

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1206 OF 2024**

Pooja Suryabhan Tandale

Age : 32, Occ. : Household

R/o at Wanjarwadi, Tal. Beed

Dist.: Beed, Maharashtra

....Petitioner

versus

1. Brihan Mumbai Municipal Corporation,
Through, Executive Health Officer,
F/South Division Office Building,
Room No. 49, Third Floor,
Dr. Babasaheb Ambedkar Marg,
Parel, Mumbai-400012.

2. State of Maharashtra,
Through Public Health Department,
Mantralaya, Mumbai

....Respondents

WITH

WRIT PETITION NO.1459 OF 2024

Ushabai Santaram Dudhe

Age: 35, Occu.: Household

R/o at Mu Wanjola Tq. Sillod,

Wanjola, Dist. Aurangabad.

....Petitioner

versus

1. Brihan Mumbai Municipal Corporation
Through, Executive Health Officer,
Public Health Department,

F/South Division Office Building,
Room No.49, Third Floor,
Dr. Babasaheb Ambedkar Marg,
Parel, Mumbai-400012.

2. State of Maharashtra,
Through Public Health Department,
Mantralaya, MumbaiRespondents

Mr. Abhijeet Khade i/by Mr. Satyajeet P. Dighe, Advocate for the
Petitioner.

Ms. Shilpa Redkar i/by Mr. Shivprasad Borade, Advocate for
Respondent No.1-BMC.

Ms. Jayamala Ostwal, Addl. G.P., for Respondents-State in
WP/1459/2024.

**CORAM : M. S. KARNIK &
&
ASHWIN D. BHOBE, JJ.**

DATE : 21st MARCH , 2025

JUGEMENT (PER ASHWIN D. BHOBE, J.) :-

1. Heard. Mr. Abhijeet Khade, learned Counsel for the
Petitioner, Ms. Shilpa Redkar, learned Counsel for the Respondent
No.1-BMC and Ms. Jayamala Ostwal, Addl. G.P., for Respondents-
State.

2. Learned Counsel for the parties state that the facts, issues
and challenges involved in Writ Petition Nos.1206 of 2024 and 1459

of 2024 are identical. In view of the same, by consent, both these Writ Petitions are heard together and disposed of by this common judgment.

3. For the sake of convenience, facts in Writ Petition No.1206 of 2024 are referred and taken into account for adjudication of both the petitions.

4. By the present petition, the Petitioner has sought for the following substantial relief :

“a. By issuing Writ of Mandamus, or any other appropriate Writ, order of direction in nature of the Writ, the Petitioner be added in the list dated 12.07.2023 published by Respondent No 1 and further Petitioner be granted appointment to the post of Staff Nurse as per advertisement dated 27.02.2023 issued by Respondent No. 1 for the post of Staff Nurse.”

5. **Factual Matrix:**

(a) Respondent No.1 issued advertisement dated 27.02.2023 inviting applications from eligible candidates for the post of ‘Staff Nurse’ (said advertisement for short). Eligibility criteria and the conditions were notified in the said advertisement.

(b) Respondent No.1 published the list of selected candidates dated 12.07.2023. Name of the Petitioner was not reflected in the said list.

(c) Petitioner vide application dated 31.07.2023, applied to the Respondent No.1, seeking reasons for exclusion of her name in the said list dated 12.07.2023.

(d) By e-mail dated 10.08.2023, the Respondent No.1 communicated the reasons for the non-inclusion of the Petitioner in the selection list. Reasons given in the e-mail dated 10.08.2023, for non-inclusion of the Petitioner in the said selection list dated 12.07.2023 are as follows :

“1. If the candidate has passed the first/second/ third year of nursing course in second attempt. The final percentage will be calculated by deducting 10 marks from the total marks obtained in the year.

2. Also, if the candidate has passed first/ second/ third year of the nursing course in third attempt then the final percentage will be calculated by subtracting 20 marks from the total marks obtained in the respective year.

3. Candidates who have passed first/second/third year of the nursing course in more than three attempts for recruitment will be declared ineligible.

As per the Order of the Hon'ble High Court, we are informing to Smt. Pooja Suryabhan Tandale that she have passed the first year of Nursing course in 4th attempt. Therefore, she is not included in the provisional notification list for the above reasons.”

Submissions:-

6. Mr. Abhijeet Khade, learned Counsel for the Petitioner submits that the Petitioner had cleared the Nursing Course within the

stipulated time. According to him the attempts taken for clearing the semesters would not attract Clause (क) (3) [referred to as clause c(3)] of the said advertisement. He submits that the Petitioner has cleared the entire Nursing Course within three attempts. He submit that the Respondent No.1 on misinterpretation of the said advertisement has disqualified the Petitioner. According to him the true and proper interpretation of clause c(3) of the said advertisement is as urged in ground “J” at page 6A of the memo of petition, which reads as follows:

“ It to be held and seen that the said advertisement requires to clear the year within three years and not the semester. Therefore, the reason given by Respondent No.1 for non-inclusion of the name of the Petitioner in selection list is arbitrary and illegal”. He submits that the Respondent No.1 has acted illegally and therefore, prays that the petition be allowed.”

