

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.82 OF 2015**

DISTRICT : NANDED

Shri Madhukar Lobha Rathod,)
Age 50 years, Occ. Nil, R/o Aniket Niwas,)
Tilak Nagar, Nanded, Taluka & Dist. Nanded)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Agriculture Department,)
Mantralaya, Mumbai 400032)
2. The Agricultural Commissioner,)
Agricultural Commissionerate,)
Maharashtra State, Pune)
3. The Divisional Agricultural Joint Director)
Latur Division, Latur)

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4. Shri S.H. Walsanghkar,)
Enquiry Officer,)
C/o Divisional Agricultural Joint Director)
Latur Division, Latur)
5. The District Superintendent Agricultural)
Officer, District Agriculture Office,)
Nawa Mondha, Nanded)..Respondents

Shri Y.R. Barhate – Advocate for the Applicant

Miss Neelima Gohad – Presenting Officer for Respondents No.1
to 3 and 5

None for Respondent No.4

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri R.B. Malik, Member (J)

DATE : 28th June, 2016

PER : Shri Rajiv Agarwal, Vice-Chairman

J U D G M E N T

1. Heard Shri Y.R. Barhate, the learned Advocate for the Applicant and Miss Neelima Gohad, the learned Presenting Officer for Respondents No.1 to 3 and 5.

2. This OA has been filed by the Applicant challenging the order dated 26.8.2011 passed by the Respondent No.3 dismissing him from service and the order dated 3.9.2012, passed by the Respondent No.2 in appeal confirming the aforesaid order.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Agriculture Assistant on 18.8.1990 and he joined service on 8.1.1992. The Applicant had a degree of B.Sc. (Agro) when he had applied for the post. His qualification was treated as equivalent to degree of B.Sc. (Agri.) by the Regional Subordinate Selection Board, Nagpur. The Applicant was initially appointed in Nagpur Division and subsequently sought transfer to Latur Division, under the control of the Respondent No.3 where he was transferred. The Applicant was not considered for promotion and he filed OA No.105 of 2016, before Aurangabad Bench of this Tribunal which was allowed by order dated 29.8.2006. The writ petition against the order of this Tribunal was dismissed by Hon'ble Bombay High Court (Aurangabad Bench) by order dated 5.4.2007 in a group of W.P. No.4359 of 2006 etc. The Respondents then started a Departmental Enquiry (DE) against the Applicant on 20.9.2008 on the charge that he did not hold the requisite qualification for the post of Agriculture Assistant, which is B.Sc. (Agriculture) and he holds qualification of B.Sc. (Agro-Chemicals) which is not the same as B.Sc. (Agriculture).

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Learned Counsel for the Applicant stated that the Applicant was found guilty in the DE and was dismissed from service by order dated 26.8.2011. There were procedural irregularity in the DE as no final show cause notice was given to the Applicant, before his dismissal order was passed. The Applicant filed OA No.624 of 2011 before this Tribunal, which was not entertained as the Applicant had not availed of the remedy of filing appeal. The Applicant filed appeal and by order dated 3.9.2012, the Appeal has since been dismissed. Learned counsel for the Applicant stated that the Applicant was selected by the Regional Subordinate Selection Board, Nagpur in 1990. He had produced his certificate of B.Sc. (Agro) before the Superintending Agriculture Officer, Nagpur, who found it valid and accepted it. It was not the fault of the Applicant that his certificate of B.Sc. (Agro) was treated as equivalent to B.Sc. (Agri.) by the appointing authority. In fact, the course content of both the courses is almost identical and the degree of B.Sc. (Agro) is equivalent to B.Sc. (Agri.). He cited several court judgments in support of his various contentions which are discussed subsequently.

