

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

WRIT PETITION NO. 3432 OF 2022

Amar Vikas Kingaonkar

.. Petitioner

Versus

The Maharashtra Public Service
Commission through its Secretary

.. Respondent

Shri Amit A. Yadkikar, Advocate a/w Shri Akshay Kulkarni, Shri Shyam Jawale and Shri Harshal Acharya, Advocates for the Petitioner.

Shri A. R. Kale, A.G.P. for Respondent sole.

**CORAM : S. V. GANGAPURWALA AND
S. G. DIGE, JJ.**

DATE : 11TH MARCH, 2022.

FINAL ORDER :

. Heard the learned counsel for the petitioner and the learned Assistant Government Pleader for respondent sole.

2. The learned counsel for the petitioner submits that, advertisement is issued by the respondent/Maharashtra Public Service Commission for filling in the post of Dental Surgeon. The advertisement refers to the Government Resolution dated 17th December, 2021. The Government Resolution dated 17th December, 2021 in turn refers to the Government Resolution dated 25th April, 2016. Under G. R. dated 25th April, 2016, the maximum age for a candidate applying from general category is increased to 38 years and as per G. R. dated 17th December,

2021, as a one time measure, the age is further relaxed by more than 21 months. The said relaxation is given because no advertisement was published since 01st March, 2020. According to the learned advocate in view of both government resolutions, the petitioner is within the age, however, his form is not accepted.

3. The learned Assistant Government Pleader for the respondent submits that, the G. R. dated 25th April, 2016 and 17th December, 2021 is not applicable to the present case. The said G. R. would apply only, if, by competition the selection has to be done. In the present case, the petitioner is being selected through M. P. S. C. for the specialized post on the basis of specialized experience and qualification. The learned A. G. P. further submits that, as per the recruitment rules, namely Dental Surgeon Class - II in the Directorate of Health Services Recruitment Rules, 1990, maximum age is 35 years for a general category candidate. According to the learned A. G. P. the Commission has not made any recommendation to the Government for relaxation of the upper age limit. The learned A. G. P. further submits that, the petitioner can move the Maharashtra Administrative Tribunal. The Maharashtra Administrative Tribunal would have jurisdiction in the present matter. The learned A. G. P. further submits that, in this case, no competitive examination is held and the G. R. dated 25th April, 2016 is applicable only to those cases, where M. P. S. C. conducts competitive examination.

4. According to the learned counsel for the petitioner, 14th March, 2022 is the last date for filling in form and the amount for examination.

5. The advertisement pursuant to which the petitioner seeks to apply refers to the Government Resolution dated 17th December, 2021. The G. R. dated 17th December, 2021 refers to the G. R. dated 25th April, 2016. If both these government resolutions are read conjointly, then upper age limit provided for the selection through M.P.S.C. is 38 years for general category candidate and same is also relaxed. The respondents are harping upon the fact that the G. R. of 25th April, 2016 would apply only to those cases, wherein competitive examinations are to be held. In this case no competitive exam is to be held.

6. According to the petitioner screening test is also to be held.

7. Considering the fact that, 14th March, 2022 is the last date for filling in the form and that the issue would be required to be decided by the Maharashtra Administrative Tribunal, we pass following order.

8. In case there is no impediment then the respondent may provisionally accept the form of the petitioner and may not reject it only on the ground of age of the petitioner. The acceptance of the said form would be provisional. The same would not bestow

right upon the petitioner.

9. The Maharashtra Administrative Tribunal is competent to decide the lis. The writ petition is transferred to the Maharashtra Administrative Tribunal. The parties shall appear before the Maharashtra Administrative Tribunal on 21st March, 2022. The Registry shall ensure that the present petition is transferred to the Maharashtra Administrative Tribunal before the said date. As the date is already given by this Court, no fresh notices are required to be issued. The Tribunal shall pass further orders with regard to the eligibility of the petitioner to apply pursuant to the advertisement before the scheduled date for interview.

10. In the light of the above, the writ petition is disposed of. NO costs.

[S. G. DIGE, J.]

[S. V. GANGAPURWALA, J.]

bsb/March 22