

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1383/2022

Dr. Sunil s/o Nilkanth Washimkar,
Aged about 51 years,
Occ. Govt. Service,
R/o 35, Murari Apartments, Ashok
Colony, Khamla, Nagpur-440 025.
(Mob.No.9823065380)
(E-mail :sunil_ wash@rediffmail.com) ...Petitioner

- Versus -

- 1) The State of Maharashtra,
through its Secretary, Medical
Education & Drugs Department,
Mantralaya, Mumbai-32.
- 2) The Director of Medical Education &
Research, Saint George Hospital,
Mumbai.
- 3) The Maharashtra Public Service
Commission through its Secretary
(Direct Recruitment), having Office
at 578th Floor, Kuprez Telephone
Exchange Building, Maharshi Karve
Road, Kuprez, Mumbai-400 021. ... Respondents

Mr. A.A. Naik Advocate for the Petitioner.

Mr. D.L.Dharmadhikari, Assistant Government Pleader for
Respondent Nos.1 to 3.

CORAM : SUNIL B. SHUKRE
MRS. VRUSHALI V.JOSHI, JJ.
DATE : 13.02.2023.

ORAL JUDGMENT (Per Sunil B. Shukre, J.)

1. Heard.
2. Leave to file on record a Pursis marked as document-A along with three documents marked as documents-A1, A2 and A3 is granted and copies of Pursis and documents be furnished to learned AGP forthwith.
3. **Rule.** Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.
4. The petitioner is an Associate Professor working with Superspeciality Hospital, Government Medical College, Nagpur. The petitioner, in response to the advertisement No.008/2021, inviting applications from the eligible Associate Professors in Cardiology for their

selection and appointment as Professor in Cardiology, made an application for that post. Along with his application, the petitioner had enclosed all the necessary documents including copies of paper publications and letters showing dates of acceptance of those research papers which were sent by the petitioner for their publication in the prescribed journal. During scrutiny of the application, the petitioner, however, was found to be ineligible to take part in the selection and appointment process. The decision of the MPSC holding the petitioner “ineligible” for the post of Professor in Cardiology by E-mail dated 4.3.2022 was stated to be sent to him by E-mail. This E-mail was, however, sent to the petitioner on wrong E-mail ID and which was, “sunil-wash@rediffmail.com” although the correct E-mail ID of the petitioner was, “sunil_wash@rediffmail.com”, and thus was not received by the petitioner.

5. Sometime later, the petitioner came across names of shortlisted candidates when he found his name missing and realised that there was something amiss about the selection process and, therefore, he questioned

the action of the MPSC by filing an appropriate application before the Maharashtra Administrative Tribunal, Nagpur. During the course of hearing before the Tribunal, the petitioner learnt about the communication of he being ineligible to take part in the selection process. That was the communication sent by the MPSC on his wrong Email ID and when the petitioner pointed out this fact to the Tribunal that the physical copy of the E-mail dated 4.3.2022 was handed over to the learned counsel for the petitioner and it was then the petitioner really and authentically learnt about he having been found ineligible to take part in the selection process. The Tribunal did not, however, take any notice of this lapse and, nevertheless, dismissed the application of the petitioner upholding the decision of the MPSC.

6. Being aggrieved by dismissal order passed by the Maharashtra Administrative Tribunal, the petitioner has approached this Court by filing this petition.

7. The learned counsel for the petitioner contends that the dismissal order passed by the MPSC is bad in law as it does not consider the most relevant aspects of the matter, in particular, the fact that the research paper of

the petitioner was accepted for publication by the concerned International journal on 19.8.2021, much before the last date of filing of the application, which was 26.8.2021.

8. The learned AGP appearing for the respondents, opposes the petition. According to him, the decision taken by the MPSC is based upon the decision of the Experts Committee. He submits that the first decision taken by the MPSC was based upon the earlier decision of the Experts Committee and subsequently when this matter was again directed to be referred to the Experts Committee for fresh consideration, the Experts Committee found that the fourth research paper on the subject "Retrospective Study of Clinical & Epidemiological Parameters of PCI PA" was published after due date of the application i.e. 26.8.2021 and, therefore, the Experts Committee found afresh that the petitioner could not be said to be eligible for taking part in the selection process and that this fresh opinion of the Experts Committee has been relied upon by the MPSC. He submits that when the Experts Committee has given its opinion, it is not open to the MPSC to disagree with the opinion of the Experts

Committee and, in fact, the opinion of Experts Committee would also be binding upon this Court. Thus, he submits that there is no substance in the petition.

