

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

(1) ORIGINAL APPLICATION NO. 763 OF 2015

DIST. : AURANGABAD

Laxmichaya d/o Arun Jahagirdar,)
Age. 38 years, Occ. Service,)
R/o Row House no. 78, Pannalal Nagar,))
Harsool Sawangi, Dist. Aurangabad.)--

APPLICANT

VERSUS

1. The State of Maharashtra,)
Through its Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai - 32.)
2. The Director General)
Health Services, Maharashtra,)
Mumbai.)
3. The Maharashtra Public Service)
Commission, (through its Secretary)
5 ½, 7 & 8th floor, Kuprej Telephone)
Exchange Building,)
Maharshi Karve Marg, Kuprej,)
Mumbai 400 021.) --

RESPONDENTS

W I T H

(2) ORIGINAL APPLICATION NO. 750 OF 2015

DIST. : AURANGABAD

Dnyaneshwar s/o Laxman Kedare,)
Age. 34 years, Occ. Government Service,))
R/o B-05, New Shantiniketan Colony,))
Aurangabad.)--

APPLICANT

VERSUS

1. The State of Maharashtra,)
Through its Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai - 32.)

2. The Director General)
Health Services, Maharashtra,)
Mumbai.)
3. The Maharashtra Public Service)
Commission, (through its Secretary)
5 ½, 7 & 8th floor, Kuprej Telephone)
Exchange Building,)
Maharshi Karve Marg, Kuprej,)
Mumbai 400 021.) -- **RESPONDENTS**

APPEARANCE :- Smt. Pradnya Talekar, learned Advocate holding for Shri S.B. Talekar, learned Advocate for the applicants in both the cases.

: Smt. Priya R. Bharaswadkar, learned Presenting Officer for the respondents in both the cases.

**CORAM : JUSTICE A.H. JOSHI, CHAIRMAN
AND
ATUL RAJ CHADHA, MEMBER (A)**

DATE : 3.5.2019

JUDGMENT

[Per : Atul Raj Chadha, Member (A)]

1. Heard Smt. Pradnya Talekar, learned Advocate holding for Shri S.B. Talekar, learned Advocate for the applicants in both the cases and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the respondents in both the cases.

2. The common questions of law and facts have arisen in the present two cases therefore these two cases are decided by the present common judgment.

3. The applicants seek following relief :-

“A. To quash and set aside the impugned communication / order dated 5.9.2015 cancelling candidature of the applicants holding that they did not possess experience as required under Clause No. 4.5 (ii) of the advertisement dated 07.02.2014 issued by the under Secretary, Maharashtra Public Service Commission, Mumbai.

B. To grant interim stay to the impugned communication / order dated 05.09.2015 cancelling candidature of the applicants on the ground that they did not possess experience as prescribed under Clause No. 4.5 (ii) of the advertisement dated 07.02.2014 issued by the under Secretary, Maharashtra Public Service Commission, pending hearing and till disposal of this application.

*C. To direct the respondents to declare the result of oral interviews and finalize the selection for the post of Chief Administrative Officer, General States Service Grade-A pursuant to the advertisement No. 47 of 2014 dated 07.02.2014 (**Annexure “A-1”**) published by the Maharashtra Public Service Commission, pending hearing and till final disposal of this application.*

D. To hold and declare that the letter dated 13.07.2015 issued by the Government on the basis of which the candidature of the applicants are rejected ultra-virus Articles 14 and 16 of the Constitution of India as well as the Chief Administrative Officer Grade-A and Administrative Officer Grade-B in Directorate of Health Services (Recruitment) Rules 2002.”

4. The main submissions of applicants are summarized as follows :-

4.1) In O.A. no. 763/2015 the Applicant was working as Senior Assistant in Ph.D. Section of Babasaheb Ambedkar Marathwada University, Aurangabad. In O.A. no. 750/2015, the applicant was working as Superintendent in Midday Milk Scheme, Panchayat Samiti, Kannad, Dist. Aurangabad.

4.2) Ten posts of Chief Administrative Officer, General States Services, Grade-A were advertised by M.P.S.C. on 7.2.2014 of which four posts were for general category out of which one was reserved for Woman.

