



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11394 OF 2024

Dr. Shivshakti Dattatraya Pawar,
Age 48 years, Occu. Service,
R/o Sree Laxminiwas, at present.
Nai Chakur, Tq. Umarga,
District Osmanabad

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Department of Public Health,
Mantralaya Mumbai-32
2. National Medical Commission,
Through its Secretary,
Pocket 14, Sector – 8, Dwarka,
Phase-I, New Delhi-77.
3. The Director,
Sri. Chitra Tirunal Institute for
Medical Sciences and Technology
Trivendurm 695 011
4. Dr. Sanjay Kumarrao Muley,
Age 47 years, Occu. Service,
R/o Primary Health Center, Nagad,
Tq. Kannad, Dist. Aurangabad
5. Dr. Sanjay Ramrao Kadam,
Age-48 years, Occu. Service,
R/o 19, Navjivan Teaches Colony,
Behind Bus Stand, Beed,
Tq. & District Beed
6. Dr. Satish Bapurao Shinde,
Age 48 years, Occu. Service
R/o Vijaya Apartment, Jijau Nagar,
Canal Road, Raju Gandhi Chowk,
Beed, Tq. & District Beed.
7. Dr. Vikas Uttamrao Athwale,
Age 47 years, occu. Service,
R/o Behind Sahyadri Garage,
Dhanora Road, Sant Namdev Nagar,
Beed, Tq. & District beed.
8. Dr. Dnyaneshwar Sheshrao Nipte,
Age 47 years, Occu. Service,
R/o "Sawali" Swarja Nagar,

Galdhar Chowk, Barshi Road,
Beed Tq. & District Beed.

9. Dr. Santosh Shankarrao Vidhute,
Age 47 years, Occu. Service,
R/o Primary Health Center, Sonai,
Tq. Newasa, Dist Ahmednagar.
10. Dr. Damodhar Bhivaji More,
Age 51 years, Occu. Service,
R/o Taluka Health Officer, Shirur,
Tq. Shirur, District Pune,
11. Dr. Ansari Mohammad Rafikoddin Mohammad,
Age 48 years, Occu. Service,
R/o 104/7, in front of Dnyaneshwar
Mandir, Solapur-Aurangabad Highway,
Milly Colony, Osmanabad.
Tq. & District Osmanabad.
12. Dr. Mohammad Turabali Deshmukh
Age 47 years, Occu. Service,
R/o 102, Golden Nest Apartment,
Dasak Satbhai Nagar, Jail Road,
Nashik District Nashik.

..RESPONDENTS

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Advocate for petitioner : Mr. S.S. Thombre
AGP for the respondent no. 1 : Mr. M.K. Goyanka
Advocate for the respondent no. 2 : Mr. S.K. Kadam
Advocate for respondents no. 4 to 12 : Mr. Mohit R. Deshmukh

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**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

**RESERVED ON : 27 NOVEMBER 2024
PRONOUNCED ON : 10 JANUARY 2025**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. It is made returnable forthwith. Learned AGP and the learned advocates for the respective respondents waive service. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. By way of this writ petition under Article 226 of the Constitution of India, the petitioners are putting up a challenge to the judgment and order of the Maharashtra Administrative Tribunal (**the Tribunal**) in Original Application No. 447 of 2012 dated 26-09-2024.

3. The issue that arises for consideration in this petition, is as to whether the course Master of Public Health (**MPH**) from respondent no. 3 – Sree Chitra Tirunal Institute for Medical Sciences and Technology, Trivendurm (**Sree Chitra Institute**), is adequate qualification for promotion to the post of District Health Officers, Group A, against 75% quota earmarked for post graduate degree holders under the Civil Surgeon Cadre, Group A in the Maharashtra Health Services, Group A (Recruitment) Rules, 2021 (**the Recruitment Rules**).

4. The question arises on the basis of following facts :

Respondents no. 4 to 12 are the original applicants before the tribunal (respondents no. 10 and 12 were allowed to be deleted by the tribunal by its order dated 06-05-2022). They have been serving as Medical Officers in the State of Maharashtra holding MPH degree from respondent no. 3 - Sree Chitra Institute. They claimed to be fulfilling the requisite qualification under Rule 4(b)(iii) of the Recruitment Rules. They claimed that respondent no. 3 – Sree Chitra Institute was

established by the Act of Parliament in the year 1980, namely, Sree Chitra Tirunal Institute for Medical Sciences & Technology Act, 1980. It was declared to be an Institute of national importance. Its provisions empowered it to grant medical degrees, under section 23. As per section 24, the degrees and diplomas granted by it are declared to be recognised medical qualification for the purpose of Indian Medical Council Act, 1956 (**Act of 1956**) and deemed to have been included in its first schedule. They claimed that the Medical Council of India, predecessor of respondent no. 2 - National Medical Commission (**NMC**) by its notification dated 08-12-2010 amended its Post Graduate Medical Education Regulation, 2000 (**Regulation of 2000**) and included Master of Public Health (Epidemiology) under the categories of Doctor of Medicine (MD).

