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

904 WRIT PETITION NO.494 OF 2016

**DEVIDAS DHONDIRAM SHELKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. V.R. Jain, Advocate for petitioner;
Mr. S.W. Munde, A.G.P. for respondent nos.1 & 2;
Mr. Vaibhav Pawar, Advocate holding for Mr S.S. Tope, Advocate for
respondent nos.4 & 5

**CORAM : DIPANKAR DATTA, CJ
AND
MANGESH S. PATIL, J.**

DATE : September 29, 2021

PC:

1. Petitioner was an aspirant for the post of Health Worker (Male), pursuant to an advertisement dated 31st October 2015 issued by the Collector, Jalna. It is not in dispute that the petitioner, despite being ineligible in terms of the said advertisement, was first called upon to appear at the written examination and thereafter was also permitted to participate in further stages of the selection process. It is the petitioner's claim that despite figuring as the first candidate under NT-C (reserved category of candidates), he was not offered appointment on the ground that he was not having requisite experience certificate.

2. Aggrieved by the inaction of the respondents in appointing him, the petitioner presented this writ petition challenging the advertisement dated 31st October 2015 as well as the selection process, with a particular prayer for direction on the respondents that the post of Health Worker (Male)

should be divided into 50% for seasonal spraying workers and 40% for other candidates as per Health Worker (Male) Group C in the Directorate of Health Services (Recruitment) Rules, 2001.

3. We are afraid, no relief can be granted to the petitioner. Law is well settled that if an aspirant for public employment responds to an advertisement despite being aware of the fact that he is not eligible in terms of such advertisement, takes a chance of selection and, thereafter, the result of selection is not palatable to him, the Court ought to be loath in entertaining a writ petition at the instance of such an aggrieved aspirant challenging the advertisement itself. If any authority is required, we may profitably refer to the decisions of the Supreme Court reported in AIR 1986 SC 1043 (**Om Prakash Shukla vs. Akhilesh Kumar Shukla & ors.**), (1995) 3 SCC 486 (**Madan Lal & ors. vs. State of J & K & ors.**) and (2010) 12 SCC 576 (**Manish Kumar Shahi vs. State of Bihar**).

4. Since the petitioner was not eligible to apply in terms of the qualifications mentioned in the advertisement 31st October 2015, which is a representation to the public, the appointing authority could not have appointed him in deviation of the terms thereof unless the qualifications were relaxable. That the qualification regarding experience was relaxable is not the petitioner's case. His appointment, if made, would amount to a fraud on public, as held by the Supreme Court in its decision reported in (1990) 3 SCC 455 (**District Collector vs. M. Tripura Sundari Devi**).

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5. We, thus, find no illegality in the respondents' not offering appointment to the petitioner. There being no merit in the writ petition, the same stands dismissed. No costs.

(MANGESH S. PATIL, J.)

(CHIEF JUSTICE)

amj