

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

WRIT PETITION NO. 10149 OF 2022

The State of Maharashtra
Through the Special State
Tax Commissioner Office
3rd Floor, H-Wing, GST Bhavan
Mazgaon Mumbai 400 010.

...PETITIONER

V E R S U S

1. Dr.Kishor Shrimant Ubale,
Age; 33 years, Occ; Doctor,
R/o; Opp. To Old Shivaji Vidyalaya,
Shivaji Nagar Beed.
Tq. & Dist. Beed.
2. The Maharashtra Public Service
Commissioner,
Through its Chairman
Having its office at 5th , 6th and
8th Floor, Cooprej Telephone Nigam
Building,
Maharashi Karve Road, Kuprej,
Mumbai 400 021.
3. Sir. J.J. Group of Hospital Byculla,
Through its Chairman
J.J. Marg, Nagpada Mumbai Central
Offi Jijabhoy Road, Mumbai 400008.

...RESPONDENTS

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AGP for the petitioner-State s : Mrs. M.A. Deshpande
Advocate for Respondent No. 1 : Mr. Avinash S. Deshmukh
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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 03.10.2022

JUDGMENT : [PER : SANDEEP V. MARNE, J.]

1. Rule. Made returnable forthwith. With the consent of the learned Advocates for the respective parties, heard finally at the stage of admission.

2. The State Government has filed the present petition assailing the judgment and order dated 12.04.2022 passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad, allowing the Original Application No. 339 of 2019 filed by respondent No. 1. The Original Application was filed by respondent No. 1 challenging the letter dated 27.04.2018, declaring him ineligible for appointment on the post of Sales Tax Inspector, on the ground that his disability was certified to be 30% in the examination conducted by the Medical Board, as against the minimum requirement of 40% disability.

3. The facts of the case are in narrow compass. Maharashtra Public Service Commission (for short 'MPSC') published advertisement No. 47 of 2016 on 22.01.2016 for the post of Sales Tax Inspector. Respondent No. 1 was in possession of disability certificate dated 11.07.2006 issued by the District Civil Surgeon (Civil Hospital, Aurangabad) and disability certificate dated 08.11.2008 issued by the Medical Board, Medical College and Hospital, Aurangabad, both certifying 40% vision disability. He applied against post reserved for

disabled quota. He was declared successful in the preliminary examination, as also in the main examination. Upon being selected, his name was included in the select list by letter dated 09.02.2017. Respondent No. 1, along with six other candidates were directed to approach the Dean, Government Medical College, Ambejogai for medical examination to certify whether they were fit to render duties of the post. However Respondent No. 1 was again directed by letter dated 10.01.2018 to approach the Medical Board of referral at J.J. Hospital, Mumbai for the verification of his medical certificate. The petitioner accordingly appeared before the Medical Board which certified him to possess disability certificate to the extent of 30%. It is undisputed that the minimum percentage of disability required for the reservation in P.H. category is 40%. Therefore, by the communication dated 27.04.2018, the Joint Commissioner of Sales Tax, Mumbai informed respondent No. 1 that he was found ineligible for being appointed on the post of Sales Tax Inspector. This communication dated 27.04.2018 was challenged by respondent No. 3 in his Original Application No. 339 of 2019. By the order impugned before us, the Tribunal proceeded to allow the Original Application setting aside the communication dated 27.04.2018 and directing the petitioners to consider Respondent No. 1 for appointment as per the recommendations of MPSC within eight weeks. The Tribunal however, directed that it would be open to the petitioners to refer him for medical examination only for deciding his disability to work on the post of appointment but not for verification of his disability certificate.

4. Appearing for petitioners-State Mrs. M.A.Deshpande, the learned Additional Government Pleader would submit that the complaint was received about the genuineness of disability certificate produced by respondent No. 3 and therefore the petitioners had referred him for medical examination before the Medical Referral Board. She would submit that the petitioners were entitled to do so. She would further submit that respondent No. 1 appeared before the Medical Board without any demur and therefore is estopped from challenging its decision. Having certified to possess only 30% disability by the medical board, respondent No. 1 is clearly ineligible to be appointed in PH Quota. She prays for setting aside the order passed by the Tribunal.

5. Per contra, Mr. Deshmukh, learned counsel appearing for respondent No. 1 would support the order passed by the Tribunal based on the findings recorded by it.

6. We have gone through the order passed by the Tribunal and have also perused the documents placed along with the petition. The Tribunal has *inter-alia* relied upon Government circular dated 14.01.2011, which is quoted in the order of the Tribunal, directing that once disability certificate is issued by the Competent Authority, the appointing authority should not question the certificate of the disability of the candidate.

7. Mrs. Deshpande, the learned AGP has not been able to produce before us any Rule or administrative instruction which empowered the petitioners to direct the remedical examination of respondent No. 1 despite the production of disability certificate by him. Her contention that there was complaint about the genuineness of the disability certificate and that therefore, the petitioners were entitled to verify the same, does not cut any ice as the complaint was about the genuineness of the certificate. The petitioners therefore were required to send the certificate for verification to the authority which had issued it only to verify whether it has issued or not. Mere receiving of complaint about the genuineness of disability certificate would not entitle them to subject the respondent No. 1 for fresh medical examination. We find that respondent No. 3 had produced two disability certificates. The Certificate date 11.07.2006 was issued by the District Ophthalmic Surgeon, (Civil Hospital, Aurangabad) and second disability certificate dated 08.11.2008 has been issued by the Medical Board, Medical College and Hospital, Aurangabad.

8. The percentage of disability can be arrived at on the basis of subjective opinion of doctors. Percentage of disability is likely to differ in different medical examinations conducted by the different doctors. It is not that respondent No. 3 does not suffer from any disability. Even in the examination conducted by the Medical Referral Board he is found to possess vision disability. However, the only difference of opinion is about the percentage of disability. We have

already come to the conclusion that the petitioners were not entitled to subject respondent No. 3 for re-medical examination. Even in such re-examination by the Medical Board, disability of respondent No. 1 is certified, *albeit* with lesser percentage. In such circumstances, rejection of candidature of respondent No. 1 relying upon the opinion of Medical Board appears to be erroneous. The Tribunal has rightly set aside the impugned communication dated 27.04.2018. We do not find any jurisdictional error being committed by the Tribunal while passing the impugned order.

9. The petition is devoid of any merits, the same is dismissed without any order as to the costs. Rule is discharged.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE