

Diksha Rane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7201 OF 2022**

Padmavir Bhagwanrao Thorat ..Petitioner

Vs.

Pune Municipal Corporation
through Commissioner and Ors. ..Respondents

Mr. Sangram Chinnappa a/w Mr. Kartikerya Bahadur for petitioner.

Ms. Manisha Jagtap a/w Mr. Mayuresh Ingale a/w Ms. Padmaja Malegaonkar for Respondent No. 1.

Mr. B.V. Samant AGP for State-Respondent No. 2.

Mr. Saurabh Ghag a/w Ms. Dishya Pandey a/w Ms. Divya Bhatia for Respondent Nos. 3 and 4.

CORAM : DIPANKAR DATTA, CJ. &

M. S. KARNIK, J.

HEARD ON : AUGUST 17, 2022.

JUDGMENT ON : AUGUST 30, 2022.

JUDGMENT (PER M. S. KARNIK, J.) :

1. This is a writ petition filed by the petitioner under Article 226 of the Constitution of India, seeking the following substantive relief:-

“(a) That this Hon’ble Court be pleased to issue a writ of Certiorari or writ, or order or direction in the nature of certiorari, calling for the records and proceeding of the files pertaining to the recruitment to the Post of Ayurvedic Medical

Officer in SC Category (General) leading to the order dated 18.05.2022 at Exhibit K and after ascertaining the legality and validity of the order be pleased to quash and set aside the same to the extent that it wrongly shows the Respondent Nos. 3 and 4 to be above the Petitioner."

2. The petitioner is a BAMS qualified doctor rendering temporary services as a Medical Officer with the State of Maharashtra under the National Health Mission (NHM). The respondent No. 1- Pune Municipal Corporation (hereinafter as 'the Corporation' for short) published an advertisement in the newspaper and also on the website for recruitment of 177 posts in the Health Department from 32 categories of specialist doctors. Of these posts, 9 posts were for Ayurvedic Medical Officer (hereafter 'AMO' for short) in the pay scale of 1300-34800 plus grade pay of Rs. 5400/-. These posts of AMOs were listed at Serial No. 31 of the said advertisement. It is averred that the educational qualification prescribed for the post of "AMO is BAMS degree from Government recognized university/ institution; 3 years related work experience is preferable". Out of 9 posts of AMO, 3 posts were reserved for Scheduled Caste (SC), 2 posts for Scheduled Tribe (ST), 1 post for Denotified Tribes, 1 post for Nomadic Tribe-C and 2 posts for Other Backward Classes. Out of the 3 posts reserved for Scheduled Caste category, 1 post was reserved for women candidate. The petitioner submitted his application on May 2, 2020 along with the copies of the

relevant eligible documents such as work experience and educational qualification. A Corrigendum was published by the Corporation on May 8, 2020. By a communication dated May 12, 2020, the candidates were called upon to submit their documents for scrutiny by May 18, 2020. The petitioner appeared before the Committee and got all his documents verified on the given date.

3. A provisional list for the post of AMO was published on July 8, 2020. In the said list, the petitioner (Sr. No. 162) was shown as provisionally qualified with total marks of 59.10. The Respondent No. 3 (Sr. No. 93) and respondent no.4 (Sr. No. 134) were shown as provisionally qualified with total marks of 52.67 and 57.32 respectively. As per the provisional list, the petitioner was having second highest marks amongst men in the SC category. The petitioner's rank was 3rd amongst SC candidates. The Corporation delayed the publication of a list of successful candidates. The Corporation published a list of successful candidates for 81 posts from 21 categories. As the final list of AMO was not being declared, the petitioner along with similarly placed persons filed Writ Petition No. 5128 of 2022 in this Court. The following order came to be passed on May 13, 2022 in such writ petition: -

"1. These petitions seek to challenge inaction of the respondents in action of the respondents in

not having declared results of the petitioners since August 2020.

2. Learned advocate for the Corporation is present today and she on the instructions from Mr.Sachin Ithape, Member Secretary and Deputy Commissioner (General Department) Pune Municipal Corporation states that the results will be declared without fail on or before 19th May 2022 and no extension will be sought under any circumstances. This becomes relevant since in Special Leave Petition bearing No. 19756/2021 the Supreme Court has directed the respondent/State Election Commission to notify the Election programme within 2 weeks from 4.5.2022. Since the Code of Conduct would otherwise come into force, the Corporation has now undertaken to declare results well in time and on 19th May 2022.

3. In view of the statement made, petitions are disposed in above terms accepting the statement of the Corporation.

4. The Code of Conduct will not prevent the Corporation from complying with its undertaking.

5. Both the Petitions are disposed.

6. Both the Interim applications are disposed."

4. Thereafter, on May 18, 2020, the Corporation published the final list of candidates for the post of AMO. The petitioner, who was ranked at No. 3 in the provisional list was now placed at Sr. No. 5. His position was shown at Sr. No. 2 on the waiting list. The respondent Nos. 3 and 4, who were ranked below the petitioner in the provisional list, were now ranked above him at Sr. No. 1 and 2 in the final list. The marks of the respondent No. 3 increased from 57.32 in the provisional list to 68.96 in the final list. Likewise, the

marks of respondent No. 4 increased from 52.67 to 62.02.

5. Learned advocate for the petitioner relied upon the tabular representation of the marks as per the provisional list and the final list and the respective position of the respondent Nos. 3 and 4. The tabulated portion reads thus: -

Sr. No.	Name of Candidate	Position as per provisional list	Position as per final list	Total marks as per provisional list	Total marks as per final list
1.	Dr. Padmavir Bhagwanrao Thorat	3	5 (No. 2 on provisional list)	59.10	59.34
2.	Dr. Gopinath Mohan Narsude	17	1	52.67	68.96
3.	Dr. Mahendra Jayram Waghmare	9	2	57.32	62.02

6. Learned advocate for the petitioner draws our attention to the final list which indicates that in the experience section, an addition of the institute namely 'Mamta Hospital' is indicated in the experience column which was missing in the provisional list, so far as the respondent No. 3 is concerned. The private experience has increased from 1 year 4 months and 2 days in the provisional list to 6 years 5 months and 5 days in the final list. The marks for private experience has gone up from 2.67 to 12.83. The remarks column in the

provisional list has a comment "As Degree Marksheet not submitted, 50% marks considered in the Degree", which is not found in the Final list. Marks for education have gone up from 30 to 36.13. The total marks have gone up from 52.67 to 68.96.

7. So far as the respondent No. 4 is concerned, learned advocate for the Petitioner submitted that, in the final list, against the experience column, the experience of the institute namely 'Niramaya Hospital Pvt Ltd.' from December 5, 2010 to March 31, 2013 has been added which was missing in the provisional list. It is submitted that private experience indicated in the provisional list as Zero is now shown to be 2 years 3 months and 26 days in the final list. Experience of 7 years and 8 days working in a Tribal area hospital has been shown as Government experience in the final list. Marks for private experience has gone from zero to 4.5. The marks for education has gone up from 37.32 to 37.52. Thus, the total marks has gone up from 57.32 to 62.02.

8. The petitioner objected to the final list vide his letter dated 19th May 2022. Learned advocate for the petitioner submitted that Corporation could not have allowed respondent Nos. 3 and 4 to add new experience after publication of provisional merit list. The advertisement does not allow candidates to provide additional experience certificates once the provisional list is published and the Corporation is not justified in

considering the said certificates at this stage when the respondent Nos. 3 and 4 in their applications have not mentioned anything about private experience. The Corporation could not have allowed respondent Nos. 3 and 4 to better their case beyond what is stated in the application. Learned advocate submits that the selection procedure is writ with irregularities and illegalities that go to the root of the selection process.

9. Learned advocate for the petitioner relies upon the following decisions of the Hon'ble Supreme Court in support of his case.

- 1. State of Bihar and Ors. Vs. Madhu Kant Ranjan and Anr.¹;**
- 2. Maharashtra State Road Transport Corp. and Ors. Vs. Rajendra Bhimrao Mandve and Ors.²;**
- 3. K. Manjushree Vs. State of Andhra Pradesh and Anr.³;**
- 4. Tej Prakash Pathak and Ors Vs. Rajasthan High Court and Ors.⁴;**
- 5. Bedanga Talukdar Vs. Saifudaullah Khan and Ors.⁵;**
- 6. Sher Singh Vs. Union of India⁶;**
- 7. Secy. (Health) Deptt of Health and Ant.**

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| 1 | Civil Appeal No.7677/2021. |
| 2 | (2001) 10 SCC 51. |
| 3 | (2008) 3 SCC 512. |
| 4 | (2013) 4 SCC 540. |
| 5 | (2011) 12 SCC 85. |
| 6 | (1984) 1 SCC 107. |

Vs. Dr. Anita Puri and Ors.⁷.

10. The Corporation filed an affidavit-in-reply opposing the writ petition. In justification of the final list, learned advocate for the Corporation drawing support from the stand taken in the affidavit-in-reply, submitted that due to Covid-19 outbreak, there was uncertainty about the procedure to be followed for the purpose of recruitment. Therefore, the Corporation only called for the applications and has not disclosed any procedure to be followed for the evaluation of application forms of the candidates. In the advertisement, only eligibility criteria was mentioned i.e. the candidates who possess a degree from Government recognized university and 3 years of related work experience is preferable. Therefore, candidates had submitted only documents pertaining to their eligibility. The candidates were called upon to submit their documents for scrutiny on May 18, 2020. During the scrutiny, the candidates raised several grievances and queries with respect to the procedure to be followed for the evaluation of the application form, marking system, difficulty to submit relevant documents etc.

11. The State Government vide resolution dated August 26, 2014, has approved the staffing pattern and classification of service and accordingly, the Pune Municipal Corporation (staffing pattern and

classification of service) Rules 2014 (hereafter "the Rules of 2014" for short) were approved. She further submitted that as per the Rules of 2014, the category of selection was divided into three types i.e. nomination, promotion and deputation. The power to decide the procedure for staff selection through nomination is vested in the Municipal Commissioner. As per Rule 3(2) of the staffing pattern Rules, after considering number of candidates and number of posts, it is the prerogative of the Municipal Commissioner, whether to conduct the written examination for the purpose of selection of candidates or not. Learned advocate submitted that as per the Rules of 2014 and Section 54 of the Maharashtra Municipal Corporation Act, 1949 (hereafter "the said Act" for short), the Corporation formed the Staff Selection Committee (hereafter "the Committee" for short) for the purpose of appointment of Municipal Officers and servants. Learned advocate submitted that Section 54(3) of the said Act states that every authority competent to make appointments in the Municipal service shall make appointments of candidates so selected in accordance with the directions given by the Committee. In the meeting held on 29th May 2020, the Committee took a decision with respect to evaluation procedure to be followed and accordingly marking system to be followed for evaluating the educational qualification and experience was published. Till May 29, 2020, the

candidates were not aware about the marking system to be followed for evaluating educational qualification and experience. It is after publication of the marking system, several candidates requested the Corporation to let them submit some additional experience certificates in the belief that their marks will increase during the process of evaluation of experience.

12. Learned advocate further submitted that on June 15, 2020, the Committee took a decision that those candidates who failed to submit their additional documents or failed to mention about their experience as there was no clarification about evaluation of application form in respect of experience of private, public and hospitals in the tribal area, their experience should be considered. On July 8, 2020, the Corporation published the provisional list as per decision of the Committee. The Corporation called for objection or suggestion from the candidates along with necessary proof. The Corporation informed the candidates to submit their objections and suggestions to the provisional list within two days. 122 objections and suggestions were received for considering an additional experience certificate which was not submitted at the time of submission of the application as earlier there was no clarification about the procedure for evaluation of the application. The petitioner also raised an objection with regard to change in the final year marksheet and accordingly, the marks of the petitioner

came to be corrected by giving him additional "0.24" marks. Learned advocate submitted that even the petitioner participated in the process and his objection and suggestion was considered. The respondent Nos. 3 and 4 submitted certificates of their private experience. As a result of submission of these certificates, the marks of respondent Nos. 3 and 4 increased in the final list. Learned advocate submitted that the selection was in accordance with the prescribed procedure and in accordance with the rules applicable to the Corporation.

13. The respondent Nos. 3 and 4 have filed detailed affidavit-in-reply. Learned advocate for the respondent Nos. 3 and 4 supported the stand of the Corporation. It is the contention of learned advocate that there was no requirement of furnishing the experience certificates along with the application. It is only when the Corporation called upon the respondent Nos. 3 and 4 to submit experience certificates, then only such certificates were furnished. Learned advocate pointed out that even the Petitioner had raised objection and requested for correction of the marks. The Corporation made necessary corrections. Learned advocate submitted that having participated in the process, it is not now open for the Petitioner to challenge the selection process.

14. Heard learned counsel for the parties. We have perused the pleadings and the materials placed on record.

CONSIDERATIONS: -

15. The advertisement for recruitment to the post of AMO was published on 17th April 2020. The advertisement prescribed the eligibility criteria to be "a degree of a Government recognized university/ institution in the discipline of Ayurved (BAMS); 3 years related work experience is preferable. The advertisement is in Marathi. The eligibility criteria indicated is thus: -

अ. क्र.	पदनाम	शैक्षणिक अहर्ता व अनुभव
१	आयुर्वेदिक वैद्यकीय अधिकारी	शासनमान्य विद्यापीठाची / संस्थेची आयुर्वेद शाखेची पदवी (बी.ए.एम.एस.) अनुभव संबंधित कामाचा ०३ वर्षांचा अनुभवास प्राधान्य.

16. The note below the advertisement mentions that in the experience certificate to be submitted by the candidates along with the application it is necessary to state the nature of duties and responsibilities as per 4.4. Note 7 provides for verification of certificates which is as under:-

"7.1 Eligibility of candidates will be verified on the basis of original documents as per Advertisement/ Qualification in the Notification/ Terms and conditions.

