

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.1378 OF 2020

1. Dr. Amol S/o Ramdas Karhe
Aged about 35 years, Occupation – Service,
R/o. Nimgaon, Tah. Nandura,
District Buldhana
2. Dr. Swati D/o Dinkar Wagh,
Aged about 26 years, Occupation – Service,
R/o. Pundlik Nagar, Ward No.16,
Chikhli, Tah. Chikhli,
District Buldhana
3. Dr. Avinash S/o Ramkisan Pise
Aged about 26 years, Occupation – Service,
R/o. State Bank Road, Mehkar,
Tah. Mehkar, District Buldhana
4. Dr. Atul S/o Anilrao Sirsat,
Aged about 26 years, Occupation – Service,
R/o. Mahadev Wetel, Ward No.13, Mehkar,
Tah. Mehkar, District Buldhana

...PETITIONERS

VERSUS

1. The Commissioner (Health Services) and
Mission Director (N.H.M.)
National Health Mission,
third Floor, Arogya Bhawan,
St. George Hospital Compound,
P.D. Mello Road,
Mumbai

2. The Deputy Director of Health Services,
near Chaudhari Vidyalaya,
Women Hospital Premises,
Durga Chowk, Akola,
Tq. and Dist. Akola
3. The Zilla Parishad, Buldhana,
through its Chief Executive Officer,
4. The District Health Officer,
Health Department,
Zilla Parishad Buldhana

...RESPONDENTS

Shri N.B. Kalwaghe, Advocate for the petitioners.
Mrs. S.S. Jachak, A.G.P for respondent Nos.1 and 2/State.
Ms Vaishali Khadekar, Advocate for respondent Nos.3 & 4.

CORAM : A.S. CHANDURKAR AND
URMILA JOSHI-PHALKE, JJ.

RESERVED ON : AUGUST 10, 2022.

PRONOUNCED ON : AUGUST 18, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard learned counsel for the parties.

2. **RULE.** Rule made returnable forthwith.

3. The petitioners are medical professionals possessing a degree of B.A.M.S. and duly registered with the Maharashtra Medical Council. In August, 2018, respondent No.3-Zilla Parishad, Amravati

issued an advertisement in the light of the directions issued by respondent No.1-Commissioner (Health Services) and Mission Director (N.H.M.), National Health Mission and respondent No.2 – The Deputy Director of Health Services, Akola for the post of Community Health Provider for the area Chikhaldara and Dharni in Amravati District under the National Health Project Scheme on contract basis. As per the eligibility criteria, petitioner Nos.1 to 3 who were qualified as B.A.M.S. were found eligible and succeeded in the entrance examination whereas petitioner No.4 applied in response to the advertisement issued by the Officer of District Health Office, District Palghar and was found eligible and succeeded in the entrance examination. As per the conditions mentioned in the advertisement candidates who were selected had to undergo Certificate Program for six months. The appointment being on contract basis was for 11 months. The advertisement further imposed the condition that if local candidates are available from the concerned taluka they would be given additional 20 marks and would be given preference. After entrance examination and after completion of Certificate Course of six months, petitioners appeared for exit exam and they were selected as Mid-Level Health Provider. Accordingly, petitioner No.1-Dr. Amol s/o Ramdas Karhe was selected for training by Order dated 05/10/2018. He successfully completed six months training and appointed as Community Health Officer on contract basis by an order

dated 07/03/2019. He was working at Primary Health Centre, Kalamkhar, Sub-centre Diya, Taluka Dharni, District Amravati. Petitioner No.2-Dr. Swati s/o Dinkar Wagh and petitioner No.3-Dr. Avinash s/o Ramkisan Pise were selected for the training by Order dated 03/10/2018. After completion of six months training they appointed on the post of Community Health Officer on contract basis by Order dated 07/03/2019. Petitioner No.2 joined at Primary Health Centre, Kalamkhar, Sub-centre Dhuni, Taluka Dharni, District Amravati whereas petitioner No.3 joined at Primary Health Centre, Kalamkher, Sub-centre Chichghat Taluka Dharni, District Amravati. All the three petitioners were appointed for 11 months. Petitioner No.4-Dr. Atul S/o Anilrao Sirsat applied in response to Zilla Parishad, Palghar which has issued an advertisement in the year 2018 and thereby invited the applications of the eligible candidates for filling the post of Community Health Officer on contractual basis. As per the said advertisement, the eligible candidates were required to undergo six months training and thereafter to pass exit exam. Accordingly, petitioner No.4 applied for the said post and he was selected for the training by an order dated 05/10/2018 and he had successfully completed six months training. Thereafter he was appointed on the post of Community Health Officer on contract basis by an order dated 08/03/2019 and was working at Primary Health Centre, Aina, Taluka Dahanu, District Palghar. All the four petitioners were

initially appointed for 11 months. As per the service conditions, petitioners had to issue Bond. They had to complete the service of three years in the said tribal area otherwise they were required to refund the amount of Rs.1,03,000/-.

4. As per the contention of the petitioners from July, 2019 they were rendering services as Community Health Officer in tribal area. There were no facilities of residence and transportation but they have rendered the services with full devotion. On 16/09/2019, respondent No.2 issued an advertisement for the post of Community Health Officer for Buldhana as well as for other districts. As per the said advertisement, near about 236 posts were declared. As per the said advertisement, the selection of the candidates would be through entrance examination conducted by National Health Mission of Maharashtra. The results would be declared by publishing district wise list on the website. The candidates fulfilling the eligibility criteria and qualifying the entrance examination would be allotted Program Study Centre at designated hospital in public health department. The candidates after completion of Certificate Program were required to appear at the exit exam conducted by the Maharashtra University of Health Sciences, Nashik. The successful candidates would be appointed as Community Health Officer initially for 11 months. It was further

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made clear in the advertisement that the successful candidates in the exit exam would be appointed as Community Health Officer as per the vacancies and as per the requirement of program through counselling at regional level based on merits of exit exam. The petitioners have applied for the post of the Community Health Officer. Their applications were duly accepted by respondent No.2 and petitioners were also permitted to appear for entrance examination conducted by respondent No.2. The petitioners were declared successful candidates in the entrance examination held by respondent No.2. As per the terms and conditions stipulated in the advertisement, respondent Nos.3 and 4 have issued the letter of counselling to the petitioners. As per the directions of respondent Nos.4 and 5, petitioners had attended the counselling process to the respective office. However, when the petitioners had visited the office of respondent Nos.3 and 4, they came across one notice which was displayed stating that the candidates who are presently working as a Community Health Officer are not permitted to participate in counselling process.

5. On inquiry by the petitioners in the office of respondent Nos.3 and 4, they came to know that Additional Director of National Health Mission, Mumbai issued communication to respondent No.2 that the candidates who are presently working as Community Health Officer

are not entitled to participate in the recruitment exercise of Community Health Officer for the year 2019 and 2020. The petitioners who are qualified and eligible for the post of Community Health Officer were refused to participate in the recruitment exercise. They immediately approached to the office of respondent No.2 and made their grievances in writing. They made grievances that they were not communicated on what basis they were refused to participate in the middle of recruitment exercise as there were no rules and regulations or circulars which would restrain them from participating in the recruitment exercise merely because they have already in the employment. There was no such condition imposed in the advertisement also.

6. It is the contention of the petitioners that the action of respondent Nos.1 to 4 refusing them an opportunity to appear them in the further recruitment process only on the ground that they are already in service which is not stipulated in the advertisement is arbitrary, illegal and liable to be set aside. The representations filed by the petitioners were rejected subsequently on 03/08/2019.

