

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 176 OF 2021

DIST. : BEED

Shri Ganesh s/o Bhanudas Gambhire)
Age. 48 years, Occu. Service (Ward Boy))
R/o Govt. Hospital, Nandur Ghat,)
Nandur Ghat to Hangewadi Road,)
Tq. Kaij, Dist. Beed.) ..

APPLICANT

V E R S U S

1. The State of Maharashtra,)
Through it's Deputy Director,)
Health Service, Latur Zone,)
Health Service Sankul,)
Government Colony, Barshi Road,))
Latur, Tq. & Dist. Latur.)
2. District Civil Surgeon,)
District Hospital, Barshi Road,)
Beed, Tq. & Dist. Beed.)
3. Medical Superintendent, Class-I,)
Woman Hospital, Neknur,)
Tq. & Dist. Beed.)..

RESPONDENTS.

APPEARANCE :- Shri B.V. Thombre, learned Advocate for
the applicant.

: Shri I.S. Thorat, 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 : **05.02.2024**

ORAL - ORDER

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

1. Heard Shri B.V. Thombre, learned counsel for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondent authorities.

2. **Facts in brief :**

Applicant entered into the Government service as Ward Boy in the year 2007 in the Health Department of the State. In the year 2016 the posts of Driver were to be filled up in the Health Department. Applicant was at the relevant time working in the Women Hospital at Neknoor, District Beed. The Medical Superintendent, Women Hospital at Neknoor recommended his name for promotion to the post of Driver in response to the letter dated 2.3.2016 received from the District Civil Surgeon, District Civil Hospital, Beed. The applicant claims that he is possessing the valid driving license as well as other qualifications prescribed for the said post. He, therefore, applied for the said post with the requisite documents and his said application was forwarded by the Medical Superintendent, Women Hospital, Neknoor to the District Civil Surgeon, District Civil Hospital, Beed on 3.3.2016. The applicant passed the field examination on 22.11.2017. However, name of the applicant was not included in the list of selected candidates and no reasons were also communicated to him as to why for he was not selected. In the circumstances, the applicant approached this

Tribunal seeking the direction against the respondents that he be held entitled for promotion to the post of Driver on the basis of final seniority list published on 31.12.2015.

3. Respondents have jointly filed their affidavit in reply. In sum and substance it is the contention of the respondents that the applicant has not been held eligible and qualified for the post of Driver on the ground of not holding the qualification of SSC passed. It is contended that as per G.R. dated 02.03.2017 minimum qualification for promotion to the post of Class-III is Secondary School passed certificate and since the applicant is not having the said qualification, he has been denied the promotion.

4. Shri B.V. Thombre, learned counsel appearing for the applicant invited our attention to the letter dated 03.03.2016, whereby the Medical Superintendent, Women Hospital, Neknoor has recommended the name of the applicant for promotion to the post of Driver along with the documents in respect of educational qualifications, experience certificate and driving license for driving the heavy motor vehicles. The concern department has forwarded the certificates in respect of 'no enquiry proceeding pending', 'no complaint pending', as well as, ACRs of preceding 05 years of the applicant along with the

said letter. Learned counsel then invited our attention to the list of eligible Class-IV candidates for promotion as on 31.12.2015. In the said list the applicant stands at Sr. No. 02. The learned counsel then brought to our notice that the applicant was called for the written examination, as well as, field test on 22.11.2017. Learned counsel then brought to our notice the result-sheet prepared of the written examination and the field test conducted on 22.11.2017, wherein the applicant is shown to have received 20 marks out of 40 and is held eligible for promotion to the post of Driver.

5. Learned counsel for the applicant further submitted that the vacancies of the post of Drivers arose in the year 2016 and the applications were called for from eligible candidates from amongst Class-IV employees and at that time, the Recruitment Rules known as, "Drivers of Motor Cars and Jeeps in Government offices (Recruitment) Rules 1980 (for short Rules of 1980)" were in vogue. Learned counsel pointed out that in the said rules appointment to the post of Driver was provided either by promotion from amongst members of staff in Class-IV Government service, who possess qualification and experience mentioned in sub-clauses (ii), (iii), (iv) & (vi) of clause (c) or by transfer of a member of staff in class-III Government service

who possesses qualification and experience mentioned in sub-clauses (ii), (iii), (iv), (v) and (vi) of clause (c) or by nomination from amongst candidates, who possess required qualification. Sub-clause (iii) of clause (c) prescribes that the candidate shall have at least passed 4th standard examination of any recognized school and can speak in Marathi and Hindi languages.

6. Learned counsel further pointed out that in the Recruitment Rules notified on 02.03.2017 the minimum educational qualification is prescribed as SSC passed. Learned counsel submitted that the respondents have held the applicant ineligible for promotion on the said ground that he does not possess the required educational qualification and that is the only ground for declaring the applicant ineligible. Learned counsel submitted that, since the vacancies of the posts of Drivers had arisen in the year 2016 i.e. prior to '2017 Rules', it were liable to be filled up in accordance with '1980 Rules'. Learned counsel in the circumstances prayed for allowing the application.

