

**MAHARASHTRA PUBLIC SERVICE
COMMISSION**

MAHARASHTRA PUBLIC SERVICE COMMISSION

TRANSFER APPLICATION NO.2 OF 2003

WRIT PETITION NO.1372/2003

D.D. 4.11.2003

Hon'ble Shri R.Vasudevan (Vice-Chairman)

Hon'ble Shri P.K.Gaikwad (Member) (J)

Dr.Harish Manilal Pathak ... **Petitioner**

Vs.

Maharashtra Public Service Commission ... **Respondent**

Recruitment - Short listing of candidates to be called for interview:

The applicant was a candidate for one post of Police Surgeon Class-I post – Out of 13 candidates available for the post only 5 candidates were called for interview by adopting the criterion of short listing as provided under the Rules – The applicant who was not called for interview challenged the short listing criterion - Rule 7(2) of Rules of Procedure provides that number of candidates to be invited for interview should not exceed 10 times the number of posts to be filled – The Applicant contended that as there were only 12 candidates found eligible P.S.C. ought to have called all the 12 candidates for interview – The Tribunal rejected the said contention and dismissed the application.

Held:

For the expressions “normally” and “should not exceed 10 times the number of posts to be filled” give discretion to the P.S.C. to fix ratio depending on the particular occasion the applicant has not been able to establish that the criterion fixed by the MPSC is irrational or arbitrary.

Case Referred:

AIR 1995 SC 77 - M.P. Public Service Commission Vs. Navnit Kumar Potdar

ORDER

Heard Shri. A.V.Bandiwadekar, learned advocate for the applicant and Shri N.K.Rajpurohit, learned Presenting Officer for the Respondents.

2. The applicant states that he was appointed as Lecturer w.e.f. 12.7.1998 at Seth B.S. Medical College, Parel, Mumbai. On 9.3.2001 he was promoted as Associate Professor and continues as such. He further states that as per the recruitment rules framed for the post of Police Surgeon in the Directorate of Health Services, appointment to the said post should be made either by transfer of suitable person holding the post of Lecturer in Forensic medicine in Government Medical College for a period of at least 4 years by nomination amongst the candidates, who are not more than 35 years of age and have passed M.D. Degree with experience in the field of forensic medicine for not less than 4 years after acquiring post graduate qualification. The rules also provide that preference may be given to candidates possessing experience of general administration in hospitals. The upper age limit is 35 which may be relaxed if the candidate is already in Government service. In response to an advertisement issued by the Maharashtra Public Service Commission (M.P.S.C.) on 20th February 2003 inviting applications for one post of Police Surgeon in Mumbai which is a class-I post, the applicant submitted his application. The applicant has taken exception to the criteria adopted by the M.P.S.C. under the pretext of short listing eligible candidates. According to him, only 7 or 8 applications were received for filling up one post and as such there was no need to short list candidates. He contends that on the contrary, the MPSC would have got a wider range of applications, if all the candidates had been called for interview. The applicant was intimated by MPSC by their letter of 8th May 2003 that as per the criteria fixed by them for short listing candidates for the said post, he is not eligible to be called for interview. As per the criteria adopted by them, only candidates with eight years of experience are held to be eligible for being called for interview, as against the minimum experience of 4 years prescribed under the Recruitment Rules. The applicant made a representation dated 13.5.2003 that he may be called for interview. By order dated 23rd May 2003 the Bombay High Court directed the Public Service Commission to interview the applicant along with other eligible candidates and complete the process of interview till the declaration of results "subject to further orders to be passed by this Court after hearing petition for admission on 16th June 2003". Subsequently by order dated 8th August 2003, the Bombay High Court directed that the record of the Writ Petition be transferred to this Tribunal.

3. In their affidavit in reply the MPSC, Respondent No.1 have contested the claim of the applicant. They have stated that 17 applications (not seven, as mentioned in the application) were received for the said post. Thus the total number of applications received from the prima facie eligible candidates was on the high side for one post. As per Rule 7(2) of the Rules of Procedure of the

Commission, if the number of prima facie eligible candidates is disproportionately large the Commission may adopt suitable criteria for short listing candidates or hold a screening test. The criteria to be adopted depend on the circumstances prevailing on each occasion of recruitment. This may result in non-selection of some candidates for interview, though they fulfill the minimum requirements prescribed in the advertisement or though they were called for interview for the same post on earlier occasion. The Commission fixed the following criteria for the said post – M.D. (Forensic Medicine) or equivalent application accepted by MCI and thereafter 8 years of full time experience in the field of Forensic medicine. As the applicant has only 7 years and 8 months of experience in the field of Forensic Medicine, he was not called for interview. Five candidates fulfilling the above criteria were called for interview. There is no provision in the rules that only teaching experience should be taken into consideration while filling up the post of nomination. In the present case 12 candidates were available for the post and thereafter the Commission adopted the above criteria.

4. The learned advocate for the applicant stated that the Commission had adopted the criteria of eight years as against the minimum four years prescribed under the rules. Relying on para 6 of the rejoinder filed by the applicant he stated that two out of the six candidates (including the applicant) called for interview will be retiring within less than 2 years. They will not even be able to complete the probationary period. He argued that the objective should be to call younger persons for interview. Referring to para 4 of the affidavit-in-reply wherein Rule 7(2) of the Rules of Procedure has been relied upon, Shri. Bandiwadekar invited our attention to the following provisions.

“(2) Normally, the number of candidates to be invited for interview should not exceed ten times the number of posts to be filled on the particular occasion. With a view to maintain that ratio, the Screening Committee appointed under rule 7(1) may adopt a criterion or decide to hold a Screening Test, for the limited purpose of short listing the candidates to be invited for interview.”

He argued that the expression with a view to maintain that ratio in the aforesaid provision clearly rules out any discretion in favour of fixing criteria which would result in calling less number of eligible candidates. On the other hand, the learned Presenting Officer argued that the phrase the number.....should not exceed ten times the number of posts clearly shows that the Commission is free to call less number of candidates than ten times the number of posts.

5. During the course of arguments the learned advocate for the applicant stated that by adopting the criterion of 8 years, no fresh candidate can be appointed as a Police Surgeon. He stated that even a meritorious student will be of minimum 37 years of age if he has to put in 8 years of service after obtaining M.D. He, therefore, argued that the criterion prescribed is against the recruitment rules framed under Art.309 of the Constitution of India and this amounts to altering the existing recruitment rules. He also referred to the fact that out of 17 candidates, 12 candidates were found eligible by the MPSC. The respondent, namely MPSC had to interview only 12 candidates for one post of Police Surgeon and the interview could be completed within about 3 hours. In the light of the criterion adopted by the MPSC only 5 candidates were found to be eligible and this criterion is totally irrational. Shri Bandiwadekar relied on the judgment of the Supreme Court in *M.P. Public Service Commission Vs. Navnit Kumar Potdar* 1995 AIR 77. Relying on the same judgment the Learned Presenting Officer argued that as per the aforesaid judgment of the Supreme Court, where selection is to be made purely on the basis of interview, if the applications for such posts are enormous in number with reference to the number of posts available to be filled up, then the Commission or the Selection Board has no option but to short list such applicants on some rational and reasonable basis.

6. It is not under dispute that the MPSC relied on Rule 7(2) of the Rules of Procedure for short listing the number of candidates for one post of Police Surgeon. Nor is it under dispute that out of 17 candidates who applied for the post, 12 were found eligible. The MPSC adopted the criterion of experience of 8 years as against the experience of 4 years prescribed in the recruitment rules. After adopting the said criterion the MPSC had called for interview only 5 candidates. The applicant could not be called for interview because he has only 7 years and 8 months of experience. The procedure adopted in short listing the candidates is now under dispute. It is well settled that even if the recruitment rules prescribe minimum years of experience, it is open to the MPSC to adopt any rational procedure to fix the number of candidates who should be called for interview. In this connection the law has been laid down by the Supreme Court in *M.P. Public Service Commission Vs. Navnit Kumar Potdar* 1995 AIR 77. In the aforesaid case 9 posts of Presiding Officers of Labour Courts in Madhya Pradesh have to be filled in out of which only four posts were available to the general category candidates. However, several applications were received in response to an advertisement to fill up the post. In view of Section 8(3)(c) of

the M.P. Industrial Relations Act 1960 it was prescribed in the advertisement that the applicants should have practised as an advocate or a pleader for a total period of not less than five years. Having regard to the large number of applications to fill up four posts, a decision was taken by the Commission to call for interview only 71 applicants, although 188 applicants were eligible. The Supreme Court held that fixing the limit of seven and half years instead of five years of practise for purpose of calling for interview cannot be said to be irrational, arbitrary having no nexus with the object of select the best amongst the applicants. Following observations of the Supreme Court in the aforesaid case are relevant.

“In this background it is all the more necessary to fix the limit of the applicants who should be called for interview where there is no written test, on some rational and objective basis so that personality and merit of the persons who are called for interview are properly assessed and evaluated. It need not be pointed out that this decision regarding short listing the number of candidates who have applied for the post must be based not on any extraneous consideration, but only to aid and help the process of selection of the best candidates among the applicants for the post in question. This process of short listing shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus. In substance and reality, this process of short listing is part of the process of selection. Once the applications are received and the Selection Board or the Commission applies its mind to evolve any rational and reasonable basis, on which the list of applicants should be short-listed, the process of selection commences. If with five years of experience an applicant is eligible, then no fault can be found with the Commission if the applicants having completed seven and half years of practise are only called for interview because such applicants having longer period of practice shall be presumed to have better experience.”

7. From the above observations of the Supreme Court it is clear that the MPSC was justified in adopting the process of short listing the candidates. Rule 7(2) of the Rules of Procedure states that normally the number of candidates to be invited for interview should not exceed 10 times the number of posts to be filled in on a particular occasion. The expression “normally” thus gives discretion to the MPSC to fix the number of candidates which is less than 10 times the number of posts to be filled in. In the present case, the number of posts to be filled in is one.

The number of candidates to be invited for interview should not normally exceed 10. However, the MPSC called for interview only 5 candidates. According to the aforesaid judgment of the Supreme Court, where selection is to be made only on the basis of interview, the Commission or the Selection Board can adopt any rational procedure to fix the number of candidates who should be called for interview. Rule 7(2) states that the number of candidates to be invited for interview “should not exceed” ten times the number of posts to be filled in. Thus the maximum number of candidates to be called for interview normally should not exceed ten times the number of posts. That does not restrict the discretion of MPSC to call for less than ten number of candidates in the present case. However, the issue involved is whether fixing the limit of experience of 8 years instead of 4 years can be said to be irrational, arbitrary having no nexus with the object to select the best amongst the applicants. A line has to be drawn somewhere. The justification given by the MPSC is that the criterion adopted depends on the circumstances prevailing on each occasion on recruitment and the MPSC consisting of three Members decided to adopt the criterion of 8 years full time experience in the field of Forensic Medicine. The learned advocate for the applicant relying on the affidavit in rejoinder argued that the Respondents had to interview only 12 candidates for one post and this could have been completed within about three hours. In this connection, he relied on the following observations of the Supreme Court in the aforesaid case.

“If large number of applicants are called for interview in respect of four posts, the interview is then bound to be casual and superficial because of the time constraint.

The members of the Commission shall not be in a position to assess properly the candidates who appear before them for interview.”

He argued that in the present case the number being limited there was no apprehension that the interview was bound to be casual or superficial. The aforesaid observations of the Supreme Court cannot be said to come in the way of MPSC deciding the ratio. The extract of Rule 7(2) reproduced earlier shows that the criterion is adopted to maintain the ratio prescribed in the aforesaid rule. The expression “normally” and “should not exceed ten times the number of posts to be filled” give discretion to the MPSC to fix ratio depending on the particular occasion. The applicant has not been able to establish that the criterion fixed by the MPSC is irrational or arbitrary. The fact that two persons who are on the verge of retirement have been called for interview by itself does not establish that the procedure followed is irrational. Nor are we impressed by the argument of the learned advocate for the applicant that the objective of short

listing should have been to call younger persons for interview instead of calling those on the verge of retirement. The emphasis laid down by the Supreme Court in short listing is that such short listing should be on some rational and reasonable basis. The applicant has not been able to establish that the short listing in the present case is not on rational and reasonable basis.

8. In the light of the above, the application deserves to be rejected. Accordingly we dismiss the application. No order as to costs.

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR**

ORIGINAL APPLICATION NO.240/2001

D.D. 15.3.2004

HON'BLE SHRI. G.C.TRIPATHI, MEMBER (A)

HON'BLE SHRI A.L.ALASPURKAR, MEMBER (J)

Dr.Nandkumar Shivram Malakolikar ... Applicant

Vs.

State of Maharashtra & Anr. ... Respondents

Recruitment - Short Listing of candidates to be called for interview:

The applicant who was not called for interview for the post of Medical Officer has challenged the criterion determined for short listing - P.S.C. had fixed the criterion of two years' experience apart from the required qualification in the case of male candidates in Open Category and one year's experience in the case of female candidates of Open Category – The Tribunal in view of the fact that there were more number of male candidates as compared to female candidates the criterion of longer work experience to cut down the number of candidates to be called for interview was fixed for male candidates has held that the criterion fixed for short listing was appropriate and dismissed the application.

Held:

As male candidates were to compete with other male candidates and the female candidates were to compete with other female candidates the question of discrimination did not arise by fixing different criterion of work experience for male and female candidates.

ORDER

Heard both sides. Perused the application and Affidavit filed in reply. Also perused the order passed by Member (A) on 31.8.2001 and the dissenting note made by Member (J) thereon.

2. By filing this O.A., the applicant is challenging the communication dated 6.2.2001, issued by respondent no.2 (M.P.S.C.) informing that the applicant was not being called for interview for

the post of Medical Officer on the ground that in the short listing process, the applicant did not possess the required experience, as per the criteria determined for such short listing. The respondent no.2 has fixed the criteria of two years experience after acquiring the required qualification, in the case of male candidates in Open Category and one year's experience in the case of female candidates of open category. Similar criteria was fixed for the male and female candidates of other categories also.

3. The O.A. was heard by the earlier Division Bench, consisting of Shri S.D.Joshi, Member (A) and Shri A.T.A. K.Sheikh, Member (J). By order dated 31.8.2001, the Member (A) rejected the O.A., but Member (J) recorded a dissenting note and hence, the matter was referred to the Hon'ble Chairman of this Tribunal. It was decided to place the matter before a different Division Bench to decide on merits. The pleadings being over, the C.A. was taken up for hearing by consent of the parties.

4. We may state a few facts of the case in order to pin point the issues involved in this O.A. By advertisement dated 9.8.2000, the M.P.S.C. called for applications for selection of candidates to fill up 807 posts of Medical Officer. The minimum qualification prescribed for all the candidates was M.B.B.S. Degree or academic qualification as listed in the first or second Schedule of the Medical Council of India Act, 1956. The number of posts for different categories, as earmarked to remove backlog, was indicated in the advertisement. It appears, that there was no backlog in the Scheduled Caste Category. The posts reserved for women in each category was also mentioned, in case such candidates were available. The advertisement also mentioned that the qualification mentioned in the advertisement was the minimum requirement for eligibility, but in case the number of applications was very large compared to the number of available posts, short listing of candidates would be done, either by conducting written test or by determining appropriate criteria before calling the candidates for interview. The criteria would be determined depending on the prevailing situation, at the relevant time.

5. In response to the said advertisement, the applicant, who was already working as a Medical Officer on adhoc basis, had filed his application before M.P.S.C. in time. The applicant fulfilled the requirement of the minimum qualification i.e. M.B.B.S. Degree and had one year 11 months and 23 days experience as an adhoc Medical Officer. Respondent no.2 (M.P.S.C.) by their letter

dated 6.2.2001 informed the applicant that, since, large number of applications were received for the post of Medical Officers, short listing of candidates was done on the basis of criteria, as determined as per the guideline No.7 of the 'Guidelines for applicants', and since the applicant did not fulfill the said criteria, it was decided not to call him for interview. The said letter also contained the details of the criteria determined for short listing candidates in different categories, in the form an Annexure. The applicant made a representation dated 21.3.2001, pointing out that he was working as a Medical Officer since 28.4.1999 in Tribal area like Public Health Centre, Kotgul in Gadchiroli District and requesting to be called for interview. However, by communication dated 29.3.2001, respondent no.2 informed the applicant that the case of the applicant was reconsidered, but no ground was found to change the earlier decision of M.P.S.C. Being aggrieved by the said decision of M.P.S.C., the applicant has filed the present O.A.

6. The main contention of the applicant is that the respondents have adopted different criteria for the selection of male candidates and female candidates, in breach of Article 16 of the Constitution of India and maintains that the criteria so fixed by the respondents was arbitrary and bad in law. It is contended that respondent no.2 has denied the equality of opportunity in the matter of employment by stating different period of experience for male and female candidates. The applicant contends that there is no rational behind making such arbitrary classification.

7. By filing affidavit-in-reply, respondent no.2 contest the say of the applicant. It is pointed out by respondent no.2 that in view of large number of applications received in comparison to the number of available posts, it was decided to short list the candidates to be called for interview. It is maintained that the provision that the Commission would adopt suitable criteria for short listing was clearly mentioned in the N.B.(5) of para 4 of notification for the post, a copy of which is supplied to candidates along with the form of application. It is stated that the provision of short listing is in accordance with Rule 7(2) of the Rules of Procedure of the Commission.

8. However, the applicant does not dispute the power of the Commission for short-listing candidates before calling them for interview. What is disputed is the set of criteria fixed by the Commission for such short listing. Hence, we find it necessary to discuss the criteria fixed for short listing.

9. It is seen that the Commission has fixed the following criteria categorywise:

“ Criteria:

(A) For open posts and posts reserved for NT(D):

1. M.B.B.S. Degree or the qualification specified in the first or second schedule to the Indian Medical Council Act, 1956 and preferential qualification of Post Graduate Degree/ Diploma in any branch of Medical Science, OR
2. M.B.B.S. Degree or the Qualification specified in the first or second schedule to the Indian Medical Council Act, 1956 and thereafter two years full time experience of actual Medical/Work in Medical or Public Health Department of Employee’s State Insurance Scheme or Zilla Parishad or equivalent local body.

(B) For Posts reserved for Open(F), DT(A), DT(A)(B), NT(B), NT(B)(F), NT(D)(F) and OBC:

1. M.B.B.S. Degree or the qualification specified in the first or second schedule to the Indian Medical Council Act, 1956 and preferential qualification of Post Graduate Degree/Diploma in any branch of Medical Science, or
2. M.B.B.S. Degree or the qualification specified in the first or second schedule to the Indian/Medical Council Act, 1956 and thereafter one year full time experience of actual Medical/work in Medical or Public Health Department or Employees’ State Insurance Scheme or Zilla Parishad or equivalent local body.

(C) For Posts Reserved OBC (F):

1. M.B.B.S. Degree or the qualification specified in the first or second schedule to the Indian Medical Council Act, 1956 and preferential qualification of Post Graduate Degree/Diploma in any branch of Medical Science, OR
2. M.B.B.S. Degree or the qualification specified in the first or second schedule to the Indian Medical Council Act, 1956 and thereafter six months full time experience of actual Medical Work in Medical or Public Health Department or Employee’s State Insurance Scheme or Zilla Parishad or equivalent local body. “

As far as the distinction made between male and female candidates, respondent no.2 points out that the State Government has laid down 30% reservation for women vide Govt. Resolution dated 1.8.1997. The said reservation of 30% is within the different categories of constitutional

reservation. Hence, two different sub categories are created in each category of Constitutional reservation consisting of male candidates on one and female candidate on the other. The male candidates in a particular category shall compete with other male candidates in the same category and same is the case with the female candidates for the reserved posts. According to respondent no.1, it was necessary to adopt different criteria in addition to the minimum qualification, for male and female candidates in each category, depending upon the number of applications received. In the Affidavit-in-Reply, respondent no.2 has indicated in a chart the number of posts and number of applications received categorywise. It is seen from the said chart as against 131 posts reserved for women in the Open Category, number of applications, eligible on the basis of minimum qualification, was 434, whereas as against 295 posts, for the male candidates in Open Category, 2290 eligible applications were received. Thus, 434 female candidates in Open Category were to compete for 131 posts, whereas 2290 male candidates in Open Category were to complete for 295 posts. Under the circumstances, the Commission decided to short list the number of candidates by fixing special criteria in addition to the minimum qualification mentioned in the advertisement. While fixing the criteria for the male candidates in Open Category, the criteria of additional qualification of Post Graduate degree of Diploma was prescribed. In the alternative, two years' experience of actual Medical Work in specified Hospitals after M.B.B.S. Degree was prescribed. As a result of application of the said criteria, the number of candidates for the Open Category posts for males was reduced from 2290 to 947, who could be called for interview. By fixing the criteria at lesser period of experience than two years, obviously would not have reduced the number of candidates as far as the male candidates for the Open Category posts were concerned. Hence, according to the respondents, the whole purpose of short listing would have been defeated. It is also to be noted that the criterion of two years' experience was made applicable to all the male candidates in Open Category, possessing M.B.B.S. Degree. Hence, the question of discrimination did not arise.

10. Similarly, in case of the female candidates in Open Category, short listing was required, since, there were 434 candidates possessing required qualification as against 131 available posts. The criteria prescribed for such short listing was additional qualification of Post Graduate Degree/ Diploma or M.B.B.S. with one year work experience. By applying these criteria, the number of candidates was reduced from 434 to 224, which appears to be a reasonable number of candidates to be interviewed for 131 posts, earmarked for female candidates in Open Category. We find that had the Commission prescribed the same criterion of two years work experience, as in the

case of male candidates, in Open Category, in all probability, the number of candidates would have fallen short of the number of posts and in that eventuality, the short listing would have proved to be negative. It is also to be noted that the criterion of one year work experience was applied to all the female candidates possessing M.B.B.S. Degree, who were to compete for 131 posts in the Open Category. Therefore, the question of discrimination did not arise.

11. We have confined our discussion only to the Open Category, since, the applicant was to compete in the said category. Although, the applicant belonged to the Scheduled Caste, there was no post reserved for the said category and hence, the applicant had applied for the Open Category post.

12. Coming to the question as to whether any discrimination was made on the basis of sex, while determining the criteria for short listing, we find that, because of 30% reservation for female candidates, 131 posts were earmarked for them in the Open Category. The female candidates were to compete among themselves. The number of applications received, was large compared to the number of posts. The Commission devised the criteria of either Post Graduate Degree/ Diploma or M.B.B.S. with one year work experience to be called for interview. In similar circumstances, the work experience fixed for the male candidates is two years work experience. The question is whether the required work experience has been reduced in case of female candidates by way of special relaxation so as to constitute discrimination on the basis of sex. We find that, such is not the case. The question of relaxation is not involved in the present case. Because of 30% reservation for women, two different categories have emerged, having their individual sphere of competition. The criteria fixed by the Commission is for each category, considering the actual number of applications received for that category. Had there been larger number of applications for the posts earmarked for females in Open Category, the Commission would have been compelled to fix the criterion of longer work experience to cut down the number of candidates to be called for interview. We find that the process of short listing and the criteria fixed by the Commission were appropriate depending on the prevailing situation and, therefore, we do not find any substance in the O.A.

In view of the facts and circumstances mentioned above, we proceed to pass the following order:

ORDER

The O.A. is dismissed. No order as to costs.

ORDER

1. Heard the learned Counsel appearing for the parties. By this petition under Article 226 of Constitution of India, the petitioner has challenged the judgment and order dated 10th December 2003 passed by Maharashtra Administrative Tribunal by which Original Application No.802 of 2003 was rejected. A prayer is made in this petition for quashing the Recruitment Rules dated 25th May 1973 and communication dated 8th March 2004 issued by Respondent No.4.

2. On 25th May 1973 the State Government framed Recruitment Rules for the post of Director of Medical Education and Research (DMER) (hereinafter referred to as the Director). On 20th December 2001 the petitioner was appointed as Joint Director (Dental) of Medical Education and Research through Maharashtra Public Service Commission (hereinafter referred to as M.P.S.C.). On 31st December 2002 vacancy arose for the post of the Director and therefore the petitioner was given additional charge of the post of the Director. An advertisement dated 10th September 2003 was issued by M.P.S.C. by which applications were invited for the post of Director which was to be filled in by nomination. The petitioner filed Original Application No.802 of 2003 before Maharashtra Administrative Tribunal, Mumbai praying for following reliefs:

- (1) be direct the respondent Nos.1 to 3 to amend the recruitment rules dated 25.5.1973 of the post of Director of Medical Education and Research (hereinafter referred to as D.M.E.R. for short) by providing promotional channel to that post from the post of Joint Director of Medical Education and Research (Dental).
- (2) To declare that the existing vacancy in the post of D.M.E.R. is available for the promotional quota.
- (3) The requisition/communication dated 9.7.2003 by the State Government to Respondent No.-M.P.S.C. be quashed, which is based upon the existing Rules dated 25.5.1973.
- (4) Quash and set aside the advertisement dated 11.9.2003 issued by the respondent No.4 for filling the post of D.M.E.R. by way of nomination.
- (5) A direction may be given to respondent nos.1 to 2 finalise the draft recruitment rules for the post of D.M.E.R. and to take further steps on the basis of the same.

3. By judgment and order dated 10th December 2003, the Tribunal rejected the said Application. However, while rejecting the Application directed the State Government to form a committee as mentioned in paragraph No.23 of the judgment and seek its report within a period of 3 months and thereafter finalise the rules for appointment for the post of Director as per the proviso to the Article 309 of the Constitution of India. It was directed that the rules shall be framed in the light of the report of the Committee. The petitioner did not challenge the said order of the Tribunal immediately. It appears that a tentative seniority list as on 1st January 2004 of the Gazetted Officers regularly appointed to the post of Joint Director (Medical) on the establishment of Director of Medical Education and Research was published by the State Government. It appears that Respondent Nos.1 to 3 without waiting for the submission of the report of the Committee constituted as per the judgment of the Tribunal initiated recruitment process for the post of Director. The petitioner applied for being considered for the said post. By communication dated 8th March 2004, M.P.S.C. declined to call the petitioner for interview as the petitioner was not holding requisite qualification and the petitioner did not furnish requisite documents. The present petition has been filed on 20th March 2004.

4. The learned Counsel for the petitioner submitted that Respondent Nos.1 to 3 without finalising the Recruitment Rules as per the Proviso to Article 309 of Constitution of India should not have commenced the recruitment process to the post of Director on the basis of non-statutory Rules dated 25th May 1973. He further submitted that when Committee of experts as directed by the Tribunal was constituted, the State Government ought to have framed Rules on the basis of recommendations of the said committee and only thereafter should have initiated the process of filling the post of the Director. The learned Counsel further submitted that the petitioner was entitled to continue to hold charge of the post of the Director till proper appointment was made after framing the Rules under proviso to Article 309 of Constitution of India. The learned counsel further submitted that the Maharashtra Administrative Tribunal totally ignored that the General Administration Department of the State Government had issued Circular dated 16th August 2002 instructing all the Departments to notify the Recruitment Rules under proviso to Article 309 of Constitution of India and unless the rules are framed, no requisition should be sent to M.P.S.C. for filling the posts. He submitted that the Tribunal ought to have held that the Advertisement dated 10th September 2003 issued by M.P.S.C. was in contravention of the said circular dated 16th August 2002.

5. We have considered the submissions made by the learned Counsel of the petitioner. In the Original Application filed by the petitioner a prayer was made for quashing and setting aside the advertisement dated 10th September 2003 issued by M.P.S.C. and directing Respondent Nos.1 to 3 to amend the Recruitment Rules by providing promotion channel to the post of Director from the post of Joint Director of Medical Education and Research (Dental). The case of the petitioner before the Tribunal was based on alleged discrimination. According to the petitioner the Officer holding the post of Joint Director (Dental) cannot be denied promotion to the post of Director. The argument of discrimination was rejected by the Tribunal in paragraph No.9 of the judgment. The Tribunal rejected the prayer made by the petitioner and while rejecting the Original Application filed by the petitioner, a direction was issued to State Government to constitute a Committee. When substantive prayers made by the petitioner were rejected by the Tribunal, the petitioner did not approach this Court immediately. On the contrary, the petitioner participated in the new selection process initiated at the instance of Respondent Nos.1 to 3. The new selection process was initiated without framing rules under the proviso to Article 309 of Constitution of India and the petitioner was fully aware of the said fact. The petitioner was also aware that an expert Committee as per the judgment of the Tribunal was constituted by the Government. If the petitioner was really aggrieved by the rejection of the Original Application, the petitioner would have immediately approached this Court. However, the petitioner applied for considering himself in the selection process and only after his application was rejected by the communication dated 8th March 2004, the petitioner has chosen to approach this Court on 20th March 2004.

6. The contention raised by the petitioner as regards violation of fundamental rights under Article 14 and 16 of Constitution of India was rejected by the Tribunal. We find no fault with the approach of the Tribunal. As per the existing rules, the petitioner does not possess necessary qualification. When the post of Director is vacant for last more than one year, the petitioner cannot claim that the post should not be filled in unless Rules are framed under the proviso to Article 309 of Constitution of India.

7. There is no merits in the petition and same is rejected with no order as to costs.

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI BEANCH AT AURANGABAD
ORIGINAL APPLIATION NO.408 OF 2003 & CONNCTED CASE**

D.D. 9.6.2004

HON'BLE SHRI P.G.KURSE – MEMBER (A)

Pradeep Nagorao Jadhav & Others ... **Applicants**

Vs.

The State of Maharashtra & Others ... **Respondents**

Examination - Mistakes in the Question papers:

The applicants appeared for limited competitive examination conducted by the P.S.C. for recruitment to the post of P.S.I. from among departmental candidates – There were typographical errors in Paper-I of Marathi, English and General Knowledge wrong caption – Paper No.2 (with book) Law and Acts adopted by Sales Tax Department, Office Procedure of Sales Tax Department, Accountancy etc., was printed instead of Paper-II Law and Essential Knowledge having nexus with the working in Police Department - The applicants contended that they were misled on account of the above mistakes and some candidates took advantage of the mistake by answering the papers by looking into the books – The enquiry conducted into the alleged instances by high power committee negated the said allegations – Therefore the Tribunal dismissed the applications.

Held:

In any case, some 16,000 candidates had appeared at the limited competitive examination. For seeking the relief of cancellation of the examination on the ground of the same having been vitiated it ought to be demonstrated that there was a failure/collapse of the system. A couple of isolated alleged instances of examination mal practices, even if they be true, cannot lead to an inference that there was systems failure. Few isolated instances, should there be such instances call for being dealt with in a different manner individually. Cancellation of the examination cannot be and is not an answer to it. In our view there is not even an iota of material to indicate that there was systems failure.

ORDER

Shri S.G.Karlekar, learned Counsel has addressed arguments on behalf of applicants in both the original applications and Shri R.M.Borde – learned Counsel has addressed his submissions on behalf of respondent no.4, Maharashtra Public Service Commission (M.P.S.C. for short). S/shri A.S.Wable and D.T.Dewane – learned Presenting Officers appear on behalf of respondent nos.1 to 3.

2. Admit. The learned Counsel for the applicants presses for final adjudication at the stage of admission itself. Since no serious objection is raised by the learned Presenting Officers and the learned Counsel for respondent no.4 and since final arguments have been addressed at length we are finally deciding the original applications at the stage of admission itself.

3. The lone applicant in O.A.No.408 of 2003 represented by learned advocate Shri. S.B.Pulkundwar and M.D.Narwadkar appeared at the limited competitive examination conducted by the M.P.S.C. for recruitment to the posts of Police Sub-Inspectors (P.S.Is) from among the departmental candidates from Nanded Centre. While the six applicants in O.A.No.421 of 2003 represented by learned advocate Shri S.G.Karlekar appeared at the said examination from Aurangabad Centre. The State of Maharashtra and the Joint Secretary to Government of Maharashtra in Home Department are respondents 1 and 2 respectively. And the Collector, Nanded and the Collector, Aurangabad respectively are respondents No.3. As already noted M.P.S.C. is respondent No.4 which is the agency authorised to carry out recruitment/selection process for appointment to the posts of P.S.I.s among others. The responsibility of actual conduct of the written examination, its supervision and overseeing is entrusted to the respective Collectors through their Resident Deputy Collectors.

4. The limited competitive examination comprised of three parts viz. written examination, physical test and oral and personality test. The written examination was conducted/held on 29.6.2003 at seven centres viz. Mumbai, Pune, Nashik, Aurangabad, Nanded, Amaravati and Nagpur. The applicants were admitted to the said examination at Nanded and Aurangabad Centres respectively as noted in paragraph 2 above.

5. The written examination which is of total 300 marks consists of two papers viz. Paper-I – Objective paper on Marathi, English and General Knowledge of two hour duration carrying 200 marks and Paper-II, a conventional/narrative paper of Law and essential knowledge having nexus

with the working in Police Department [Omitted as it is in Hindi] of three hours duration carrying 100 marks. Both the papers are without books. The examination in relation to Paper-I was held on 29.6.2003 between 11 a.m. and 1 p.m. and the examination in relation to Paper-II was held between 2.30 p.m. and 5.30 p.m. on the same day.

6. It appears that there were three sub-centres at Nanded at which the said examination was held viz. 1) Yashwant Mahavidyalay, Nanded 2) Science College, Nanded and 3) Mahatma Phule High School, Baba Nagar, Nanded. And it appears that the lone applicant in Original Application No.408 of 2003 took the examination from Sub-Centre 3, Mahatma Phule High School, Baba Nagar, Nanded.

7. At Aurangabad centre, it appears, there were five Sub-Centres viz. S.B. Arts and Commerce College, S.B. Science College, S.B. Boys High School, Gujarati High School and Baliram Patil Junior College. It further appears that the applicant No.1 in Original Application No.421 of 2003 took the examination at the Sub-Centre at S.B. Boys High School, applicants nos.2, 3 and 4 at the Sub-Centre at S.B. Arts and Commerce College and applicants nos.5 and 6 at the Sub-Centre at Baliram Patil Junior College.

8. The grievance of the applicants is that Paper-I on Marathi, English and general knowledge contained several typographical errors. So far as Paper-II is concerned their grievance is that, it carried a wrong title/caption "Paper No.2 (with book) Law and Act adopted by Sales Tax Department, Office Procedure of Sales Tax Dept., Accountancy etc.," which facilitated a large number of candidates in attempting the said paper with the aid of books by procuring the books. This had placed the applicants at a disadvantage who had studied sincerely by availing leave and who had sincerely attempted the said paper without the aid of the books.

9. We may extract applicants' own averments to the extent relevant in order to appreciate their grievance. Here is what has been averred by the applicants in Original Application No.421 of 2003.

"10.

The applicants further say that the Paper-I had several typographical mistakes.

11.....The applicants say and submit that Paper-II for the said examination was given to the candidates and to the utter surprise of candidates like applicants who had studied sincerely, the question paper for Paper-II contained a heading “With-Book”. The subject shown on the question paper also wrongly read as “Law and Acts adopted by Sales Tax Department, Office Procedure of Sales Tax Dept., Accountancy etc.”.....

12. “The applicants submit that they having prepared for the said examination, on receiving the question paper immediately started writing the answers. The applicants further submit that they were shocked to see that majority of candidates at all the three centres, where the applicants appeared, procured books for themselves and taking advantage of the heading on the question paper “With Book” started writing their answer sheet with the help of books.

13. The applicants further say and submit that they complained to the respective invigilators, who expressed their helplessness to stop the candidates from using the books for solving Paper No.II in view of the clear heading on the top of the question paper which reads as “With Book”.

14. The applicants submit that at the S.B. Boys High School and S.B. Arts and Commerce College centre after some commotion and confusion as regards the heading “With Book”, amongst the candidates like the applicants who had studied sincerely, the Centre Chief at the respective centres sought clarification from respondent no.3.

The applicants further say that after about one hour after the start of Paper no.II the concerned Officer from the respondent no.3’s office reached the respective centres and after seeing the question paper made efforts to contact the respondent no.4. The applicants submit that almost at the fag end of the time given for paper no.II, the respondent no.3’s officials got confirmation from the respondent no.4 that the heading on the question paper no.II “With Book” was a mistake.

15. The applicants further say and submit that by the time it was confirmed from

respondent no.4 that the heading “With Book” was a mistake and efforts were made to take away the books from the candidates, the candidates who used books for answering paper no.II had already finished/attempted substantial part of paper no.II and thereby the damage/prejudice was already caused to sincere candidates like the applicants.

16. The applicants no.5 and 6 say and submit that at their centre at Baliram Patil Junior College the candidates who used books taking advantage of the heading “With Book” procured books for themselves from their residential quarters nearby and attempted the entire paper no.II with the help of books.

17. The applicants say and submit that they had all sincerely prepared themselves for the said examination and therefore the unfair and undue advantage gained by the candidates who used books for answering paper no.II has caused great prejudice to the applicants and other similarly situated candidates.”

10. The following are the substantive reliefs sought:-

- “A) The examination conducted by the respondent no.4 examination for appointment of departmental Police Constable to Assistant Sub-Inspector to the post of Police Sub-Inspector, held on 29.6.2003 be cancelled;
- B) The respondent no.4 be directed to conduct the examination for appointment of departmental Police Constable to Assistant Sub-Inspector to the post of Police Sub-Inspector afresh as expeditiously as possible.”

11. Identical averments have been made in Original Application No.408 of 2003. The reliefs sought are also absolutely identical.

12. Both respondents nos.3 and 4 have filed affidavits in reply. Both the respondents have made categorical statements that the examination in relation to Paper-II on “Law” was conducted in a fair, proper and transparent manner in which it was required to be conducted and that the candidates were not allowed to resort to and did not resort to unfair means and/or use of books while solving paper II at any of the Centres/Sub-Centres notwithstanding wrong caption at the top of question paper II appearing through printing mistake.

13. So far as the alleged printing mistakes in Paper-I are concerned it has been averred by respondent no.4 that the same are being analysed by the M.P.S.C. and that necessary action will be taken according to the Rules of M.P.S.C. in all such cases. In other words appropriate allowance or weightage as may be warranted would be given uniformly to all the candidates so that there would be no question of causing prejudice to any of the candidates on account of printing mistakes in paper I. This should set at rest the grievance of the applicants in so far as alleged printing mistakes in paper I is concerned.

14. It appears that in reference to news items appearing in certain dailies the respondent no.4 – M.P.S.C. had also issued a press release on 4.7.2003. We may extract the said Press Note/Press Release:- [Omitted as it is in Hindi]

15. In paragraph 35 of the affidavit in reply of respondent no.4 in Original Application No.421 of 2003 (para 37 of the affidavit in reply in Original Application No.408 of 2003) it has been averred as follows:-

“35. The deponent submits that the Maharashtra Public Service Commission had conducted the examination at seven District centres. There were total 18,337 applications received by the M.P.S.C. and as per the information available with the M.P.S.C. approximately 16,000 candidates appeared for the examination. It is submitted that the petitioner is trying to gain wrongful advantage of the title of the question paper no.II. It is submitted that the fate of more than 16,000 candidates cannot be lightly disturbed on applications tendered by a few candidates.”

16. From the affidavits in reply and the documents/papers annexed the following positions emerge prominently:-

(i) Detailed instructions were given to the prospective candidates in regard to the limited competitive examination as contained in Annexure “A” appended to Govt. in Home Department’s Circular dated 24.2.2003. We may extract the relevant portion:- [Omitted as it is in Hindi]

(ii) Detailed instructions regarding seating arrangement and organisation/management of the examination were given by the M.P.S.C. to the concerned

Collectors and Centre in charge by letter dated 20th June, 2003. In the said letter on the front page itself it is clearly stated as follows:- [Omitted as it is in Hindi]

(iii) This position has again been reiterated in paragraph 7 of the said communication as follows:- [Omitted as it is in Hindi]

(iv) Appropriate instructions were printed on the admission letters/hall tickets issued to the candidates under the caption special instructions. Special instruction nos.7 and 8 contain a warning and spell out the consequences of violation of the instructions. The applicants themselves have referred to these special instructions in their Original Applications. (Paragraphs 15 and 19 of the respective original applications).

(v) Very responsible officers namely the Resident Deputy Collectors and Officers of the rank of Deputy Collectors were entrusted the responsibility of Centres in charge and sub-centres-in-charge respectively. A briefing session/rehearsal was held 28.6.2003 (a day prior to the examination) at which the Sub-Centres in charge along with their assistants – Supervisors and Invigilators etc., it appears, were present. We may extract the minutes of the said meeting to the extent relevant (R-2 Page 46 of O.A.No.408 of 2003):- [Omitted as it is in Hindi]

(vi) Chairman and Members of M.P.S.C. S/shri C.D.Singh, Dr.Solunke and Ajit Warty had overseen the conduct of the written examination. Dr. Solunke was personally present at Nanded Centre.

(vii) M.P.S.C.'s Under Secretaries Smt. Sandhya Sawant, Smt. Patawardhan and Superintendent Shri More had been deputed to Aurangabad Centre for co-ordinating and observing the conduct of the examination. Similarly Under Secretary Shri P.M.Achrekar, Superintendent Shri M.K.Dixit and employees/clerks Shri Dawane and Shri Munj had been deputed to Nanded Centre. They had kept visiting the Sub-Centres during the course of the examination. For the purpose of illustration we may extract the report of Under Secretary Shri P.M.Achrekar at Exbt. R3 page 61 in O.A. No.408 of 2003:- [Omitted as it is in Hindi]

(viii) The same position has been reported by Collector, Aurangabad in relation to Aurangabad Centre which is at page 52 in O.A.No.421 of 2003. We may extract the relevant portion:- [Omitted as it is in Hindi]

(ix) There are no two errors/mistakes – one “With Book” and two “Law and Acts adopted by Sales Tax Dept. Office Procedure of Sales Tax Dept., Accountancy etc.” – as sought to be made out by the applicants. But there is only one single composite error/mistake ‘PAPER NO.2 (With Book) Law and Acts adopted by Sales Tax Dept., Office Procedure of Sales Tax Dept., Accountancy etc.’ and that it is a apparent, manifest and obvious error would be clear from the text of the question paper which essentially pertains to Law and essential knowledge having nexus with the working in Police Department” to any person of ordinary prudence. That the entire caption is erroneous would be obvious to any person of ordinary prudence. If the applicants were not misled by the wrong title/caption there is no reason to apprehend or to presuppose that the rest including the invigilators, Supervisors, Observers, the Sub-Centres in charge and the Centres in charge would have been misled or would have been confused even for a moment. It is preposterous to presume that others including senior and seasoned officers are divorced of ordinary prudence/common sense while a few of them like the applicants alone are possessed of ordinary prudence/common sense.

(x) There are averments of respondent no.4 that the sealed packets containing the question papers were opened ten minutes prior to the commencement of the examination when the mistake that was staring at everybody was noticed, that immediately the MPSC clarified/confirmed telephonically to all the Centres in charge

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has caused an inquiry to be conducted into the alleged instances by constituting a high power committee comprising of Senior Member Dr. B.S.Solunke and Member Shri B.S.Mohite. The report of the said Committee and its accompaniments have been annexed to the affidavit in Sur-rejoinder filed on behalf of respondent no.4 (sworn on 19.11.2003 at Bombay). The report conclusively and unequivocally holds that there is no truth and/or substance whatsoever in the allegations. We may extract paragraphs 4 to 8 of the said report: [Omitted as it is in Hindi]

20. Ld. Counsel for the applicants raises a serious objection that the enquiry committee ought to have examined the answer sheets of the seven candidates in order to ascertain whether it appeared that they had indeed made use of the books while solving question paper no.2. According to Ld. Counsel for the applicants that was the spirit of this Tribunal's interlocutory order dated 4.9.2003.

21. We overrule the said objection. M.P.S.C. is a Constitutional Authority. It is competent to decide about the manner in which it ought to proceed in any matter. The Enquiry Committee has examined the concerned candidates, the concerned invigilators, Supervisors and the Sub-centres in charge. The manner/mode adopted by the Enquiry Committee, in our view, is unexceptionable. Just for the purpose of highlighting power of Public Service Commissions we may extract paragraphs 25 and 26 of U.P.S.C. Vs. Subhash Chandra Dixit reported in AIR 2004 SC 163. In the said case adoption of scaling system to eliminate variation in marking standards of different examiners was under challenge. Here is what the Hon'ble Apex Court has observed:-

“25. It is important to note that under Article 320 of the Constitution, the Union and a State Public Service Commission has been conferred with ample power to conduct examinations for appointment to the services of the Union and to the services of the State. Of course, the power conferred on the Public Service Commission shall not be used arbitrarily. Similarly, powers of superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of all elections to Parliament and to the Legislature of every State have been vested with the Election Commission. While considering the parameters of the powers of the Election Commission, this Court in Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others, 1978 (2) SCR 272 observed as under:-

“Even so, situations may arise which enacted law has not provided for. Legislators are not prophets but pragmatists. So it is that the Constitution has made comprehensive provision in Art. 324 to take care of surprise situations. That power itself has to be exercised, not mindlessly nor malafide, nor arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification nor existing legislation Article 324 in our view, operates in areas left unoccupied by legislation and the words ‘superintendence, direction and control’ as well as ‘conduct of all elections’ are the broadest terms Myriad may be too mystic to be precisely presaged, may call for prompt action to reach the goal of free and fair election.”

26. The above observation made in the context of Article 324 would equally apply to article 320 when it comes to the question of powers of the Public Service Commission. The question, therefore, to be considered is whether the U.P.P.S.C. has exercised its powers arbitrarily and whether adoption of scaling system was with ulterior motives to give undue preference to some candidates.”

22. In any case, some 16,000 candidates had appeared at the limited competitive examination. For seeking the relief of cancellation of the examination on the ground of the same having been vitiated it ought to be demonstrated that there was a failure/collapse of the system. A couple of isolated alleged instances of examination mal practices, even if they be true, cannot lead to an inference that there was systems failure. Few isolated instances, should there be such instances call for being dealt with in a different manner individually. Cancellation of the examination cannot be and is not an answer to it. In our view there is not even an iota of material to indicate that there was systems failure. On the contrary, the material on record which we have referred to in paragraph 16 above do indicate and demonstrate amply that the examination was conducted in a fair, proper and transparent manner in which any examination ought to be conducted. Secondly if the relief sought were granted it would adversely affect a large number of candidates and none likely to be so affected has been impleaded as a party respondent. This is another aspect of the matter. In our view, considered from any angle, there is absolutely no warrant for granting the reliefs claimed in these original applications. No case for interference by the tribunal has been made out.

23. In the aforestated circumstances both the original applications call for being dismissed. They accordingly hereby stand dismissed with no order as to costs.

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH
ORIGINAL APPLICATION NO.661 OF 2004 & CONNECTED CASES**

D.D. 25.7.2005

SHRI P.K.GAIKWAD (MEMBER) (J)

SHRI G.C. TRIPATHY (MEMBER) (A)

Shri Shashkant Shankar Tatkare & Ors. ... Applicants

Vs.

The State of Maharashtra & Anr. ... Respondents

Recruitment - Standard fixed for Selection:

The applicants were candidates for recruitment to the post of P.S.I. – Limited departmental examination for promotion to the post of P.S.I. was held for 179 posts in 1998 – As the applicants secured less than the minimum qualifying marks in the written test they were not allowed to appear for the further stages of examination like physical test, interview etc. – There was a Court direction to send a list of 406 candidates in addition to 179 candidates recommended earlier – The applicants contended that in view of the additional vacancies the qualifying standard ought to have been lowered and the applicants ought to have called for physical test – As the applicants were not among 726 candidates who were already found fit and eligible in the written test and physical test the Tribunal dismissed the applications.

JUDGMENT

1. Heard both sides. Perused the Original Applications and affidavits filed in reply. The facts and circumstances as well as the issues in all these three Original Applications being identical, they are taken up for disposal under this common order.

2. The applicants have challenged the action of Maharashtra Public Service Commission in respect of not calling the applicants for physical test in the Police Sub-Inspector's Departmental Examination 1998, on account of they having secured less than the qualifying marks fixed for the category to which they belong. All these applicants were eligible to appear for the Limited Departmental Examination for promotion to the post of Sub Inspector of Police, having worked

for the required period in the Police Force as Constables. Initially, 241 posts were advertised. Later on by Corrigendum the number of posts was reduced to 179. The said examination for the 1998 recruitment year was held on 22.9.1999. The applicants had appeared in the written test. However, the applicants were informed on 9.7.1999 that the marks secured by them in the written test were less than the minimum qualifying marks and hence they were not qualified. Thus, the applicants were not allowed to appear in the further stages of the examination like physical test, interview etc.

3. In the meanwhile, a group of unsuccessful candidates had approached the Tribunal by filing as many as 129 Original Applications. The main contention raised by the applicants was that the ratio of the different modes of recruitment to the posts of P.S.I. was not maintained properly as prescribed in the Recruitment Rules. Since the Limited Departmental Examination was not held every year there remained backlog of the posts to be filled on through the said examination. The State Government filed an affidavit that there were in all 463 vacancies to be filled in through the Limited Departmental Examination and the Government had taken a decision to fill up the said vacancies through the examination of the year 1998-99. Therefore, this Tribunal by Order dated 19.7.2000 directed the respondents to take necessary action within specific time. The MPSC however recommended only 48 names in addition to 179 names already recommended. The M.P.S.C. had taken the stand that it was not feasible for the Commission to recommend more names without lowering the qualifying standard and considering the question of administrative efficiency, it was also not advisable to lower the qualifying standard.

4. The aggrieved candidates approached the Tribunal again by filing a group of Original Applications with the first O.A. being O.A. No.630/1999. The Tribunal by Order dated 22.6.2001 directed the State Government to send requisition for additional 150 vacancies to be filled in respect of the examination of 1998-99. The Tribunal also directed the Commission to prepare the select list accordingly. The M.P.S.C. filed appeal in the High Court vide W.P.No.15153/2002, challenging the order passed by the Tribunal. By deciding the entire group matters the High Court directed by Commission to send a list of 406 candidates in addition to the 179 candidates recommended earlier. The Commission carried the matter to Supreme Court by filing SLP No.10068/2002 and also by a Review Petition but both SLP and Review Petition came to be dismissed. The Review Petition came to be dismissed by order dated 3.12.2003.

5. The applicants in the present O.A.s maintain that the qualifying standard in the written test was fixed by the Commission on the basis of the number of vacancies advertised i.e. 179. The Commission had called candidates, four times of the number of vacancies, for Physical test and Interview and the minimum qualifying marks for each category got fixed accordingly. The applicants maintain that now that under the direction of the Court, the Commission is required to recommend 406 names out of the said examination, the Commission must lower down the qualifying standard and call additional number of candidates like the applicants for physical examination and interview in order to make fair and just selection by following the formula of conducting physical test of candidates, four times of the required number of posts.

6. The applicants have filed Miscellaneous Applications praying for condoning delay. The main ground advanced is that the dispute pertaining to the Examination 1998-99 got finally settled by order of Supreme Court passed on 3.12.2003. Hence, the applicants maintain that they could have filed the present O.A.s, when the dispute was still under adjudication in different Courts. The learned Advocate for the applicants has cited number of judgments in support of the stand regarding limitation. Considering the grounds mentioned in these M.A.s, we are inclined to condone the delay. Hence, all these M.A.s are allowed.

7. So far as the merits of the case is concerned, we find that the points regarding qualifying standard and other issues are fully covered in the judgments of this Tribunal and particularly in the judgment of High Court passed in W.P.No.4625/2001 and W.P.No.4626/2001. It is a fact that the matter is finally decided and the Commission is required to send a list of 406 names to Government out of the candidates who were called for Physical test and Interview in the said examination. But the applicants under these O.A.s plead that they were not called for physical test, because of securing lower marks than the qualifying marks. The qualifying marks for different categories were fixed on the basis of 179 vacancies. The applicants contend that for additional vacancies, the qualifying standard ought to be lowered by the Commission and accordingly the applicants ought to be called for physical test. But we find that the Commission has vehemently pointed out the adverse effect of the lowering of standard on administrative efficiency in the earlier litigation referred to above and the same has been considered by this Tribunal and High Court while in their judgments in the relevant petitions. While directing M.P.S.C. to send 406 additional names, the High Court in their judgment has made the following observation:-

“Para-10. We also find no substance in the contention that standard of passing and eligibility would be lowered if more number of candidates were forwarded to the State. In our opinion, this contention is baseless. The M.P.S.C. has in its wisdom fixed certain criteria for passing the examination and it has also fixed certain criteria for passing the physical test and after examining the candidates according to those standard and criteria, has found 726 candidates as eligible. Then sending of any number of candidates from those 726 candidates would not result in lowering the standard, because standard was already determined and those 726 candidates were already been found fit and eligible.”

8. Thus, we find that the direction of the High Court is to send 406 names from the list of 726 candidates who were already found fit and eligible in the written test and physical test. We find that the applicants could not qualify in the written test and hence they were not called for physical test. Admittedly, their names do not figure in the list of 726 candidates who were found eligible on the basis of the qualifying examination and physical test.

9. The basic argument of the applicants is that in all, 585 (179 + 406) vacancies were required to be filled up. The State Government did not send requisition for all those vacancies. As a result only 179 vacancies got advertised and the MPSC called a little more than four times of 179 i.e. 726 candidates for physical test. The applicants argue that had all the vacancies would have been advertised, 2340 (four times of 485 vacancies) candidates would have been called for physical test. In that case the qualifying standard would have been determined at a lower stage and the applicants would have been called for physical test and interview. The applicants plead that since, all the vacancies were not notified, the applicants were denied the right to compete in the further stages of the Examination.

10. We find that, although it is a fact that due to lack of information or misinformation, only 179 vacancies got advertised, the State Government later on decided to obtain names of additional 463 candidates to fill up the available vacancies. It is true that the Commission had pointed out operational difficulty in selecting additional candidates, since, the process of selection required calling candidates, four times of the number of vacancies, for physical test and interview. By

that time the physical test and interview was already over and a list of 179 selected candidates was already sent to the State Government. Calling additional candidates for physical test and interview required lowering down the qualifying standard, which was going on upset the selection already made. This stand was taken by M.P.S.C. in the W.P. filed by them. Considering the operational difficulty pointed out by M.P.S.C., the High Court, under their order referred to above have restricted their direction to select additional 406 candidates only from the list of candidates who were found eligible in the written examination as well as in the physical test. The applicants, admittedly, do not fall in that category. Hence, their claim for being called for physical test, at this late stage, is baseless and deserves to be rejected.

**IN THE HIGH COURT JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
WRIT PETITION NO.37582005
D.D. 9.8.2005**

HON'BLE MR. F.I.REBELLO AND N.A.BRITTO, JJ

Ms Shubhangi ... **Petitioner**

Vs.

Maharashtra Public Service Commission & Ors. ... Respondents

Recruitment - Educational Qualification:

The application of the petitioner for the post of Lecturer was rejected on the ground that the petitioner did not have Master's Degree in second class in the relevant subject as on the last date fixed for receipt of applications i.e. 4.5.2005 – As the applicant had only post graduate qualification in education and as she obtained post graduate degree in the relevant subject in July 2005 after the last date fixed for receipt of applications the High Court rejected the writ petition holding that the petitioner was not eligible to apply.

Held:

There is no challenge to the requirement of qualifications as set out in the advertisement and as such the petitioner who obtained post graduate degree in the relevant subject after the last date fixed for receipt of applications was not eligible to apply.

ORDER

When the advertisement was issued qualifications required were:

- i) possess good academic record with Master's degree of a statutory university in Second Class in the relevant subject from an Indian university or an equivalent degree from a foreign University.
- ii) Possess Master's degree in Education of a statutory university with minimum 55 percent marks or its equivalent grade, and

iii) Have qualified in the comprehensive “Eligibility Test” or equivalent test prescribed by the University Grants Commission.

Last date for submitting application was 4th May, 2005. Admittedly as on 4th May, 2005 the petitioner did not have Master’s degree in second class in the relevant subject. The subject involved here are Marathi and Science. The petitioner holds post graduate qualification by way of Master’s degree in Education. The petitioner’s application was rejected and this was so communicated to him.

The selection has taken place, the petitioner after his non-selection has filed present petition on 19.7.2005. It is contended on behalf of the petitioner that in terms of U.G.C. only requirement for the Lecturer is that the person must possess a post graduate degree in Art, Science, Social Science, Commerce, education, Foreign Languages and Law. It is therefore, set out that the petitioner having possessed Master’s degree in Education, he met with all the requirements. It is therefore, submitted that non consideration of the petitioner is arbitrary. It is also sought to be pointed out, based on paragraph 7 of the petition, about discriminatory practice as other candidates are still in service and doing jobs at various institutions possessing similar qualification as that of the petitioner for the post of lecturer. No details have been set out nor are they party respondents before us to enable us to consider that contention.

Once the petitioner has applied under the advertisement which required the petitioner to possess good academic record with Master’s degree in second class in the relevant subject and as the petitioner, on the last date of submission of application did not have the said qualification, we find no reason to interfere with rejection of petitioner’s application as it is not the petitioner’s case that in terms of the qualification required for the post, possessing post graduate in the subject as set out in the advertisement is not required. There is also no challenge to the requirement of qualifications as set out in the advertisement. The petitioner obtained the post graduate degree in July, 2005. The advertisement did not set out that those who have appeared for the examination will also be eligible to apply.

Considering the above, we find no cause for interference. The petition is rejected.

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH, NAGPUR**

ORIGINAL APPLICATION NOS.242 & 283/2004

D.D. 12.8.2005

THE HON'BLE SHRI S.D.JOSHI, VICE-CHAIRMAN (A)

Shri Dnyaneshwar Manohar Pant Nalat & Ors. ... Applicants

Vs.

The State of Maharashtra & Ors. ... Respondents

Examination - Mistake in the Question Paper:

On same set of facts covered by order dated 9.6.2004 in Original Application No.408/2003 and connected case this batch of cases has been filed alleging mistake in Paper-II Law - The Tribunal both on merit as well as on the ground of delay and laches dismissed these applications.

Held:

The examination was held on 29.7.2003. The results were declared on 6.3.2004. The allegations regarding irregularity in conduct of examination in respect of Paper-II of Law were inquired into by the P.S.C. and had issued a Press Note that no irregularities had taken place in the examination. The applicants had not made any representation for cancellation of the examination and the applicants approached the Tribunal by filing these applications in May/June 2004 long after the results were declared. The applicants had not approached the Tribunal within a reasonable time and the applications suffered from serious laches on the part of the applicants hence not entitled to any relief.

[The text of the judgment is not printed here as the order dated 9.6.2004 in A.No.408/2003 is included in this Compilation.]

Cases referred:

1. (1998) 3 SCC 694 - Union of India & Anr. Vs. N.Chandrasekhar & Ors.
2. (2002) 5 SCC 533 - B.Ramanjini Vs. State of Andhra Pradesh
3. AIR 2002 SC 790 – G.V.Naik Vs. Goa University
4. AIR 2004 SC 163 – Union Public Service Commission Vs. Suhashchandra Dixit
