

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 244 of 2013 (D.B.)

Prashant S/o Trymbakrao Lahudkar,
Aged about 39 years, Occ. Legal Practitioner,
Resident of plot no.33,
Samata Colony no.1, Khamgaon, District Buldana.

Applicant.

Versus

- 1) Maharashtra Public Service Commission,
through its Secretary,
Office at Bank of India Building 3rd floor,
Mahatma Gandhi Road, Hutatma Square,
Mumbai-400 001.
- 2) State of Maharashtra,
Home Department through its Secretary,
Mantralaya, Mumbai-400 032.
- 3) Director of Prosecution, Mumbai
through its Director, Public Prosecutor,
Maharashtra, office at State Cottage no.6,
Behind Yashodhan Building, Dinshaw Chal Road,
Mumbai-400 020.
- 4) Shri Deelip Gopalrao Chilbule,
aged about Major, Occ. Legal Practitioner,
Resident of 58, Ganesh Colony,
Pratap Nagar, Nagpur-440 022.

Respondents

Shri Alok Daga, S.V. & Mrs. R.S. Sirpurkar, Naziya S. Pathan,
Advocates for the applicant.

Shri A.M. Ghogre, Id. P.O. for the respondent nos.1 to 3.

Shri I.S.Charlewar, Id. Advocate for respondent no.4.

Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGEMENT

(Delivered on this 4th day of December,2017)

Heard Mrs. R.S. Sirpurkar, Id. Counsel for the applicant and Shri A.M. Ghogre, Id. P.O. for the respondent nos.1 to 3. None for respondent no.4. The O.A. is heard finally with consent of Id. counsel for parties.

2. The applicant responded to the advertisement for recruitment to the post of Assistant Public Prosecutor (APP). The candidate was to possess experience of five years of practice as an Advocate in High Court or in Courts subordinate thereto. The applicant obtained Law Degree in 2001 and submitted his application duly filled in and complete in all respects in prescribed proforma. In the prescribed proforma the column as regards experience was as under:-

Sr. No.	Post held	Nature of Appointment	Nature of Post	Name of Organisation	Ownership of Organisation/ Institute	Pay
1	SAPP	Temporary	Law Practicing	Director of Prosecution (from 2/7/2007 till date)	Government of Maharashtra	O

3. The applicant, accordingly, also mentioned his experience as a Special Assistant Public Prosecutor (SAPP) for the period for which he temporarily worked under the Director of Prosecution. Since he worked as Special Assistant Public Prosecutor (SAPP) w.e.f.

2/7/2007 till date of filing of the application, he mentioned his experience as such.

4. The applicant's application for the post of Assistant Public Prosecutor (APP) was however rejected on the ground that he does not possess requisite experience. The applicant therefore challenged the said rejection of his application in this O.A. and claimed that the selection of the last candidate for the post of Assistant Public Prosecutor (APP), i.e., respondent no.4 be quashed and set aside and it shall be declared that the applicant is entitled for the post of Assistant Public Prosecutor (APP) .

5. After hearing the matter on merits, this Tribunal vide order dated 22/4/2014 was pleased to dismiss the applicant's claim.

6. Being aggrieved by the said order of the dismissal of claim, the applicant filed Writ Petition no. 2116/2015 before the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur. The said Writ Petition has been disposed of by the Hon'ble High Court vide order dated 5/7/2016. The Hon'ble High Court has observed in the order dated 5/7/2016 as under :-

“ Our attention is also drawn to the instructions issued by Maharashtra Public Service Commission. As per those instructions, veracity of information furnished in online

application is to be ascertained only at the time of interview and documents are to be furnished at that stage.

The learned Assistant Government Pleader is relying upon reply filed by respondent no.1 Maharashtra Public Service Commission. Without prejudice to request for adjournment, which we have rejected supra, only to assist the Court, she has also taken us to judgment of Maharashtra Administrative Tribunal.

Only question is if online form itself was defective and did not allow petitioner to furnish necessary data, whether his candidature could have been cancelled on that account?

