

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6424 OF 2023

Dr.Nitin Hiralal Shimpi

..... Petitioner

VERSUS

The State of Maharashtra & Anr.

..... Respondents

Mr.Prajit S.Sahane for the Petitioner.

Mrs.R.M.Shinde, A.G.P. for the State – Respondent Nos. 1 and 2.

Ms.Megha S.Dhere, Under Secretary, MPSC is present in Court.

**CORAM: R. D. DHANUKA , CJ AND
G.S.KULKARNI, JJ.**

**DATE : 29TH MAY, 2023
(VACATION COURT)**

P.C:-

Rule. Learned A.G.P. waives for the Respondents. Rule is made returnable forthwith. By consent of parties, writ petition is taken up for final hearing.

2. By this writ petition filed under Article 226 of the Constitution of India, the Petitioner has impugned the order dated 18th May, 2023 passed by the Maharashtra Administrative Tribunal thereby rejecting the interim relief in Original Application No. 570 of 2023. The

Petitioner intends to apply for the post of Food Safety Officer and Assistant Commissioner of Food pursuant to the advertisement published by the Maharashtra Public Service Commission, Respondent No.2 (for short “M.P.S.C.”) dated 24th February, 2023 and appear at the Maharashtra Civil Services Combined Preliminary Examination, 2023 to be held on 4th June, 2023. The Petitioner holds the degree of BHMS from a recognized university. It is the case of the Petitioner that Homeopathy is one of the forms/branches of the medicine and is a medical system that was developed in Germany more than 200 years ago.

3. In the above context, we have perused the judgment delivered by the Division Bench of the Maharashtra Administrative Tribunal decided by the learned Chairperson dated 29th March, 2022 in Original Application No.322 of 2023 in case of ***Dr.Malakappa M.Patil & Others vs. The State of Maharashtra & Ors.*** The relevant paragraphs of the said judgment recognizing the said qualification possessed by the Petitioner reads as under :-

“ 5. The Medical Council Act of 1956 has defined Medicine under Section 2(f) as follows :-
(f) “Medicine” means modern scientific

medicine in all its branches and include surgery and obstetrics, but does not include veterinary medicine and surgery.”

Thus, the Medical Council of India in order to establish uniform standard of higher qualification in Medicine has introduced the 1933 amendment and the word ‘Medicine’ is defined to mean ‘modern scientific medicine’ which connotes allopathic medicine including surgery and obstetrics, but excluding veterinary medicine and surgery.

6. *We have considered the interim order of the Division Bench of the Allahabad High Court and so also the final judgment of the Madurai Bench of the Madras High Court. The expression ‘medicine’ obviously includes Siddha system of medicine which is ancient Indian medicine. The degree secured in that field of medicine is recognized as Degree in Medicine by the Madurai Bench of the Madras High Court.*

7. *Prima facie, we are of the view that the word ‘medicine’ which is defined in Rule 2(f) of the Medical Council of India Act, 1956, is to be restricted to and is to be read for the purpose of Medical Council Act, 1956 only, which is one of the branches of the Medicine. ‘Medicine’ is a wider connotation includes various branches, i.e. Aayurveda, Unani, Homeopathy etc. The definition of Medicine under Section 2(f) cannot be made applicable when the word ‘medicine’ as a whole is understood. Apart from Allopathy, there can be other branches of medicine by which the patients are cured and are recognized by the Medical Council of India, i.e. Unani, Ayurveda, Allopathy and Siddha.*

8. *We also rely on the final judgment of the Madurai Bench of the Madras High Court dated 23.3.2023 in W.P. (MD) No. 4882/2023. We grant*

interim relief at this stage by directing the Respondent, M.P.S.C. to allow the applicants to submit the application form from today for Preliminary Examination to be conducted for the post of Food Safety Officer and Assistant Commissioner for Food as per advertisement dated 24.2.2023 and 17.3.2023 and allow them to appear for the examination on 4.6.2023.”

4. By the above judgment the Maharashtra Administrative Tribunal has accordingly directed the M.P.S.C. to make available the online application site open to the applicants therein to fill up the form and decide in the matter and made it clear that any decision in the matter will be subject to the outcome of the original application.

5. We have also perused the order dated 2nd May, 2023 in Writ Petition No. 5970 of 2023 in case of ***Ratnadip Nanasaheb Bhise & Ors. vs. Maharashtra Public Service Commission & Ors.*** as referred by the Tribunal, wherein the Division Bench of this Court has dealt with the issue equivalent to the Degree in Pharmacy and decided the issue as to whether the said degree equivalent to the degree mentioned in clause 2.1.3.

6. We have perused the impugned order passed by the Chairperson

of the Tribunal on 18th May, 2023. In our *prima facie* view, the Chairperson ought to have placed reliance on the order dated 2nd May, 2023 passed by this Court in case of ***Ratnadip Nanasaheb Bhise & Ors.*** (supra) referring to delay of the Petitioner in approaching the Tribunal while rejecting the interim application when the *prima facie*, the Petitioner met the requirements of eligibility for the qualification. The substantial proceedings are still pending.

7. Ms.Shinde, learned A.G.P. for the Respondents vehemently opposed this application on the ground that there is gross delay on the part of the Petitioner in submitting application form. We have however noticed that there was corrigendum issued to the original advertisement. The corrigendum was issued on 28th April, 2023 setting out new programme in response to the said advertisement. We are informed that the examination is scheduled to be held on 4th June, 2023. We are not inclined to accept the submission made by the learned A.G.P. that since the hall tickets are issued to the other candidates, at this stage the Petitioner cannot be issued hall ticket at this stage, since we have found the substance in the submission made by the learned counsel for the Petitioner and we *prima facie* find that the rejection of

the interim order passed by the learned Chairperson of the Maharashtra Administrative Tribunal is contrary to the earlier order passed by the Tribunal. The Petitioner hence permitted to file the application within two days from today. If any such application is filed by the Petitioner, the same shall be accepted. Upon filing of such application, the Respondents to issue hall ticket to the Petitioner within 24 hours thereafter and shall be permitted to appear for the examination. Ordered accordingly.

8. It is however, made clear that the order passed by this Court today is subject to the further order as may be passed by the Maharashtra Administrative Tribunal in the pending original application. The Maharashtra Administrative Tribunal is directed to dispose off the original application expeditiously.

9. Writ petition is disposed off in the aforesaid terms. Rule is made absolute. No order as to costs. The parties to act on the authenticated copy of this order.

[G.S.KULKARNI, J.]

[CHIEF JUSTICE]