



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10259 OF 2022

Nilesh Lahurao Kangude,
Age 25 yrs., Occ. Lab-Technician,
R/o Santosh Nagar, Mondha Naka,
Georai, Tq. Georai, Dist. Beed.

... Petitioner

... Versus ...

- 1 Joint Director (Technical),
Aurangabad Region, Aurangabad.
- 2 Institute of Pharmacy,
Run by Jai Bhavani Shikshan Prasarak Mandal,
Through its Principal,
Having office at Gadhi, Georai,
Tq. Georai, Dist. Beed.

... Respondents

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Mr. S.V. Deshmukh, Advocate for petitioner
Mr. S.R. Yadav-Lonikar, AGP for respondent No.1
Mr. R.A. Deshmukh, Advocate for respondent No.2

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CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

RESERVED ON : 12th MARCH, 2024

PRONOUNCED ON : 02nd APRIL, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 The petitioner challenges the impugned communication dated 24.02.2022 issued by respondent No.1 rejecting the approval to the appointment of the petitioner. It is further prayed that respondent No.1 should be directed to issue approval in favour of the petitioner.

3 The factual matrix leading to the petition are that the petitioner after due procedure came to be appointed as Lab Technician by respondent No.2. The petitioner is qualified in D. Pharmacy. Respondent No.1 had accorded sanction to fill up the post to respondent No.2 by letter dated 10.01.2019. Thereupon respondent No.2 had issued advertise on 10.08.2019. The advertisement contained that for the post of Lab Technician the experience of two years was required. The corrigendum was then issued on 01.09.2019 stating that experience of three years is necessary. Thereafter, by letter dated 04.12.2019 respondent No.1 had constituted selection committee and nominated a nominee on its behalf on the said committee. The interviews were conducted and the name of the petitioner was recommended for the post of Lab Technician by report dated 07.12.2019.

Along with the report the selection committee of the institute by letter dated 10.12.2019 forwarded the proposal to respondent No.1 seeking approval to the appointment of the petitioner. Respondent No.1 had then raised deficiency in the certificate of experience of the petitioner by letter dated 07.02.2020. However, it was the initial stage of Covid-19 Pandemic and, therefore, respondent No.1 by letter dated 04.05.2020 and 20.08.2020 it was informed that due to the pandemic situation it is unable to take necessary action on the proposal. Respondent No.1 then directed that the proposal be submitted once the Covid-19 pandemic guidelines are relaxed by the Government. Accordingly, after the guidelines were relaxed, respondent No.2 re-submitted the proposal seeking approval to the appointment of the petitioner. However, it was then informed by respondent No.1 that in view of Government Resolution dated 04.05.2020 and 24.06.2021 the approval cannot be granted as there were restrictions on the recruitment. The petitioner contends that the Government Resolution is unjust and arbitrary. Taking into consideration the Covid-19 Pandemic difficulties the Hon'ble Supreme Court by Suo-moto Writ Petition No.3 of 2020 order dated 10.01.2020 had clarified and extended the limitations. However, by communication dated 24.02.2022 the proposal has been rejected. Hence, the writ petition.

4 One Umesh Teniprasad Nagdeve, the Joint Director Technical Education, Aurangabad has filed affidavit-in-reply on behalf of respondent No.1. Almost all the facts are admitted, however, it is stated that when the experience of three years was necessary initially certificate of two years experience was only attached, but later on the concerned college had forwarded the letter about inadvertently missing one certificate which later on tendered. It was then brought to the notice of the college about the Government policy vide Government Resolution dated 04.05.2020 that the recruitment is prohibited due to Covid-19 Pandemic situation. According to respondent No.1, in view of Government Resolution dated 13.06.2018 issued by General Administration Department of the Government of Maharashtra it is said that as regards the waiting list recommended by the selection committee could be valid up to one year only or till the date of waiting list, whichever happens earlier. Thereafter the said wait list would automatically get lapsed. In the present case more than one year period has passed and, therefore, approval cannot be granted.

