

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 755 OF 2012

DISTRICT : SOLAPUR

Shri Dinesh Shivkumar Mujgond,)
Occ : Temp. Pvt Service,)
R/o: 32, Anupum Park, Near Saiful)
Bus Stop, Solapur 413 004.)...**Applicant**

Versus

1. The Government of Maharashtra)
Through Secretary of Higher &)
Technical Education Ministry,)
Mantralaya, Mumbai 400 032.)
2. The Director of Vocational Education)
& Training, Regional Office,)
Ghole Road, Pune 411 005.)
3. Miss Avintika V. Prabhune,)
Occ-Craft Instructor-Mechanical)
cum Operator.)
R/o: 133, Ashirwad Niwas,)
Surya Nagar, Aurangabad Road,)
Ahmednagar.)
4. Nilambari Balaso Kajave,)
Occ- Craft Instructor-Basic Electrical)
and Electronics and Computer Skills,))
R/o: B-6/103, Policy No. 3,)
Amboli Society, Krishna Nagar,)
Chinchwad, Pune 411 019.)...**Respondents**

Shri Rahul Khot, holding for Shri N.Y Chavan, learned counsel advocate for the Applicant.

Ms Swati Manchekar, leaned Chief Presenting Officer for the Respondents no 1 & 2.

Shri B.A Bandiwadekar, learned advocate for Respondent nos 3 & 4.

CORAM : Justice Mridula R. Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)

RESERVED ON : 07.10.2021

PRONOUNCED ON : 20.10.2021

PER : Justice Mridula R. Bhatkar (Chairperson)

J U D G M E N T

1. The applicant prays that he is to be appointed by Respondents no 1 and 2 in the place of Respondent no. 3 on the post of Craft Instructor-Mechanical cum operator Electronic Communication system or in the place of Respondent no. 4 as Craft Instructor-Basic Electrical and Electronics and Computer Skills. He further prays that the waiting list dated 21.10.2011 is to be held valid after July, 2012.

2. The applicant is holding the qualification of Diploma in Communication Engineering and I.T.I (Electronic) and also having experience in technology, computer, electronics and electrical department. Respondents no 1 & 2 issued the advertisement dated 3.8.2011 for the post of Craft Instructor-Basic Electrical and Electronics and Computer Skills and Craft Instructor-Mechanical cum-operator Electronic Communication system, in the office of Respondent no. 2. The applicant filled up the form for these two posts for which experience of two years was mandatory. Minimum 45% marks were required to clear the examination. The applicant has secured 55% marks in written examination.

3. It is the case of the applicant that though Respondents no 3 & 4 have applied from open category, they have no experience and they were held as ineligible in the scrutiny and they were appointed to the said post by giving the benefit of reservation.

4. Learned counsel for the applicant Mr N.Y Chavan, has submitted that the applicant has rightful claim on either of these two posts as he has cleared the examination and he is holding the requisite experience in technology, computer, electronic and electrical department and also worked with Larsen & Turbo Company Pvt Ltd., and Bharati Air Tel Pvt Ltd. Respondent no. 3 has nil experience. Learned counsel for the applicant has submitted that Respondent no. 3 was disqualified in the scrutiny of documents. Though Respondent no. 4 is having the experience, she has not applied in any reserved category and she has not produced the Certificate of Non-Creamy Layer (NCL). Respondent no. 3 has applied for the post of Craft Instructor-Mechanical cum-operator Electronic Communication system, having Examination No. MOCES-001 and Respondent no. 4 applied for the post of Craft Instructor-Basic Electrical and Electronics and Computer Skills, having examination No. BEECS-056. Respondent no. 3 secured 44 marks. However, on perusing the answer sheet of Respondent no. 3, it was found that there was over writing and scrubbing and she was given 45 marks. However, there is no initial, who has scrubbed or erased the same. Respondent no.4, secured 48 marks in the said examination.

5. Learned counsel for the applicant has submitted that the Respondents no 1 & 2 have published a list of ineligible candidates on 17.9.2011 and in the said list, the name of Respondent no. 3 is shown. In front of name of Respondent no. 3, there was a remark which states that for want of required experience. For the post of Craft Instructor-Basic Electrical and Electronics and Computer Skills, Respondent no. 3, has secured 93.75 marks and the applicant has secure 124 marks. However, the applicant was not appointed. Learned counsel for the applicant has submitted that the applicant has obtained the answer sheets of Respondents no 3

& 4 under Right to Information and demonstrated as to how the case of the applicant is on a higher footing than Respondents no 3 & 4 and he has rightful claim on either of the posts. Learned counsel for the applicant submitted that there was no specific reservation for women mentioned in the advertisement for the above said post. Despite this fact, the Respondents no 3 & 4 were given the benefit of Backward Class (Women) reservation.