9. The grievance of the petitioner is that even though he is eligible to take part in the selection process initiated vide advertisement No.008/2021 for appointment to the post of Professor in Cardiology, he is being unjustly found to be ineligible, has charted a chequered course of litigation which has seen the dispute being tossed in between the Tribunal and this Court and then this Court and the Experts Committee. But, on the flip side of it, there is a narrowing down of the controversy. Now, the issue of ineligibility or otherwise of the petitioner is confined to controversy enveloping publication of one research paper out of four research papers submitted by the petitioner to the prescribed journal, as per the Medical Council of India/ National Medical Council Rules.

10. It so happened that initially the Scrutiny Committee had found that out of four research papers publications, two research papers publications were not as per the rules framed by the Medical Council of India/National Medical Council Rules. The Scrutiny

Committee, however, had also found that one research paper was published as per the MCI/NMC Rules. Later on, when the petitioner was served with physical copy of the E-mail dated 4.3.2022, another reason was given by the MPSC for finding the petitioner to be “ineligible”. In this E-mail, it was stated that the petitioner had not produced copies of any publications as per the advertisement of the Professor in Cardiology, Government Medical College. However, it was further stated that the reason for finding the petitioner to be “ineligible” earlier was an inadvertent mistake. It was further stated that the request of the petitioner for he being considered as, “eligible” was being examined separately. Of course, on the basis of this communication, the Administrative Tribunal dismissed the application of the petitioner but, it was only this communication, that weighed with this Court in the present petition prompting it to issue a direction on 9.3.2022 to respondent no.3 i.e. the MPSC to examine the request of the petitioner and decide the issue, with a further direction to spell out the reasons, if the decision was adverse to the petitioner.

11. After the direction dated 9.3.2022, the MPSC, through Experts Committee, was expected to have a fresh look at the whole issue but, neither the Experts Committee nor the MPSC embarked upon fresh consideration of the issue and the MPSC, relying upon its E-mail dated 4.3.2022, discussed earlier, rejected the claim of the petitioner on the ground that out of four research papers publications, only one research paper publication was as per Rules and, therefore, reiterated its finding that the petitioner was ineligible. This was no less than a case of non-application of mind to the facts of the case and the direction issued by this Court on 9.3.2022. When this folly was brought to the notice of this Court, this Court took its cognizance, and passed another direction on 13.10.2022. This Court directed respondent no.3 – the MPSC to examine the claim of the petitioner regarding his being eligible or otherwise by making fresh reference to the Committee of Experts. Accordingly, the MPSC referred the issue to the Committee of Experts for its fresh consideration and now, by pursis filed on record bearing

No.04/22, decision of the Committee of Experts is placed on record.

12. We have gone through the fresh decision of the Committee of Experts. As stated earlier, it discloses that the controversy relating to publication of four research papers as prescribed in the advertisement now has been reduced to publication of only one research paper. It is further seen that the Committee of Experts has now accepted that the publication of three papers is as per Rules and it has objection only in respect of publication of one research paper having title, "Retrospective Study of Clinical & Epidemiological Parameters of PCI PA".

13. The Committee of Experts, it is further seen, has opined that the paper about which it has objection has been published after due date i.e. 26.8.2021, which was the last date of filing of the application and hence it found that the petitioner was "ineligible". This opinion of the Committee of Experts, in our view, is perverse as it does not take into account the relevant facts and also the guidelines issued by the Medical Council of India, as submitted by Mr. Naik, learned counsel for the petitioner. These guidelines are contained in document-A3. They

show that the requirement of publication of a research paper in the prescribed journal is fulfilled not only by its actual publication in the journal but also by the fact that the research paper is “accepted for publication”, even though research paper may not have been actually published. There is no dispute about these guidelines. These guidelines, in our opinion, clinch the issue in favour of the petitioner here for the reason that the fourth research paper of the petitioner objected to by Experts Committee was accepted for publication by Editor of International Journal of Scientific Research on 19.8.2021. This is evident from the E-mail dated 19.8.2021 received by the petitioner from the Editor of the journal. A copy of this E-mail had also been undeniably submitted by the petitioner along with his application, though it's a different thing that it went unnoticed by the MPSC or the Experts Committee. Of course, document, which is marked as document-A1, as pointed out by learned AGP, does show that it is an E-mail addressed to the co-author of the fourth research paper, Mr. Atul Singh Rajput and not to the petitioner. But, there is one more document, marked as

