

WRIT PETITION NO. 9872 OF 2016

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DATE : 26 OCTOBER 2023

P.C.:

Heard the learned Counsel for the parties.

2. The petition is filed by the Maharashtra Public Service Commission (the Commission) challenging the order dated 19 October 2015 passed by the Maharashtra Administrative Tribunal (the Tribunal), Mumbai in Original Application No. 239 of 2015. The Tribunal by the impugned order directed the Petitioner-the Commission to send a recommendation in respect of Respondent No.1-Original Applicant for appointment from open category to the Respondent – State of Maharashtra by making necessary changes in the list of open category/OBC category.

3. The Petitioner- the Commission issued an advertisement on 30 April 2014 to fill up six posts of Associate Professors in Orthopedics. Respondent No.1-Original Applicant applied from open category. Respondent No.1-Original Applicant was working as an Assistant Professor in the recognized medical college. The Tribunal, accepting the position that Respondent No.1/ Original Applicant did not have requisite experience of four years which was falling short by 4 months, directed his consideration on equitable consideration. This direction of equitable consideration de hors the Rules, the Commission has challenged before us.

4. The learned Counsel for Respondent No.1- Original Application states that he has no instructions as Respondent No.1 is not contacting him any more.

5. On 28 July 2017, this Court had passed the following order :

“1. Leave to amend forthwith.

2. Heard Learned Counsel for the petitioner.

3. Issue notice to respondents no.1 and 2 returnable on 10th October, 2017. Learned AGP waives service for respondent no.3.

4. In O.A. No. 239 of 2015, the Maharashtra Administrative Tribunal (MAT) has issued the following directions :-

“In O.A.no.239/2015, the Respondent no.1 may send the recommendation in respect of the Applicant for appointment from open

category to the respondent no.3, by making necessary changes in the list of open category/OBC category.”

5. This O.A. was filed by respondent no.1 in this petition who was not selected for the post of Associate Professors in Orthopedics though he had obtained higher marks than all the three candidates selected from the open category. It appears, respondent no.1 did not have the requisite experience of 4 years as an Assistant Professor and therefore though he had obtained highest marks, he was not selected for the said post. The Tribunal, as it appears, has held thus, “To deny him appointment, only as he did not have requisite experience (which was less by 4 months only) is quite inequitous”. Prima-facie, we are of the view that, the directions issued by the MAT as reproduced hereinabove, requires further examination and scrutiny and if the operation of this direction is not stayed, it will affect the selection process and the candidates, who are appointed from the open category by following due process of selection. That in the fact situation, we are inclined to stay the operation of the directions (ii) as reproduced hereinabove and hence ad-interim relief in terms of prayer clause (c).”

This interim order is continued thereafter.

6. As consequence of the interim order, the post in question has already been filled in and this fact is brought on record by the Commission by way of an affidavit. Perhaps, this is the reason that Respondent No.1-Original Applicant is no longer interested in this litigation.

7. Considering the fact that Respondent No.1- Original Applicant in whose favour recommendation was made eight years ago has shown no interest, thereafter, as a sequitur, the direction has become unenforceable and unworkable.

8. In these circumstances, we quash and set aside the order dated 19 October 2015.

9. We make it clear that in these circumstances we have not considered *inter se* rights raised in this Petition.

(MANJUSHA DESHPANDE, J.) (NITIN JAMDAR, J.)