7. The petitioners have challenged the said condition which was issued subsequently by the respondents in the present writ petition. It is contended by the petitioners that there was no clause in the

advertisement which debars or disqualifies the candidate in the selection process who is already working on the post of Community Health Officer. Since the petitioners belong to Buldhana district and, therefore, they applied for the post of Community Health Officer. On perusal of the aforesaid advertisement through online process for Buldhana district the petitioners did not suppress the fact that they are working on the post of Community Health Officer. The petitioners are qualified and eligible to be appointed on the post of Community Health Officer. The respondents conducted written entrance examination. The petitioners were qualified in the said examination. The respondents published merit list wherein petitioner No.1 was at serial No.5, petitioner No.2 was at serial No.86, petitioner No.3 was at serial No.179 and petitioner No.4 was at serial No.90. First time they came to know when they appeared for counselling as per the advertisement that they would not be considered for the post of Community Health Officer for the reason that they are already working as a Community Health Officer in the Amravati District. They made representations to respondent Nos.2 and 4 thereafter they came across the communication dated 04/07/2019 issued by the Additional Director of National Health Mission, Mumbai to respondent No.2 and thereby informed that the candidates who are presently working as Community Health Officer are not entitled to participate in the recruitment process for the year 2019-2020. Subsequently, by the

communication dated 18/09/2019 in the meeting it was decided that if an employee working under the National Health Mission applies for the same post, his application shall be taken into consideration subject to educational qualification required for the said post. Thus the respondents have rectified the mistakes in the subsequent meeting and made it clear that the candidates who are already working as a Community Health Officer would be entitled for participation in the fresh recruitment process undertaken for the said post. The petitioners who had already successfully completed the training also qualified for the exit exam, therefore, they are more qualified and eligible candidates but opportunity was not given to them by the communication dated 04/07/2019 and opportunity was denied to them to participate in the selection process to work in non-tribal area in the Buldhana district wherein total 236 posts were advertised. It is the contention of the petitioners that the condition stipulated in the communication dated 04/07/2019 is arbitrary, illegal and liable to be set aside.

8. Respondent Nos.1 and 4 opposed the petition by filing their reply on the ground that the Committee is constituted under the Chairmanship of Commissioner (Health Services) and Mission Director, National Health Mission, Mumbai on 27/07/2020 at Mumbai, wherein the representation of the petitioners dated 26/02/2020 and the decision

taken in the meeting dated 03/08/2019 have been discussed and the claim of the petitioners had been rejected on the basis of certain grounds mentioned in the minutes of the meeting. It is further submitted that the communication along with the minutes of the meeting dated 03/08/2019 was misconceived by the petitioners. The minutes of the meeting dated 03/08/2019 clause 2 specifically shows that if an employee working under the National Health Mission applies for the same post, his application shall be taken into consideration subject to educational qualification required for the said post. On the basis of representation made by the union of National Health Mission employee, Mahasangh dated 31/07/2019 a committee was constituted under the Chairmanship of Additional Mission Director, National Urban Health Mission, Mumbai. The Committee meeting was conducted on 03/08/2019 wherein the issues pertaining to the representation of the union were discussed and accordingly the decision was taken. As per said decision the employees who are working in the National Health Mission, salary of such employee of same qualification working in different programs were different. Also salary to some cadres was much less considering the required education, qualification and experience, therefore, it was resolved that if employees working under the National Health Mission applies for the same post in upcoming new advertisement because of salary difference, then their application shall

be taken into consideration subject to educational qualification required for the said post. It was the aim and object of this clause to provide opportunity of higher salary to the employee if they are selected by competition. As far as petitioners are concerned there is no difference in the salary of newly recruited and already working Community Health Officers, therefore, said clause No.2 does not apply to the petitioners. It is further the contention of the respondents that all the petitioners were already working as a Community Health Officer, District Amravati and Palghar and posted in the tribal areas. They were posted as per their willingness by counselling. As they were already posted and there is no salary difference and they were not considered freshly.