6. Learned Presenting Officer for the Respondents submitted that the applicant is from open category and Respondent no. 3 is from Scheduled Caste (Female) and Respondent no. 4 is from Special Backward Class (Female) and for them one post is reserved. Thus, the applicant competes for the post from open category. Respondent no. 3 is having Diploma in Electronics & Communication Engineering as well as B.C (Electronics). Therefore, while computing the experience, the year spent in acquiring the Diploma is also considered as it is a trade where the practical training is given to large extent. Therefore, it cannot be said that she does not have any experience. Learned P.O for the Respondents justified the appointment of Respondents no 3 & 4 and have submitted that the State Government has also considered the complaint made by the applicant about the over writing of marks from 44 marks to 45 marks in the mark sheet of Respondent no. 3. However, he submitted that this one mark will not change the situation, when the Respondents have got much more marks than the cut-off marks.

7. Learned counsel Mr Bandiwadekar, for Respondents no 3 & 4 has submitted that both the Respondents are selected from horizontal reservation (female). The applicant is disqualified as he was age barred in August 2011, when he filled the application form. The applicant has made a false and misleading statement.

Learned counsel further submitted that the Respondent no. 3 belongs to S.C (female) category for which there was no requirement of Non-Creamy Layer Certificate even while competing for open category posts. Learned counsel Mr Bandiwadekar has challenged the locus of the applicant on the point that he was age barred when he filed his application. Learned counsel for the applicant has relied upon Rule 3, clause (B)(I) of the Recruitment Rules of 1983 for the post of Craft Instructor, which is reproduced below:-

- “(B) by nomination from amongst candidates who-
- (I) Unless already in the service of Government, are not more than thirty years of age”.

However, in the advertisement dated 3.8.2011, at clause 25, the age mentioned is 33 years.

8. **Assessment:-**

The advertisement dated 3.8.2011 is issued as per G.Rs dated 19.10.2007 and 27.6.2008. The eligibility criteria discloses that a candidate should have practical experience in appropriate trade for a period of not less than four years and two years' experience in respective trades as mentioned in the advertisement. It shows minimum 45% marks are required in the practical examination. The application of the applicant and Respondents no 3 & 4 are on record. It shows that applicant has applied in open category. Respondent no. 3 Miss Avintika V. Prabhune, has applied in MOCES, open category, but has also applied in horizontal reservation for women. In the scrutiny form, the Committee has mentioned that she has no experience and she was held ineligible and it is also mentioned that she has not filed Non-Creamy Layer Certificate. The same is at Exh. 'C' to the Original Application.

However, at the bottom of the Certificate another entry is found that she is eligible in open category. In the case of Respondent no. 4, Nilambari Balaso Kajave, the Scrutiny Form is at EXh. 'D' shows that she has not submitted the Non-Creamy Layer Certificate and hence she was held ineligible for non-production of NCL Certificate. She has applied under Special Backward Class category and also under horizontal reservation for women.

9. As we came across the endorsement of no experience on the Scrutiny Form of Respondent no. 3, we called upon the Respondent-State to explain the situation. Our attention was drawn by learned P.O to the relevant rule 3 of the Education and Employment Department dated 18.11.1983. Learned P.O explained that the experience of four years is generally required for the said post and if the applicant is Diploma Holder, then the practical experience of 2 years is required in the appropriate trade. We perused the advertisement dated 3.8.2011. In the said advertisement, in clause No. 2, under Educational Qualification and experience, the experience of not less than four years including the minimum period spent for training in a particular trade, after acquiring the qualification in respective trade in an Industry or Government department is mentioned. Learned P.O with the assistance of the Under Secretary of the Department has clarified that the State includes the period of Diploma or Degree as practical experience and both the candidates were holding the Diploma and Degree therefore the period of practical experience further was not required. We made a grilling enquiry about such computation of period of experience and we were informed that those courses are for a particular trade and therefore, the practical training in the Trade starts from the beginning when the candidate takes his admission for Diploma or Degree. Therefore, this practice of including the period spent in acquiring Diploma or

Degree as experience is routinely followed since many years by the Respondents. Hence Respondents no 3 & 4 were not given special treatment. It was informed that all the candidates who applied for these posts and who are selected and working since 2012, their period of experience is computed in this manner only.

10. In order to find out the legality of such computation, we went through the Recruitment Rules dated 18.11.1983. We reproduce the relevant provisions of eligibility and experience for the post of Craft Instructor, Class-III.

