S.B. Yawalkar, A.G.P. for respondent Nos.1 to 3

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WITH

WRIT PETITION NO.11770 OF 2019

1. Bhagashri Sopan Gaikwad
Age 28 years, Occu. Staff Nurse,
R/o Wadgaon (Ga), Tq. Lohara,
District Osmanabad
2. Swati Prakash Dongare,
Age 28 years, Occu. Staff Nurse
R/o Devani, Tq. Devani,
District Latur
3. Sarika Limbraj Pitale,
Age 26 years, Occu. Staff Nurse
R/o Kalandi, Tq. Nilanga,
District Latur
4. Manisha Shrirang Mirswad,
Age 28 years, Occu. Staff Nurse
R/o SP Quarter, Barshi Road,
Tal. Latur, District Latur
5. Ranjana Venkatrao Tile,
Age 28 years, Occu. Staff Nurse

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R/o Deoni, Tal. Latur,
District Latur

6. Suchita Arjunrao Biradar,
Age 28 years, Occu. Staff Nurse
R/o Charanhipparga, Tq. Deoni,
District Latur
7. Jayshri Atmaram Mane,
Age 26 years, Occu. Staff Nurse
R/o Talni (Mo), Tq. Renapur,
District Latur.
8. Priyaka Kanyalal Dhadu
Age 28 years, Occu. Staff Nurse
R/o Degloor, Tq. Degloor,
District Nanded

... PETITIONERS

VERSUS

1. The State of Maharashtra
through its Principal Secretary,
Public Health Department,
Mantralaya, Mumbai
2. The Commissioner of
Health Services and Project Director,
Health Mission, Mumbai
3. The Director of Health Services,
Directorate of Health Services,
Mumbai – 002
4. The Deputy Director of Health Services,
Arogya Bhavan, Mumbai
5. The Deputy Director of Health Services,
Latur Region, Latur

... RESPONDENTS

.....
Mr. S.S. Thombre, Advocate for the petitioners
Mr. S.B. Yawalkar, A.G.P. for respondent Nos.1 to 3
.....

WITH

WRIT PETITION NO.11915 OF 2019

1. Pallavi Bharat Raut
Age 29 years, Occu. Staff Nurse,
R/o Prakash Nagar, Latur,
Tal. and District Latur
2. Jayshree Vijaykumar Kapade,
Age 27 years, Occu. Staff Nurse,
R/o S.T. Colony, Nalegaon Road,
Udgir, Tal. Udgir, Dist. Latur
3. Jyoti Sambhaji Shendge,
Age 30 years, Occu. Staff Nurse,
R/o Patoda (TB), Tal. Naigaon
District Nanded
4. Sangita Dnyanoba Konke,
Age 28 years, Occu. Staff Nurse,
R/o Dongraj, Tal. Chakur,
District Latur.
5. Priyanka Gautam Paithane
Age 28 years, Occu. Staff Nurse,
R/o Pangara, Tal. Kandhar,
District Nanded
6. Yogeshree Keshav Kabir,
Age 27 years, Occu. Staff Nurse,
R/o Kandhar, Tal. Kandhar,
District Nanded
7. Manjusha Namdev Biranje,
Age 27 years, Occu. Staff Nurse,
R/o Ambejawalge,
Tq. & District Osmanabad
8. Rekha Digambar Panchal,

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Age 27 years, Occu. Staff Nurse,
R/o Vishnupuri, Tal. Vishnupuri,
District Nanded

... PETITIONERS

VERSUS

1. The State of Maharashtra
through its Principal Secretary,
Public Health Department,
Mantralaya, Mumbai
2. The Commissioner of
Health Services and Project Director,
Health Mission, Mumbai
3. The Director of Health Services,
Directorate of Health Services,
Mumbai – 002
4. The Deputy Director of Health Services,
Arogya Bhavan, Mumbai
5. The Deputy Director of Health Services,
Latur Region, Latur

... RESPONDENTS

.....
Mr. S.S. Thombre, Advocate for the petitioners
Mr. S.B. Yawalkar, A.G.P. for respondent Nos.1 to 3
.....