9. It is further the contention of the respondent that in the training of Community Health Officer, the trainees are provided training material, lectures, demonstration etc. for that purpose the Government has to incur the expenditure per candidate is Rs.1,03,000/-. Once the candidate has undergone the training and successfully passed the examination conducted by the Maharashtra University of Health Sciences, Nashik, 'he/she' is supposed to join the district which is allotted to him/her accepting the application of the candidates who are already trained and posted again incurring expenses for them is a wastage of public money and human resources, therefore, the petitioners

are not entitled for any benefits. This writ petition is devoid of merits and liable to be dismissed.

10. Heard Shri N.B. Kalwaghe, learned Counsel for the petitioners. He submitted that the petitioners are possessing qualification of B.A.M.S. and, therefore, they applied to the post of Health Officer in response to the advertisement published by respondent Nos.1 and 2 in August, 2018. They had undergone the entrance examination, counselling and exit exam and thereafter they were selected. The petitioners were duly selected by following due procedure of law for the post of Community Health Provider. The petitioners were well aware that their appointment is for limited period but as they were facing unemployment since years together they decided to join the services in tribal area. From July, 2019 they were rendering services as Community Health Officer in tribal area of Amravati district. Admittedly in tribal area, there were no facilities of residence and transportation, however, the petitioners had rendered the services with full devotion. As they got opportunity to work in a better condition as respondent No.2 issued an advertisement on 16/09/2019 for the post of Community Health Officer for Buldhana and other districts. Total 236 posts were declared to be filled in Buldhana, therefore, the petitioners had applied for the said post. There was no condition mentioned in the said

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advertisement that the candidates who are already in service as a Community Health Officer are not entitled for applying in response to the advertisement published on 16/09/2019. Therefore, they have applied for the said post. In their applications, which were submitted by them, they have mentioned that they are already in service. The applications of the petitioners for the post of Community Health Officer were duly accepted by the office of respondent No.2 and they were permitted to appear for entrance examination conducted by respondent No.2 by issuing them Admit Card. Accordingly, entrance examination was conducted by respondent No.2 on 02/02/2020. The petitioners were declared as a successful candidate in the result of Community Health Officer entrance examination hold by respondent No.2. They have also received the letters issued by respondent Nos.3 and 4 of counselling. Accordingly, they visited the counselling process at the office of respondent Nos.4 and 5. However, they came across the notice which was displayed stating that the candidates who were presently working as Community Health Officer are not permitted to participate in counselling process. On inquiry they came to know that Additional Director of National Health Mission, Mumbai informed respondent No.2 that the candidates who are presently working as Community Health Officer are not entitled to participate in the recruitment exercise of Community Health Officer for the year 2019 and 2020. He submitted

that the petitioners who are eligible for the post of Community Health Officer were refused to participate in the recruitment exercise. The opportunity of appearing in further process of recruitment was denied to the petitioners. In fact, there was no condition mentioned in the advertisement that the candidates who are already working as a Community Health Officers are not entitled to apply for the said post. The communication was issued by the respondents against the said advertisement which is arbitrary and illegal. Opportunity to work in a better condition is denied to the petitioners and, therefore, the said action deserves to be quashed and set aside.

11. On the other hand Mrs. Jachak, learned Assistant Government Pleader for respondent Nos.1 and 2 submitted that as per the terms and conditions of the appointment of the petitioners they had to serve minimum three years services in the given district, if not served minimum for three years then the amount spend of Rs.1,03,000/- for the training of the candidates would be recovered from them. In view of the above condition, the petitioners are bound to provide their services to the department. She further submitted that as per the National Health Mission, there was no salary difference regarding the post wherein the petitioners are working and the post which are advertised, therefore, the application of the petitioners are not taken into consideration. The

petitioners have been posted as per their willingness by counselling. There was no issue of rationalisation of their salary, therefore, they were not considered as per the decision during the meeting dated 03/08/2019. It is submitted that a Committee was constituted under the Chairmanship of Commissioner (Health Services) and Mission Director, National Health Mission, Mumbai on 27/07/2020 wherein the decision is taken in the meeting dated 03/08/2019 about the candidates who are already in service as Health Officer would not be considered for the post which was advertised in the subsequent advertisement in the year 2019. Said decision is taken in view of the fact that during the training of Community Health Officer for six months, the trainees are provided training material, lectures, demonstration, clinical cases etc. and the expenditure of such training per candidate is Rs.1,03,000/-, therefore, the communication of respondent No.1 is legal and proper one.