“(B) by nomination from amongst candidates who-

- (I) Unless already in the service of Government, are not more than thirty years of age; and
- (II) Possess-
 - (a) Degree at least in Second Class in appropriate branch of Engineering or Technology of the Board of Technical Examinations, Bombay or its equivalent qualification; or
 - (b) have passed the Secondary Schools Certificate Examination with Mathematics and Science or its equivalent examination; and possess either-
 - (i) National Apprenticeship Certificate in the appropriate trade of the National Council of Training in Vocational Trades or its equivalent; or
 - (ii) National Trade Certificate in appropriate trade of the National Council for Training in Vocational Trades or its equivalent; or
 - (iii) Trade Certificate in respective trade awarded by the State Council for Training in Vocational Trades of the Maharashtra
- (iv) persons from Defence Service having basic qualifications and possessing trade Certificate and two years' experience in the respective trade as mentioned in sub-clauses (III) below; and
- (III) have practical experience in appropriate trade for a period not less than four years including

the minimum period prescribed for training by the persons possessing the qualifications mentioned in sub clauses (a) and (b) (i), (ii) and (iii) of clause (B) of this rule; and for persons possessing the qualification mentioned in sub-clause (b) (iv) of clause (B) (II) of this rule, two years practical experience in appropriate trade after acquiring the qualifications in a respective trade in an industry or Government Department or Industrial Undertaking or Commercial concern or Corporation or Board established by Government: (emphasis added)

Provided that, preference may be given to candidates who have successfully completed training in the Central Training Institute for the post of Instructor.

Provided further that, the requirement of experience may not be insisted upon in case of persons possessing Diploma in Second Class.”

11. We have highlighted the emphasis on the words as above: i.e. ‘after acquiring’ the qualification and that the experience of four years is also mentioned in the beginning of sub rule (iii) the period of not less than four years is prescribed for the persons possessing qualification as mentioned in clause (a) & (b) (i), (ii) & (iii) of the Rules dated 18.11.1983. Thus, on plain reading of the Rules, we understand that the requirement of experience is only after the candidate possess the Degree or Diploma. The procedure followed while computing the period of experience by the Respondent-State appears to be incorrect. Generally experience is counted after acquiring the educational qualification, i.e. Degree or Diploma in a faculty. If the years spent in acquiring Degree or Diploma are to be considered as period of experience, then it is necessary that it is a very specialized form of Diploma in a particular trade, where the practical training starts from the beginning. In that circumstance, it is necessary for the Respondent-State to amend and clarify specifically the 1983

Recruitment Rules accordingly. However, as on today, we find the method of counting the experience is not correct and not consistent with the Recruitment Rules of 1983. However, as explained by the learned P.O on instructions that the State has followed and has been following this formula of computation throughout and other candidates who appeared for the examination pursuant to the said advertisement have also been selected in this manner and are appointed and working since 2012 as Craft Instructors in various Departments. Hence, it is unjust to disturb their selection. The Rules are made applicable incorrectly. However, it is made applicable so universally. Therefore, it will lead to a cascading and disastrous effect if we disturb the selection now.

12. Thus, when a specific age limit is mentioned in the rules, i.e. 30 years, it cannot be increased in the advertisement as it is shown in the impugned advertisement as 33 years. We hold that the applicant was 32 years old (June 1979). Thus, he has applied as per the advertisement and he was not age barred. It is true that the advertisement cannot go beyond the rules. However, as discussed by us earlier, some such candidates might have been applied and might have been selected or might not have been selected. They have applied as per the age condition mentioned in the advertisement. We have also observed that the computation of the period of experience is also incorrect. Thus the Respondents are expected to be careful and adhere to the rules hereafter while giving the advertisement.

13. However, we direct the Respondent-State to correct their procedure hereafter regarding computation of the period of experience which is after acquiring the Degree or Diploma in the trade. Alternatively it is necessary for the State Government to

amend the Recruitment Rules of 1983 to make suitable to their procedure. The applicant is competing from the open category, while Respondents no 3 is competing from S.C (Female) and Respondent no. 4 from S.B.C (Female) and thus, the applicant cannot challenge their appointment and selection.

14. We further suggest that hereafter the Respondents should give a legible advertisement with proper spacing in a proper format. All the terms and conditions are put in a crowded manner and it is very difficult to understand and read the rules of the said advertisement.

15. In view of the discussions above, the applicant is not entitled to any relief. The application is dismissed. Parties to bear their own costs.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 20.10.2021
Dictation taken by : A.K. Nair.