4.3) The qualification for the posts as per advertisement (para 4 page 59 & 60) were :

(a) By promotion of a suitable person on the basis of seniority subject to fitness from amongst persons holding the posts of Administrative, Group B, in the Directorate, having not less than three years regular service in the posts,

OR

b) By nomination from amongst candidates, who –

(i) Unless already in service of the Government, are not more than 40 years of age ; and

(ii) Possess a degree or any other qualification recognized by the Government to be equivalent thereto ;

(iii) Possess executive or administrative experience or both, for a period of not less than seven years, gained after acquiring qualification

mentioned in sub-clause (ii) above, in a Government department, commercial concern, local authority, or a Corporation or Board established by the Government; and

(iv) Have adequate knowledge of Marathi so as to speak, read and write the language with faculty.

4.4) According to Applicants, the Applicant possessed a degree and experience as executive or administrative for a period of not less than 7 years gained after acquiring the qualification in Government Department. They have discharged duties which are of administrative nature. The Registrar of the University have issued a certificate that the Applicants are holding a non-technical post in an administrative capacity. In O.A. no. 763/2015 and O.A. no. 750/2015 Deputy District Health Officer, Zillah Parishad issued necessary certificate about experience.

4.5) The Applicants have applied online. The Applicants were called for written examination and secured more marks than cutoff. Thirty-two candidates were called for viva-voice test on 14.5.2015 vide call letter dated 24.4.2015.

4.6) Several candidates who do not qualify in the written test approached M.P.S.C. that the qualified candidates do not possess requisite experience.

4.7) Certain persons also filed an O.A. no. 497/2015 at Principal Seat of this Tribunal at Mumbai in which following interim directions were issued by the Tribunal on 1.9.2015 :-

“1. Heard Shri M.D. Lonkar, the learned Advocate for the Applicant and Shri K.B. Bhise, the learned Presenting Officer for the Respondents.

2. Learned P.O. states as follows :-

a) He has received instructions to the effect that the challenge contained in the O.A. which is based on the grounds as are averred in paragraph no. 6.5, are examined by the M.P.S.C.

b) He would find out as to whether the M.P.S.C. would clarify the stance before taking steps for filing of affidavit.

3. For reporting action as may be taken by the M.P.S.C. adjourned to 7.9.2015.

4. Steno copy and hamdast is allowed to learned P.O.

5. S.O. to 7.9.2015.”

(quoted from page no. 73 of paper book of O.A. no. 763/2015)

4.8) M.P.S.C. vide letter dated 13.7.2015 informed that the Applicant do not have valid experience. The results of viva-voce have not been declared.

4.9) M.P.S.C. wrote to the Government through letter Annex. A.11 (in O.A. no. 763/2015) and sought views of the Government as regards the nature of experience of 14

candidates, because these candidates had claimed that their experience of work was of administrative in nature. The Respondent no. 1 informed M.P.S.C. that 14 candidates do not have requisite administrative experience and their experience is of clerical nature (Annex. A. 12 of O.A. no. 763/2015).

4.10) The Applicants have also given a chart of duties & responsibilities of Chief Administrative Officer qua duties of post held by the Applicants (page 30-31 of Paper Book of O.A. no. 763/2015 and page 26-27 of paper book of O.A. no. 750/2015) .

5. The submissions of the Respondents are :

5.1) The Respondent no. 3 filed an affidavit in reply in which do not deny the factual position regarding advertisement, securing more marks then the cutoff and calling applicants for interview.

5.2) The candidates were called for interview on the condition that they fulfill all the terms and conditions in the advertisement. In this regard following portion of the call letter is reproduced herein below :-

“३. आपण अर्जात दिलेल्या माहितीच्या आधारे आपणांस आयोगाकडून मुलाखतीस बोलाविण्यात आले आहे. आपण ऑनलाईन पध्दतीने आयोगास सादर केलेल्या अर्जांमध्ये पात्रतेसंदर्भातील केलेल्या विविध दाव्यांची तपासणी आपल्या मूळ प्रमाणपत्रांच्या आधारे करण्यात येईल. अर्जांमध्ये केलेल्या दाव्यांनुसार आपण पात्र आढळून आल्यासच आपली मुलाखत घेतली जाईल. अर्जांमध्ये केलेल्या दाव्यांच्या पुष्ट्यर्थ आवश्यक पुरावा सादर न केल्यास आपली उमेदवारी रद्द करण्यात येईल व आपली मुलाखत घेतली जाणार नाही. मुळ प्रमाणपत्रांसोबत त्यांच्या छायांकीत प्रतीचे दोन संच आणण्यात यावेत.”