Even respondent no. 2 - NMC issued a public notice amending the schedule of the National Medical Commission Act, 2019 (**Act of 2019**) notifying respondent no. 3 - Sree Chitra Institute as an Institute of national importance, under section 37 of the Act of 2019. Even the Ministry of Health and Family Welfare (Department of Health and Family Welfare) issued a notification dated 14-11-2022 published in the gazette on 15-12-2022, thereby declaring that all the medical qualifications granted by respondent no. 3 - Sree Chitra Institute to be added in schedule I of the Act of 2019.

5. Respondent no. 2 NMC took a stand before the tribunal by way of an affidavit and specifically contended that in view of regulation 10(3) of the Regulations of 2000, the MPH course being offered by respondent no. 3 - Sree Chitra Institute being a post graduate course of two years was a 'post graduate diploma' and not a 'post graduate degree' which requires a three year course. Therefore, the MPH degree course offered by it was a post graduate 'diploma' and not a post graduate 'degree'.

6. Respondent no. 2 - NMC further contended that MBBS is the basic qualification for admission to any post graduate course. However, respondent no. 3 - Sree Chitra Institute provides for admission to MPH course not only to the candidates possessing MBBS qualification but even other qualifications like BDS, BAMS, BNYS, BUMS, BSMS, BHMS and even B.Tech or BE along with degree qualifications in Veterinary Science, Nursing, Physiotherapy, Occupational Therapy, Pharmacy, Statistics / Biostatistics, Demographic, Population Studies, Nutrition, Sociology, Economics, Psychology, Anthropology etc. Respondent no. 2 - NMC further contended that the qualification of MPH has been included in the first schedule of the Act of 1956 as well as that of Act of 2019, in the category of post graduate diploma qualification. It, therefore, justified the stand taken by one of the members of the Post Graduate Medical

Education Board in the communication dated 06-07-2021. It was the stand of respondent no. 2 - NMC that the public notice dated 15-12-2022 cannot be read to mean as MPH offered by Sree Chitra Institute as a post graduate degree. It was its stand that the schedule to the Act of 2019 merely includes list of medical qualifications and does not distinguish between a degree and a diploma.

7. The petitioner sought to oppose the original application by preferring application for intervention. They had taken the same stand as was the stand of respondent no. 2 - NMC.

8. After hearing both the sides, by the order under challenge, the tribunal held that as per clause 10 of the Regulations of 2000, a degree course has to be of three years and a diploma course could be of two years. However, entry no. 6 in the amended schedule of the Act of 2019, expressly mentions all medical qualification granted by respondent no. 3 - Sree Chitra Institute vide section 37, by virtue of gazette notification dated 15-12-2022 published by the Central government and in spite of the fact that the MPH course offered by respondent no. 3 - Sree Chitra Institute was of two years. It has observed that entry no. 6 was worded so as to include all medical qualifications by virtue of a resolution of the general body of respondent no. 2 - NMC in its meeting dated 24-03-2003, without any qualification. Its stand that the MPH course offered by respondent

no. 3 - Sree Chitra Institute is a diploma and not a degree, was not sustainable. It was further noticed that though the resolution mentioned that it was desirable for respondent no. 3 - Sree Chitra Institute that the nomenclatures and the duration of the course offered by it should be in consonance with Regulations of 2000, still, the proposal was not rejected and entry no. 6 was included in the schedule under the Act of 2019, so as to cover all medical qualifications granted by it.

9. The tribunal also concluded that by virtue of section 22 of the University Grants Commission Act, 1956 (**UGC Act**) the right of conferring or granting degrees shall be exercised by a university established or incorporated under a Central Act, Provincial Act or a State Act etc. It was also noticed that by notifications dated 23-05-2009 and 05-07-2014, the UGC had included in the list of degrees MPH at serial no. 38. It was thus held that since all the original applicants were possessing MBBS degree of a statutory university and were holding MPH from respondent no. 3 - Sree Chitra Institute, they were fulfilling the requisite educational qualification for being promoted through the 75% quota earmarked for promotion to the cadre of District Health Officer, Group A under the Recruitment Rules of 2021.

10. The tribunal has also pointed out that the state government by its communication dated 31-01-2022 addressed to the Maharashtra Public Service Commission informed that the qualification of MPH offered by respondent no. 3 - Sree Chitra Institute shall not be considered as requisite qualification for grant of promotion through 75% quota. However, it was noted that this communication of the state government was based on the letter dated 06-07-2021 bearing signature of one Dr. Vijay Oza as a member of the Board of respondent no. 2 - NMC who subsequently, by communication dated 31-01-2022 in the capacity of Central Public Information Officer (**CPIO**) of respondent no. 2 - NMC expressly communicated that the MPH offered by respondent no. 3 - Sree Chitra Institute was a degree, the communication dated 31-01-2022 issued by the state government was ineffective.

