

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO. 660/2013.

Dadaji Madhav Andraskar,
Aged about 45 years,
Occupation- Service,
R/o Ram Nagar, Ward No.19,
Subhash Chowk, Gadchiroli.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Higher & Technical Education,
Mantralaya, Mumbai-32.
2. The Joint Director,
(Higher Education), Nagpur Division,
Old Morris College Building,
Nagpur.
3. The Principal,
Govt. Science College,
Chamorshi Road, Gadchiroli-442605.
4. N.S. Khobragade,
Laboratory Attendant,
C/o Govt. Science College,
Chamorshi Road, Gadchiroli-442605.

Respondents.

Shri N.R. Saboo, the learned counsel for the applicant.
Smt. S.V. Kolhe, the Ld. P.O. for the respondents 1 to 3.
Shri B.D. Pandit, learned Advocate for respondent No.4.

**Coram:- The Hon'ble Shri J.D. Kulkarni,
Member (J)**

Judgment

(Delivered on this 27th of October 2016).

From the admitted facts of the case, it seems that the applicant and respondent No.4 were on daily wages and were absorbed in regular service in view of decision taken by respondent No.1 i.e. State of Maharashtra on 11.9.2012. Accordingly the applicant has been absorbed on the post of Peon in the pay scale of 4440-7440 plus grade pay of Rs. 1300/- whereas respondent No.4 Mr. N.S. Khobragade has been absorbed as Laboratory Attendant in the pay scale of 5200-20200 plus grade pay of Rs. 1900/-. In fact out of eight employees, who were on daily wages were absorbed and out of these eight, four employees were absorbed in the post of Laboratory Attendant and two including the applicant were absorbed on the post of Peon.

2. Subsequent to the decision dated 11.9.2012 an order was issued on 27.5.2012 absorbing the applicant in the post of Peon and respondent No.4 in the post of Laboratory Attendant.

3. According to the applicant, respondent No.4 is SSC failed whereas applicant is SSC passed and, therefore, the applicant should have been absorbed in the post of Laboratory Attendant. The applicant has, therefore, filed this O.A. and has claimed that notification dated 27.9.2012 issued by respondent No.2 and order dated

11.9.2012 issued by respondent No.1 be quashed and set aside, as it pertains to absorption of respondent No.4 as Laboratory Attendant. It is further prayed that the applicant be absorbed on the post of Laboratory Attendant w.e.f. 11.9.2012 and respondent No.1 be directed to grant consequential benefits including difference of salary and other benefits.

4. The respondents have filed affidavit in reply and justified the absorption of respondent No.4 in the cadre of Laboratory Attendant. Respondent No.4 also filed affidavit in reply and submitted that he is senior to the applicant and has been absorbed as per the rules.

5. Heard Shri N.R. Saboo, the learned counsel for the applicant, Smt. S.V. Kolhe, the Ld. P.O. for the respondents 1 to 3 and Shri B.D. Pandit, learned counsel for respondent No.4. Perused the application, affidavit in reply as well as various documents placed on record.

6. Only material point to be considered is whether the absorption of respondent No.4 as Laboratory Attendant is legal and proper ?

7. According to the learned counsel for the applicant, qualification for the post of Laboratory Attendant is passing of SSC examination. He has placed on record the rules relating to recruitment

of non teaching posts at Annexure A-8 at paper book pages 23 and 24. However the said document is incomplete and it is not known as to which department has issued this Circular. The said rules are not signed by any competent authority and, therefore, no reliance can be placed on Annexure A-8.

8. Respondent Nos. 1 to 3 in their affidavit in reply have stated that the required qualification for the post of Laboratory Attendant is mentioned in the notification dated 21.1.1990 issued by Govt. of Maharashtra and as per the said notification, qualification for the post of Laboratory Attendant is mentioned as Pre-SSC with (Physics and Chemistry). It is stated that respondent No.4, though SSC failed, he appeared for the said examination with science subjects and was appointed on 10.12.1990, whereas the date of appointment of the applicant is 23.11.1991 and, therefore, the applicant is junior to respondent no.4 and respondent No.4 was qualified for being appointed as Laboratory Attendant.

9. Notification dated 29.1.1990 is placed on record at page 32 and 33. These are the rules called "Maharashtra Non Agricultural Universities and Affiliated Colleges Standard of Code) (Revised Pay of Non-Teaching Employees) (Amendment) Rules, 1990. Clause 2 of the notification reads as under:

“2. In the schedule annexed to the Maharashtra Non Agricultural Universities and Affiliated Colleges Standard of Code (Revised Pay of Non-Teaching Employees) Rules, 1989 under the heading Non-teaching staff of Non-Government Colleges attached to Non Agricultural Universities for the entries against Sr. No.27, following entries shall be substituted, namely :-

Sr.No.	Designation	Existing scale of pay.	Revised scale of pay.	Remarks
27.	Laboratory Attendant/Library Attendant/File Collector.	200-280 205-355	i) 950-1400 ii) 750-940	Those in service on 31.12.1985 or those who attained the age of 30 years on 29.1.1990 or those whose have studied upto Pre-SSC class (with Physics and Chemistry) for Laboratory Attendant). Others.

10. From the aforesaid notification, it will be thus clear that those who have studied upto Pre-SSC class, with Physics and Chemistry are entitled to be appointed as Laboratory Attendant / Library Attendant.

11. The learned counsel for the applicant submits that the respondent authorities have recommended the case of the applicant for being absorbed to the post of Laboratory Attendant and respondent No.4 was recommended for the post of Peon. However, the said recommendation has not been accepted and respondent No.4 is absorbed as Laboratory Attendant. From the documents in this regard at page Nos. 35 to 40, it seems that the applicant was recommended for the post of Laboratory Attendant, whereas respondent No.4 was recommended for the post of Peon. However, vide impugned order, the applicant has been absorbed as Peon whereas respondent No.4 has been absorbed as Laboratory Attendant. Even accepting this fact, mere submission of proposal to the competent authority will not give right to the applicant to claim the post of Laboratory Attendant. It seems that respondent authority has considered the qualification as well as seniority. There is nothing on record to deny that the respondent No.4 was appointed earlier in time than the applicant. In short, respondent No.4 seems to be senior to the applicant and he also holds the requisite qualification for being considered for the post of Laboratory Attendant and, therefore, respondent authority seems to have considered the qualification as well as seniority. There is nothing wrong in considering the case on the basis of qualification and seniority by the competent authority.

12. The learned counsel for the applicant has invited my attention to one information received under Right to Information Act as per Annexure A-7. It is a letter dated 28.6.2013 received from Information Officer in which it is stated that in the Government and Non-Government Colleges, requisite qualification for the post of Laboratory Attendant is passing of 10th standard. This one line information cannot be accepted as true in view of the fact that the notification issued by the Government dated 29.1.1990 clearly states that the qualification for the post of Laboratory Attendant is Pre-SSC passed with Physics and Chemistry.

13. Respondent No.4 has filed affidavit in reply and has reiterated the fact that he possesses requisite qualification as Pre-SSC passed with Physics and Chemistry and was initially appointed on 10.11.1990, whereas the applicant though, has passed SSC examination, his date of initial appointment is 23.11.1991. This has not been challenged by filing rejoinder.

14. In view of the discussion in the foregoing paras, I do not find any merit in the O.A. Hence, the following order:

ORDER

O.A. stands dismissed with no order as to costs.

(J.D. Kulkarni)
Member (J)

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