(quoted from page 53 of paper
book of O.A. no. 763/2015)

5.3) The Respondent no. 3 stated that after checking the claim of candidates about experience, experience claims of the interviewed candidates, it sought opinion from Respondent no. 1 vide letter dated 30th May, 2015 as to whether experience of 14 candidates is valid as per Recruitment Rules for the post or not.

5.4) The opinion was received on 13th July, 2015 that out of 13 of the 14 candidates do not fulfill the experience criterion. Therefore their candidature was rejected.

6) Reliance was made to following judgments :-

(i) Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others [(2009) 1 SCC 180] in Civil Appeal No. 6143 of 2008.

(ii) East Coast Railway and Another Vs. Mahadev Appa Rao and Others [(2010) 7 SCC 678] in Civil Appeals No. 4964/2010 with Nos. 4965-66/2010.

(iii) M.J. Shivani and Others Vs. State of Karnataka in Civil Appeal No. 4564 of 1995 with Nos. 6343-58 of 1994, 4614-27, 4629-33 of 1995 etc. etc. and Contempt Petition No. 38-51 of 1995 in SLP nos. 10065-78 of 1994 [(1995) 6 SCC 289].

6.1) We are afraid that none of the relevant paras relied by the learned Advocate for the Applicants help the Applicants for pleading their case.

7. Following are the observations of the Government with respect to Applicant in O.A. no. 750/2015 & 763/2015 :-

(i) O.A. NO. 763/2015 :

Name of applicant	:	Laxmichaya d/o Arun Jahagirdar
Organization / Department	:	Dr. Babasaheb Ambedkar Marathwada University, A'bad.
Designation	:	Junior Assistant
Nature of post	:	Administrative.
Nature of appointment	:	Permanent
Pay band	:	3050-4590
Basic	:	1900
Grade Pay	:	1900
Remark	:	सदर अनुभव हा लिपीक संवर्गातील पदावरील कामाचा अनुभव असल्याने तो प्रशासकीय अनुभव धरता येणार नाही. त्यामुळे सदर अनुभव ग्राह्य घरू नये.

(ii) O.A. NO. 715/2015 :

Name of applicant	:	Dnyaneshwar s/o Laxman Kedare
Organization / Department	:	Zilla Parishad, Aurangabad
Designation	:	Senior Assistant
Nature of post	:	Administrative.
Nature of appointment	:	Permanent
Pay band	:	5200-20200
Basic	:	9110
Grade Pay	:	2400
Remark	:	सदर अनुभव हा लिपीक संवर्गातील पदावरील कामाचा अनुभव असल्याने तो प्रशासकीय अनुभव धरता येणार नाही. त्यामुळे सदर अनुभव ग्राह्य घरू नये.

8. Though, it is true that the Applicants had qualified in written examination and they were called for interview. But they were called for interview on the basis of the claim made in the online application and Respondents had full right to satisfy themselves about the experience Applicants have claimed.

9. The perusal of the bio-data tabularized by the applicants in page nos. 30-31 in O.A. no. 763/2015 and page nos. 26-27 in O.A. no. 750/2015 would also reveal that their experience is of clerical work and hence it cannot be considered of Administrative or of Executive nature.

10. The synonyms of objective 'administrative' are managerial, management, directorial, executive, organizational, controlling, supervisory, OR regulatory, whereas, the adjective is 'clerical' relates to work in office especially routine documentation.

11. The experience of the applicants though certified by their employer furnished in online applications are of clerical nature it is seen to be not that of administrative nature. Hence, Respondents were within its power to reject their applications.

12. In view of above following order :-

- (a) Both the Original Applications are dismissed.
- (b) No costs as to either of parties.

(ATUL RAJ CHADHA)
MEMBER (A)

(A.H. JOSHI)
CHAIRMAN

Place : Aurangabad

Date : 3.5.2019

ARJ-O.A.NOS.763 AND 750 OF 2015 D.B. (APPOINTMENT)