

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 490 OF 2015

DIST. : LATUR

Vaishnavi d/o Diliprao Kulkarni,)
Age. 19 years, Occ. Nil,)
R/o Akshay Apartments,)
Behind Keshav Nagar,)
Ambajogai Road, Latur.)-- **APPLICANT**

VERSUS

1. The State of Maharashtra,)
Through its Secretary,)
Higher & Technical Education)
Department, M.S., Mantralaya,)
Mumbai – 32.)

2. The In-charge Joint Director,)
Technical Education,)
Regional Office, Aurangabad,)
Dist. Aurangabad.)-- **RESPONDENTS**

APPEARANCE :- Shri Avinash S. Deshmukh, learned
Advocate for the applicant.
: Smt. Deepali S. Deshpande, learned
Presenting Officer for the respondents.

**CORAM : B.P. PATIL, ACTING CHAIRMAN
AND
P.N. DIXIT, VICE CHAIRMAN (A)**

RESERVED ON : 13th NOVEMBER, 2019

PRONOUNCED ON : 15th NOVEMBER, 2019

JUDGMENT*[Per : P.N. Dixit, Vice Chairman (A)]*

1. Heard Shri Avinash S. Deshmukh, learned Advocate for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondents.

2. This is a case of non-selection of the applicant as she did not possess the necessary experience as mentioned in the advertisement.

3. In response to the advertisement published by the respondent no. 2 (The In-charge Joint Director, Technical Education, Regional Office, Aurangabad) the applicant participated in the selection process. The advertisement was for the post mentioned as under :-

शैक्षणिक अर्हता, अनुभव आणि अन्य अटी

अ.क्र.	पदनाम	किमान शैक्षणिक अर्हता
	संवर्ग-गट-क	
४.	तंत्रिक प्रयोगशाळा सहाय्यक	महाराष्ट्र राज्य तंत्रशिक्षण मंडळाचा किंवा शासनमान्य स्वायत्त संस्थेतील पदविका अभियांत्रिकी शाखेतील ३ वर्षांचा अभ्यासक्रम उत्तीर्ण व तदनंतर संबंधित क्षेत्रातील सर्दिसिंग / मेटेनन्स विषय एक वर्षाचा अनुभव आवश्यक.

(quoted from paper book page 21 of the O.A.)

4. The applicant submitted online application form and stated as under so far as work experience was concerned :-

“:: Work Experience (कामाचा अनुभव)

S. N.	Organization Name	Designation	From Date	To Date	Exp. Type	Exp (In Months)
1.	SMART MACHINE	PRODUCTION SUPERVISAR	05.11.2013	21.01.2015	PRODUCTION SUPERVISAR	1 year and 2 months

(quoted from paper book page 50 of the O.A.)

5. The applicant further stated that she passed the Diploma as required in June, 2014. As the applicant was not selected by the respondents vide the impugned order Annex. A.8 paper book page 53, she has challenged the same by filing the present Original Application. The impugned communication states as under :-

“उपरोक्त विषयी कळविण्यात येते की, आपण इलेक्ट्रॉनिक्स अँड टेलीकमिनीकेशन अभियांत्रिकी शाखेतील ३ वर्षांचा पदविका अभ्यासक्रम पूर्ण करत असतानांच दि. ०५/११/२०१३ ते २१/०१/२०१५ पर्यंत Smart Machine, लातूर येथे नोकरी केली असल्याचे प्रमाणपत्र या कार्यालयास सादर केले आहे.

परंतु आपण इलेक्ट्रॉनिक्स अँड टेलीकमिनीकेशन अभियांत्रिकी शाखेतील पदविका अभ्यासक्रम पूर्ण केल्यानंतर आपणास एक वर्ष पूर्णवेळ कालावधीचा अनुभव नसल्याने Smart Machine, लातूर येथील आपला अनुभव ग्राह्य धरता येणार नाही. सबब आपणास प्रयोगशाळा सहाय्यक पदावर नेमणूक करण्यास आपात्र ठरविण्यात येत आहे.”

(quoted from paper book page 53 of the O.A.)

6. In support of prayer to quash and set aside the impugned communication dated 15.7.2015, the applicant has mentioned following grounds :-

(i) The applicant had acquired the necessary experience while undergoing the Diploma in Engineering and therefore she cannot be considered as ineligible.

(ii) It is not necessary that the experience of one year should be after possessing the Diploma.

(iii) There is no mention about the same in the draft Recruitment Rules.

(iv) This requirement is against the draft Recruitment Rules as well as the advertisements published by the counter parts of the respondent no. 2 in other regions of the State.

7. The respondents have filed an affidavit in reply contesting the same. The relevant portion from the same is as under :-

“6. -- -- -- -- -- -- -- -- -- --
-- -- -- -- -- -- -- -- -- --

It is kindly submitted before Hon'ble Tribunal that the applicant was studying in full time Diploma course and passed final year on dated 12/06/2014, copy of the final year marks memo annexed herewith as Exh-R1. The experience certificate produced by her reveals work duration from 05/11/2013 to 21/01/2015. As the period 05/11/2013 to 12/06/2014 is a overlapping period of her full time course and hence cannot be full time experience. As per the instructions laid down in Govt. Circular GAD/SRV-2004/प्र.फ. 10/04/12 dated 03 July 2004, only full time work experience is valid for recruitment (copy of Circular is annexed herewith as Exh R-2).

It is further submitted that Hon'ble Supreme Court of India expressed clear guidelines in Civil Appeal 7310/2000 filed by Indian Airlines Ltd V/s S. Gopalakrishnan, as when in addition to Qualification experience is prescribed for any post, it would only mean acquiring experience after obtaining the necessary qualification. Copy of said Judgment is annexed herewith as Exh R-3.

The same opinion further confirmed by Hon'ble Supreme Court in Civil Appeal Nos. 8479-8482 of 2014, filed by K.K. Dixit & Ors. V/s Rajasthan Housing Board & another etc.

In view of above referred judgment & Govt. Circular applicant's case was decided by respondent authorities & could not accept her experience certificate accordingly issue letter of rejection to applicant vide letter no. 4956 dated 15/07/2015."

(quoted from para 6 of paper book pages 56 & 57 of the O.A.)

"8. As regards to para no. 6 (ix) of the application, I say and submit that, the applicant was well aware of the advertisement published by respondent No. 2, that the requirement was made very clear that applicant should have experience only after acquiring requisite qualification, which is well settled law. The applicant never raised any objection on the word 'तदन्तर' in the advt. while applying for the post.

When in addition to qualification experience is prescribed, it would only mean acquiring experience after completion of such qualification. Moreover the respondent no. 2 when precisely mentioned in advertisement about it, the contentions of the para are not accepted and denied in toto."

(quoted para 8 from paper book pages 57 & 58 of the O.A.)

8. The respondents have, therefore, submitted that the Original Application has no merit and same deserves to be dismissed.

OBSERVATIONS AND FINDINGS :-

9. We have perused the draft Recruitment Rules as well as the approved Recruitment Rules submitted by the applicant as well as

the respondents respectively. We have to see the advertisement published for this particular post. Perusal of the same reveals that the approved Recruitment Rules state as under :-

“(३) निदेशक (प्रयोगशाळा सहाय्यक (तांत्रिक)) पदावरील नेमणुका पुढीलप्रमाणे कोणत्याही मार्गाने करता येतील :-

(क)(एक) -- -- -- --

(दोन) -- -- -- --

किंवा

(ख)(एक) -- -- -- --

(दोन) -- -- -- --

(तीन) प्रशासकीय किंवा निमशासकीय किंवा खाजगी, संस्था किंवा आस्थापना, किंवा शासन अंगीकृत महामंडळामधील प्रयोगशाळा सहाय्यक किंवा साईट सुपरवायजर पदावर, किंवा त्याने धारण केलेल्या पदविकेच्या विद्याशाखेशी संबधित मॅन्युफॅक्चरिंग किंवा सर्किटिंग किंवा मेटेनल्स किंवा सीएनसी मशीन हाताळण्याचा रोजंदारी किंवा कार्यव्ययी किंवा करार पध्दतीवर किंवा मानधन इत्यादी स्वरूपात पुर्ण वेळ कामाचा एक वर्षाचा अनुभव धारण करणा-या उमेदवारामधून नामनिर्देशनाद्वारे करण्यात येईल.”

(quoted from paper book page 67 of the O.A.)

“3. Appointment to the post of instructor (Laboratory Assistant (Technical)) shall be made either –

(a) -- -- -- --

(i) -- -- -- --

(ii) -- -- -- --

Or

(b) By nomination from amongst the candidates who –

- (i) -- -- -- --
- (ii) -- -- -- --
- (iii) *possess experience as Laboratory Assistant or Site Supervisor or Manufacturing or servicing or maintenance or operating Computer Numerical Control Machine in the field relevant to the branch of Diploma held by him of not less than one year in Government or Semi Government or Private institutes or establishments or Government Corporations on daily wages or work charges or contract system or honorarium basis.”*

(quoted from paper book pages 68 & 69 of the O.A.)

10. The advertisement is also categorically stating that the experience of one year should be after completing the three years' Diploma course.

11. Any experience acquired by the applicant before completing the necessary Diploma or while undergoing the training in Diploma is on different footing and cannot be considered as necessary experience by the applicant after completing the requisite course. So called experience while undergoing the training program is only in the form of internship and has no responsibility involved therein. The same therefore cannot be considered as valid for becoming eligible for the post for which the applicant had applied. As observed by the Hon'ble Supreme Court, wherein in addition to qualification, experience is

prescribed, it means acquiring experience after obtaining the necessary qualification (Supra).

12. The contention of the applicant that the draft rules make no mention about acquiring experience after completing the educational qualification violets draft rules needs examination. The advertisement in fact clarifies and gives no doubt about the spirit of what is expected by the word 'experience'. It does not violate, but clarifies the expectations and leaves no uncertainty. Hence, the contention by the applicant has no merit in the same.

13. For the reasons stated above we find that there is no merit in the Original Application and the same deserves to be dismissed.

14. In view of the above, the Original Application is dismissed. There shall be no order as to costs.

(P.N. DIXIT)
VICE CHAIRMAN (A)

(B.P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 15th November, 2019