5 Heard learned Advocate Mr. S.V. Deshmukh for the petitioner, learned AGP Mr. S.R. Yadav-Lonikar for respondent No.1 and learned Advocate Mr. R.A. Deshmukh for respondent No.2.

6 The first and the foremost fact to be noted is that the advertisement for filling up the post of Lab Technician was published by respondent No.2 by taking prior consent of respondent No.1 by letter dated 13.12.2018. The permission was granted by letter dated 10.01.2019. The advertisement was then published in the newspaper on 01.08.2019. Thereafter as per the selection committee rules even respondent No.1 had nominated Mr. D.A. Madavi, Assistant Director, Raimal Office of Technical Edition, Aurangabad. Thereafter the interviews were held on 07.12.2019 and it appears that the report was also prepared by the committee. It appears that in all seven members were in the committee and five persons had applied for the said post. Out of them petitioner was selected. Immediately thereafter on 10.12.2019 respondent No.2 had forwarded application/communication for grant of approval to the appointment of petitioner. It was along with necessary documents. Thereafter it appears that the scrutiny of the said proposal was made and by letter dated 17.01.2020 defect was pointed out that he is having less experience than requirement. Thereupon by letter dated 07.02.2020 respondent No.2 accepted that one more experience certificate remained to be attached with the proposal though submitted by the petitioner and, therefore, along with the same it was presented. The said letter dated 07.02.2020 was accepted by the office of respondent No.1 on 10.02.2020. However, till 20.02.2020 there was no

action on the part of respondent No.1. It was on the basis of the Covid-19 situation. If we are to recollect the restrictions started from 22.03.2020, respondent No.1 had time to consider the proposal forwarded by respondent No.2 as it had received the letter dated 07.02.2020 on 10.02.2020 till 22.03.2020. But respondent No.1 had sit over the file and could respond only on 20.08.2020. Even at that time there were Covid-19 restrictions and help of Government Resolution dated 04.05.2020 was taken to say that since restrictions on the recruitment are placed by the Government, it is not possible to take decision on that day. Directions were given that after the Government relaxes those conditions then the proposal should be re-submitted. It appears that till 19.01.2022 respondent No.2 was continuously pursuing respondent No.1 to take decision on the proposal. Again the proposal was re-submitted on 19.01.2022. But by impugned order dated 22.04.2022 the proposal has been rejected. It can be said to be a normal ground by taking help of Government Resolution dated 13.06.2018, which says that the select list will automatically lapse after one year. Respondent No.1 failed to consider that it was his own inaction to take any decision between 10.02.2020 till 22.03.2020 i.e. before the restrictions came into existence in respect of Covid-19 situation. Even by letter dated 20.08.2020 it was not pointed out that if the re-submission of the proposal goes beyond one year, then in view of Government Resolution dated 13.06.2018 the list

will lapse. Rather by communication dated 20.08.2020 respondent No.2 was directed to re-submit the proposal. Respondent No.1's office has also in fact participated in the selection process and, therefore, it was the duty of respondent No.1 also that the entire selection should not go in vain, in view of Government Resolution dated 13.06.2018. When a suitable candidate was selected by appropriate procedure and the post was vacant, that too, of a Lab Technician, then by appropriate communication to the higher authorities respondent No.1 ought to have seen that the selection is then protected. The ground for rejection, therefore, is illegal, illogical, in view of the peculiar circumstances. Therefore, we find this to be a fit case where we should exercise our constitutional powers under Article 226 of the Constitution of India. Hence, following order is passed.

ORDER

- 1 The Writ Petition stands allowed.
- 2 The impugned communication dated 24.02.2022 issued by respondent No.1 rejecting the approval to the appointment of the petitioner is hereby quashed and set aside.
- 3 Respondent No.1 is directed to accord approval in favour of

petitioner and such approval be communicated to respondent No.2 within a period of 15 days from today.

4 Respondent No.2 to take further action thereafter.

5 Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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