CORAM : **SUNIL P. DESHMUKH AND**
 R. G. AVACHAT, JJ.

DATE : **6th OCTOBER, 2020.**

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and taken up
for final hearing with the consent of learned counsel for the

parties.

2. After hearing learned counsel, it transpires that, the petitioners have rushed to the court, *en masse*, as doors, for special examination scheduled on 22-09-2019, were sought to be closed on them at eleventh hour.

3. Having regard to availability of vacancies, petitioners and others, being possessed of qualifications *viz.*, passing G.N.M. Course, being registered by Maharashtra Nursing Council etc. pursuant to Recruitment Rules, 1954, were issued appointment orders, initially for a period of 18 months with respective Directorate of Health Services, and in present case, of Latur, engaging them as nurses/midwives. Their services were being continued from time to time giving technical breaks.

4. Such a practice was being followed for number of years by respondents in making appointments of nurses/midwives. This practice had given rise to issue of regularization of their service. In the situation, Maharashtra Nursing Services, Group 'C' Recruitment Rules of 2015 emerged. Pursuant to said rules of 2015, nurses who were appointed up to 31-12-2011 on execution of bond, were to be regularised by conducting a

written examination. According to said regulations, special examination had been conducted in 2015 and services of 1248 nurses were regularised.

5. While the nurses who were appointed up to 31-12-2011 were regularised as per aforesaid recruitment rules, the nurses like petitioners who were appointed after 31-12-2011 by following the same procedure and were working up to 12-04-2015, care in their respect had not been taken and an issue arose in respect of their regularisation. Having regard to the same, the Government issued a resolution dated 28-06-2019, referring to that, the nurses who were appointed from 01-12-2012 to 12-04-2015 working on execution of bond, would be given an opportunity to appear at a special examination being held and would be considered for regularisation clarifying that, however, this facility would not be available for the ones who were appointed after 15-04-2015.

6. Pursuant to aforesaid resolution dated 28-06-2019, the respondents had also issued hall tickets to petitioners enabling their appearance at the special written examination scheduled on 22-09-2019.

7. However, all of a sudden, despite hall tickets being issued to petitioners, at the eleventh hour, they were informed that, they would not be allowed to appear at the examination scheduled on 22-09-2019 and thus, as referred to above, the petitioners had rushed to this court.

8. A division bench of the High Court, on 21-09-2019 had passed an order to the effect that the respondents would allow petitioners to appear at the special written examination being conducted on 22-09-2019 without prejudice to rights and contentions of parties and without creating equity or right in favour of petitioners.

9. In the affidavit-in-reply filed on behalf of the respondents, it has been referred to that, prevailing practice for appointing persons who had completed General Nursing Midwifery course in Government Nursing School and had executed bond of serving in government hospital for 18 months, were being appointed and on completion of said bond period, in case of vacancies, they were being given *ad-hoc* 11 months posting. The practice had been discontinued after 2005 pursuant to a circular of General Administration Department. However, as nurses were essential for providing health care services, the

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nurses who had completed bond period were being appointed on vacant posts for a period of 11 months and on completion of such period, they were being appointed on contractual basis until appointment of regular candidates. It has been also referred to that, subsequently, a notification had been issued by Public Health Department on 15-04-2015, revising recruitment rules, accommodating bond staff nurses who were appointed till 31-12-2011, facilitating their regularisation upon condition of passing special written examination. It has been specifically referred to in said affidavit-in-reply that, though cutoff date pursuant to 15-04-2015 notification had been 31-12-2011, quite a few nurses were appointed on bond during 01-01-2012 to 15-04-2015 and had not been regularised. With a view to address this issue, rectification in date had taken place, issuing Government Resolution dated 28-6-2019, specifically referring to that, thereby bond nurses who were working during 01-01-2012 to 15-04-2015 became eligible for special examination and further that, nurses who would pass special examination in September, 2019 would be regularised and would get all the benefits of regular government servant w.e.f. 15-04-2015.

