



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 980 OF 2025

Maharashtra Public Service Commission... **PETITIONER**

VERSUS

The State of Maharashtra & anr. ... **RESPONDENTS**

.....
Mr. Mukul S. Kulkarni, Advocate for petitioner
Mr. A.A.A. Khan, A.G.P. for R. No.1
Mr. Avinash Deshmukh, Advocate holding for
Mr. Jayant S. Deshmukh, Advocate for R.No.2
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**CORAM : R.G. AVACHAT AND
ABASAHEB D. SHINDE, JJ.**

Date of reserving order : 6th October, 2025

Date of pronouncing order : 2nd December, 2025

ORDER :

The challenge in this Writ Petition is to the order dated 2/11/2023, passed by the Maharashtra Administrative Tribunal (MAT), Mumbai, Bench at Aurangabad in Original Application, No.312/2019 and the order dated 21/10/2024,

passed by the very Bench, rejecting the application for review of the order dated 2/11/2023.

2. The MPSC published advertisement on 31/7/2015 for filling up 189 posts of Dental Surgeon. The requisite qualification prescribed for the post was – Bachelor's degree in Dental Surgery (BDS) plus one year experience as Clinical Assistant or any post equivalent or higher than the post of Clinical Assistant.

3. The advertisement prescribed that preference would be given to candidates holding postgraduate qualification in Dental Surgery (MDS). Under the National Rural Health Mission Programme, implemented in the State of Maharashtra, many individuals were engaged as Dental Surgeon in Government recognised hospitals on contract basis. Those recruited, did hold qualification as BDS. These individuals in contractual employment made application in response to the advertisement dated 31/7/2025.

4. Since the number of candidates applied was large, the shortlisting of the applications was made. Candidates

possessing higher educational qualification (MDS) were preferred over BDS candidates. Those who were already in service on contract basis were not called for interview on account of shortlisting of candidates. Many of such candidates, therefore, filed applications before the MAT, Mumbai for consideration of their candidature in selection process. The petitioner MPSC thereafter conducted the interviews of shortlisted candidates and prepared a merit list in November 2016. The petitioner MPSC recommended 188 candidates for appointment. Only 122 candidates joined. 66 posts remained unfilled. The MAT, by its interim order dated 1/3/2018, had directed continuation of services of the original applicants (contractual appointees). It had even, by its order dated 21/12/2015, directed the petitioner MPSC and the State Government to interview the original applicants. The MAT thereafter decided all the Original Applications vide its order dated 8/5/2019. It directed the MPSC to revise the list of selected candidates and to send additional names by including the names of original applicants found eligible on the basis of minimum qualification. The services (contractual) of the original applicants were protected until completion of the said

exercise. The MPSC and even the original applicant challenged the order of the MAT dated 8/5/2019 by filing various Writ Petitions. The Division Bench of this Court at principal Seat decided those Writ Petitions vide its judgment and order dated 20/3/2023. Clause (3) of the operative order dated 8/5/2019 reads thus :

“(iii) Writ Petition St. Nos. 9195/2021 and Writ Petition No.7201/2019 filed by the original applicants are disposed of with a direction to MPSC to consider the names of original applicants who are already interviewed in pursuance of interim order of the Tribunal for being recommended to the State Government based on their performance in the interview against 67 unfilled vacancies of Dental Surgeon. This exercise be carried out by MPSC within a period of six weeks from today. In the event of such original applicants being recommended by the MPSC, the State Government shall consider their names for being appointed against 67 unfilled posts of Dental Surgeon prospectively. They shall not be entitled to any benefits from an earlier date. The State Government to complete this exercise within a period of four weeks from the date of receipt of recommendations from the MPSC.”

5. The Division Bench, however, restricted the relief to the original applicants who had approached the Tribunal and had been litigating since the year 2015. To be specific, the Division Bench observed thus :

“However, considering the peculiar facts and circumstances of the present case, we are restricting the relief only to the original applicants who had approached the Tribunal and who have been litigating since the year 2015 and pursuant to the order of Tribunal are interfered. In these peculiar circumstances, the benefit of the present judgment cannot be extended to those similarly situated candidates who did not move the Tribunal.”

6. The respondent No.2 herein was working as one of the Dental Surgeons on contractual basis. He had also applied in response to the advertisement dated 31/7/2015. He moved Original Application, No.1071/2015 before the MAT (Principal Seat at Mumbai). The MAT, vide interim order dated 21/12/2025, directed the MPSC to conduct his interview. Vide its judgment and order dated 20/12/2016, it directed the petitioner/ MPSC to consider respondent No.2's candidature on merits. He was from NT(D) category. He had secured 50 marks in interview. Since two candidates who secured equal marks expressed unwillingness to take up the appointment, the respondent No.2 moved Original Application, No.312/2019 for appointment on the post which remained vacant on account of unwillingness of those two candidates.

7. The respondent No.2 amended the Original Application and urged for grant of relief similar to one granted by the Division of this Court at Principal Seat vide order dated 20/3/2023 in Writ Petition (Stamp) No.9195/2021 with companion petitions.

On hearing the parties to the Misc. Application No.453/2023 with Original Application No.312/2019, the MAT allowed the same in terms of the following order :

“(i) MPSC is directed to recommend the name of the applicant for his appointment on the post of Dental Surgeon against 16 unfilled vacancies within 4 weeks from the date of this order.

(ii) Respondent No.1 shall in turn issue the order of appointment in favour of applicant within 2 weeks after receiving recommendation from MPSC.”