7. Ms. Shilpa Redkar, learned Counsel for the Respondent No.1, on the other hand, submits that candidates who had attempted the first, second or third year of the Nursing Course more than three times would be disqualified in terms of the said advertisement . By placing reliance on the application dated 15.03.2023 submitted by the Petitioner and more particularly, clause 7(b) at page no. 30 of the petition paper-book, she submits that the Petitioner had conveniently

left the “attempt’s column” in respect of the first year of Nursing Course blank, thereby avoiding to disclose the number of attempts the Petitioner took to clear the first year of the Nursing Course. She submits as per the records, the Petitioner had passed the first year of Nursing Course in four attempts. Thus, according to her, the Petitioner stood disqualified and consequently, was excluded in the list of the selected candidates dated 12.07.2023. She submits that the Respondent No.1 has acted in terms of the advertisement and having found the Petitioner disqualified, rejected the Petitioner’s candidature. For the said reasons, she submits that the Petition be dismissed.

Analysis:

8. As the controversy in the petition revolves on clause c(3) of the said advertisement and the details furnished by the Petitioner in respect of the said clause in her application form, the same are extracted hereinbelow:-

English Translation of clause c(3) at Page No.27B of the paper-book:

“Candidates who have attempted the first/second/ third year of the Nursing course more than three times will be disqualified from the recruitment process.”

Relevant Column of the application dated 15.03.2023:

ब)	अ क्र	अभ्यासक्रम	एकूण प्राप्त गुण	पैकी गुण	टक्के	कितव्या प्रयत्नात उत्तीर्ण (I/II/ III)	उत्तीर्ण झाल्याचे महिना व वर्ष	संस्था/ विद्यापीठाचे नाव
	१	२	३	४	५	६	७	८
	i	जनरल नर्सिंग अँड मिडवायफरी डिप्लोमा अभ्यासक्रम (G.N.M) प्रथम वर्ष	२८०	५००	५६		जून २०१३	बा. य. ल. नायर धर्मादाय रुग्णालय
	ii	जनरल नर्सिंग अँड मिडवायफरी डिप्लोमा अभ्यासक्रम (G.N.M) द्वितीय वर्ष	२६७	५००	५३. ०४	II	डिसेंबर २०१२.	बा.य.ल. नायर धर्मादाय रुग्णालय.
	iii	जनरल नर्सिंग अँड मिडवायफरी डिप्लोमा अभ्यासक्रम (G.N.M) तृतीय वर्ष	३५१	६००	५८. ५०	I	डिसेंबर २०१३.	बा.य.ल. नायर धर्मादाय रुग्णालय.
		एकूण गुण (i+ii+iii)	८९८	१६००				
* जनरल नर्सिंग अँड मिडवायफरी डिप्लोमा (G.N.M) अभ्यासक्रमाचे प्रथम /द्वितीय/तृतीय वर्ष एकापेक्षा जास्त प्रयत्नात उत्तीर्ण झाले असल्यास सर्व गुणपत्रिका सोबत जोडणे आवश्यक आहे.								

9. Clause c(3) of the said advertisement disqualifies a candidate who has cleared the first / second / third year in more than three attempts. Petitioner has not raised any challenge to the said clause c(3). Petitioner does not dispute of having passed first year of

Nursing Course in four attempts.

10. The said advertisement issued by Respondent No.1 is clear and unambiguous. Use of Stroke (/) between first/ /second/third would mean one or either. “Attempts” referred to in clause c(3) of the said advertisement pertain to the “year” i.e. First year or Second year or the third Year of the Nursing Course.

11. We are unable to accept the interpretation of clause c(3) of the said advertisement as put forth by the learned Counsel for the Petitioner. Petitioner having cleared the first year of Nursing Course in the forth attempt, incurred disqualification in terms of clause c(3) of the said advertisement.

12. Even otherwise, as rightly submitted by Ms. Shilpa Redkar, learned Counsel for the Respondent No.1, perusal of column 7(b) of the application dated 15.03.2023, clearly indicates that the Petitioner was aware of the true and proper import of clause c(3) of the said advertisement and being so aware, has consciously left the column pertaining to the attempts in respect of the first year of the Nursing Course, blank. Mr. Abhijeet Khade, learned Counsel for the Petitioner was unable to offer any justification for the said column being left blank.

13. We do not find any fault in the non-inclusion of the

Petitioner's name in the list of selected candidates dated 12.07.2023 ,
as published by the Respondent No. 1.

14. Both the Petitions are without merit and as such dismissed.
There shall be no orders as to costs.

(ASHWIN D. BHOBE, J.)

(M. S. KARNIK, J.)