Perusal of online form produced on record shows that there is no separate column for mentioning the experience as an Advocate except the portion reproduced supra. There the applicant has to disclose post held by him. Whether a person practising as Advocate for private litigants holds any post under any Organization is the question. If he is not holding any such post, there is no occasion for him to fill in that information.

We find that all this material has not been looked into by the Maharashtra Administrative Tribunal while deciding Original Application.

The other question, which has cropped up during hearing, is what information was supplied by other Advocates, who qualified for the post. Adv. Sirpurkar submits that that data has been asked for after filing of present writ petition under Right to Information Act and is yet to be received.

In this situation, we find that it is necessary for respondent no.1 to suitably modify its application form. Not

only this, as grievance of petitioner has not been considered on merits by Maharashtra Administrative Tribunal, we find that it is necessary to place back the entire controversy before it. Only for this purpose, we quash and set aside the impugned judgment dated 22/4/2014 delivered by Maharashtra Administrative Tribunal in Original Application No.244/2013. That Original Application is restored back to file of Maharashtra Administrative Tribunal.”

7. The parties appeared before this Tribunal after remand and the MPSC was directed to file affidavit-in-reply in view of the observations made by the Hon'ble High Court on the point of "Post" in the application form. The MPSC, i.e., respondent no.1 filed affidavit-in-reply accordingly. The respondent no.3, i.e., the Director of Prosecution, Mumbai also filed affidavit-in-reply.

8. According to the MPSC, the Government of Maharashtra in its Home Department had sent a requisition to recommend 145 candidates for the post of Assistant Public Prosecutor, Group-A. Accordingly, the Commission issued an advertisement no.224/2012 on 13/03/2012. A complete break-up of the posts reserved for the various categories was given in the advertisement and the advertisement was published strictly in accordance with the Recruitment Rules framed for the said post. It is stated that all the candidates who had applied for the post were allowed to appear for screening test without the scrutiny of their applications subject to

subsequent scrutiny of their eligibility. The applicant was found to have total experience of 4 years, 8 months and 28 days which was less than the required 5 years and therefore he was not qualified. It is stated that the screening test was held on 4/9/2012. The interviews of the qualified candidates were conducted from 10th to 15th September and 17th & 18th September, 2012. The final result was declared on 13/02/2013 and therefore the complete procedure has been followed which is just proper and legal. It is stated that the applicant was rightly disqualified and was accordingly noted in the list of non qualified candidates having marks greater than the cut-off. The said list was published on website on 5/9/2012.

9. As regards experience column, it is stated that the Commission has received applications from the candidates who have mentioned their experience in more than one post and it proves that the candidate can add more than one row in the online application and can mention number of experiences held by him. The contention of the applicant that there was no column in the application form in respect of experience as practice in legal profession was specifically mentioned in the application form is incorrect. The respondent no.1 has also placed on record the copies of the application forms filled in by such candidates showing their experiences in various fields including legal practice.

10. The learned counsel for the applicant submits that the additional affidavit filed by the MPSC is totally silent on the points discussed in the order of the Hon'ble High Court. As already discussed, in the order passed by the Hon'ble High Court it has been observed that perusal of the online form produced on record shows that there is no separate column for mentioning the experience as an Advocate except the portion reproduced supra. It was also observed as to whether a person practicing as Advocate for private litigants holds any post under any Organisation is the question and if he is not holding in any such post, there is no occasion for him to fill in the information.

