

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2391 OF 2021
IN
WRIT PETITION NO. 704 OF 2021**

Smt. Sarita Ishwarsingh Kushwah

...Applicant/
Petitioner

Versus

The State of Maharashtra and 3 ors.

...Respondents

Mr. Manish Kelkar i/b. Pralhad D. Paranjpe, advocate for the
applicant/petitioner.

Mr. S. B.Kalel, AGP for the State.

**CORAM : PRASANNA B. VARALE &
N. R. BORKAR, JJ.**

DATE : 20th SEPTEMBER, 2021.

P.C. :

1. Mr. Kelkar, learned counsel for the applicant invited our attention the the document placed on record under caption 'Corrigendum' dated 20th August, 2021. Then, our attention was invited to Schedule 'A' annexed at Page 115 under the caption " जिल्हा परिषदेच्या अधिपत्याखालील आरोग्यविभागाशी संबंधित पदभरतीबाबत जाहीर प्रकटन ". Schedule 'B' is the time-table proposed for the process of filling up the posts in the Health Department. Clause (3) refers to timeline for filling up the application i.e. three weeks from 1st September, 2021 to 21st September, 2021. The examination for the selected candidates is scheduled on 16th October, 2021. Learned counsel for the applicant submitted that the

applicant and like candidates are working in the Health Department as Lab Technician on ad-hoc basis for 10 long years. Though the issue for regularization of services of such employees is pending, the State Government thought it fit to initiate the process of filling up various posts in the Health Department. By inviting our attention to various documents annexed to the petition as well as the present application, it was submitted that on one hand, the State Government time and again gave assurance to this Court that the request of the applicant/petitioner for relaxation of age criteria in the backdrop of her continuous service in the Health Department is under consideration and would be decided at the earliest, on the other hand, the State Government is in a hurry to fill up the posts by ignoring the orders passed by this Court or the statements made on behalf of the State before this Court. In support of his submission, Mr. Kelkar invited our attention to the order of the Division Bench dated 3rd September, 2021 in writ petition (stamp) No.14050 of 2019, which is placed on record at Exhibit 'C' to the petition. Our attention was also invited to the minutes of the meeting dated 2nd August, 2019, which was conducted on 28th June, 2019 in the presence of Hon'ble Minister, Finance and Planning and Hon'ble Minister, Rural Development. Needless to state that 3 member committee was constituted by the State Government. Perusal of the minutes of order dated 2nd August, 2019 clearly show that the committee was positively considering various issues and relaxation of age criteria was one of them. The members of the

committee were positive about granting benefit of relaxation of age to the eligible candidates and the only rider was that the benefit may not be granted to those candidates who were facing serious charges or who were removed from services.

2. On a query being put to the learned AGP in respect of the progress in view of the said minutes of order, learned AGP submitted that the minutes are now placed before the General Administration Department of the State Government. Learned AGP further submitted that subsequently the matter shall be placed before the Finance Department and Law Department so as to consider the financial implication or legal issues and lastly, it would be placed before the Cabinet for final decision.

3. Though, there are orders of this Court as well as statement made before the Court and now though there is a positive opinion expressed by the Committee members, the matter would still require further time for a final decision. Learned counsel for the applicant/petitioner was justified in submitting before this Court that considering the Schedule fixed for the process under the corrigendum dated 20th August, 2021, if no opportunity is granted to the petitioner to participate in the recruitment process before 21st September, 2021 i.e. tomorrow, then the entire exercise of approaching this Court would render futile.

4. On perusal of the documents referred to in the petition as well as the order of this Court, we are of the opinion that there is a considerable merit in the submission of learned counsel for the applicant. In view of these peculiar facts and circumstances, we are of the opinion that the applicant/petitioner cannot be deprived from participating in the recruitment process only on the ground that the State Government is yet to take decision on the request of the applicant/petitioner for relaxation of age. As such, by way of interim order, the respondents are directed to permit the applicant to participate in the recruitment process initiated pursuant to the advertisement dated 6th August, 2021 and the corrigendum dated 20th August, 2021 and for that purpose, the respondents shall accept her application form.

5. Accordingly, the petitioner is permitted to submit her application form by way of physical mode with respondent Nos. 1, 2 and 3 on or before 22nd September, 2021 and if such application is submitted on or before 22nd September, 2021, the respondents to accept the same.

6. Needless to state that the permission granted to the applicant/petitioner to participate in the recruitment process shall be subject to final outcome/decision of the present petition.

7. In view of the above, the interim application stands disposed of.

8. Learned AGP to inform the order to all the concerned respondents at the earliest.

9. The Registry is directed to post the petition for further consideration on 11th October, 2021.

10. All concerned to act upon a copy of this order duly authenticated by the Registry of this Court.

(N. R. BORKAR, J.)

(PRASANNA B. VARALE, J.)