However, having regard to a letter dated 17-09-2019

by the Commissioner, Health Services, Mumbai, considering that the issue is with respect to the nurses who are in service as on 15-04-2015 as also should be in service till the date of examination viz., 22-09-2019 except technical breaks and accordingly, only such candidates would be allowed to appear at the examination by the Department.

10. It would be pertinent to reproduce relevant extract of paragraph No.5 of the affidavit-in-reply filed on 12-03-2020, which reads as under;

“5.
.....
However, as nurses are essential for providing health care services, such nurses who had completed their bond period, were given appointment on contractual basis on vacant post to serve department on appointment were issued further 11 months as per need and on vacant posts. Such 11 months contractual orders continued to be issued till regular candidate were appointed and joined on the vacant post.”

as well as paragraphs No.6, 7, 9, 10 and 12 read thus,

“6. I say and submit that, thereafter Public Health Department issued Notification regarding revised Recruitment Rules dated 15/04/2015 as per this notification bond nurses appointed as bond Staff Nurses till the 31st December, 2011 and who is not regularized, shall be required to pass

Special written examination conducted by The Maharashtra knowledge corporation Ltd. or by any other authorized institute as decided by the government for regularization of their services. Hereto annexed and marked as **Exhibit R-1** is the copy of Government Notification dated 15.4.2015, issued by Public Health Department.

7. I say and submit that, in the above notification the cutoff date mentioned for the regularization after passing special written examination was 31.12.2011. The said notification came in to force on 15.4.2015 as the cutoff date mentioned in notification the bonded nurses in between 1.1.2012 to 15.4.2015 who were still working could not be regularized. **To address this issue the Government rectified this date by issuing another Government Resolution dated 28.6.2019 thereby bond nurses who were working on 1st January 2012 to 15.4.2015 become eligible for special examination.** Hereto annexed and marked as **Exhibit R-2** is the copy of Government Resolution dated 28.6.2019, issued by Public Health Department and revised notification is under submission. As per the notification nurses who passed the special examination would be regularized from the date of issue of notification i.e. 15.4.15. Thus any nurse who passed Special Departmental written examination in September 2019 would be regularized from 15.4.15 she will get all the benefit of regular Government Servant.

8.

9. I say and submit that, in the said letter dated 17.9.2019, it is specifically pointed out that as the issue is pertaining to regularization of services of the bond Nurses who are in service in the Public Health Department then candidates must be in service on 15.4.2015 and also should in service till the date of examination i.e. 22.9.2019 except technical break allowed by the Department.

10. It is pertinent to note here that, as this special written examination which only meant for regularization of bond nurses who were in services, as a Staff Nurse in Public Health Department from the date of Notification i.e. 15.4.2015 till the date of examination and further and give all consequential benefits including increment, earn leave etc., this clearly means that candidate should be in service in the department of Public Health as on the date of 15.4.2015 and also till the date of examination.

11.

12. I say and submit that, by wrong interpretation of Resolution dated 28.6.2019, Respondent No.2 to 4 issued hall tickets to the petitioner to appear for special written examination scheduled on 22.9.2019. However when clarification letter was issued by Commissioner, Health Services, Mumbai, and respondent No.5 informed the entire petitioner by way of text messages that they were not allowed to appear for the special written examination scheduled on 22.9.2019.”

11. Pursuant to an order dated 30-07-2020 passed by division bench of this court, respondent No.1 filed his affidavit-in-reply on 27-08-2020. In paragraph No.2 of the same, it is stated, thus :-

“2. I state that, as far as the statement made by the learned counsel for the petitioners that, except Latur and Aurangabad divisions, the result of all other divisions are declared, even in respect of the candidates who are in service till 15.04.2015 and were not in service as on the date of examination

is concerned, the said statement is factually incorrect to the extent mentioned below. So far as the candidates who were in service from the date of notification dated 15.04.2015 till the date of examination, their results have been declared in all the division. **Except Latur and Aurangabad division, in other divisions, there is not a single candidate who appeared for the examination and who was discontinued after 15.04.2015 and therefore, not in service on the date of examination.** Hence there is no question of declaring the result of such candidate.”