8. The contention of the petitioner/ MPSC before the MAT was that, the respondent No.2 was not one of the applicants in the Original Application to whom the High Court granted the relief. Paragraph No.52 of the order passed by the Division Bench was heavily relied on. Availability of no vacancy for accommodating the respondent No.2 was not a

ground raised. In paragraph No.10 of its judgment and order, the MAT observed thus :

“10. In the said list MPSC has recommend 3 candidates from NT(D) category. One Sonune Satish Nivrutti is recommended against the Open General seat. He is shown to have received 51 marks in the interview. Chate Sanjay Digambar is another NT(D) candidate who is recommended against NT(D) (General-1). Said candidate is shown to have earned 45 marks in the interview. As has been pointed out by the learned counsel for the applicant, a candidate by name Gophane Sandip Lundlikrao who belongs to NT(C) category is recommended against NT(D) (General-1). He is shown to have received 41 marks. As has been submitted on behalf of the applicant in the list of 51 candidates when MPSCo has recommended 2 candidates from NT(D) category of which one has received 45 marks and the another has received 41 marks, it ought to have recommended the name of the applicant since he has received 50 marks in the interview. In the list of 51 candidates why the name of the applicant has not been included, is not explained by MPSC. The applicant has now come out with the case that without disturbing the candidates coming from NT(D) category whose names have been recommended by MPSC despite having less number of marks than the applicant, still the name of the applicant can be recommended by MPSC having regard to the fact that out of 67 posts directed to be filled in by the Hon’ble High Court 16 seats are vacant.”

9. Then the MAT relied on paragraph No.52 of the judgment passed in Writ Petition. It then proceeded to observe in paragraph Nos.12 and 13 thus :

“12. In the earlier O.A. No.1071/2015, this tribunal has held the applicant eligible for his appointment to the post of Dental Surgeon. He has also been interviewed by the Committee and has secured 50 marks in the interview. He belongs to NT(D) category and the NT(D) candidates whose names are included in the list of 51 candidates have admittedly received less marks than the applicant. Applicant, however, is not seeking their deletion. Request of the applicant is that his name be recommended by MPSC against 16 unfilled vacant posts.

13. We find that the prayer made by the applicant is just and bona fide. Applicant has proved his eligibility for the subject post. We have noticed that some of the Open General candidates whose names have been recommended by MPSC on 18/09/2023 have received less marks than the applicant. As such, the applicant has certainly made out a case for recommendation of his name against 16 unfilled vacancies. In the result following order is passed:

ORDER

(i) MPSC is directed to recommend the name of the applicant for his appointment on the post of Dental Surgeon against 16 unfilled vacancies within 4 weeks from the date of this order.

(ii) Respondent No.1 shall in turn issue the order of appointment in favour of the applicant within 2 weeks after receiving recommendation from MPSC.”

10. Admittedly, the respondent State remained a silent spectator. It did not challenge the order passed in the Original

Application nor is it before us to take exception to the order rejecting the review application. The petitioner/ MPSC is the only recommendatory authority. The final call is to be taken by the respondent State. The vacancy position was not placed before the MAT while deciding the Original Application. The respondent No.2 had first approached the Courts way back in 2015 and since 2018, his claim is subjudice, first before the MAT and then in this Writ Petition. He has already rendered service of not less than eight years on the said post, albeit contractual.

11. Learned Advocate relied on the judgment of the Apex Court in case of **Sudesh Kumar Goyal Vs. The State of Haryana & ors. (MANU/SC/1038/2023)**.

12. Reliance on the judgment of the Apex Court in case of Sudesh Kumar Goyal (supra) is of no assistance to the petitioner/ MPSC in view of factual distinction between the two i.e. the matter in hand and the matter before the Hon'ble Supreme Court. The petitioner therein was not given the appointment on the post of District Judge in spite of he having

been in the select list of 14 candidates. First 13 candidates in order of merit were appointed. Paragraph No.12 of the said judgment speaks for itself, which reads thus :

12. The respondents, in order to justify the non-appointment of the appellant on the 14th vacancy, submitted that the notification/advertisement dated 18.05.2007 advertised 22 posts for direct recruitment in the higher judicial service, out of which 14 were meant to be filled up by general category candidates but only 13 selected general category candidates were appointed. The reason being that 5 general category candidates who were working as Additional District & Sessions Judges (Fast Track Court) in Haryana pursuant to the notification dated 26.05.2003 applied for their absorption and filed writ petition No.8587 of 2007 seeking their regularisation on substantive posts which petition came to be disposed of vide order dated 30.05.2007 directing them to make representation on administrative side to the High Court in terms of Brij Mohan Lal(1) v. Union of India (2002) 2 SCC 1. Acting on the aforesaid representation, the selection committee of the High Court recommended for absorption of the above 5 Fast Track Court judges on fresh posts. Accepting the recommendations of the Committee, out of the 14 general category posts, 5 officers of the Fast Track Court were adjusted, thus leaving only 9 to be filled up as per selection. In the meantime, 20 fresh vacancies of the cadre became available, out of which, 5 were to be filled up by direct recruitment from the Bar, (4 general category and 1 scheduled caste category). Therefore, a conscious decision was taken to add these 4 general category vacancies to the already advertised vacancies, thus making the number of general category vacancies to be 13 [14-5=9+4=13]. Thus, only 13 candidates were appointed. The respondents have not acted arbitrarily in making such appointments."

13. Since the respondent No.2 has been litigating for his claim for long and he is one who secured more marks than some of those who were recommended pursuant to the order

passed in the Writ Petition, in our view, the MAT has rightly allowed the Original application and rejected the application for review of the said order. Moreover, he has rendered service of not less than eight years, albeit contractual. We, therefore, find no reason to interfere with the orders impugned herein. The Writ Petition, therefore, fails. It is dismissed.

(ABASAHEB D. SHINDE, J.)

(R.G. AVACHAT, J.)

fmp/-