11. The tribunal thus held that the original applicants were possessing requisite qualification for grant of promotion to the post of District Health Officer, Group A against 75% quota under the Recruitment Rules of 2021.

12. The learned advocates for the respective parties as also the learned AGP made the submissions exactly similar to what they had made before the tribunal, in consonance with the stand of their respective clients.

13. The rival submissions now fall for our consideration.

14. Relevant portion of rule 4 of the Recruitment Rules reads as under:

“4. Appointment to the post in the “District Health Officer Cadre”, Group-A shall be made either,

(a)

(b) by nomination on the basis of selection through Commission from amongst the candidates who,-

(i) are not more than thirty-eight years of age;

Provided that, the upper age limit may be relaxed up to ten years in case of candidates who are already in the service of Government;

(ii) possess M.B.B.S. degree of statutory University or any other qualification specified in the First Schedule or Second Schedule to the Indian Medical Council Act, 1956;

(iii) Possess a post graduate degree of a statutory university in Preventive and Social Medicine or the qualification specified in the First or Second Schedule to the Indian Medical Council Act, 1956, or any other qualification recognized as equivalent thereto by the Medical Council of India;

(iv) possess experience of not less than five years rural service out of which not less than three years experience of working in Health Administration and implementation of National Health Programmers after acquiring qualification mentioned in clause (ii) and (iii) of this sub-rule.”

15. As can be noticed, by virtue of sub-clause (iii) of clause (b) of rule 4, a candidate, inter alia, is required to possess a post graduate degree of a statutory university in Preventive and Social Medicine or the qualifications specified in the first or second schedule to the Act of 1956 or any other qualification recognised as equivalent by the Medical

Council of India i.e. the predecessor of respondent no. 2 - NMC. As can be gathered, the whole controversy revolves around this clause only.

16. Admittedly, by an appropriate resolution passed under section 37 of the Act of 2019, the erstwhile Indian Medical Council, which is the predecessor of respondent no. 2 - National Medical Commission had included entry no. 6 in schedule I in following words:

All medical qualifications granted by Sree Chitra Institute for Medical Sciences and Technology (SCIMST) Trivandrum, Kerala have been published by gazette notification dated 15-12-2022 by respondent no. 2 - NMC and approved by the Central government.

Entry no. 6 was added without incorporating any qualification or rider. Since this was done in exercise of the statutory powers available with Indian Medical Council under section 37 of the Act of 2019, no fault can be found with the tribunal in refusing to concede to the stand of the petitioner herein.

It has correctly noticed that irrespective of the initial communication signed by one Dr. Vijay Oza, who seems to be a Member of respondent no. 2 - NMC's board, in his official capacity as CPIO of respondent no. 2 - NMC he informed that the MPH offered by respondent no. 3 - Sree Chitra Institute having been included in the first schedule of the Act of 1956 was recognized as requisite qualification

for promotion under Recruitment Rules through the 75% quota provided under rule 4(b)(iii).

17. The whole emphasis of the petitioner seems to be on clause no. 10 of the Regulations of 2000 which provides that a post graduate degree should be in the form of a three year course whereas the MPH offered by respondent no. 3 – Sree Chitra Institute is a two year course. In our considered view, the tribunal has rightly discarded such stand for a sound reason, by taking a plausible view that the MCI under the Act of 1956 had resolved in its meeting dated 24-03-2003 to include MPH offered by respondent no. 3 – Sree Chitra Institute in the first schedule in spite of being aware that it was a two year course, and, therefore, holding clause 10 of Regulations of 2000, to be inconsequential.

18. There has been no dispute about the fact that the respondents, who are the original applicants, were otherwise possessing the requisite MBBS degrees and the experience, since they were simultaneously holding the MPH degree offered by respondent no. 3 – Sree Chitra Institute. Thus, they possess requisite qualification for being considered to the promotional post of District Health Officer, Group A under the Recruitment Rules of 2021. No illegality has been committed by the tribunal in allowing the original application.

19. In this regard, it is further pertinent to note that irrespective of the stand of respondent no. 2 – NMC before the tribunal, by way of an affidavit in reply and irrespective of its stand through its learned advocate Shri Kadam before the tribunal, indicating its inclination to challenge the order of the tribunal, Mr. Kadam expressly submitted before us that respondent no. 2 – NMC was not putting up any challenge to the order of the tribunal.

20. Under these circumstances, there is no merit in the petition. It is dismissed.

21. Rule is discharged.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

22. After pronouncement of the order, the learned advocate for the petitioner submits that ad-interim relief has been in operation till date. It may be extended by a reasonable period, so as to enable the petitioner to approach the Supreme Court.

23. The learned advocate for the original applicants strongly opposes the request on the ground that they have been waiting for appointments since long.

24. *Ad-interim* relief to continue for a period of four (4) weeks.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/