12. Heard both the sides and perused the record on which the petitioners as well as the respondents are relied upon. The issue involved in this petition is already dealt by this Court in Writ Petition No.6765/2019 (Dr. Punam Gangadharrao Ingle and ors. Vs. Commissioner (Health Services) and Mission Director (N.H.M.), Mumbai and ors.) with Writ Petition No.2784/2021 (Dr. Bhushan Rajendra

Randale and anr. Vs. Commissioner (Health Services) and Mission Director (N.H.M.), Mumbai and ors.) decided on 29/07/2022 by allowing those petitions. Admittedly, all the petitioners had resigned from their post. Admittedly, in the year 2018, respondent Nos.3-Zilla Parishad, Amravati as per the directions of respondent Nos.1 and 2 had issued an advertisement for the post of Community Health Provider under the National Health Project Scheme on contract basis particularly for tribal area for Amravati district i.e. Chikhaldara and Dharni. Said advertisement is on record as Annexure-1. As per the terms and conditions of the said advertisement the candidate who is qualified as B.A.M.S. or B.Sc. (Nursing) is eligible to apply for the said post. The post of Community Health Provider under the National Health Project Scheme was on the contract basis particularly for the tribal area. The petitioners are possessing qualification of B.A.M.S. and they were duly registered with the Maharashtra Medical Council, applied for the said post. As per the advertisement, the candidates who are applied for the post have to appear for the entrance examination. After clearing the entrance examination, the candidates are selected would have to go through the Certificate Program for six months and thereafter they have to appear for exit exam which would be conducted by the Maharashtra University of Health Sciences, Nashik. It is further a part of record that the petitioners have cleared the entrance examination, they had

undergone six months Certificate of Program for six months thereafter appeared for exit exam and cleared the same. They had participated in the said process for the post of Community Health Provider. It is also an admitted position that the said post was on contract basis and, therefore, the candidates would be appointed initially for 11 months. As the petitioners had participated in the entire process, they were duly selected by following due procedure of law and appointed as a Community Health Provider. The appointment orders were issued to them respectively on 07/03/2019 and 08/03/2019. As per the terms and conditions of the said advertisement, the petitioners were asked to execute a bond. As per the terms and conditions of the said bond, the petitioners have to work continuously for a period of three years in the tribal area otherwise they have to refund the amount of Rs.1,03,000/- which was incurred for their training. In the light of the above condition, they were under the obligation to provide their services to the department. It is further the matter of record that again on 16/09/2019, respondent No.2 – Deputy Director of Health Services, Akola issued an advertisement for the post of Community Health Officer of Buldhana and other districts. The petitioners had applied for the post which was advertised on 16/09/2019 for the post of Community Health Officer for Buldhana and other districts. As per the said advertisement at about 236 posts were declared for Buldhana district. As per the terms and

conditions mentioned in the advertisement the selection of the candidates would be through entrance examination conducted by the National Health Mission of Maharashtra. The result would be declared by publishing districtwise list on the website. The candidates fulfilling the eligibility criteria and qualifying the entrance examination would be allotted program study centres at designated hospitals in Public Health Department. The candidates after completion of Certificate Program were required to appear for exit exam conducted by Maharashtra University of Health Sciences, Nashik. Thereafter the successful candidates would be appointed as Community Health Officer. The petitioners had submitted their applications online. Said applications were duly accepted by the office of respondent No.2 – Deputy Director of Health Services, Akola. The petitioners were also permitted to appear for the entrance examination conducted by respondent No.2. The petitioners were declared successful in the entrance examination. As per the terms and conditions stipulated in the advertisement respondent Nos.3 and 4 issued a letter of counselling to the petitioners. In accordance with the direction to remain present to attend counselling process, the petitioners have visited the office of respondent Nos.4 and 5. They were not intimated in advance that they would not be considered for the further process. But they came across the notice displayed that the candidates who are working as a Community Health