document-A2, which shows that it is a communication indicating acceptance of the said research paper and it has been addressed to both the authors including the petitioner. Even otherwise, addressing of a communication to one of two authors in a case like this would not negate the fact that the research paper in question has been accepted for publication before the due date as the paper is written by two authors, the petitioner being the first author and Mr. Rajput the co-author. The respondent no.3 – MPSC does not also have any dispute about the fourth research paper having been written by the petitioner and Atul Singh Rajput of which, the petitioner is the first author. Such being authorship of the fourth research paper, the E-mail vide document A1 having been addressed to the second author loses its significance from the view point of fulfillment of eligibility criteria by the petitioner for the post for which he has made the application. Even otherwise, there is one more E-mail similarly received by the petitioner from the Editor of International Journal of Scientific Research on 19.8.2021, which is at page 50-A showing acceptance of

the fourth research paper of the petitioner before the due date, copy of which has been admittedly submitted by the petitioner along with his application. This document at page 50-A effectively meets the objection of the learned AGP for the respondents in this regard and enables us to reject the same.

14. Once it is established on record that the Medical Council of India considers the research papers accepted for publication as eligible for various posts and it is found that the fourth research paper of the petitioner was accepted for publication on 19.8.2021, much before the due date of 26.8.2021, the Committee of Experts could not have found the petitioner to be not eligible on the ground that the publication of the research paper of the petitioner was after the said due date. In fact, the publication of any research paper in an international journal is only a consequence of the decision to accept the research paper for publication and this consequence may ensue immediately after the acceptance of the research paper for publication or may visit after a gap of several days, months and even years. That apart publication of any research paper, which is already accepted for

publication depends various factors such as availability of space in the journal, frequency of the journal and so on. These things are not within the control of the researcher and, in fact, should not matter for determining the eligibility of a researcher for a particular post or qualification. What should matter in such a case is the date on which a research paper is accepted for publication as it is such acceptance only which indicates the worth of research paper for its publication. In our view, it is only the fitness or worthiness of research paper for its publication, which comes from a decision of its acceptance for publication, which should determine the issue of eligibility of the researcher for a particular post or qualification. The guidelines issued by the Medical Council of India, (document-A3), in our view, make sense and they only show that Medical Council of India accepts that it is only the finding about worthiness of research paper for its publication which matters and not its actual publication. The Committee of Experts, however, glossed over this most important aspect of the matter and reached a

patently wrong and perverse conclusion. It, therefore, deserves to be interfered with.

15. In this view of the matter, we find that the scrutiny Committee has committed serious error of fact and law and has misdirected itself by taking into consideration something which is really not relevant for deciding the issue in the petition. It also appears to us that the MPSC - respondent no.3 has only mechanically followed decision of the Committee Experts, though it ought to have rejected it. Opinion of any Experts Committee would be binding on the MPSC, when it is not vitiated by any perversity or ignorance of some relevant fact or consideration of some irrelevant fact. By the same principle, the opinion of the Experts Committee would also not bind this Court and, therefore, we are of the view that this is a fit case for making interference in the matter.

16. In the result, the petition is allowed. The impugned order passed by the Maharashtra Administrative Tribunal and also the impugned decision taken by the MPSC are hereby quashed and set aside.

17. It is declared that the petitioner satisfies the eligibility criteria for appointment to the post of Professor in

Cardiology under the Maharashtra Medical Education & Research Service, Group-A, as per Advertisement No.008/2021 published on 6.8.2021.

18. We direct the MPSC to conduct the process of selection and appointment to the post of Professor in Cardiology under Maharashtra Medical Education & Research Service, Group-A by allowing the petitioner to take part in the selection process.

19. We further direct the MPSC to take it's final decision in the matter in accordance with law and in the light of the observations made hereinabove, at the earliest, preferably within eight weeks of the receipt of the writ of this Court.

20. Rule is made absolute in the above terms. No costs.

JUDGE

JUDGE

Ambulkar.