7.2 The candidature of candidate unable to submit prescribed documents will be cancelled and, no extension of time will be given for that purpose.

7.3 If original certificates in prescribed format with reference to eligibility or various facilities are not submitted the candidature will be cancelled."

Further, note 12, 21, 22, 23, 25.3 and 29 which are relevant read thus :-

"12. Along with the application letter it is necessary to forward the said self-declaration as well as all necessary documents mentioned in the Form. Otherwise the application letter will be deemed incomplete and rejected."

"21. If the candidate is from a Private Institution it is necessary to include Experience Certificate/ Dispensary Registration Certificate from the concerned Institution.

22. For candidate from Private Institution it is necessary to include Salary Slip and statement (Form 16) in respect of payment of Income-tax for the last 3 years.

23. While counting experience of the candidate action should be taken as per Government Circular No. SAAVHI-2004/C.No../10/04/12 dt. 3 July 2004.

25.3 After online filing of Application it is necessary to upload scanned copy of the printed Application information, Self-Declaration and necessary certificates.

29. The right for making improvements/changes in the aforesaid Programme of the Selection Process has been reserved by the Mahapalika Commissioner, Pune Mahanagarpalika.

17. In exercise of the power under Section 457(2) of the said Act, the Rules of 2014 are made. Rule 1 provides that in terms of provision of section 54 of the said Act, for appointment to the post on the establishment of the Corporation, the Selection Committee in terms of Rule 2 is to be constituted. The procedure in respect of appointment by nomination is

provided in Rule 3. Rule 3A provides that all applications received in respect to the advertisement published in the newspaper or notice board will be considered. Rule 3B provides that the Commissioner is empowered to call for additional information in respect of the particulars mentioned in the application. Rule 3C is not relevant for the present case as it pertains to a situation when a written examination is to be held. Rule 3D provides that the Selection Committee has taken into consideration the marks received and the select list has to be prepared accordingly.

18. As indicated earlier, for the post of AMO to be filled in by nomination, the eligibility criteria prescribed by the Rules of 2014 is degree in Ayurved (BAMS) from Government recognized university/institution. The experience criteria stipulated is " 3 years related work experience is preferable". In the affidavit-in-reply, the Corporation has taken the following stand in paragraph Nos. 5 to 17 setting out the steps taken pursuant to the issuance of the advertisement dated April 17, 2020:-

"5. On April 17, 2020, the respondent no.1 has published advertisement for recruitment of 177 posts under the health department, out of which 9 posts were for Ayurvedic Medical Officers. The petitioner has submitted his application for Ayurvedic Medical Officer in SC category. The respondent no.1 has received a total 400 applications for the post of Ayurvedic Medical Officer. It is pertinent to note that due to Covid-19 outbreak, there was uncertainty about the procedure to be followed for the

purpose of recruitment. Therefore, the respondent no.1 has only called upon the applications and has not disclosed any procedure to be followed for the evaluation of application forms of the candidates.

6. In the said advertisement, only eligibility criteria was mentioned i.e., that the candidates who possess a BAMS degree from Government recognized university and three years of work experience is preferable. Therefore, candidates have submitted only documents pertaining to eligibility.

7. Through communication dated May 12, 2020 the candidates were called upon to submit their documents for scrutiny by May 18, 2020. On May 18, 2020, during the scrutiny, the candidates raised several grievances and queries with respect to the procedure to be followed for the evaluation of application form, marking system, difficulty to submit the relevant documents etc.

8. The State Government vide its resolution No.PMC-3014/Pra.Kra. - 2/UD-22 dated August 26, 2014 has approved staffing pattern and classification of service. Accordingly, the Pune Municipal Corporation (staffing pattern and classification of service) Rules, 2014 were approved.

9. As per the Pune Municipal Corporation (staffing pattern and classification of service) Rules, 2014, category of the staff selection was divided into three types i.e. Nomination, Promotion and Deputation. The power to decide procedure for Staff Selection through nomination is vested into Municipal Commissioner. As per the rule 3(2) of the (staffing pattern and classification of service) Rules, 2014, after considering number of candidates and number of posts, it is the prerogative of the Municipal Commissioner,

whether to conduct the written examination for the purpose of selection of candidates or not.

10.As per the abovementioned rules and Section 54 of the Maharashtra Municipal Corporation Act, 1949, the respondent no.1 has formed Staff Selection Committee for the purpose of appointment of the municipal officers or servants. The Section 54(3) of the Maharashtra Municipal Corporation Act, 1949 states that every authority competent to make appointments in the Municipal service shall make appointments of candidates so selected in accordance with directions given by the Staff Selection Committee.