Officer presently are not permitted to participate in the counselling process. It is also a part of record that the petitioners have preferred their representations and made a grievance that they were not communicated on what basis they were refused to participate in the middle of recruitment exercise. In absence of any rules, regulations and circulars their representations were not considered by the respondents and, therefore, they approached to this Court.

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13. Perused the advertisement dated 16/09/2019. Admittedly said advertisement was issued for the Buldhana as well as for other districts for the post of Community Health Provider. As per the said advertisement National Health Mission, Maharashtra invited applications for 6/8 months Certificate Program in Community Health from the candidates who are willing/enthusiastic to serve the Community. Candidates who successfully complete this Program would be posted at the Health and Wellness Centres and Sub-centres as Community Health Officer on contract basis. Community Health Officers were expected to carry out public health functions, ambulatory care management and leadership at Health and Wellness Centre. The selection process stipulated in the advertisement is that selection of the candidates for Certificate Program in Community Health will be done through an entrance examination that would be conducted by National Health

Mission, Maharashtra. The relevant terms and conditions are reproduced herein for reference:

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(i) The entrance examination would be conducted on 02/02/2020 between 11.00 a.m. to 1.00 p.m. in selected examination centres at the level of Deputy Director of Health Sciences.

(ii) The entrance examination will be objective type with 50 questions.

(iii) Admit Card would be issued through e-mails on the candidates e-mail id mentioned in the application form.

(iv) The candidates fulfilling the eligibility criteria and qualifying entrance examination would be allotted Program Study Centres for 6/8 months Certificate Program at designated Hospitals in Public Health Department, Trust Hospitals and Hospitals decided by Public Health Department in State by counselling process at Deputy Director level based on the merit of entrance examination.

(v) After completion of Certificate Program, candidate will have to appear for an exit exam which will be conducted by M.U.H.S. Nashik.

(vi) Candidate successfully qualifying the exit exam would be appointed as Community Health Officer at Subcentre in the same or other district as per vacancy and requirement of program through counselling at regional level based on merit of exit exam.

14. As per the terms and conditions for the appointment, the relevant condition is that – candidate successfully clearing the exit exam will get a certificate which will be applicable only for working as a Community Health Officer at Sub-centre under Health and Wellness Scheme. This certificate does not make the candidate eligible for any specialisation/private practice/ any government job. Under the head of general terms and conditions, the relevant condition is that the candidates qualifying exit exam may likely to be appointed as Community Health Officer initially for 11 months, which may be extended subject to continuation of the project from Government of India and their performance. If the same is not extended : candidate cannot claim any right on the post or permanency of job or job protection by Government or any litigation regarding the employment protection. In case of unsatisfactory performance the services of candidate may be terminated after giving due notice. Thus, as per the terms and conditions of the advertisement there is no stipulation or

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condition that the persons who are already working as a Community Service Provider are not eligible to apply to the post as per the advertisement dated 16/09/2019.

