

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

WRIT PETITION NO.8217 OF 2022

Seema D/o. Shivaji Jaybhave,
Age : 30 years, Occu : Service as
Staff Nurse (Contract Basis),
at Covid-19 Hospital, Jalna,
Tal. & Dist. Jalna.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Public Health Department,
G.T. Hospital Compound,
10th Floor, Mantralaya, Mumbai.
2. The Commissioner,
Health Services, Mumbai,
Arogya Bhavan, Saint George
Hospital Compound, P.D'Mello
Road, Mumbai.
3. The Director-2,
Health Services, Central Building,
1st Floor, Near Railway Station,
Pune.
4. The Deputy Director of Health Services,
Mahaveer Chowk,
Opposite Baba Petrol Pump,
Aurangabad, Dist. Aurangabad.

.. Respondents

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Shri. Shrikrashna B. Solanke, Advocate for the Petitioner
Smt. M.A. Deshpande, AGP for the Respondents – State

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AND

WRIT PETITION NO.8218 OF 2022

Sapna D/o. Dilip Nikam
Age : 28 years, Occu : Service as
Community Health Officer, Sub-Centre,
Devgaon, Tal. Newasa, Dist. Ahmednagar

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Public Health Department,
G.T. Hospital Compound,
10th Floor, Mantralaya, Mumbai.
2. The Commissioner,
Health Services, Mumbai,
Arogya Bhavan, Saint George
Hospital Compound, P.D'Mello
Road, Mumbai.
3. The Director-2,
Health Services, Central Building,
1st Floor, Near Railway Station,
Pune.
4. The Deputy Director of Health Services,
Mahaveer Chowk,
Opposite Baba Petrol Pump,
Aurangabad, Dist. Aurangabad.

.. Respondents

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Shri. Shrikrashna B. Solanke, Advocate for the Petitioner
Shri. S.B. Yawalkar, AGP for the Respondents – State

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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 05-08-2022

JUDGMENT (*PER* SANDEEP V. MARNE, J.) :

1. Mr. S.B. Solanke, learned advocate for the petitioner seeks leave to amend.
2. Leave to amend. Amendment to be carried out forthwith.

3. Rule. It is made returnable forthwith. The learned Additional Government Pleaders waive service for the respondent - State. At the joint request of learned advocate for the petitioners and the learned AGPs, the matter is heard finally at the admission stage.

4. By way of the present petitions, the petitioners take exception to the common judgment and order dated 21.07.2022 passed by the Maharashtra Administrative Tribunal, Mumbai Bench at Aurangabad in Original Application Nos.264 of 2021 and 282 of 2021. The Tribunal has dismissed both the original applications and has upheld the decision of the respondents to hold both of them ineligible for being appointed on the post of Staff Nurse in Physically Handicapped (PH) Category.

5. An advertisement was published by respondent no.4 on 22.02.2019 for filling up the post of Staff Nurse. Total 55 posts of Staff Nurse (Private) (50%) were advertised, out of which one post was reserved for PH. category. The petitioners applied in pursuance of the advertisement in the Physically Handicapped Category. They have low vision and have been certified disability to the extent of 40%. Both of them participated in the selection process. There was no written examination. They were called for conciliation when their

documents were verified. However, on 4th June 2021 / 2nd June 2021 it was communicated to them that though they were selected for the post of Staff Nurse in open P.H. Category, they were found to be ineligible on the basis of the Disability Certificate submitted by them.

6. The communications dated 02.06.2021 / 04.06.2021 were assailed by the petitioners before Maharashtra Administrative Tribunal by filing Original Application Nos.264/2021 and 282 of 2021. It was urged on their behalf that impugned communications made reference to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the 'Act of 1995') which has been repealed and therefore, the decision was perverse. It was further alleged on behalf of the petitioners that the Central Government had notified "Benchmark Disabilities" for various posts on 04.01.2021 under which physically handicapped candidates with low vision have been made eligible for being appointed on the post of Nurse. It was further contended that the provisions of Government Resolution dated 27.02.2009 quoted in the impugned communications ceased to exist after the Act of 1995 was repealed and it is the Central Government notification dated 04.01.2021 issued after enactment of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred

to as the 'Act of 2016') which would prevail over the Government Resolution dated 27.02.2009.