7. Shri I.S. Thorat, learned Presenting Officer reiterated the contentions raised in the affidavit in reply filed on behalf of the respondents. Learned P.O. submitted that when the recruitment process was commenced the new Rules were

notified vide G.R. dated 2.3.2017 and according to the said Rules the minimum educational qualification is prescribed as S.S.C. passed. Learned P.O. further submitted that since the applicant does not possess the said qualification, the respondents have rightly declared him ineligible for said promotion. Learned P.O. submitted that in rejecting the candidature of the applicant on the aforesaid ground the respondents have not committed any error. He, therefore, prayed for dismissal of the Original Application.

8. 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. There is no dispute on the issue that Class-IV employees are entitled to be promoted to Class-III posts, if they possess the required educational qualification, as well as, experience. There is further no dispute that in the year 2016 the applications were sought from Class-IV employees for their promotion to the post of Driver (Class-III), who possessed the required qualification, experience and the requisite driving license. There is further no dispute that the Medical Superintendent, Women Hospital, Neknoor recommended name of the applicant to the District Civil Surgeon, District Hospital,

Beed for his promotion to the post of Driver with application of the applicant annexed with all the requisite documents. It is also undisputed that the name of the applicant was at sr. no. 02 in the list published of the Class-IV candidates eligible to be promoted to the post of Driver on 31.12.2015. The applicant was admittedly permitted to appear for the written, as well as, field test and he succeeded in both the tests and in the result published of written examination and the field test the applicant was shown to be eligible for appointment. The applicant was, however, not promoted to the post of Driver (Class-III). As is contended by the applicant the reason was not communicated to the applicant by the respondents for not giving him appointment. The reason for not giving appointment to the applicant on the post of Driver is disclosed in the affidavit in reply filed on behalf of the respondents.

9. As we have noted hereinabove, the only reason for declaring the applicant ineligible for his appointment to the post of Driver is that he is not holding the qualification of S.S.C. passed as prescribed in the '2017 Rules'. The question for our consideration is the rejection of the candidature of the applicant or the act of respondents in declaring the applicant ineligible on

the ground of not holding the educational qualification as S.S.C. passed, whether can be sustained?

10. As we have noted hereinabove, the vacancies of the posts of Drivers had arisen in the year 2016 and the applications, therefore, were invited from the eligible Class-IV candidates through their respective offices. In the letter dated 3.3.2016, whereby the Medical Superintendent, Women Hospital, Neknoor recommended the name of the applicant, there is reference of the letter dated 2.3.2016 received to the Women Hospital, Neknoor from the District Hospital, Beed. It is thus evident that in response to the said letter dated 2.3.2016 the application of the applicant was forwarded to the District Hospital, Beed by the Medical Superintendent, Women Hospital, Neknoor on 3.3.2016. The respondents have not disputed that the name of the applicant stands at sr. no. 02 in the list published of the eligible Class-IV candidates for their promotion to the post of Driver as on 31.12.2015.

11. From the aforesaid documents there remain no doubt that the process for promotion to the posts of Drivers from out of Class-IV candidates had commenced prior to coming into effect of '2017 Rules'. Admittedly, 2017 Rules came into effect from 2.3.2017. Prior to that '1980 Rules' were holding the

field. According to '1980 Rules', for promotion to the post of Driver out of Class-IV candidates the requisite educational qualification was 4th standard passed. The applicant is undisputedly possessing the said educational qualification. Though '2017 Rules' were made effective w.e.f. 2.3.2017, the vacancies in the promotional posts of Driver had undoubtedly occurred prior to coming into effect of '2017 Rules'. In the circumstances, according to us, the vacancies, which occurred prior to coming into effect of '2017 Rules' must be filled up in accordance with the '1980 Rules', which were at the relevant time holding the field. As we have noted hereinabove, the applicant is possessing the educational qualification prescribed in the '1980 Rules'.

12. As has come on record, the applicant is satisfying other eligibility conditions i.e. he is holding the prescribed experience and possesses valid and effective driving license to drive the heavy motor vehicle. Even according to the respondents, the only reason for not considering the applicant for such promotion is that he is not possessing educational qualification as S.S.S. passed. According to us, the respondents have grossly erred in declaring the applicant ineligible on the ground of educational qualification. We reiterate that the

vacancies in the promotional posts, since had occurred prior to coming into effect of 2017 Rules, the said vacancies must have to be filled in, in accordance with then existing Rules i.e. 1980 Rules. For the reasons stated above, the Original Application succeeds. Hence, the following order:-

ORDER

(i) The applicant is held eligible for to be promoted to the post of Driver from amongst Class-IV candidates. Consequently, the respondents are directed to consider the candidature of the applicant for the said promotion and issue him the order of appointment against the vacancy arisen prior to 02.03.2017 within 08 weeks from the date of this order, if otherwise there is no other legal impediment.

(ii) The Original Application stands allowed in the aforesaid term without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 05.02.2024