

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

WRIT PETITION NO.6765 OF 2019

WITH

WRIT PETITION NO.2784 OF 2021

WRIT PETITION NO.6765 OF 2019

1. Dr. Punam Gangadharrao Ingle,
Age 28 years, Occupation – Service,
R/o. Pote Township, Kathora Road,
Amravati, Tq. and Dist. Amravati
2. Dr. Akshay Mohan Pimpare,
Age 30 years, Occupation – Service,
R/o. Gavalipura, Apsara Talkies Road,
Yavatmal, Tq. and Dist. Yavatmal
3. Dr. Rahul Sambhajirao Rawate,
Age 29 years, Occupation – Service,
R/o. Dhanki, Tq. Umred,
Dist. Yavatmal
4. Dr. Anand Dineshrao Ulhe,
Age 30 years, Occupation – Service,
R/o. Plot No.6, Balaji Nagar,
Near Shankar Nagar, Rajapeth,
Amravati, Tq. and Dist. Amravati
5. Dr. Sachin Arunrao Wankhade,
Age – 30 years, Occupation – Service,
R/o. Aalewadi, Deori, Akola,
Tq. and Dist. Akola

6. Dr. Madhuri Vijay Waghmare,
Age – 32 years, Occupation – Service,
R/o. Gokul Colony, Akola Road,
Akot, Dist. Akola
7. Dr. Punam Ramdas Gulhane,
Age – 28 years, Occupation – Service,
R/o Shri Appaswami Chaule,
Telipura, Darwaha,
Tq. Darwaha, Dist. Yavatmal

...PETITIONERS

VERSUS

1. Commissioner (Health Services) and
Mission Director (N.H.M.)
National Health Mission,
3rd Floor, Arogya Bhavan,
St. George Hospital Compound,
P.D. Mello Road,
Mumbai
2. Deputy Director of Health Services,
Near Chaudhari Vidyalaya,
Woman Hospital Premises,
Durga Chowk, Akola,
Tq. and Dist. Akola
3. Zilla Parishad Amravati,
through its Chief Executive Officer,
Amravati,
Tq. and Dist. Amravati
4. District Health Officer,
Health Department,
Zilla Parishad Camp,
Amravati

5. District Health Officer,
Health Department,
Zilla Parishad Arni Road,
Umarsara, Yavatmal
Tq. and Dist. Yavatmal

...RESPONDENTS

WITH

WRIT PETITION NO.2784 OF 2021

1. Dr. Bhushan Rajendra Randale,
Age 28 years, Occupation - Service,
R/o Patwari Colony, Chandur (Bz),
Tq. Chandur Bazar, Dist. Amravati
2. Dr. Madhuri Manohar Nanir
Age 29 years, Occupation - Service,
R/o Mahuli Chor, Nandgaon (Kh),
Tq. Nandgaon Khandeshwar,
Dist. Amravati

...PETITIONERS

VERSUS

1. Commissioner (Health Services) and
Mission Director (N.H.M.)
National Health Mission,
3rd Floor, Arogya Bhavan,
St. George Hospital Compound,
P.D. Mello Road,
Mumbai
2. Deputy Director of Health Services,
Near Chaudhari Vidyalaya,
Woman Hospital Premises,
Durga Chowk, Akola,
Tq. and Dist. Akola

3. Zilla Parishad Amravati,
through its Chief Executive Officer,
Amravati,
Tq. and Dist. Amravati
4. District Health Officer,
Health Department,
Zilla Parishad, Camp,
Amravati

...RESPONDENTS

WP No.6765/19

Shri P.S. Patil, Advocate for the petitioners.
Shri N.R. Patil, A.G.P. for respondent Nos.1 & 2/State.
Shri Sunil Shinde, Advocate for respondent Nos.3 & 4.
Shri Vikas Kulsange, Advocate for respondent No.5.

WP No.2784/21

Shri P.S. Patil, Advocate for the petitioners.
Shri N.R. Patil, A.G.P. for respondent Nos.1 & 2/State.

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

DATED : JULY 29, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard learned counsel for the parties.

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

3. The petitioners in both the petitions are medical professionals possessing a degree of B.A.M.S. and duly registered with the Maharashtra Medical Council. In August, 2018, respondent No.1–Commissioner (Health Services) and Mission Director (N.H.M.), National Health Mission respondent No.2 – Deputy Director of Health Services, Akola issued an advertisement for the post of Health Officer for the area Chikhaldara and Dharni in Amravati District under the National Health Project Scheme on contract basis. As per the eligibility criteria, petitioners who are qualified as B.A.M.S. were 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, appointment orders were issued on 05/07/2019 for the period of six months i.e. up to 05/01/2020. 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 19/06/2019, respondent No.2 issued an advertisement for the post of Community Health Officer for Amravati and Yavatmal districts as well as for other districts. As per the said advertisement, near about 857 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 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.4 and 5, 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 5, 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 5 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 representation filed by the petitioners was 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 petitions.

8. Respondent Nos.1 and 2 filed their reply to the writ petition and resisted the petition on the ground that the petitioners are already appointed as a Community Health Officer in the year 2018 by virtue of advertisement published by the office of respondent No.4 – District Health Officer. As per the said advertisement, the local candidates would be preferred and candidates are not at liberty to claim change in the place of work. That advertisement was published specifically for the block of Chikhaldara and Dharni, District Amravati. As the petitioners were posted at Chikhaldara and Dharni after counselling. Subsequently, petitioner Nos.5 and 6 had been terminated by the Common order of Civil Surgeon, Civil Hospital, Amravati and District Health Officer, Amravati dated 24/02/2020.