7. The learned Tribunal, however, repelled the submission and proceeded to dismiss both the original applications.

8. Mr. Shrikrashna Solanke appearing for petitioners repeated the submissions advanced before the Tribunal and urged before us that the findings recorded by the Tribunal suffered from vice of perversity. He further submitted that the petitioners are discriminated on account of the fact that the posts of staff / staff nurse can be filled in Central Government Departments with the disability of low vision. He relied upon the decision of the Supreme Court in **Union of India (UOI) and Ors. Vs. National Federation of the Blind and Ors. MANU/SC/1025/2013**, to buttress his submission that no ministry / department / establishment can exclude any identified post / job from the purview of reservation at its own discretion. Relying on the decision, he further submitted that once the post of Nurse / Staff Nurse is identified by the Central Government for being filled from candidates having disability of low vision, it was beyond the scope of the State Government to exclude the post from reservation for candidates having the disability of low vision.

9. Mr. Yawalkar and Mrs. Deshpande appearing for the respondents support the order passed by the Tribunal.

10. Section 39 of the Act of 1995 provided for reservation of posts for persons with benchmark disabilities and enabled the appropriate government to exempt any establishment from the mandate of provisions of reservation, having regard to the type of work carried on in any department or establishment. By the Government Resolution dated 27.02.2009 the State Government has notified that only persons with locomotor disability would be eligible for being considered in PH. Category for the post of Staff Nurse.

11. Coming to Act of 2016, Section 33 provides as under :

“33. Identification of posts for reservation. - The appropriate Government shall -

(i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;

(ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

(iii) undertake periodic review of the identified posts at an interval not exceeding three years.”

. In accordance with this provision, the State Government has issued Government Resolution dated 17.06.2021, once again

notifying that the only persons possessing disability of locomotor to the tune of 40% to 50% of lower extremity are eligible for appointment on the post of Staff Nurse in P.H. Category.

12. Thus, in accordance with the provisions of the Act of 1996 and Act of 2016 the State Government has notified that considering the requirement of the job, only persons with locomotor disability can be considered for P.H. quota for the post of Staff Nurse. The State Government is entitled to do so under the provisions of both Act of 1996 and Act of 2016.

13. The submission of Mr. Solanke that the Central Government having notified the post of Nurse / Staff Nurse in its departments even for persons with low vision, such notification is binding on the State Government, does not appeal to us. In fact, the Government Resolution dated 17.06.2021 makes a reference to the Central Government notification dated 04.01.2021. The State Government has thereafter notified the posts on its own establishments by considering the nature of duties and responsibilities. Since the State Government has notified the nature of reservation of posts on its own establishments, the notification issued by the Central Government would not apply to the post on establishment of the State Government. Since the State Government

enjoys full authority to notify the nature of disability for particular post, the objection of the petitioners of discrimination, cannot be accepted.

14. It is the submission of Shri. Solanke that the Government Resolution dated 27.02.2009 lost its existence on repealing of the Act of 1996 and that the Government Resolution dated 17.06.2021 can have only prospective effect. Such submission, if accepted, would create a vacuum during the period of date of repeal of the Act of 1996 upto 17.06.2021. The Tribunal has rightly relied upon the provisions of Section 102 of the Act of 2016 under which anything done or any action taken under the Act of 1996 is deemed to have been taken under the corresponding provisions of the Act of 2016. Therefore, it is difficult to hold that the G.R. dated 27.02.2009 lost its existence.

15. In the result, we do not find any infirmity in the order passed by the Tribunal. The petitions deserve to be dismissed and are accordingly dismissed without any order as to costs.

16. Rule is discharged.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)