

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1208 OF 2025**

Maharashtra Public Service Commission,
Through its Secretary,
having its office at, Trishul Gold Field, Plot
No. 34, Sector 11, Oppo Sarovar Vihar,
Belapur, CBD, Navi Mumbai – 400 614.

...Petitioner

~ versus ~

- 1. Dr. Jagdish Anandrao Bhalerao,**
Adult, Occu: Servcie, R/o Hutatma
Samrak Road, Hasyavadan Dental Clinic,
Opp. Civil Hopital, Nagar Parishad
Complex, Jintur, Parbhani
- 2. Shirish V. Ingley,**
Adult, Occu:-Service,
R/at Sangaloodkar Nagar,
Dr. Mhala Hospital Lane, Daryapur,
Amravati 44803
- 3. The State of Maharashtra,**
Through its Secretary,
Public Health Department, 10th Floor,
GT Hospital, New Mantralaya,
Mumbai 400 001.

...Respondents

WITH

WRIT PETITION NO. 1205 OF 2025

Maharashtra Public Service Commission,
Through its Secretary,

...Petitioners

SHEPHALI
SANJAY
MORMARE

Digitally signed
by SHEPHALI
SANJAY
MORMARE
Date: 2026.07.10
17:01:36 +0530

having its office at, Trishul Gold Field, Plot No. 34, Sector 11, Oppo Sarovar Vihar, Belapur, CBD, Navi Mumbai – 400 614.

~ versus ~

1. **Dr Bharat Lad,**
Age:41 years, Occu: Service,
R/o. Behind Maruti Mandir, Kalyan Nagar, Wasmata Road, Parbhani 431 401
Mob. :-98230 84554
Email:- bharatmlad@gmail.com
2. **The State of Maharashtra,**
Through its Secretary,
Public Health Department, 10th Floor,
GT Hospital, New Mantralaya,
Mumbai 400 001.

...Respondents

WITH

WRIT PETITION NO. 15021 OF 2025

Dr Bharat Lad,
Age: 52 years, Occu: Service,
R/o. Behind Maruti Mandir, Kalyan Nagar,
Wasmata Road, Parbhani 431 401
Mob. :-98230 84554
Email:- bharatmlad@gmail.com

...Petitioner

~ versus ~

1. **Maharashtra Public Service Commission,**
Through its Secretary,
having its office at, Trishul Gold Field,
Plot No. 34, Sector 11, Oppo Sarovar
Vihar, Belapur, CBD,
Navi Mumbai – 400 614.
2. **The State of Maharashtra,**
Through its Secretary,

...Respondents

Public Health Department, 10th Floor,
GT Hospital, New Mantralaya,
Mumbai 400 001.

APPEARANCES

For the Petitioners in WP/1208/2025 & WP/1205/2025 and for the Respondent in WP/15021/2025	Mr Ashutosh M Kulkarni, with Mr Hrutik Chavan & Mr Soham Salunke.
For the Petitioner in WP/15021/2025 for the Respondent No. 1 in WP/1205/2025	Mr Kranti L. C., i/b Kaustubh Gidh.
For Respondent in WP/1208/2025	Mr Abhijeet A. Desai, with Ms Mohini A Desai (Rehpade), Mr Vijay Singh, Ms Daksha Punghera & Mr Deepesh R, i/b Desai Legal LLP.
For Respondents-State	Ms Shruti D Vyas, Addl. GP, with Ms Reena A Salunkhe, AGP

**CORAM : SUMAN SHYAM &
RANJITSINHA RAJA BHONSALE, JJ**

**RESERVED ON : 18th JUNE 2026.
PRONOUNCED ON : 9th JULY 2026.**

JUDGMENT (Per Suman Shyam, J):-

1. These Writ Petitions arise out of common Judgment and Order dated 25th July 2024 passed by the learned Maharashtra Administrative Tribunal (“MAT”). Writ Petition No. 1208 of 2025 pertains to the Judgment passed in connection with Original

Application No. 1442 of 2023 filed by the two Original Applicants/Respondents Nos. 1 and 2 in the Writ Petition, viz., (1) Dr Jagdish Anandrao Bhalerao; and (2) Shri. Shrish V. Ingley. Writ Petition No. 1205 of 2025 pertains to the Original Application No. 1368 of 2023 instituted by the Original Applicant/Respondent No. 1 viz. Dr. Bharat Lad. In both these Writ Petitions instituted by the Maharashtra Public Service Commission (“MPSC”) as the Writ Petitioner, the Judgment and Order dated 25th July 2024 passed by the Learned MAT directing the MPSC to recommend the names of the Original Applicants for appointment to the post(s) of Dental Surgeon within a period of six weeks by relaxing their age limit as per Rule 3(b) of the Directorate of Health Service Recruitment Rules, 1990 (hereinafter referred to as “Rules of 1990”) has been put under challenge. Although the operative part of the Judgment and Order dated 25th July 2024 is in favour of the Original Applicant, viz. Dr Bharat Lad, yet, he is assailing the Judgment and Order dated 25th July 2024 by filing Writ Petition No. 15021 of 2025 on the ground that the learned Tribunal has not accepted his plea that being already in the service of the Government, the age restriction clause prescribed by the Rules of 1990 as well as Clause 4.2 of the advertisement notice was not at all applicable in his

case. Since the issues involved in all these three Writ Petitions are interconnected, hence, we propose to dispose of these Writ Petitions by this common Judgment. For appreciating the issues involved in the Writ Petitions, the facts of the case, shorn of unnecessary details, are stated hereinbelow:-

2. On being requisitioned by the State Government of Maharashtra, the MPSC had issued advertisement notice dated 31st July, 2015 inviting applications for filling up 189 posts of Dental Surgeon (Group-B). The eligibility criteria prescribed in the advertisement notice was Bachelors Degree in Dental Surgery (BDS) with one year experience as Clinical Assistant or in any post, which in the opinion of the Government, is equivalent or higher than the post of Clinical Assistant. As per the advertisement notice, the upper age limit of the Applicant was prescribed as 35 years for the open category and 40 years for the reserved category. Such upper limit was to be reckoned as on 1st November 2015. Clause 4.6 of the advertisement notice had also mentioned that preference would be given to candidates possessing Post Graduate qualification in Dental Science (MDS).

3. The Original Applicants, i.e., the private Respondents in Writ Petition No. 1208 of 2025 and Writ Petition No. 1205 of 2025 were all serving as Dental Surgeons on contractual basis, their appointments having been made under a centrally sponsored scheme, viz., National Health Mission (“NHM”) adopted by the State Government of Maharashtra. It appears from the projections made in the Original Applications that the Respondent Nos. 1 and 2 in Writ Petition No. 1208 of 2025 were appointed on contractual basis in the year 2008, initially for a period of 11 months and their contractual appointments were later on extended from time to time to such effect that these Respondents/Original Applicants are continuing to serve as Dental Surgeons on contractual basis under the different institutions of the Government of Maharashtra, till date. Likewise, the Respondent No. 1 in Writ Petition No. 1205 of 2025, viz. Dr Bharat Lad was also appointed as Dental Surgeon on contractual basis on 1st August 2012, initially for a period of 11 months and, thereafter, his contractual appointment was also extended from time to time, as a result of which, he is also rendering his service as a contractual appointee till date with periodical extensions of his order of contractual appointment.

4. Since the Original Applicants/private Respondents are all BDS degree holders and had the requisite qualification and experience as prescribed under the advertisement notice, hence, in response to the advertisement notice dated 31st July, 2015, they had submitted their applications.

5. It further appears from the material available on record that online applications were accepted by the MPSC. However, there was some confusion as to whether candidates having experience in private hospitals/clinics could also be considered. As such, on 1st October, 2015, the State Government had clarified that candidates having experience in private hospitals/clinics could also be considered. Accordingly, the MPSC had considered the candidates having experience in private hospitals/clinics. That apart, by invoking Clause 4.6, the MPSC had also extended preferential treatment to the candidates possessing higher educational qualification of MDS for short-listing of the candidates for interview on the ground that the number of candidates, who had applied, was quite large. In the result, the candidates possessing BDS qualification, including the private respondents, who were

already serving as contractual employees, were not called for interview.

6. The decision of the MPSC to go for shortlisting of candidates possessing higher educational qualification, viz., MDS was put under challenge by a large number of Applicants possessing BDS qualification, by filing series of Original Applications including Original Application No 1119 of 2015 before the learned Tribunal. Clause 4.6 of the advertisement notice was also put under challenge by the Original Applicants. By order dated 23rd December 2015, the learned Tribunal had directed the MPSC to conduct interview of the Original Applicants as well.

7. In the meantime, the MPSC had conducted interviews of the short listed candidates and thereafter, published select list dated 18th November, 2016 recommending the names of 188 candidates for being appointed as Dental Surgeons. Accordingly, the State Government had also issued appointment orders in favour of such candidates. However, only 122 out of the 188 selected candidates eventually joined service, thus leaving 66 vacancies unfilled. It appears that by the interim order dated 1st March, 2018, the MAT had directed that the original applicants be continued in service.

8. Original Application No 1091 of 2015 instituted by Dr. Kshitij Digambar Lohite was treated as the lead case. The learned MAT, by order dated 8th May, 2019, passed in Original Application No. 1091 of 2015 and the batch of connected Original Applications, had held that shortlisting of candidates by the MPSC based on higher education qualification would have the effect of En-Bloc elimination of candidates holding the lower qualification of Bachelor degree in Dental Surgery (BDS). The Tribunal had also held that candidates having experience in private hospitals/clinics could also be considered for the purpose of determining their eligibility. On such basis, the Tribunal had directed the MPSC to revise the list of selected candidates and send additional names by including the names of those candidates who met the minimum prescribed qualification.

9. Being aggrieved by such directions of the learned Tribunal, the MPSC had approached this Court by filing a batch of Writ Petitions including Writ Petition (St) No. 1153 of 2020. Although the operative part of the order dated 8th May, 2019 was in their favour, yet, some of the Original Applicants had challenged the order dated 8th May, 2019 passed by the learned MAT before this

Court, assailing the findings of the learned Tribunal to the effect that the candidates having experience in private hospitals/clinics could also be considered eligible for selection.

10. By the Judgment and Order dated 20th March 2023 passed by the Division Bench of this Court in Writ Petition (ST) No. 9195 of 2021 and the batch of connected Writ Petitions, the shortlisting criteria adopted by the MPSC based on higher qualification was held to be valid. Consequently, the Writ Petitions filed by the MPSC were allowed. However, the directions issued by the learned Tribunal pertaining to the eligibility of candidates who had gained experience in private hospitals/clinics was interfered with. Accordingly, by the Judgment and Order dated 20th March 2023, the High Court had directed the MPSC to consider the names of the Original Applicants, who were already interviewed in pursuance to the interim order of the Tribunal. The operative part of the order dated 20th March, 2023 as contained in paragraphs 53(iii) and (iv), are reproduced hereinbelow for ready reference:

“(iii) Writ Petition St. Nos. 9195/2021 and Writ Petition No.7201/2019 filed by the Original applicants are disposed of with a direction to MPSC to consider the names of Original applicants who are already interviewed in pursuance of interim order of

the Tribunal for being recommended to the State Government based on their performance in the interview against 67 unfilled vacancies of Dental Surgeon. This exercise be carried out by MPSC within a period of six weeks from today. In the event of such Original applicants being recommended by the MPSC, the State Government shall consider their names for being appointed against 67 unfilled posts of Dental Surgeon prospectively. They shall not be entitled to any benefits from an earlier date. The State Government to complete this exercise within a period of four weeks from the date of receipt of recommendations from the MPSC.

(iv) Until the exercise in direction (iii) above is completed, services of the Original applicants, who are already in service, shall not be disturbed.”

11. Pursuant to the Judgment and Order dated 20th March 2023, whereby, a direction was issued by the Division Bench of the High Court to consider the names of the Original Applicants who had already been interviewed, for filling up the 67 vacancies, the MPSC had published a list of 51 candidates. However, the names of the Original Applicants/Private Respondents herein were not included therein. Rather, on 17th October 2023, the MPSC had notified that the Original Applicants were not eligible on account of having exceeded the upper age limit.

12. Aggrieved thereby, Dr Jagdish Anandrao Bhalerao and Shri. Shrish V. Ingley had jointly instituted Original Application No.

1442 of 2023 assailing the Order dated 17th October 2023 with a prayer to issue a direction to the MPSC for recommending their names for appointment as Dental Surgeon on regular basis. Likewise, Dr Bharat Lad had also instituted Original Application No. 1368 of 2023 with a similar prayer to set aside the order dated 17th October 2023 and for issuance of a similar direction to the MPSC.

13. The stand of the MPSC as well as the State Government of Maharashtra before the MAT was to the effect that the Original Applicants, not being government servants, were not entitled for age relaxation as per Rule 3(b) of the Rules of 1990 since, they were over-aged candidates. Therefore, regardless of their merit position, the names of those candidates could not be recommended for appointment in the post of Dental Surgeon on regular basis.

14. After considering the submissions made by both the sides and by taking note of the Government Resolution (“GR”) dated 14th March 2024, as well as the order dated 20th March 2023 passed by this Court, the learned Tribunal had allowed the Original Applications by directing the MPSC to recommend the names of

the Original Applicants for the posts of Dental Surgeon within a period of six weeks.

15. Assailing the Judgment and Order dated 25th July 2025 passed by the learned MAT, the Writ Petitioner-MPSC has contended that the learned MAT has failed to appreciate that the Original Applicants were over-aged as on 1st November 2015, which was the cut-off date as per Clause 4.1 of the Advertisement Notice; that the learned Tribunal has failed to appreciate that the Original Applicants were contractual employees under the NHM Scheme and hence, were not employees of the State Government of Maharashtra. Therefore they were not entitled to claim age relaxation under the Rules; that granting age relaxation to the Original Applicants will open floodgates as several other similarly situated contractual employees would also claim the benefit of age relaxation; that the learned Tribunal had failed to appreciate that the provisions in the Rule 1990 for relaxation of age in exceptional cases would not be applicable to the Original Applicants in the facts of this case.

16. Mr Kulkarni, learned counsel appearing for the Petitioner(s) (MPSC) has argued that the Original Applicants are not

government servants and, therefore, in view of the age limit prescribed by the statute, they are not entitled to be appointed as per the Advertisement Notice. According to Mr. Kulkarni, the private respondents were not eligible to participate in the selection process under the Advertisement Notice dated 31st July 2015, in view of the age limit prescribed by the Rules as well as the Advertisement Notice. It is also his submission that the Petitioners do not have the experience and qualification of exceptional nature, so as to justify relaxation of age. Moreover, according to Mr Kulkarni, the MPSC had called the candidates for interview by applying the preferential qualification as approved by this Court by its Judgment and Order dated 20th March 2023. Therefore, the Original Applicants did not have any right under the Rules, either to participate in the selection process or to seek an order for their appointment. In such view of the matter, the impugned Judgment and Order dated 25th July 2024 of the learned MAT, according to Mr. Kulkarni, is unsustainable in law and, therefore, liable to be set aside on such count.

17. Contesting such submission of Mr Kulkarni, Shri. Desai, learned Counsel appearing for the private Respondents in Writ

Petition No. 1208 of 2025 has argued that regardless of the nature of appointment of the Respondents, it is an established fact that they were serving under the establishment of the Government of Maharashtra and, therefore, the age restriction imposed under Rule 3(b)(i) as well Clause 4.2 of the Advertisement Notice would not be applicable to them. In such view of the matter, the MPSC has committed manifest illegality in declining recommendation of his clients for appointment for the post of “Dental Surgeon” only on the ground that they were over-aged by ignoring the high score of the Respondent Nos. 1 and 2 in the interview process. By referring to the decision of the Hon’ble Supreme Court in the case of *UPSC Vs. Dr. Jamuna Kurup & Ors.*¹ as well as another decision rendered in the case *Union of India & Ors. Vs. V. R. Nanukuttan Nair*.² Mr Desai has argued that since Rule 3(b)(i) did not mandate permanent employment as a government servant for waiver of age restriction criteria, hence, the facts of the case would wholly justify extending the benefit of waiver clause of upper age in favour of the Respondent Nos. 1 and 2.

1 (2008) 11 SCC, 10.

2 (2019) 19 SCC 690.

18. Moreover, submits Mr. Desai, having served the government institutions for a continuous period in excess of 10 years, his clients were entitled to absorption on permanent basis even under the GR dated 14th March 2024 and, therefore, the learned Tribunal had rightly passed the impugned Judgment and order which does not call for any interference by this court.

19. Mr Kranti, learned counsel appearing for the Petitioner in the Writ Petition No. 1205 of 2025 has, by and large, adopted the abovenoted submissions advanced by Mr Desai but he has also argued that the learned Tribunal had committed manifest illegality in not recording a finding in favour of the Original Applicant to the effect that his candidature was not hit by the age restriction contemplated under Rule 3(b)(i) of the Rules of 1990. Therefore, although, the operative part of the impugned Judgment dated 25th July 2024 is in favour of his client, yet, since the above contention of the Original Applicant was not expressly accepted by the learned Tribunal, hence, by way of abundant caution, Writ Petition No. 15021 of 2025 has been filed by contending that even under Rule 3(b)(i), the candidature of the Original Applicant would not be hit by the age bar.

20. We have considered the submissions made at the Bar and have also gone through the material available on record. Since the core controversy involved in these proceedings has to be answered on an interpretation of Rule 3 of the Rules of 1990, we deem it appropriate to re- produce the said Rules as hereunder:

“3. Appointment to the post of Dental Surgeon in the Directorate shall be made either,-

(a)

(b) by nomination from amongst the candidates who,

(i) unless already in the service of the Government are not more than thirty-five years of age;

(ii) possess a degree of Bachelor of Dental Surgery as included in Part I or III of the Schedule to the Dentists Act 1948 (16 of 1948); and

(iii) have experience for not less than two years* as a Clinical Assistant in any post, which in the opinion of the Government is equivalent to or higher than, the post of Clinical Assistant, gained after acquiring the qualification mentioned in sub-clause (ii) above.”

Provided that the age limit may be relaxed by the Government on the recommendation of the Commission in favour of candidates possessing exceptional qualification or experience or both.”

21. Clauses 4.1 and 4.2 of the Advertisement Notice are reproduced hereinbelow:-

“४.१ वय:- दिनांक १ नोव्हेंबर, २०१५ रोजी वय ३५ वर्षे व मागास वर्गवारीकरीता ४० वर्षांपेक्षा जास्त नसावे.

4.1 Age: On 1st November 2015, the age should not exceed **35 years** and for backward categories it should not exceed 40 years.

४.२ महाराष्ट्र शासनाच्या सेवेतील कर्मचा-यांना उच्च उच्च वयोमर्यादा लागू नाही.

4.2 There shall be no upper age limit for employees in the service of the Government of Maharashtra.”

22. What would be significant to note herein is that clause 4.1 of the advertisement notice aims at giving effect to Rule 3(b)(i) which prescribes the upper age limit of 35 years. However, Rule 3(b)(i) of the Rules of 1990 also provides that no upper age limit will be applicable for the candidates who are already in the service of Government. In view of the aforesaid provision of the Rules, Clause 4.2 has been inserted in the Advertisement Notice dated 31st July 2015 clearly providing that the upper age limit will not be applicable for those candidates who are in the service of the Maharashtra Government.

23. It would be pertinent to note herein that neither Rule 3(b) of the Rules of 1990 nor Clause 4.2 of the Advertisement Notice dated 31st July 2015 require that the candidates, in order to get the benefit of waiver of upper age limit, must be government servants

nor does it prescribe that the appointment of the candidates serving under the Government of Maharashtra must be permanent and/or on regular basis. On the contrary, Rule 3(b)(i) contemplates is that the person concerned must be in the service of the Government of Maharashtra. The said position is also clearly reflected in Clause 4.2 of the Advertisement Notice dated 31st July 2015. The core questions that would therefore, arises for consideration in this case is as to whether, by virtue of their contractual services as Dental Surgeon pursuant to their appointments in posts made available under the centrally sponsored scheme, viz., National Health Mission, whether the Original Applicants/private Respondents herein would be automatically entitled to exemption of the upper age limit criteria of 35 years as prescribed in Rule 3(b)(i) of the Rules of 1990 read with Clauses 4.1 and 4.2 of the Advertisement Notice dated 31st July 2015. If not, whether their age would be liable to be relaxed by the Government on the recommendation of the Petitioner commission as per proviso to Rule 3(b) on the ground of possessing exceptional qualification or experience or both. The second question would arise for consideration of this court on account of the fact that the two Original Applications, noted above,

have been disposed of by the learned MAT with a direction upon the MPSC (Writ Petitioner) to recommend the case of the Original Applicants/Respondents for appointment upon relaxation of their age by relying upon proviso to Rule 3(b).

24. In order to deny the claim of the Original Applicants, Mr Kulkarni has argued that the contractual employees, such as Original Applicants, cannot be treated to be persons, who are in the service of the Government of Maharashtra. However, from a scrutiny of the appointment orders as well as the certificates issued to the Original Applicants, we find that those were issued by the Medical Superintendent of the Government Hospitals. Not only that the service of the Respondents were also availed in the hospitals established by the Government of Maharashtra for the benefit of the common public. Therefore, it is clear that Respondents have been discharging their duties in the Government establishment and, hence, were in the service of the Government. If that be so, in our considered opinion, they be entitled for exemption of upper age limit prescribed by Rule 3(b)(i).

25. It may be correct to contend that being in contractual employment, the Original Applicants cannot claim to be

“Government Servants” in the strict sense of the expression. However, Rule 2(b) of the Maharashtra Civil Service (Conduct) Rules, 1979 (“Rules of 1979”) lays down a very wide definition of Government servants which is as hereunder :-

“2 (b) – “Government servant” means any person appointed to any civil service or post in connection with the affairs of the State of Maharashtra, and includes a Government servant whose services are placed at the disposal of a company, corporation, organization, local authority or any other Government, notwithstanding that his salary is drawn from sources other than from the Consolidated Fund of the State.”

26. As has been noted above, the Original Applicants need not be in permanent employment in any civil posts under the Government of Maharashtra so as to get the benefit of Rule 3(b)(i) of the Rules of 1990. In view of the language employed in Rule 2(b) of the Rules of 1979, in our opinion, if a candidate has been serving in any Institutions under Government of Maharashtra even as Contractual Employee, that would be sufficient for being entitled for the waiver/ exemption of upper age limit as prescribed in Rule 3(b)(i).

27. In the above context, it would be pertinent to note herein that noticing the plight of the contractual employees working under the National Health Mission (NHM) for a number of years,

the State Cabinet had taken several significant decisions to permanently absorb such contractual employees, if necessary, by amending the service entry Rules and also by granting relaxation of their age. Pursuant to a Cabinet Decision taken on 13th March 2024, the Additional Chief Secretary, Public Health Department, Government of Maharashtra, had issued Government Resolution dated 14th March 2024, the English translation whereof, reads as follows:-

“GOVERNMENT RESOLUTION :-

With reference to adjustment in services of contract employees working under the National Health Mission the following decision was taken in the meeting of the State Cabinet held on 13/03/2024.

(1) Approval is being given for carrying out amendments in the general service recruitment rules for adjustment in services of contract employees working under the National Health Mission by making alterations to service recruitment rules to approved equivalent posts in the Public Health Department and recruitment therein of 70 percent by general service recruitment and 30 percent every year by adjustment.

(2) Approval is being given for relaxation in age limit to the extent of tenure of service of employees for adjustment of contract employees who have put in 10 years and more of services under the National Health Mission.

(3) After adjustment of contract employees who have put in 10 years and more of services under the National Health Mission as regards wages approval is being given for fixing it in the next step of the regular pay scale to the extent of honorarium drawn by them in the immediately preceding month.

(4) Approval for adjustment is being given subject to strict compliance with the instructions / guidelines regarding educational qualifications of contract employees under the National Health Mission decided by the Central Government from time to time.

(5) Approval is being given for making applicable adjustment of services of contract employees working under the National Health Mission with effect from the date of decision taken by the Cabinet.

(6) Approval is being given for taking decision at the Department level for technical problems arising during implementation of decision of the Cabinet.

03. The said Government Resolution is being issued with reference to minutes of meeting of the Hon'ble Cabinet held on 13/03/2024.

04. The Government Resolution is made available on Government of Maharashtra website www.maharashtra.gov.in and its code number is 202403051440390917. This Government Resolution is issued by certifying under digital signature.

Under the order and in the name of the
Governor of Maharashtra.

MILIND JAYANT MHAISKAR”

28. A careful reading of the aforementioned Government Resolution unequivocally goes to show that although the primary objective of the GR appear to be to absorb the contractual appointees, if necessary by amending the recruitment rules, yet, the different resolutions contained therein, in our view, would operate in independent spheres. While Resolution No.1 contemplates amendment of the Service Entry Rule for adjustment of contractual employees working under the National Health

Mission so as to provide recruitment of 70% by direct recruitment and 30% by way of adjustment, Resolution No. 2 conveys the general approval of the State Government in according to relaxation of age limit to the extent of the tenure of service period of such employees for the purpose of adjustment of contractual employees working in the State under the National Health Mission, who have completed service of ten years or more.

29. The aforesaid Government Resolution, in our considered opinion, not only notifies a clear policy decision on the part of the State Government to permanently absorb/accommodate the contractual employees working for more than ten years under the National Health Mission, but also clarifies that the contractual employees engaged under the NHM scheme were working under the State, i.e., State Government. Not only that, there is also a categorical decision of the State Government to grant relaxation of upper age limit to the deserving candidates, who have served for more than ten years under the National Health Mission. If that be so, viewed from that angle also, it is apparent that there is already a policy decision on the part of the Government of Maharashtra to grant relaxation of upper age limit to the eligible contractual

employees serving under the National Health Mission and to permanently absorb them. It appears that it is precisely on such count that the State Government of Maharashtra has not challenged the Judgment of the learned MAT before this Court.

30. In view of the Government Resolution dated 14th March 2024, which has also been relied upon by the Learned Tribunal, we are of the un-hesitant opinion that the Original Applicants, having served the State under the National Health Mission Scheme, were entitled to age relaxation, at least for the period of service rendered by them. If such a criteria is applied to the Original Applicants/Private Respondents herein, each of the three Original Applicants would undoubtedly meet the age criteria as on 1st November 2015. As such, their candidature could not have been rejected by the MPSC on the ground that the Original Applicants were over-aged.

31. It must also be noted herein that in the Judgment and Order dated 20th March 2023, as referred to above, a Division Bench of this Court had issued categorical direction upon the Writ Petitioner- MPSC to consider the names of Original Applicants who had already been interviewed, for the 67 vacant posts. The Private

Respondents/ Original Respondents are evidently, included in the list of the Original Applicants referred to the Judgment dated 20th March 2023 passed by this Court. The said Judgment has attained finality in the eyes of law. The plain reading of the operative part of the Judgment dated 20th March 2023 leaves no room for doubt that the question of eligibility of those Original Applicants were no longer open for debate. Subject to their merit position, the MPSC would be bound to recommend their names for appointment. There is no controversy in this case that all the three Original Applicants have scored marks which would be sufficient to justify their selection on merit. Therefore, by rejecting the candidature of the Original Applicants on the ground that they were not eligible on account of being over-aged, the MPSC has, in our opinion, clearly acted in violation of the letter and spirit of the directions of this court.

32. Insofar as the direction of the MAT requiring the MPSC to recommend the names of the Original Applicants for relaxation of the age is concerned, we find force in the argument of Mr Kulkarni that the relaxation under the proviso to Rule 3(b) can only be granted by the Government, and therefore, the MAT was not

correct in issuing a direction to the MPSC to recommend the names of the Original Applicants, for appointment in the post of Dental Surgeon by observing that it was a fit case for relaxing the age limit under Rule 3(b). It appears that the relaxation of age was granted by the learned Tribunal by observing that in view of the specialized experience acquired by the Original Applicants they were entitled to such relaxation. Under the Rules, such relaxation could only be granted by the Government and therefore, the learned MAT was not correct in issuing such a direction. However, since we have already held that the candidature of the Original Applicants could not have been rejected on the ground that they were over-aged, it would not be necessary for this Court to go into that aspect in the matter in any further details.

33. Mr Kulkarni has also addressed elaborate arguments to convince us that since the learned Tribunal has not granted relief to the Original Applicants on the ground that the age restriction was not applicable to them by virtue of their status as contractual employees serving under the National Health Mission, hence, such a relief cannot be granted to the private Respondents in Writ Petition No. 1208 of 2025, since they have not challenged the

Judgment and Order of learned Tribunal by filing a separate Writ Petition. We are unable to accept such submission of Mr Kulkarni for the following reasons .

34. Under Article 226 of India, the High Court exercises plenary jurisdiction to pass such orders or directions in furtherance of interest of justice and to mould a relief. In the case of *Dwarka Nath Vs. Income Tax Officer, Special Circle, D-Ward, Kanpur & Anr.*,³ the Hon'ble Supreme Court has observed that the power of the High court under Article 226 of the Constitution of India is wide enough to reach injustice wherever it is found. The constitution has designedly used a wide language in describing the nature of power, the purpose for which and on the person or authority against whom it can be exercised. The High Court can not only issue writs in the nature of prerogative Writs as understood in England, but the scope of those writs is widened by the use of the expression "nature" for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. The High Courts can issue directions, orders or writs, other than the prerogative writs which enables the High

3 (1965) 57 ITR 349: 1965 SCC OnLine SC 61.

Courts to mould the relief to meet the peculiar and complicated requirements of this country.

35. In *Union of India & Anr. Vs. SB Vohra & Ors.*,⁴ the Supreme Court has made the following observations on the power of judicial review in paragraph 30, which are reproduced hereinbelow:-

“30. Judicial review is a highly complex and developing subject. It has its roots long back and its scope and extent varies from case to case. It is considered to be the basic feature of the Constitution. The Court in exercise of its power of judicial review would jealously guard the human rights, fundamental rights and the citizens' right of life and liberty as also many non-statutory powers of governmental bodies as regards their control over property and assets of various kinds which could be expended on building hospitals, roads and the like, or overseas aid, or compensating victims of crime (See for example, r. V. Secy. OF State for the Home Deptt., EX P Fire Brigades Union).”

36. In *ABL International Ltd. & Anr. Vs. Export Credit Guarantee Corporation Ltd. & Ors.*,⁵ the Supreme Court has observed that the plenary right of the High Court to issue a prerogative writ will not normally be exercised to the exclusion of other available remedies unless the impugned action of the State or its instrumentality is found to be arbitrary and unreasonable, so as to violate the mandate of Article 14.

4 (2004) 2 SCC 150.

5 (2004) 3 SCC 553.

37. From a careful analysis of the aforementioned decisions, it is thus, crystal clear that while entertaining a Writ Petition in exercise of discretionary jurisdiction under Article 226 of the Constitution of India, the High Court would have wide powers to issue writ, directions and orders, so as to zealously guard the constitutional and legal rights of the citizens against arbitrary exercise of power by the State or its instrumentalities. The plenary jurisdiction of the High Court under Article 226 is original, discretionary, extraordinary and comprehensive and is a vital component of the basic structure of the Constitution. While exercising jurisdiction under Article 226, the High Court does not sit in appeal over the decision but exercises supervisory jurisdiction so as to examine the decision making process on the touch stone of fairness, reasonableness and non-arbitrariness in State action. Therefore, exercise of such plenary jurisdiction cannot be shackled under the rigid procedural constraints.

38. In the present case, we have held that the Original Applicants, who are standing on equal footing, seeking similar reliefs, are all eligible candidates and, therefore, their candidature could not have been rejected by raising the plea of upper age limit.

Having held as above, it would be impermissible for this Court to decline relief to one set of Applicants merely on a technical plea that they have not challenged the Judgment and Order of the learned Tribunal on a particular ground. As has been observed above, a Writ Petition under Article 226 of the Constitution of India is not an Appeal under a statute. Therefore, extending a differential treatment to the Respondent Nos. 1 and 2 in Writ Petition No. 1208 of 2025 on such a technical ground, in our view, would not only be highly inequitable but the same would also lead to serious miscarriage of justice. In that view of the matter, we are not inclined to accept the plea raised by Mr Kulkarni to the effect that in the absence of any challenge made to the impugned Judgment and Order of the learned MAT, the Writ Petitioners in Writ Petition No. 1208 of 2025 would not be entitled to any relief.

39. Although we differ from the reasons recorded by the learned Tribunal in the Judgment and Order dated 25th July 2024 , yet, we are in agreement with the operative part of the impugned Judgment of the MAT, whereby, a direction has been issued to the MPSC-Writ Petitioner to recommend the names of the Original Applicants for appointment in the post of Dental Surgeon.

Therefore, the directions contained in paragraph 23(2) of the Judgment and Order dated 25th July, 2024 passed by the learned MAT is hereby confirmed. During the course of hearing, on a query made by the Court, Mr Kulkarni, in his usual fairness, has submitted that vacancies are still available to accommodate the Original Applicants. We, therefore, provide that the direction of the learned MAT in paragraph 23(2), as noted above, shall be implemented by the MPSC and the State Government of Maharashtra within a period of 6 (six) weeks from the date of uploading this order.

40. With the above observations and directions, Writ Petition No. 1208 of 2025 and Writ Petition No. 1205 of 2025, preferred by the MPSC, are disposed of. Writ Petition No. 15021 of 2025 also stands disposed of in the light of the observations made here-in-above.

41. There would be no order as to costs.

(RANJITSINHA RAJA BHONSALE, J.)

(SUMAN SHYAM, J.)