

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 17 OF 2023

DIST. : JALNA

Sandeep Sudhakar Kshire,)
Age. 50 years, Occu. Private Auditor,)
R/o Sanskruti Niwas, Sanjoyg Nagar,)
Near Bhagya Nagar, Old Jalna,)
Jalna.) .. **APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through Director of Accounts &)
Treasury, 5th Floor,)
New Administrative Building,)
Opposite to Mantralaya,)
Mumbai – 400 032.)
- 2. The Joint Director,**)
Accounts & Treasury,)
Aurangabad Division, Aurangabad.)
- 3. The Secretary (Information &)**
Technology),)
General Administration Department,)
Mantralaya, Mumbai – 400 032.).. **RESPONDENTS**

APPEARANCE :- Shri Jiwan J. Patil, learned Advocate for
the applicant.
: Shri M.P. Gude, learned Presenting
Officer for the respondent authorities.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)

DATE : **06.02.2024**

ORAL - ORDER

[Per :- Justice P.R. Bora, V.C.]

1. Heard Shri Jiwan J. Patil, learned counsel for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondent authorities.

2. The applicant had applied for the post of Junior Auditor in pursuance of the advertisement published by respondent no. 01 on 08.01.2019. The applicant passed the written examination, as well as, succeeded in the oral interview also. At the time of document verification, according to the respondents, the applicant was not found to be holding qualification so far as computer knowledge is concerned as prescribed in the advertisement and on that ground the applicant was declared ineligible vide communication dated 02.12.2022, which has been impugned in the present Original Application.

3. The learned counsel for the applicant submitted that at the relevant time i.e. at the time of filing application for the subject post, the applicant was possessing the certificate in Computer Programming Course in Basic & Softword issued by Shri Guru Gobind Singhji College of Engineering & Technology,

Nanded. Learned counsel submitted that the applicant completed the said course during the period from 15.8.1991 to 15.2.1992. Learned counsel further submitted that the course, which the applicant completed and certificate in that regard which the applicant is possessing, is in fact more than the requirement, which is prescribed in the advertisement insofar as the computer knowledge is concerned.

4. Learned counsel pointed out that since the respondents were not sure about the equivalence of the qualification possessed by the applicant with the qualification as was prescribed in the advertisement, a reference was made to the General Administration Department of the State and the G.A.D. (Information & Technology) communicated to respondent no. 02 that since the particulars as about the syllabus of the training course, which the applicant has completed, was not available, since it was old course, it was practically not possible for them to give any concrete opinion whether the qualification possessed by the applicant can be held as equivalent to the qualification as prescribed in the advertisement. However, in the same letter dated 4.8.2022 the G.A.D. had given advice to the respondent no. 02 as about consideration of the candidates insofar as knowledge in computer science is concerned by giving

them period of 02 years as provided in the G.R. dated 19.03.2003 for passing MS-CIT exam and subject to that the appointment can be given to the candidates like the applicant.

5. It is the grievance of the applicant that without considering the advice so given by the G.A.D. (Information & Technology) and without having any concrete information as about equivalence of the course completed by the applicant with qualification as prescribed in the advertisement, the respondents illegally held the applicant ineligible for the subject post. The learned counsel submitted that during the period wherein the correspondence was being going on between the respondent no. 02 and the G.A.D. and the application of the applicant was pending for consideration, the applicant completed the course of MS-CIT, which was provided as one of the qualifications in the advertisement and informed about that to the respondent no. 02. Learned counsel submitted that even that has been ignored by the respondents and the impugned order has been passed. In the circumstances, the applicant has filed the present Original Application seeking the following reliefs :-

“A) Allow the Original Application.

B) To quash and set aside the communication dated 02.12.2022 (Annexure ‘H’) and hold and declare that the

applicant is holding the requisite qualification for the post of Junior Accountant/Junior Auditor as per the advertisement dated 08.01.2019.

C) To direct the Respondent Nos. 1 and 2 to forthwith issue the appointment order to the applicant on the post of the Junior Accountant/Junior Auditor from open and part time category as per the Advertisement dated 08.01.2019.

Interim Reliefs, if any, prayed for –

D) Pending hearing and final disposal of Original Application Respondent Nos. 1 to 2 be directed not to filled in the post of the Junior Accountant/Junior Auditor from open and part time category as per the advertisement dated 08.01.2019 of the open part time category.

E) Grant ad interim relief in terms of prayer clause (D).

F) Grant any other relief to which the applicant is entitled in the interest of justice.”

6. Shri M.P. Gude, learned Presenting Officer for the State authorities reiterated the contentions raised in the joint affidavit in reply filed on behalf of respondent nos. 01 and 02. Learned P.O. pointed out that in the advertisement it was expressly mentioned that on the date of document verification, the candidate concerned must be holding the qualification as has been prescribed in the advertisement and if any candidate fails to produce the requisite certificate evidencing that he is possessing the prescribed qualification, his candidature will not be considered. Learned Presenting Officer pointed out that in the advertisement it was also mentioned that the candidate

must ensure that on the date of filing the application, he possesses all the required documents. Learned P.O. further submitted that since the applicant was not possessing the qualification as prescribed in the advertisement, the respondents have rightly declared the applicant ineligible for to be considered and no error can be said to have committed by the respondents. In the circumstances, the learned P.O. prayed for rejecting the application.

7. We have duly considered the submissions made on behalf of the applicant, as well as, the respondents. We have also gone through the documents produced on record by the parties. Most of the facts are not in dispute. Following qualification has been prescribed in the advertisement for the post of Junior Auditor:-

अ. क्रं.	पदनाम	सामाईक अर्हता
२.	कनिष्ठ लेखापाल/कनिष्ठ लेखा परिक्षक	१. संगणक अर्हता :- सामान्य प्रशासन विभाग, शासन निर्णय क्रमांक प्रशिक्षण २०००/प्र.क्र.६१/२००१/३९, दिनांक १९.३.२००३ मधील तरतुदीनुसार (अ) D.O.E.A.C.C. सोसायटीच्या अधिकृत C.C.C. किंवा O स्तर किंवा B किंवा C स्तर पैकी कोणतीही एक परीक्षा उत्तीर्ण झाल्याचे प्रमाणपत्र किंवा महाराष्ट्र उच्च व तंत्र शिक्षण मंडळ, मुंबई यांचेकडील अधिकृत MS-CIT परीक्षा उत्तीर्ण झाल्याचे प्रमाणपत्र यापैकी एक प्रमाणपत्र किंवा माहिती तंत्रज्ञान सा.प्र.वि. विभागाच्या शासन निर्णय क्रमांक मातंस २०१२/प्र.क्र.२७७/३९, दिनांक ०४.०२.२०१३ व शासन पूरकपत्र क्रं. मातंस २०१२/प्र.क्र. २७०/३९, दिनांक ०८.०१.२०१८ मध्ये नमुद केल्यानुसार आवश्यक संगणक अर्हता बंधनकारक आहे. २.

8. It is not in dispute that on the date of filing application or on the date of scrutiny of the documents the applicant was not possessing any of the qualifications prescribed in the advertisement. As has been submitted by the applicant, he had passed the certificate course in Computer Programming in Basic & Softword from Shri Guru Gobind Singhji College of Engineering & Technology, Nanded. The question arises whether the qualification as was possessed by the applicant was the qualification as prescribed in the advertisement and whether on the basis of the said qualification the applicant could have been held eligible for to be considered for the subject post.

9. As is revealing from the documents filed on record and the pleadings of the parties, the respondents themselves were not very sure whether the qualification possessed by the applicant was equivalent to the qualification as prescribed in the advertisement. That was the reason that opinion from the GAD (Information & Technology) was sought by the respondents. The reply dated 4.8.2022 received from the GAD is quite material. We deem it appropriate to reproduce the same as it is, which reads thus: -

“कं. संअप्र-१७२२/प्र.कं.२२/से५/३९

दिनांक ०४ ऑगस्ट, २०२२

प्रति,
सहसंचालक,
लेखा व कोषागरे, औरंगाबाद.

विषय :- श्री. संदिप सुधाकर दिरे, अंशकालीन यांच्या संगणक अर्हतेबाबत...

संदर्भ :- १. विभागाचे दि. २८ एप्रिल, २०२२ रोजीचे समकमांकाचे पत्र.
२. आपले पत्र कं. जा.क. सहसंचालक/कार्या-दक्ष१/न.क.४०८/भ.प्र.
/२०२२/१५७७, दि. ०१ जुलै, २०२२.

महोदय,

संदर्भ कं. १ येथील पत्रान्वये श्री. संदिप सुधाकर दिरे, अंशकालीन यांनी सादर केलेले COMPUTER PROGRAMMING COURSE मध्ये अभ्यासला जाणारा अभ्यासक्रम/घटक याबाबत माहिती मागविली होती. त्यास अनुसरून संदर्भ कं.२ येथील आपल्या कार्यालयाच्या पत्रान्वये आपण श्री. गुरु गोविंद सिंघजी अभियांत्रिकी व तंत्रशास्त्र संस्था, नांदेड यांच्या पत्राचा संदर्भ घेत सदर Computer Programming Course खुप जुना असल्यामुळे याबाबतच्या अभ्यासक्रमाची माहिती संस्थेमध्ये उपलब्ध नाही, असे कळविले आहे.

विभागाच्या विविध शासन निर्णयांद्वारे शासकीय संगणक अर्हता म्हणून मान्यता देण्यात आलेल्या संगणक अभ्यासक्रमांव्यतिरिक्त एखादा संगणक अभ्यासक्रम शासकीय संगणक अर्हता म्हणून ग्राह्य धरावा किंवा कसे हे ठरविण्यासाठी सदर संगणक अभ्यासक्रमाची समकक्षता MS-CIT या संगणक अभ्यासक्रमाबरोबर तुलनात्मकरित्या पडताळण्यात येते. परंतू, प्रस्तुत प्रकरणामध्ये Computer Programming Course मधील अभ्यासक्रम/घटकांची माहिती उपलब्ध नसल्याने सदर संगणक अभ्यासक्रम शासकीय संगणक अर्हता म्हणून ग्राह्य धरता येईल किंवा कसे याबाबत अभिप्राय देता येणे शक्य नाही. तथापि, विभागाच्या दि. १९ मार्च, २००३ रोजीच्या शासन निर्णयामध्ये दि. १९.०३.२००३ किंवा त्यानंतर गट-अ, गट-ब व गट-क मधील (वाहन चालक वगळून) ज्या पदांची निवड प्रक्रिया सुरु होईल अशा नव्याने नियुक्त होणा-या सर्व अधिकारी/कर्मचा-यांनी संगणक अर्हता त्यांच्या नियुक्तीच्या दोन वर्षांच्या आत प्राप्त करणे आवश्यक राहिल अन्यथा त्यांच्या सेवा समाप्त होतील, अशा प्रकारची अट अशा उमेदवारांच्या नियुक्तीपत्रात घालण्यात यावी अशी तरतूद करण्यात आली आहे. सदर तरतूदीकडे आपल्या कार्यालयाचे लक्ष वेधण्यात येत आहे.

आपली,

सहि/ XXX

(मेधा भोगांवकर)

कार्यासन अधिकारी,

सामान्य प्रशासन विभाग,

महाराष्ट्र शासन,

मंत्रालय, मुंबई - ४०० ०३२.”

10. As is revealing from the contents of the aforesaid letter an attempt was made of collecting the information about the equivalence of the course which was completed by the applicant, but that attempt could not succeed as because said course was old one; however, the GAD did not record any adverse opinion that the qualification possessed by the applicant was not liable to be considered. On the contrary, in para 2 of the said letter by giving reference of the G.R. dated 19.03.2003 it was informed that the said G.R. provides for giving 02 years period for acquiring the qualification of MS-CIT if somebody is not holding the same, even after giving appointment to him on the subject post. It was advised by the GAD that in such case provisional temporary appointment can be issued putting condition on the applicant to complete the MS-CIT within 02 years failing which to suffer termination on that ground.

11. It is quite apparent that respondent No. 2 did not act upon the later part of the said letter and straightway declared the applicant ineligible vide impugned communication on the ground of not holding the qualification as prescribed in the advertisement. We have carefully gone through the concerned clause in the advertisement prescribing qualification as about

computer proficiency. There is reference of G.R. dated 19.03.2003. The copy of G.R. dated 19.03.2003 is also produced on record by the applicant. Said G.R. is issued by the General Administration Department of the Government giving relaxation and providing two year's period for attaining computer proficiency; it does not prescribe any qualification. Qualification is already prescribed vide G.R. dated 07.08.2001. G.R. dated 19.03.2003 came to be issued providing time for securing qualification of MS-CIT to the candidates appointed in service from the date of their appointment.

12. In view of reference of G.R. in the advertisement, the G.A.D. has rightly informed respondent No. 2 to take note of that G.R. and act accordingly. In view of the aforesaid G.R. the respondents must have positively considered the case of the applicant or else it must have been clearly held that the qualification held by the applicant is not equivalent to the qualification as prescribed in the advertisement. No such opinion is recorded. In the meanwhile as has been submitted on behalf of the applicant, the applicant has completed the MS-CIT course also. Applicant is applying from the category of part-time workers for which the age limit is 55 years. The applicant has already crossed his age of 50 years and if the

applicant is not considered for his appointment when he has proved his eligibility on all other counts, grave injustice is likely to be caused to him.

13. Most importantly when the respondent no. 02 has sought guidance from the G.A.D. (Information & Technology) and when said department has given an opinion as about the qualification possessed by the applicant and also about the provisions made in G.R. dated 19.03.2003, according to us, the respondent no. 02 could not have held the applicant ineligible for the subject post. As we have mentioned hereinabove, the applicant acquired the qualification MS-CIT in the month of June, 2022 and accordingly informed the respondent no. 02 about that on 21.07.2022. By that time the recruitment process was not completed. In the circumstances, it could have been fare on part of the respondents to consider the candidature of the applicant when he acquired such qualification instead of adopting a hyper-technical approach.

14. It is further significant to note that under the orders of this Tribunal passed on 12.01.2023 the post for which the applicant had applied i.e. the post reserved for Part-Time employee, is still vacant. Having considered the facts and

circumstances as above, we are inclined to allow the Original Application with the following order :-

ORDER

- (i) The impugned order dated 02.12.2022 issued by respondent no. 02 is quashed and set aside.
- (ii) It is held that the applicant is holding the qualification as prescribed in the advertisement. Consequently the respondents are directed to consider the candidature of the applicant for appointment to the post of Junior Auditor and if there is no other impediment, issue appointment order in favour of the applicant, within 08 weeks from the date of this order.
- (iii) There shall be no order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 06.02.2024