11.On May 29, 2020, in the meeting of the Staff Selection Committee took a decision with respect to evaluation procedure to be followed and accordingly, the marking system to be followed for evaluating the educational qualification and experience is published. It is annexed to page no. 99 of the writ petition. It is pertinent to note that till May 29, 2020, the candidates were not aware about the marking system to be followed for evaluating the educational qualification and experience.

12.After the publication of the marking system, several candidates were calling to the respondent no.1's office and requested to allow to submit some additional experience certificate in the belief that their marks will increase while evaluation of the experience.

13.On June 15, 2020, the meeting of Staff Selection Committee was called upon in view of various queries raised with respect to the submission of additional documents. The Staff Selection Committee took a decision that, the candidates whoever failed to submit the additional documents or failed to mention about their experience as there was no clarification about evaluation of application form in respect

of experience of private, public and hospitals in the tribal area, their experience should be considered.

14. On July 8, 2020, the respondent no.1 has published the provisional list and as per decision of Staff Selection Committee, we called upon any objections or suggestions from the candidates along with proof. The respondent no.1 had informed the candidates to mail within two days from the publication of the provisional list.

15. Within stipulated time, total 122 objections/suggestions were received. The objections/ suggestions were with respect to submission of Non-creamy Certificate, submission of additional experience certificate, grievances about final year marksheet, etc. Out of 122 objections/suggestions, 28 were about considering additional experience certificate which were not submitted at the time of submission of application form as earlier there was no clarification about the procedure for evaluation of application. It is pertinent to note that the petitioner also raised the objection with respect to the change in final year marksheet and accordingly, the marks of petitioner was corrected and 0.24 marks were increased. Therefore, it was not the case that the petitioner was not aware about the opportunity given to the candidates for raising objection and suggestions.

16. The respondent nos. 3 and 4 have raised the objections/suggestions and submitted their private experience certificate.

17. On May 18, 2022, the respondent no.1 published the final list of the candidates for the post of AMO. In the final list, the marks of respondent no.3 and 4 were increased due to submission of experience certificate and the marks of the petitioner was remained

unchanged as he had already submitted all the experience certificates and he does not have any other experience certificate."

19. The stand of the Corporation indicates that the procedure to be followed for the evaluation of the application forms of the candidates was not disclosed at the time of the publication of the advertisement on April 17, 2020. Due to Covid-19 outbreak, the Corporation takes a stand that there was uncertainty about the procedure to be followed for the purpose of recruitment. Section 54 of the the said Act which has bearing on the controversy reads thus: -

"54. Manner of making appointments.

(1) There shall be a Staff Selection Committee consisting of the Commissioner or any other officer designated by him in his behalf, the Municipal Chief Auditor, the Head of the Department concerned and not more than one other officer nominated by the Commissioner.

(2) The Staff Selection Committee shall, in the manner prescribed in the rules, select candidates for all appointments in the municipal service other than appointments referred to in sub-section (1) of section 53 and other than those which the Corporation may, with the previous approval of the State Government, by order specify in this behalf, unless it is proposed to fill the appointment from amongst persons already in municipal service or unless the appointment is of a temporary character and is not likely to last for more than six months.

(3) Every authority competent to make appointments in the municipal service shall make appointments of the candidates so selected in

accordance with the directions given by the Staff Selection Committee.

(4) With reference to officers and servants appointed under Chapter XX the provisions of this section shall apply as if for the word "Commissioner" the words "Transport Manager" had been substituted.

(5) Subject to the provisions of this section, any appointment of a municipal officer or servant shall be made in the manner prescribed in the rules, save as expressly provided therein."

20. A bare reading of sub-section (2) of Section 54 of the said Act reveals that the appointments have to be made by the Committee in the manner prescribed by the rules viz. the said Rules of 2014. Sub-section (3) of section 54 of the said Act ordains the competent authority to make appointments of the selected candidates in accordance with the directions given by the Committee.

21. Section 54, thus, imposes an obligation on the Committee to select the candidates in accordance with the Rules of 2014. In the present case, as we are concerned with nomination as the mode of appointment, the Rules of 2014 referred to herein before, prescribes the qualification for appointment to be degree of Ayurved (BAMS) from a Government recognized university/ institution; three (3) years related work experience is indicated to be preferable. For one, the Corporation admits that due to Covid-19 outbreak there was uncertainty about the procedure to be followed for the purpose of recruitment when the

advertisement dated April 17, 2020 was issued and hence did not disclose any procedure to be followed for the evaluation of the application forms of the candidates. No doubt, the Committee is empowered to select candidates for all appointments, however, that does not mean that the appointment can be made in contravention of the rules. It is only on May 29, 2020, in the meeting of the Selection Committee that a decision was taken as regards the evaluation procedure to be followed for selecting candidates. Accordingly, the Minutes of the meeting dated May 29, 2020 of the Selection Committee recorded its decision that 60 marks are prescribed for educational qualification and 40 marks for experience. 40 marks for experience are then bifurcated as maximum 20 marks towards experience in Government service and maximum 20 marks experience in non-Government service. Note-3 below the Minutes of the meeting dated May 29, 2020 mentions that due to Covid-19 lock-down, the candidates were not in a position to submit the documents and therefore, the relevant documents be called for from the candidates. Thereafter, in the meeting of the Committee held on June 15, 2020, further procedure was set out. Clause 8 mentions that "In the event experience is mentioned in the online form but experience certificate is not attached or experience is not mentioned in the form then if the candidate submits the experience certificate at the time

of raising objection/submitting suggestion, then it should be considered”.

