



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

WRIT PETITION NO. 978 OF 2025

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

VERSUS

The Principal Secretary, Public Health
Department, Government of
Maharashtra & ors.

... **RESPONDENTS**

.....
Mr. Mukul S. Kulkarni, Advocate for petitioner
Mr. A.A.A. Khan, A.G.P. for R. No.1 to 4
Mr. A.S. Deshpande, Advocate for R.No.5

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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 6/12/2023, passed by the Maharashtra Administrative Tribunal (MAT), Mumbai, Bench at Aurangabad in Original

Application, No.360/2019 and the order dated 21/10/2024, passed by the very Bench, rejecting the application for review, No.4/2024, of the order dated 6/12/2023 in Original Application No.360/2019. The petitioner before us is the Maharashtra Public Service Commission (MPSC), original respondent No.5 in the Original Application No.360/2019.

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 applications 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 the 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 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 agitating 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.5 herein was one of the Dental Surgeons working on contractual basis under National Rural Health Mission Programme. He was also one of the candidates who had applied in response to the advertisement dated 31/7/2015. Since his services on contractual basis were terminated on 3/4/2019, he approached the MAT in Original Application, No.360/2019. The main prayer therein was for setting aside the order of his termination. After the Division Bench of this Court passed the order dated 20/3/2023 in Writ Petition (Stamp) No.9195/2021 and companion petitions, the respondent No.5 amended the Original Application and urged for grant of relief similar to one granted by virtue of the order

dated 20/3/2023.

7. On hearing the parties to the Application, the MAT allowed the Original Application in following terms :

“(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 8 weeks from the date of this order.

(ii) Respondent No.1 shall in turn issue the order of appointment in favour of applicant within 3 weeks after receiving recommendation from MPSC.”

The aforesaid order is under challenge in this Writ Petition along with the order of rejecting the application for review of the said order.

8. According to learned Advocate for the petitioner/ MPSC, there was no vacant post. The break-up of the unfilled posts and open category includes 6 Female, 4 Sports category and 1 Physically Handicapped. The respondent No.5 Dr. Atul Deshmukh, therefore, could not be recommended against those posts.

9. The contention of the petitioner/ MPSC before the MAT was that, the respondent No.5 was not one of the

applicants in Original Application preferred before the MAT, Mumbai. Paragraph No.52 of the order passed by the Division Bench restricted the relief only for those original applicants. Before us, however, the learned Advocate for the petitioner would submit that, there are no vacancies of the post of Dental Surgeon. It was a recruitment process of the year 2015. Even two recruitment processes did take place thereafter. He, therefore, urged for allowing the Writ Petition.

10. We have considered the submissions advanced. We do not propose to reiterate the factual matrix. Suffice it to say that, the respondent No.5 joined the service as a Dental Surgeon way back in 2014, albeit contractual. He applied for the post of Dental Surgeon pursuant to the advertisement dated 31/7/2015. He does hold the requisite qualification, though not Masters in Dental Surgeon. He secured 49 marks. Pursuant to the order passed by the MAT, Bench at Mumbai and confirmed by the Division Bench of this Court on 20/3/2023, candidates who secured marks lesser than secured by respondent No.5, were directed to be appointed for the posts of Dental Surgeons. The respondent No.5 had already

filed Original Application challenging his termination dated 3/4/2019. He amended the Original Application after the Division Bench decided the Writ Petitions on 20/3/2023, granting relief to the applicants in the Original Applications before the MAT. The respondent No.5 claims similar relief. True, in paragraph No.52 of its judgment and order, the Division Bench observed:

“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.”

11. The MAT, Bench at Aurangabad granted the Original Application in terms of the order referred in paragraph No.7 above.

12. While deciding the Original Application, the MAT observed in so many words that, the respondents in the said application (petitioner MPSC being one of them), came with the only defence that the case of the original applicant

(respondent No.5) was not covered by the orders of the High Court. Admittedly, the respondent No.5 had been interviewed for the post of Dental Surgeon. He secured 49 marks. Candidates securing lesser marks were recommended. While the Original Application, (No.360/2019) was pending decision, there were 16 unfilled seats/ posts. Even in the Review Application, it was not the case of the petitioner/ MPSC that all the vacancies have now been filled up. Needless to mention, the petitioner/ MPSC is only recommendatory authority. The respondent State is appointing authority. The State did not challenge the order passed in Original Application, No.360/2019.

13. In the aforesaid factual backdrop, we are not inclined to interfere with the orders impugned in this Writ Petition. The Writ Petition, therefore, fails. The same is thus dismissed.

(ABASAHEB D. SHINDE, J.)

(R.G. AVACHAT, J.)

fmp/-