



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

WRIT PETITION NO. 979 OF 2025

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

VERSUS

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

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Mr. Mukul S. Kulkarni, Advocate for petitioner

Mr. A.A.A. Khan, A.G.P. for R. No.1 & 2

Mr. K.G. Salunke & M.P. Kale, Advocates for R.No.3

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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 22/11/2023, passed by the Maharashtra Administrative Tribunal (MAT), Mumbai, Bench at Aurangabad in Original Application, No.67/2018 and the order dated 21/10/2024, passed by the very Bench, rejecting the application of the petitioner/ MPSC for review of the order dated 22/11/2023.

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 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.3 was serving as a Dental Surgeon 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. His candidature was for the post reserved for OBC category candidates. According to respondent No.3, a decision was taken to give preference to the candidates working under the National Rural Health Mission. As per the said scheme, a person who worked on adhoc basis was to be given three additional/ grace marks for each year' service. Since the respondent No.3 was serving from 2008, he claimed 30 such marks. He, therefore, filed Original Application, No.67/2018 before the MAT. Pending the said application, the judgment in Writ Petition (Stamp) No.9195/2021 and other companion petitions was delivered on 20/3/2023 by the Division Bench at Principal Seat at Bombay. The respondent No.3, therefore, moved Misc. Application, No.452/2023. According to respondent No.3, candidates securing lesser marks were

recommended for appointment. He was one of the candidates who had already been interviewed. There were 16 unfilled vacancies. The MAT, Aurangabad, vide its judgment and order dated 22/11/2023, allowed the application 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.”

7. The petitioner/ MPSC preferred the application for review of the said order. The pleadings in the said application and the decision thereon, dated 21/10/2024 indicate that it was the case of the petitioner/ MPSC that, findings recorded in paragraph Nos.52 and 53 of the judgment and order passed by the Division Bench of this Court at Principal Seat in Writ Petition (Stamp) No.9195/2021 and other companion petitions was not brought to the notice of the MAT. The MAT, after having heard the parties to the review application, rejected the same with the following observations :

“13. It is the matter of record that, applicant was already interviewed by the Commission and in the said interview he secured 50 marks. At the relevant time, his claim was not considered for the reason that Commission resolved to apply the criteria of shortlisting and decided to recommend the names of the candidates possessing higher qualification i.e. of MDS. It is also the matter of record that accordingly the Commission though recommended names of 188 candidates against 189 vacancies only 122 joined the services and 67 posts remained unfilled.

14. As noted hereinabove, having regard to the said vacancies the Hon’ble High Court permitted recommendations of the BDS candidates also with a rider that the candidates who are interviewed under the orders of the Tribunal shall only be considered for such appointment. While passing the order in O.A., the Tribunal has clarified that the applicant was already interviewed by MPSC, however, remained to be recommended only on the ground that he was not possessing higher qualification. The order passed by the Tribunal, therefore, cannot be in any way said to be not in consonance with the order passed by the Hon’ble High Court. We, therefore, see no substance in the review application. Hence, the following order:

ORDER

Review Application No.05/2024 is rejected. No costs.”

This is how the petitioner/ MPSC is before us in this Writ petition.

8. The learned Advocate for the petitioner would submit that, the respondent No.3 had secured 50 marks as

against 55 cut-off marks for OBC. He was, therefore, not recommended. The said non-recommendation was never ever specifically challenged. The respondent No.3, therefore, could not claim parity with the candidates recommended as per the directions of the MAT and the Division Bench of this Court at Principal Seat at Bombay. The direction was specifically in respect of 48 applicants before the Tribunal. The respondent No.3 herein was not one of those applicants. When the Division Bench of this Court, in paragraph No.52 of its judgment and order restricted the grant of relief to the 48 original applicants only, the MAT ought not to have allowed the Original Application and rejected the review application as well. According to the learned Advocate, the State Government filed affidavit in the review application, stating therein that, no posts for OBC and NT-D category was available since all the candidates recommended joined the post. According to learned Advocate, there is no vested right in a candidate to seek recommendation to a vacant post. The recruitment process dates back to 2015. After a long spell of ten years, the respondent No.3 cannot be given appointment. Even if any posts are vacant, the same are required to be filled by

following the regular recruitment process to be undertaken and not from the candidates who were not recommended on merits. The 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)**.

9. The learned Advocate for respondent No.3 would, on the other hand, submit that, since before the judgment in Writ Petition (Stamp) No.9195/2021 and other companion petitions was delivered on 20/3/2023, the respondent No.3 was agitating his rights by filing Original Application, although it was on some other ground. No sooner the decision in the Writ Petition was delivered, he moved Misc. Application in the Original Application No.67/2018 and sought for the relief. This respondent was one of the candidates who had already been interviewed. The petitioner/ MPSC ought to have informed the Division Bench dealing with the said Writ Petitions, the pendency of claim of this respondent who had in fact secured marks more than those who were directed to be recommended. According to the learned Advocate, the respondent No.3 has been serving on the post since 2008,

albeit on contractual basis. He would further submit that, the MAT, by passing the order in his favour, has in fact done justice. He, therefore, urged for dismissal of the Writ Petition.

10. We have considered the submissions advanced. Perused the orders impugned herein. The respondent No.3 was one of the Dental Surgeons working on contractual basis under National Rural Health Mission. He was one of the candidates who applied in response to the advertisement dated 31/7/2015. He approached the MAT in Original Application, No.67/2018 with a prayer for grant of additional/ grace 30 marks on account of 10 years service to have already been rendered on the post. The prayer was based on a certain decision taken in that regard by a competent authority. Pending the Original Application, the respondent No.3 moved Misc. Application before the MAT and urged for grant of reliefs similar to one granted in terms of the order dated 20/3/2023 by the Division Bench of this Court at Principal Seat. The respondent No.3 gave up his prayer in the Original Application for grant of grace marks.

11. As such, the facts indicate that, although on some

other grounds the respondent No.3 was agitating his claim for appointment to the post of Dental Surgeon pursuant to the recruitment process initiated vide advertisement No.87/2015, dated 31/7/2015, he was even interviewed for the post. He is from OBC category. He secured 50 marks. Pursuant to the order passed by the Division Bench at Principal Seat at Bombay in Writ Petition (Stamp) No.9195/2021 and companion petitions, candidates securing marks lesser than secured by him were recommended. It is not that this respondent for the first time approached the MAT post the decision in the Writ Petition. The apprehension of the petitioner/ MPSC is that candidates similarly placed who have not yet approached the Courts of law, may come with similar prayers after a long, post decision in Writ Petition (Stamp) No.9195/2021. While the MAT considered the petitioner's claim for review of the order in Original Application, the only ground raised before it was that the High Court had restricted the relief only to the 48 applicants who were before the Tribunal in Original Application. There was no interim order restraining the implementation of the order impugned herein. The petitioner/ MPSC is only recommendatory authority. It is the respondent State who is

the appointing authority. In spite of being a party to both the orders impugned herein, it preferred not to challenge the same. It appears that, for the first time the petitioner/ MPSC has come with a stand of there being no vacancy.

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. As the respondent No.3 has been litigating for his claim since 2018 and he is one who secured more marks than some of those who were recommended pursuant to the order passed in the Writ Petition. He is one of the contractual appointees. In our view, the MAT has rightly allowed the Original Application and rejected the application for review of the said order. We 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/-