22. The question is whether the selection process followed by the Corporation is in accordance with the Rules of 2014. The Rules of 2014 categorically provide for the eligibility to be a degree in Ayurved (BAMS) from recognized university/institution, the experience stipulated being preferential. Sub-section (2) of Section 54 of the said Act clearly ordains the Committee to select candidates for all appointments in the manner prescribed by the rules. The evaluating procedure adopted by the Committee thereby prescribing 60 marks for educational qualifications and 40 marks for experience is not in the contemplation of the rules. The procedure adopted, in our opinion is without appreciating the context in which the rules prescribed preferential qualifications. In the first instance, the Committee should have assessed the merit of the candidates on the basis of the educational qualifications viz. degree of Ayurved (BAMS) from Government recognized universities/ institutions. The evaluation procedure should have been so devised to find out the comparative merit only on the basis of the educational qualification prescribed in the first instance.

23. It is only thereafter, if the evaluation process reveals that there is a tie, meaning thereby that other things being equal between the candidates or that they are found to be more or less of equal merit on the basis

of educational qualifications, then the question of giving preference on the basis of the experience would arise. On a misreading and misinterpretation of the rules, the Committee has prescribed 60 marks for educational qualification and 40 marks for experience, which is contrary to the rules. For the view that we take, as to how a rule prescribing preferential qualification is to be read, we draw inspiration and support from the decision of the Supreme Court in **Sher Singh vs. Union of India and others**⁸. Paragraph 6 which is relevant in the context of the present controversy needs to be extracted, which reads thus: -

“6. At the outset it is necessary to bear in mind the legal position of a State Transport Undertaking when dealt with under Chapter IV-A and Chapter IV of the Act. If an approved scheme in respect of a notified area or a notified route is in force, State Transport Undertaking alone is entitled to operate vehicles and therefore is entitled to obtain stage carriage permits both regular and temporary depending upon whether the scheme provides for total or partial exclusion of private operators. However, when an application for a permit is made under Chapter IV, the Undertaking has to compete with private operators who may as well make an application for permit. When the Undertaking applies for permit under Chap.IV, it must satisfy the Regional Transport Authority that it is better suited than the private operator to render transport facility to the travelling public. Section 47 (1-H) however, provides that in the case of inter-State route, the Undertaking will have preference in the matter of stage carriage permit. Does preference of this

nature deny equality guaranteed by Art.14? The expression 'preference' amongst others means prior right, advantage, precedence etc. But how would it be possible to give precedence one over the other? It signifies that other things being equal, one will have preference over the others. When an application for a stage carriage permit is being processed as required by Sec. 47, the application of the Undertaking for an inter-State route shall be examined as application of any other private operator. Their merits and demerits must be ascertained keeping in view the requirements of (a) to (f) of S. 47(1) and after comparing the merits and demerits of both, not with the yardstick of mathematical accuracy, but other things being equal, the application of the Undertaking will have preference over others. Qualitative and quantitative comparison on broad features of passenger transport facility such as fleet, facilities to travelling public and other relevant consideration may be undertaken and after balancing these factors other things being equal, the application of the Undertaking shall be given preference over other applicants. There is no question of eliminating private operators merely because the Undertaking applies for a stage carriage permit under Chap. IV. That situation is catered to under Cap.IV-A. In an application under Chapter IV, Corporation has to enter the arena like any other applicant, face the competition and come-up to the level of other private operators intending to obtain stage carriage permits and then in respect of the route in question claim preference. Would this statutory provision violate equality guaranteed by Art. 14? The answer is obviously in the negative. Competition is the essence of improved commercial service. After ensuring competition in the matter of rendering more efficient transport service a public sector Undertaking is assured statutory preference, remember no monopoly, there is no denial of equality guaranteed by Art.

14? A similar argument when the vires of the provisions contained in Chap. IV-A were questioned in Dosa Satyanarayanamurthy etc. v. Andhra Pradesh State Road Transport Corporation, (1961) 1 SCR 642. (AIR 1961 SC 82) did not commend to the Constitution Bench when it repelled the challenge observing as under:

“Ordinarily a State Transport Undertaking should be in a better position than others to carry on the said services for the benefit of the public; administratively, financially and technically it can be expected to be in a far better position than others. It can provide more well equipped buses, give better amenities to the travelling public, keep regular timings, repair or replace the buses in emergencies. It may also employ efficient supervisory staff to keep things going at an appreciably high standard.”