9. It is further the contention of respondent Nos.1 and 2 that it is subsequently mentioned in the appointment letter of the petitioners that they have to execute the Bond at the time of joining wherein condition was stipulated that “he/she” has to serve minimum three years services in the given district, if not served minimum three years then amount spend of Rs.1,03,000/- for the training of the candidates will be recovered. In the light of the above condition, the petitioners are binding to provide their services to the department. As per the contention of respondent Nos.1 and 2 in the National Health Mission salary of the employee of same qualification working in different program was different. Salary of some candidates was much less considering the required education, qualification and experience. Salary rationalisation exercise was undertaken and these issues are considered and the salary was increased considering equal qualification and experience. Government of India did not agree to increase the salary of already working employees as per rationalisation structure, therefore, it was resolved in a meeting dated 03/08/2019, that if employees working under the National Health Mission applies for the same post in upcoming new advertisement because of salary difference, then their applications should 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 the petitioners are concerned, there is no difference in the salary of newly recruited and already working Community Health Officers. The petitioners had been posted as per their willingness by counselling. As they are already posted and there is no issue of rationalisation of their salary they were not considered as per the decision during meeting dated 03/08/2019. The aforesaid decision was taken by the Committee which was constituted under the Chairmanship of Commissioner (Health Services) and Mission Director, National Health Mission, Mumbai on 03/08/2019. The guidelines issued by the Government of India, the Sub-centres, the health Sub-centres in Maharashtra State are to be upgraded to Health and Wellness Centres. For the purpose of appointment as Community Health Officer, the candidate is required to possess the qualification of B.A.M.S., B.Sc. (Nursing) or B.Sc. in Community Health. As per the guidelines of Union of India the candidates need to undergo a training of six months in Comprehensive Primary Health Care (CPHC) before being posted as Community Health Officer in Health and Wellness Centres and

Sub-centres. As the petitioners had already undergone the said training and as per the condition mentioned in the earlier advertisement while appointing the petitioners, the petitioners have to work at least for three years at the designated centres otherwise they have to refund the amount of Rs.1,03,000/-, they are not considered.

10. The decision dated 03/08/2019 is taken with a view that during the training of Community Health Officer for six months, the trainees are provided training materials, lectures, demonstration, clinical cases and the expenditure for giving such training per candidate is Rs.1,03,000/-, therefore the communication of respondent No.1 is legal and proper one, therefore, the writ petition deserves to be dismissed.

11. Heard Shri P.S. Patil, learned Counsel for the petitioners in both the petitions. 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 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 19/06/2019 for the post of Community Health Officer for Amravati and Yavatmal district and other districts. Total 857 posts were declared to be filled in Amravati and Yavatmal district, therefore, the petitioners had applied for the said post. There was no condition mentioned in the said 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 19/06/2019. 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 21/07/2019. 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.

12. In support of his contention he placed reliance on **Madan Mohan Sharma and anr. Vs. State of Rajasthan and ors. (2008) 3 SCC 724** wherein it is held by the Hon'ble Apex Court that once advertisement had been issued on the basis of circular obtaining at that particular time, the effect would be that selection process should continue on the basis of criteria which were laid down, and it cannot be on the basis of the criteria which has been made subsequently.

13. On the other hand Shri N.R. Patil, learned Assistant Government Pleader for respondent Nos.1 and 2, Shri Sunil Shinde, learned Counsel for respondent Nos.3 and 4 and Shri Vikas Kulsange, learned Counsel for respondent No.5 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 will be recovered from them. In view of the above condition, the petitioners are bound to provide their services to the department. He 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 with 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. The issue was raised by the Deputy Director, Health Services, Nashik 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 that not to consider the application 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 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.

14. Heard both the sides and perused the record on which the petitioners as wells as respondents are relied upon. Admittedly, in Writ Petition No.6765/2019, the services of petitioner No.4 – Dr. Anand Dineshrao Ulhe and petitioner No.5 – Dr. Sachin Arunrao Wankhade had been terminated by common order of Civil Surgeon, Civil Hospital, Amravati and District Health Officer, Amravati dated 24/02/2022 which is on record as Annexure-R-2. Admittedly, in the year 2018, respondent Nos.3 and 4 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 on 05/07/2019 initially, for the period of six months i.e. up to 05/01/2020. 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 19/06/2019, respondent No.2 – Deputy Director of Health Services, Akola issued an advertisement for the post of Community Health Officer of Amravati and Yavatmal districts. The petitioners had applied for the post which was advertised on 19/06/2019 for the post of Community Health Officer for Amravati and Yavatmal district. As per the said advertisement at about 857 posts were declared. 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.

15. Perused the advertisement dated 19/06/2019. Admittedly said advertisement was issued for the Amravati and Yavatmal districts 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 :

- (i) The entrance examination would be conducted on 21/07/2019 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.

16. 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 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 19/06/2019.

17. It is vehemently submitted by the learned Assistant Government Pleader and the learned Counsel for respondent Nos.3 to 5 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. (supra) on which learned Counsel for the petitioners placed reliance by submitting 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 19/06/2019. 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 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 19/06/2019. 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.

18. 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.

19. We, therefore, pass the following order :

(a) The writ petitions are 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

(c) Respondent No.1 is directed to permit the petitioners to participate in further process of

recruitment as per the advertisement dated 19/06/2019.

(d) Petitioner Nos.5 and 6 in the Writ Petition No.6765/2019 are already terminated from the services, therefore, they are not entitled for any relief as claimed by them.

Correction carried out
as per Hon'ble Court's
Order dated 05.09.2022

20. 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*