

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO. 219/2014.

Manish Ramchandra Patil,
Aged about 39 years,
R/o 58, Laghuvetan Colony,
Kamptee Road, Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Public Works Department,
Mantralaya, Mumbai-32.
2. The Maharashtra Public Service Commission,
Bank of India Building, 3rd floor,
Mahatma Gandhi Road,
Hutatma Chowk, Mumbai-01.

Respondents.

Shri R.V. Shiralkar, Ld. Advocate for the applicant.

Shri A.P. Sadavarte, the Ld. P.O. for the respondents.

**Coram:- B. Majumdar, Vice-Chairman and
Justice M.N. Gilani, Member (J).**

Dated:- 14th July, 2014.

Order

Per: M.N.Gilani, M(J)

What shall be the age limit for in-service candidate for the post of Deputy Engineer (Electrical) or Assistant Electrical Inspector, Group-A on the establishment of Public Works Department, Government of Maharashtra is the subject matter of this O.A.

2. The applicant was initially appointed as Sectional Engineer on the establishment of Public Works Department and later on came to be appointed as Assistant Engineer. On 1.2.2013, the respondent No.2 advertised for 20 posts of Deputy Engineer (Electrical) or Assistant Electrical Inspector, Group-A. Three posts were reserved for the candidates belonging to SC category. The applicant applied against the post reserved for SC category. On 18.8.2013, written test was

conducted. On 29.10.2013, the result of written test was declared and in that the applicant was shown to have scored 97 marks. This was followed by publication of select list on 4.3.2014. The cut off marks kept were 80. This made the applicant to lodge protest. On 7.3.2014, he was informed that because of he having crossed the age of 40 years, his candidature for the said post was rejected. Therefore, this O.A.

3. The respondent No.2 submitted reply. It is not denied that the applicant was allowed to participate in the selection process and in the written test, he has scored 97 marks. According to the respondent No.2, on the relevant date i.e. on 1.6.2013, the age of the applicant was 38 years, 11 months and 14 days, whereas the upper age limit as per rules is 35 years. It is further clarified that in the matter of age relaxation, the candidate can claim only one benefit, that means he can claim age relaxation on the ground that he belongs to backward class category or he can claim age relaxation on the ground that he is in the service of the Government. However, both the benefits are not available to the candidate.

4. Annexure A-2 P.21) is an advertisement published by the respondent No.2. The eligibility criteria particularly about the age was mentioned in clause 4.1, 4.2 and 4.3 of the advertisement which reads thus:

”४.१ वय दिनांक १ जून ,२०१३ रोजी अमागासप्रवर्गासाठी ३०, मागासप्रवर्गासाठी ३५ वर्षांपेक्षा जास्त नसावे.

४.२ शासन आदेशानुसार संबंधित आरक्षित प्रवर्ग / उपप्रवर्गासाठी वयोमर्यादा शिथिलक्षम राहिल.

४.३ महाराष्ट्र शासनाच्या सेवेत नियमित नियुक्ती झालेल्या कर्मचा-यांना उच्च वयोमर्यादा पाच वर्षांपर्यंत शिथिलक्षम राहिल”.

If this is followed, the candidature of the applicant cannot be rejected. Admittedly, on the relevant date, his age was 38 years, 11 months and 14 days, as mentioned in the affidavit in reply filed on behalf of the respondent No.2.

5. The recruitment rules for the post of Deputy Engineer (Electrical) or Assistant Electrical Inspector, Group-A, published vide notification dated 2nd July 2005 provide that the age limit for the said post shall be 30 years and this limit can be relaxed by five years in respect of candidates who are in the Government service. This is to be read with M.C.S. (Provision of Upper Age Limit for Recruitment by Nomination) Rules, 1986 (in short Upper Age Limit Rules, 1986"). It begins with 'notwithstanding' clause and states thus:

“Notwithstanding anything contained in any rule, order or instrument for the time being in force relating to recruitment by nomination to any posts, cadre or service in Class, Class II, Class III and Class IV, the upper age limit for the purpose of recruitment by nomination to the said post, cadre or service in Class, Class II, Class III and Class IV shall be (30) years and in respect of persons belonging to Backward Classes, it shall be (35) years”.

Therefore, whenever the matter relates to recruitment by nomination to any post, cadre or service, in Class, Class II, Class III and Class IV etc. and if the candidate belongs to backward class category, notwithstanding anything contained in the Recruitment Rules for that post, the age limit shall be 35 years. Put it differently, if the Recruitment Rules provide upper age limit to be 35 years, in that event, the question of applying M.C.S. (Provision of Upper Age Limit for Recruitment by Nomination) Rules, 1986, does not arise. In the matter of competitive examinations held by the MPSC, same provision is made applicable *mutatis mutandis* by virtue of Rule 4 of the Upper Age Limit Rules, 1986. The stand of the respondents, that those who seek relaxation in age of five years on the ground that they are in Government service, are not entitled for the benefit of upper age limit, provided under the Upper Age Limit Rules, 1986, he is devoid of merit. On plain reading of the Recruitment Rules, 2005 and Upper Age Limit

Rules, 1986, spells out that they are supplementary to each other. This is for the reason that the provision of relaxation in age provided under the Upper Age Limit Rules, 1986 begins with “notwithstanding’ clause. That means this is to be read in addition to whatever is provided in the respective Recruitment Rules. That means one does not exclude the other.

6. What emerges from the above is, the applicant being a candidate belonging to backward class, is entitled to compete for the post advertised by the MPSC and to be filled in by nomination. Further, he being a Government servant, is entitled for further age relaxation by five years. If this is not the meaning as pleaded by the respondent No.2, then the Upper Age Limit Rules, 1986 brought into force with specific purpose to cover the cases of candidates belonging to backward classes, become otiose. We are, therefore, of the view that the decision taken by the respondent No.2 by rejecting the candidature of the applicant on the ground that he does not fulfill aged criteria is *de hors* the Recruitment Rules, 2005 and the Upper Age Limit Rules, 1986.

In the result, the O.A. succeeds in the following terms:

- 1) It is declared that the applicant is entitled for age relaxation and in turn is eligible to be considered for the post of Deputy Engineer (Electrical) or Assistant Electrical Inspector, Group-A in terms of advertisement dated 1.2.2013 from SC category.
- 2) Accordingly, the respondent No.2 shall consider the candidature of the applicant and take further necessary steps according to law.
- 3) No order as to costs.

(Justice M.N.Gilani)
Member (J)

(B.Majumdar)
Vice-Chairman

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