This would apply mutatis mutandis to the present situation. But let it be made clear that while considering the application for stage carriage permit under S.47, the private operator has an equal chance to get a permit even on inter-State route if it shows that the Undertaking is either unable to provide efficient and economical service or that the private operator is better equipped to render the same. Preference in this context would mean that other things generally appearing to be qualitatively and quantitatively equal though not with mathematical accuracy, statutory provision will tilt the balance in favour of the Undertaking. Viewed from this perspective the provision contained in Section 47 (1-H) would not deny equality before law and hence would not offend Art.14.”

(Emphasis ours)

We may also profitably refer to the decision of the Supreme Court of recent origin in the case of **The Chairman Tangedco & anr. vs. Priyadaarshini**⁹. In this decision Their Lordships found it apposite to reproduce the observations of the Supreme Court in **Secy., A. P. Public Service Commission v. Y. V. V. R. Srinivasulu**¹⁰ which reads thus: -

"10. ... The word "preference" in our view is capable of different shades of meaning taking colour from the context, purpose and object of its use under the scheme of things envisaged. Hence, it is to be construed not in an isolated or detached manner, ascribing a meaning of universal import, for all contingencies capable of an invariable application. The procedure for selection in the case involves a qualifying test, a written examination and an oral test or interview and the final list of selection has to be on the basis of the marks obtained in them. The suitability and all-round merit, if had to be adjudged in that manner only, what justification could there be for overriding all these merely because, a particular candidate is in possession of an additional qualification on the basis of which, a preference for separate classification of those candidates or apply different norms of selection for them. The "preference" envisaged in the Rules, in our view, under the scheme of things and contextually also cannot mean, an absolute en bloc preference akin to reservation or separate and distinct method of selection for them alone. A mere rule of preference meant to give weightage to the additional qualification cannot be enforced as a rule of reservation or rule of complete precedence. Such a construction would not only undermine the scheme of selection envisaged

through the Public Service Commission on the basis of merit performance but also would work great hardship and injustice to those who possess the required minimum educational qualification with which they are entitled to compete with those possessing additional qualification too, and demonstrate their superiority meritwise and their suitability for the post. It is not to be viewed as a preferential right conferred even for taking up their claims for consideration. On the other hand, the preference envisaged has to be given only when the claims of all candidates who are eligible are taken for consideration and when any one or more of them are found equally positioned, by using the additional qualification as a tilting factor, in their favour vis-a-vis others in the matter of actual selection.

11. Whenever, a selection is to be made on the basis of merit performance involving competition, and possession of any additional qualification or factor is also envisaged to accord preference, it cannot be for the purpose of putting them as a whole lot ahead of others, dehors their intrinsic worth or proven inter se merit and suitability, duly assessed by the competent authority. Preference, in the context of all such competitive scheme of selection would only mean that other things being qualitatively and quantitatively equal, those with the additional qualification have to be preferred. There is no question of eliminating all others preventing thereby even an effective and comparative consideration on merits, by according en bloc precedence in favour of those in possession of additional qualification irrespective of the respective merits and demerits of all candidates to be considered."

(Emphasis ours)

Thus, the decisions in **Sher Singh** (supra) and **The Chairman Tangedco** (supra) prove to be a valuable guide for us to hold that in the factual matrix of the

present case, preference, in the context of the present selection would mean that upon an effective and comparative consideration on merits of the candidates on the basis of educational qualification, if found to be more or less equal, those with the additional qualification in terms of the experience criteria have to be preferred.

24. *Dehors* the view that we have taken, let us now test whether the selection process carried out by the Selection Committee withstands the test of non-arbitrariness. According to learned counsel for the Corporation, the Selection Committee for the purpose of selection, while prescribing 60 marks for educational qualification and 40 marks for experience has relied upon the guidelines prescribed by the Public Health Department of the Government of Maharashtra vide a Government circular dated June 24, 2016. The circular relied upon by learned counsel is not a part of the affidavit-in-reply but has been tendered across the Bar. No doubt, the break up of 60 marks for educational qualification and 40 marks for experience prescribed by the Corporation for the post of AMO is in accordance with the Government circular dated June 24, 2016. However, it is pertinent to note that the guidelines are prescribed for filling the post of Medical Officers Group-A category in the State Government service by conducting interviews (walk-in interviews). Nothing has been placed on record by the Corporation to indicate as to on what

basis the selection procedure prescribed by the Government circular is applied to the selection of AMO. There is nothing on record to indicate that some exercise has been carried out by the Corporation to determine the equivalence of the post of Medical Officers Group-A under the State and that of AMO under the Corporation. Moreover, the decision taken by the Government was in the context of interviews (walk-in interviews) and having regard to the circumstances mentioned in the circular, the Government had prescribed the eligibility. In our opinion, simply cutting and copy-pasting the evaluation system adopted by the Government to the present selection of AMO, without any application of mind to the context in which the Government circular dated June 24, 2016 came to be issued has to be regarded as an instance of non-application of mind and arbitrary.