12. Paragraphs No.5 and 6 of the affidavit-in-reply filed on behalf of respondent No.1 read as under :-

“5. I say and submit that, in the above notification dated 15.04.2015 the cutoff date of the regularization of services of such bonded staff nurses after passing special written examination was mentioned i.e. 31.12.2011. Since this notification came to be force on 15.04.2015 and **issue arose about the bonded staff nurses who were recruited in between 01.01.2012 till 15.04.2015 and who were still working but still not confirm** in Government services. **So to rectify this anomaly** and taking into consideration the circumstances, one **Government Resolution dated 28.06.2019 was issued, whereby cutoff date was extended from 01.01.2012 till 15.04.2015**, i.e. those recruited till 15.04.2015 still in service of Government as bonded staff nurses could be regularized provided they pass the exam so conducted by Government.

6. I say and submit that, thereafter Commissioner, Health Services, Mumbai has issued letter on 17.9.2019, wherein queries pertaining to implementation of the above

Government Resolution raised by Deputy Directors (Circle) were clarified.

I say and submit that, in the said letter dated 17.9.2019, it is specifically pointed out that as the issue is pertaining to regularization of services of the bonded Nurses only those bonded staff nurses who were in service in the Public Health Department as on 15.4.2015 and are also in service till the date of examination i.e. 22.9.2019, would be treated as eligible to appear in exam. It was also mentioned clearly in this letter that those who are not working in Public Health Department after the date of 15.04.2015 are not eligible.”

13. While aforesaid is being referred to on behalf of respondents, it would be pertinent to refer to rules promulgated under notification dated 15-04-2015 and rule 13 thereunder reads as under :-

"१३. वरील नियमात काहीही अंतर्भूत असले तरी, दिनांक ३१ डिसेंबर २०११ पर्यंत बंधपत्रानुसार अधिपरीचारीका या पदावर बंधपत्रीत म्हणून शासन सेवेत नियुक्ती झालेल्या व सेवा नियमित न झालेल्या अधिपरीचारीकांना त्यांच्या सेवा नियमित होण्यासाठी, महाराष्ट्र ज्ञान महामंडळामार्फत अथवा शासन निश्चित करेल अशा प्राधिकृत संस्थेमार्फत आयोजित केलेली विशेष लेखी परीक्षा उत्तीर्ण होणे आवश्यक राहील :-

(अ) प्रथम संधीत लेखी परीक्षा उत्तीर्ण न होणाऱ्या बंधपत्रीत अधिपरिचारीकांना, लेखी परीक्षेसाठी दुसरी संधी देण्यात येईल;

(ब) दुसऱ्या संधीत लेखी परीक्षा उत्तीर्ण होऊ शकणार नाहीत, त्यांना लेखी परीक्षेला बसण्याची एक शेवटची संधी देण्यात येईल;

(क) उप नियम (ब) मधील तरतुदीनुसार शेवटच्या

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संधीतही लेखी परीक्षा उत्तीर्ण होणार नाहीत त्यांच्या सेवा तात्काळ समाप्त करण्यात येतील;

परंतु असे की, विहित संधीत परीक्षा उत्तीर्ण होणाऱ्या बंधपत्रीत अधिपरिचारीकांच्या सेवा, हे नियम प्रसिद्ध झाल्याच्या दिनांकापासून नियमित समजण्यात येतील."