11. The column as regards experience in the application form which is already reproduced in earlier para pertains to the nature of appointment, post held, nature of post, name of Organisation and Ownership of Organisation / Institution. Admittedly when a person practices in legal field as a lawyer, he does not work under any Institution or Organisation. He also does not hold any post though he is nominated or called "Advocate / Lawyer". There is no question of he is being appointed either temporary or permanently as an Advocate by any Institution and therefore the column regarding the experience prima facie and specifically does not denote or it can be said that it

never relates to the experience as an Advocate. In fact there should have been a specific column in the application form such as under :-

Experience as an Advocate					
Year of passing of Law degree	Name of the University	Date of enrolment as an Advocate	Name of places of Courts where practised.		
			Courts	Since when	Till what date

12. Had there been such column or a specific column in similar fashion in the proforma, the applicant would not have been misguided. The column as regards experience in the online application definitely does not state about experience as an Advocate. At the most it can be said that if the candidate is appointed such as Legal Advisor or Legal Officer or Special Assistant Public Prosecutor (SAPP) etc. such experience can be mentioned in the said column, but it does not disclose specifically about experience as an Advocate.

13. The learned counsel for the applicant has also invited my attention to one experience Certificate filed by the applicant. The said experience Certificate has been issued by the Principal District & Sessions Judge, Buldana in Proforma "A-1". In the said experience Certificate it has been specifically stated that the applicant has worked as a Special Assistant Public Prosecutor (SAPP) from 2/7/2007 till the

date of Certificate, i.e., 20/1/2011 and his practice as an Advocate is from 7/11/2001 to 1/7/2007, i.e., 5 years, 7 months and 24 days.

14. The learned counsel for the applicant has also invited my attention to the list of the not qualified candidates who got greater marks than Cut-Off marks. Such list is at Annex-A-9 from P.B. page nos. 36 to 39 from which it seems that total 73 candidates have been declared not qualified though they got more marks than the Cut-Off marks for being called for interview and out of these 73 candidates, 10 are not qualified as they were over age and rest of the 63 candidates were declared not qualified as they having less experience. The possibility that these candidates might not have been able to specifically state their experience as an Advocate in the proforma or online form for want of such specific column in the application form, cannot be ruled out. It seems that in all 145 posts of Assistant Public Prosecutor (APP) were to be filled and as per the reply-affidavit 123 posts were recommended. If it is taken into consideration then 22 posts might be still vacant. It is expected that the MPSC will reconsider this fact while notifying the advertisement for any post where ever experience is material and will modify the application forms accordingly. The Hon'ble High Court has also observed the same in the Judgment, as already stated, that it is necessary for respondent no.1 to suitably modify its' application form.

15. The learned P.O. has invited my attention to the various application forms which are filled by the candidates. The copies of the said application forms are placed on record at P.B. at page nos. 81 to 88 (both inclusive). The learned P.O. submits that the candidates, who have filled these application forms, have specifically bifurcated the experience column and they have specifically mentioned the date of their practice as an Advocate. As already stated this column of experience in the application form states about the Department, Designation, Nature of appointment, Nature of Post, Pay Scale, Basic, Number of Years/ Months etc., so also the name of Organisation, Ownership of Organisation etc. and these columns does not pertains to the experience as an Advocate. There should have been a specific column as regards experience as an Advocate as already discussed in the forgoing paras. The possibility that the candidates might have been misguided cannot be ruled out and that seems to be the reason as to why number of candidates have been rejected on the ground that they does not possess requisite experience.

16. For the reasons discussed in forgoing paras, I am therefore satisfied that the rejection of the applicant's form on the ground that he possesses less experience is not legal and proper. Hence, the following order :-

ORDER

- (i) The application is partly allowed.
- (ii) Considering the fact that still 22 posts of Assistant Public Prosecutor (APP) are available, the respondent nos. 1&2 shall call the applicant for interview within three months from the date of this order and take appropriate decision as may be deemed fit. The respondent nos. 1&2 will be at liberty to exercise its jurisdiction to re-consider the cases of the candidates on the point of want of experience in the similar fashion if it desires to do so. The applicant's request for quashing and setting aside the appointment order of respondent no.4 is however rejected. The respondent no.2 shall take step to add a specific experience column in the application form for the post of Assistant Public Prosecutor (APP) or the like posts, so that the controversy arose in this O.A. may not be repeated in future. No order as to costs.

Dated :- 4/12/2017.

**(J.D. Kulkarni)
Vice-Chairman (J).**

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