25. There is another flaw in the selection process that we have noticed. While awarding maximum 20 marks for Government service and 20 marks for non-Government service, a candidate who has all throughout been in Government service, can secure a maximum of 20 marks; whereas, in respect of a candidate who has for some time been in non-Government service and later on in Government service may get 40 marks for experience. On this count also, we do find some substance in the contention of learned counsel for the petitioner that the marking system may

not be free from the vice of arbitrariness. It is necessary for the Selection Committee to delve upon this aspect before fixing the marking system, in the event, the selection procedure necessitates recourse to the preferred criteria of experience.

26. We have already noted the stand of the Corporation that when the advertisement was issued, the Corporation was yet to decide the procedure for evaluation. The marking system to be followed for evaluating the educational qualification and experience was resorted to after the advertisement was published. In the provisional list published, the petitioner ranked higher than the respondent Nos. 3 and 4. The Corporation allowed the respondent Nos. 3 and 4 to submit experience certificates of having worked in private institutions after the application forms were filled in pursuant to the publication of the advertisement. The Corporation has taken a stand that due to lock-down, the candidates were not in a position to submit the documents and hence, the opportunity was granted. In our opinion, having regard to the specific conditions in the advertisement, the Corporation could have at the highest permitted the candidates to submit the documents in support of what was already disclosed by the candidates in the application. There are ample clauses in the advertisement which we have referred to hereinbefore clearly indicating that the experience certificate has to

be submitted by the candidate along with the application, wherein it is necessary to mention the nature of duties and responsibilities as per Clause 4.4. of the advertisement. Clause 4 prescribed the eligibility. Clause 4.4 prescribed educational qualifications and experience. Clause 21 below the advertisement provided that if the candidate is from a private institution it is necessary to include an experience certificate/dispensary registration certificate from the concerned institution. Then Clause 22 stipulates that for candidates from private institutions it is necessary to include salary slip and statement (Form 16) in respect of payment of Income-tax for the last 3 years. Having regard to the conditions mentioned in the application, the candidates had sufficient notice that in the application form, the educational qualification and the experience should be mentioned with supporting documents. We do appreciate a situation where due to Covid-19 lockdown, it may not have been possible for the candidates to submit all the documents regarding experience. This, however, did not prevent the candidates from at least indicating in the application the details of the experience which they had in the private institution. Even the Selection Committee appears to have so understood the advertisement as could be seen from the Minutes of the meeting dated May 29, 2020. In terms of Clause 3 of such Minutes, an

opportunity was given to the candidates to complete the documents.

27. We find that it is in the Minutes of the meeting dated June 15, 2020, the Selection Committee in Clause 8 records that "In the event experience is mentioned in the online form but experience certificate is not attached or experience is not mentioned in the form then if candidate submits the experience certificate at the time of raising objection / submitting suggestion, then it should be considered". The respondent Nos. 3 and 4 did not mention anything about their experience with the private institution in the application form. Resultantly, when the provisional merit list was published, the petitioner was higher in merit than the respondent Nos. 3 and 4. It is, thereafter, that the respondent Nos. 3 and 4 produced some certificates regarding their experience in private institutions in terms of the Minutes of the meeting dated June 15, 2020. On the basis of the certificates so produced after publication of the provisional merit list, resulted in the respondent Nos. 3 and 4 securing more marks than the petitioner on the basis of their experience in the private institutions. Such a course adopted by the Selection Committee is contrary to the terms of the advertisement itself. Though, we are in complete agreement with learned counsel for the Corporation and learned counsel for the respondent Nos. 3 and 4 that it is the function of the Staff Selection

Committee to select candidates, we are not at all satisfied with the manner in which the selection process progressed. The selection process to the post of AMO, apart from being contrary to the rules, also is against the principles of fair-play and justice.

28. Consequently, the writ petition deserves to be allowed and is accordingly allowed.

29. The selection process pertaining to recruitment to the post of Ayurvedic Medical Officer, SC category (General) including the appointment of respondent Nos. 3 and 4 which is the subject matter of the present writ petition is quashed and set aside.

30. It is open for the Corporation to fill up the post of AMO in SC category (General) which is the subject matter of the present writ petition, in accordance with law.

31. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)