14. Notably resolution dated 28-06-2019 has been issued taking into consideration as has been spelt out in the same,

"उपरोक्त अधिसूचनेनुसार दिनांक ३१.१२.२०११ पर्यंतच्या अधिपरिचारीकांना विशेष लेखा परीक्षेसाठी पात्र समजण्यात आले. तथापि, दिनांक ०१.०१.२०१२ ते दिनांक १५.०४.२०१५ या कालावधीत शासन सेवेत असलेल्या बंधपत्रीत अधिपरिचारीका ह्या विशेष लेखा परीक्षेसाठी पात्र न ठरल्याने त्यांच्या सेवा नियमित करण्याबाबत अनेक न्यायालयीन प्रकरणे झालेली आहेत. यावर सर्वकष विचार करून सेवा प्रवेश नियम अधिसूचित झालेल्या दिनांकापासूनच्या म्हणजेच दिनांक १५.०४.२०१५ पर्यंत शासन सेवेत कार्यरत असलेल्या बंधपत्रीत अधिपरिचारीकांना विशेष लेखा परीक्षेसाठी पात्र ठरविण्याची बाब शासनाच्या विचाराधीन होती. त्यानुसार शासन पुढीलप्रमाणे निर्णय घेत आहे."

15. Relevant portion of resolution dated 28-06-2019, annexed to the petition at Exhibit 'D', *inter-alia*, reads as under :

"शासन निर्णय -

१. दिनांक १५.४.२०१५ पर्यंत सार्वजनिक आरोग्य विभागाच्या अखत्यारीतील आरोग्य सेवा संचालनालय व राज्य कामगार विमा योजना यांचे अधिपत्याखाली कार्यरत बंधपत्रीत अधिपरिचारीकांना विशेष लेखा परीक्षेसाठी पात्र समजण्यास या शासन निर्णयाद्वारे मान्यता देण्यात येत आहे. दिनांक १५.४.२०१५ नंतर मात्र सर्व अधिपरिचारीकांच्या नियुक्त्या ह्या

नामनिर्देशनाने करण्यात येतील.”

16. The reason by respondents that the government had no intention to regularize services of those who were not in services from the date of examination, appear to be over stretched rather over-reaching and not compatible with the decision as is appearing from the Government Resolution dated 28-06-2019. Moreover, while in paragraph 5 of the affidavit-in-reply filed by respondent No.1, it has been specifically referred to that issue arose in respect of nurses recruited during 01-01-2012 to 15-04-2015. Albeit, it is further superimposed referring to that, who were still working and confirmed and having regard to that rectification under government resolution dated 28-06-2019 was issued. While it is so stated in the affidavit yet the government appears to have resolved to accommodate those nurses who were working till 15-04-2015 and it had not intended as contended in the reply were required to be working after the said date till the date of special examination. Regard may be had to the portions in Marathi, reproduced hereinabove. The government resolution does not at all refer to that the candidates shall be working till the examination is held. On the other hand, it specifically declares

approval to that bonded nurses working up to 15-04-2015 would be considered eligible to appear at the special examination. It does not appear that the intention underlying the government resolution would be as sought to be interpreted as appearing from the two affidavits-in-reply respectively in paragraph No.7 of first and paragraph No.5 of later. Resistance in affidavit-in-reply is digressed from the underlying purpose spelt out in the resolution. The Government Resolution had been issued with a view to accommodate the nurses/staff appointed during the period from 01-01-2012 to 15-04-2015. Petitioners' claim that they were appointed during period from 01-01-2012 to 15-04-2015 and were working up to the cutoff date has not been disputed. It is also to be noted that, they were appointed for 18 months on bond and their further continuation on *ad-hoc* or contractual basis were at the pleasure of respondents while respondents specifically refer to that the kind of services rendered by the petitioners were essential services for healthcare.

17. In the face of clauses reproduced hereinabove from the Government Decision dated 28-06-2019, insistence about being in service till the date of special examination is

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incompatible with, incongruous to and digressed from the purpose underlying the same. The reason referred to reflecting reluctance and disinclination emerging from the affidavits-in-reply to consider petitioners eligible, is untenable. In the circumstances, the petition will have to be considered accordingly.

18. Petitioners are stated to have appeared at the examination held on 22-09-2019 pursuant to interim directions issued by this court and it has further been referred to that, their results have also been declared and the petitioners have been declared to be successful in the same.

19. In the circumstances, the petitions stand disposed of in terms of prayer clause (B), and (C) as well *albeit* purpose under the same appears to have been worked out.

20. Rule is made absolute accordingly.

[R. G. AVACHAT]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE