

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 577 OF 2017

DIST. : NANDURBAR

Shri Ramesh s/o Gokul Chaudhari,)
 Age. 42 years, Occu. Service as)
 Senior Lecturer, presently working)
 With D.I.E.C.P.D., Nandurbar,)
 R/o Mathura Nagar, Lonkheda,)
 Tq. Shahada, Dist. Nandurbar.) .. **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
 Through its Secretary,)
 School Education and Sports)
 Department, Mantralaya,)
 Mumbai – 32.)
2. The Secretary,)
 Maharashtra Public Service)
 Commission, Bank of India)
 Building, 3rd Floor, Fort,)
 Mumbai – 01.)
3. Mangesh s/o Bhagwan Ghogare,)
 Age. 32 years, Occu. Service,)
 R/o Nandkhed, Tq. Balapur,)
 Dist. Akola - 444 001.).. **RESPONDENTS.**

 APPEARANCE :- Shri A.G. Ambetkar, learned
 Advocate for the applicant.

: Smt. Deepali S. Deshpande, learned
 Presenting Officer for the respondent
 authorities.

: Shri Avinash S. Deshmukh, learned
 counsel for respondent No. 03.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)
DATE : **07.02.2024**

O R A L - O R D E R

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

1. Heard Shri A.G. Ambetkar, learned counsel for the applicant, Smt. Deepali S. Deshpande, learned Presenting Officer for the respondent authorities and Shri Avinash S. Deshmukh, learned counsel for respondent no. 03.
2. The applicant has raised an objection to the recommendation and thereafter selection of respondent no. 03 for his appointment to the post of Principal, District Institution of Education and Training, M.E.S. Grade-A (Teachers Training Branch). In the Original Application though challenge was given for the appointment of respondent no. 03 on the count of educational qualification, as well as, caste certificate etc., when the present matter was heard today, the learned counsel for the applicant submitted that challenge now is restricted to the extent of requisite experience possessed by respondent no. 03. It is the contention of the applicant that respondent no. 03 does

not possess the requisite experience i.e. teaching experience of 05 years as prescribed in the advertisement.

3. The said submission has been countered by respondent no. 03 by filing his affidavit in reply. The State and the M.P.S.C. have also filed their respective affidavits in reply in the matter. Respondent no. 03 has filed the experience certificate of his working in Tatyasaheb Kore College of Education, Warnanagar, Dist. Kolhapur. The certificate demonstrates that respondent no. 03 worked in the said Institution as Assistant Professor in History (Teaching) in the pay scale of Rs. 8000-275-13500 during the period from 03.08.2010 to 30.06.2016. It is, therefore, the contention of respondent no. 03 that he is holding the requisite experience of 05 years.

4. Another objection has been raised on behalf of the applicant that the period, which is shown as the period of teaching by respondent no. 03, cannot be counted in whole for the reason that during the said period respondent no. 03 did his M.Phil. and Ph.D. It is argued that the period, which is spent in pursuing the M.Phil. and Ph.D. degrees is not liable to be counted for experience and if the said period is excluded, respondent no. 03 does not possess the requisite experience.

5. Learned counsel for respondent no. 03 submitted that the U.G.C. was consulted in this regard and it has communicated that according to the norms set by the U.G.C. the period, which is spent by the candidate in pursuing M.Phil and Ph.D. is liable to be considered as the period of teaching and the said period cannot be excluded while counting the period of service.

6. To the aforesaid opinion of the U.G.C. an objection has been raised by the applicant that as per the affidavit in reply submitted on behalf of the State authorities though U.G.C. may have given such an opinion, unless the same is accepted by the State Government, it cannot be held to be valid one and it was the further contention of the applicant that since the State Government has not accepted the said recommendation / opinion or there is nothing on record to show that the said opinion is accepted by the State, the said period has to be excluded and if that period is excluded, the period of experience of respondent no. 03 gets reduced and therefore, he cannot be held entitled for the subject post for not having requisite experience as prescribed in the advertisement.

7. On the submission as aforesaid, the learned counsel for respondent no. 03 gave the reply referring to the documents filed on record. Emphasis of the learned counsel is on the appointment order issued in favour of respondent no. 03. Said order was read in toto by the learned counsel before the Tribunal. In the said order there is elaborate discussion as about all the events occurred more particularly objection raised by the applicant to the recommendation of respondent no.03, thereafter instance of the appointment of Committee, report of the said Committee, thereafter recommendation by the U.G.C. and then as about acceptance or non-acceptance of the said recommendation by the State.

8. Learned counsel pointed out that before giving appointment to respondent no. 03 all such aspects are considered by the Department, which is appointing authority in the present matter and after having satisfied that respondent no. 03 is fully eligible on the count of experience, as well as, educational qualification and also fulfills all other criterias that the appointment order has been issued. Learned counsel pointed out that the Committee in many words has recommended in favour of respondent no. 03 opining that respondent no. 03 is holding the requisite experience. We need

not to refer to the said elaborate discussion. Sum and substance thereof is that the entire period was liable to be considered during which respondent no. 03 was discharging duties as Assistant Professor in History in Tatyasaheb Kore College of Education, Warnanagar, Dist. Kolhapur and simultaneously was pursuing M.Phil. and Ph.D. courses.

9. Lastly another objection was raised and canvassed by the learned counsel for the applicant that initial advertisement was issued on 18.6.2015 and the experience was liable to be computed up to said date. It was then pointed out that time was extended for submitting applications up to 12.8.2015 by another notification issued in that regard. It was the contention of the learned counsel for the applicant that though time was extended till 12.8.2015, in the notification itself it was clarified that all other conditions mentioned in the original advertisement would remain as it is. It was, therefore, his submission that the experience of respondent no. 03 cannot be considered beyond the period of 18.6.2015 on which date the original advertisement was issued by the respondents.

10. Learned Presenting Officer, however, brought to our notice that in M.A. No. 394/2018 filed in the present O.A., in the affidavit in reply filed on behalf of respondent no. 02 this

aspect has been clarified. Learned P.O. read out some portion in para 03 of the reply, perusal of which reveals that the experience was to be counted up to the last date of receipt of application form i.e. up to date of 12.8.2015. In the reply, the M.P.S.C. has further stated that respondent no. 03 possesses the experience of 05 years and 09 days as on 12.8.2015. In view of the affidavit in reply filed on behalf of the M.P.S.C., the objection raised by the applicant that in one chart prepared by the M.P.S.C. the experience of respondent no. 03 has been shown for the period of 04 years, 11 months and some odd days and not of five years, has become redundant.

11. Learned counsel for respondent no. 03 submitted that even in the affidavit in reply submitted in the O.A. the M.P.S.C. has taken the same stand that the experience of respondent no. 03 was to be counted up to the last date of filing application for the subject post i.e. till 12.8.2015. Even if it is assumed that the experience has to be counted till the date of filing application by the respondent no. 03, even then the experience possessed by the respondent no. 03 has to be held of more than 05 years.

12. One more objection has been pressed in service on behalf of the applicant that in the advertisement itself, as well

as, in the relevant Recruitment Rules it is specifically provided that the preference shall be given to the candidates holding experience of at least one year of teaching in Primary School or of 02 years of Supervising the administration of Private Schools. Learned counsel for the applicant submitted that if this criteria is applied, the applicant only is having experience and respondent no. 03 does not have any experience in teaching in Primary School, preference should have been given to the applicant, however, this aspect has been ignored by the respondent authorities. If this criteria prescribed in the advertisement is duly applied, no recommendation can be made of respondent no. 03 in preference to the applicant.

13. Respondent no. 03 referring to his averments in the affidavit in reply and taking us through the relevant clause in the advertisement submitted that the preferences are to be considered sequentially and only one preference cannot be read isolatedly. Proviso to clause 4.3 in the advertisement provides that,

(a) preference may be given to candidates having Second Class Master's degree in Humanity or Social Science or Sciences and M.Ed. with degree or Diploma in management or Higher Education or Educational Planning or Rural Development or Child Development.

(b) Preference shall be given to the candidates possessing at least one year's experience of teaching in

approved primary school or two years' experience of supervision on primary schools.

As has been submitted by the learned counsel appearing for respondent no. 03 preference 'a' will have to be considered first and if the candidate concerned satisfies the criteria laid therein one need not to consider the other candidate, who satisfies the qualification prescribed in preference 'b'. We, therefore, see no substance in the aforesaid objection also.

14. After having considered the entire facts and circumstances and documents placed on record, the applicant has failed in establishing that respondent no. 03 was not having the requisite experience and hence was not liable to be recommended for the subject post. The Original Application, therefore, deserves to be dismissed. Hence, we pass the following order:-

ORDER

The Original Application stands dismissed without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 07.02.2024