15. It is vehemently submitted by the learned Assistant Government Pleader that the Deputy Director, Health Services, Nashik raised query as to whether to consider the applications of the candidates for training who are already trained in the earlier round. Then it was decided and accordingly informed to the Field Officers vide communication dated 04/07/2019 that not to consider the applications of the candidates who have already undergone six months training to become eligible to be appointed as Community Health Officer. Said decision is taken in view of fact that during the training of Community Health Officer for six months, the trainees are provided training material, lectures, demonstration and clinical cases etc., and the expenditure for giving such training per candidate is Rs.1,03,000/-. The communication dated 04/07/2019 was discussed in the meeting held under the Chairmanship of Commissioner (Health Services) and Mission Director, National Health Mission, Mumbai on 03/08/2019 and representations of the petitioners are rejected. Thus it is apparent that the petitioners are not considered for the said post only on the ground that they are already working as a Community Health Provider. They

had undergone the training of six months. The Government was required to incur the expenses of Rs.1,03,000/- per candidate for the said training and, therefore, it was decided not to consider the candidates who are already working as a Community Health Officer in Health and Wellness Centres. Admittedly, there was no condition stipulated in the advertisement. Admittedly, said decision is taken by respondent Nos.1 and 2 subsequently in the meeting held under the Chairmanship of Commissioner (Health Services) and Mission Director, National Health Mission, Mumbai on 03/08/2019. There is no basis for the such decision. The petitioners applications were accepted by respondent No.2. They were afforded with an opportunity to appear for the entrance examination. If an individual get an opportunity to work in a better condition definitely he or she would avail the said opportunity. Said opportunity could not be denied to the individual merely because they undergone the training and Government has to incur the expenses for the said training. The respondents were at liberty to exempt them from the said training if they would be selected in the further process but denying the opportunity to them to undergo further process of recruitment itself is arbitrary. It is held by the Hon'ble Apex Court in the case of *Madan Mohan Sharma and anr. Vs. State of Rajasthan and ors. (2008) 3 SCC 724* that once the advertisement had been issued on the basis of Circular obtaining at that particular time, the effect would be

that the selection process should continue on the basis of criteria which were laid down and which cannot be on the basis of criteria which has been made subsequently. Subsequent amendment of the rules laid during the pendency of the advertisement which was prospective cannot be made retrospective so as to make the selection on the basis of the rules which were subsequently amended. If this was to be done, then the only course open was to recall the advertisement and to issue a fresh advertisement according to the rules which had come into force. These observations are applicable in the present case also. As when advertisement had been issued there was no condition that the candidates who are already working as a Community Service Provider are not eligible to apply for the post of Community Health Provider as per the advertisement dated 16/09/2019. The applications of the petitioners are accepted. They appeared for the entrance examination. They have cleared the entrance examination, they were called for counselling and, thereafter, subsequently the decisions was taken that the candidates who are already working as a Health Service Provider are not to be taken into consideration as they have already undergone six months training. The contention of the respondents in their reply shows that said decision is taken in view of the fact that during the training of Community Health Officer for six months, the trainees are provided training material, lectures, demonstration, clinical cases, etc. and the

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expenditure for giving such training per candidate is Rs.1,03,000/-. This subsequent decision is contrary to the selection process declared by the respondents in the advertisement dated 16/09/2019. The selection process has to be conducted on the basis of criteria which was already laid down as observed by the Hon'ble Apex Court otherwise the only course is open to recall the advertisement and to issue a fresh advertisement. The decision taken by respondent No.1 not to consider the petitioners as they are already in service as a Community Health Officer is arbitrary, illegal and against the principles of natural justice hence, is liable to be quashed and set aside. Therefore, the writ petition deserves to be allowed.

16. In the light of above discussion and in the light of the observation of the Hon'ble Apex Court, we hold that the communication of respondent No.1 dated 04/07/2019 is illegal and needs to be quashed and set aside.

17. We, therefore, pass the following order :

(a) The writ petition is allowed.

(b) The communication of respondent No.1 dated 04/07/2019 and subsequent decision taken in meeting held on 03/08/2019 are hereby quashed and set aside

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(c) Respondent No.1 is directed to permit the petitioners to participate in further process of recruitment as per the advertisement dated 16/09/2019.

18. Rule is made absolute in the aforesaid terms. There will be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

**Divya*