4. Learned Presenting Officer (PO) argued on behalf of the Respondents (except the Respondent No.4) that the Applicant does not hold the qualification required for the post of Agricultural Assistant as required under the Agricultural Supervisor and Agricultural Assistant (Class III) in the

Development Group in the Agricultural Department (Recruitment) Rules, 1983. As per Rule 6(2) *ibid*, a person holding a degree in Agriculture or having undergone two years' course in Agriculture in an Agricultural School recognized by the Government after Higher Secondary School Certificate Examination with vocational courses in Agriculture Wing is eligible for appointment to the post of Agricultural Assistant. The Applicant, in his application form, claimed that he holds the degree of B.Sc. (Agro) while the Applicant in fact had a simple degree of Bachelor of Science, with Botany, Chemistry and Agro-Chemicals and Fertilizers as subjects. The Applicant had also completed only 6 months training in Soil Conservation in 1993-94 during his service. However, that 6 months course does not fulfill the requirement of the Recruitment Rules of 2 years course. The Applicant misled the authorities that he had degree of B.Sc. (Agro) which he claims is equivalent to B.Sc. (Agri.). However, his degree was simply B.Sc. and it has not been recognized as equivalent to B.Sc. (Agri.).

5. Learned PO argued that a regular DE was held against the Applicant. A charge-sheet was issued to him on 28.9.2008 and a DE under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 was held. The Enquiry Officer, submitted his report to the Respondent No.3 on 28.3.2011 and held that the Applicant did not hold the educational qualification for the post of Agricultural Assistant

and the charges against him were held to be proved. A copy of the report of enquiry officer was made available to the Applicant and his reply dated 21.5.2011 was duly considered by the Respondent No.3 before the order of dismissal was passed and, therefore, his submission that the impugned order dated 26.8.2011 was passed without giving him notice is not correct. Learned PO argued that the Applicant had challenged the DE against him, inter alia, on the ground that a final show cause notice was not given to him before order of punishment was passed. However, there is material on record to show that the order of punishment was passed, after the Applicant had submitted his say on the report of the Enquiry Officer. The Applicant has not been able to substantiate his contention that there was any procedural irregularity in holding of the DE. He has also not made any allegation about the proceedings before the Appellate Authority. On merits of the case against the Applicant, there is clear evidence that the Applicant did not hold (and even now does not hold) the requisite qualification for the post of Agricultural Assistant. Learned PO relied on GR dated 12.10.1993, which is based on the judgment of Hon'ble Supreme Court in **COLLECTOR OF VIZIANAGARAM VERSUS M. TRIPURA SUNDARI DEVI 1990(4) SLR 237** and also judgment of Hon'ble Bombay High Court (Aurangabad Bench) in **PALLAVI SADASHIV BANDE VERSUS GOVERNMENT OF INDIA IN WRIT PETITION NO.8030 OF 2015 dated 2.3.2016.**



6. It is seen that a DE was initiated by the Respondents against the Applicant by Memorandum dated 28.9.2008, on the charges that he did not hold the requisite educational qualification when he secured appointment to the post of Agricultural Assistant in 1990. The Applicant claims that this DE was started as he had succeeded in OA No.105 of 2006, before Aurangabad Bench of this Tribunal regarding his promotion. This judgment dated 29.8.2006 is regarding interpretation of GR dated 18.10.1997 which deals with appointment of backward class candidates. It is held that those backward class candidates, who are selected on merit, will not be counted against reserved posts. This order was upheld by Hon'ble Bombay High Court (Aurangabad Bench) in a group of Writ Petitions No.4359 of 2006 etc. The subject matter of the present OA does not have anything to do with the matter decided in OA No.105 and 106 of 2006. There is absolutely nothing on record to suggest that the Respondent No.3 started DE against the Applicant as he had filed OA No.105 of 2006 and succeeded. This contention of the Applicant is unfounded.

7. Coming to the DE, the Applicant has claimed in Para 7(vi) of the OA that the principles of natural justice have been violated during the DE as the opportunity to cross-examine the departmental witnesses was not given to the Applicant. The respondents in their affidavit in reply dated 22.12.2015 in Para



28 have stated that opportunity to cross-examine witness was given to the Applicant. In the report of the enquiry officer dated 28.3.2011, Para 8 deals with analysis of evidence (पुराव्याचे विश्लेषण). It is mentioned that a total of 5 departmental witnesses were examined and opportunity was given to the Applicant to cross-examine each of them. To give just one example, the cross-examination of witness no.5 Shri R.V. Wankhede is summarized as below:-

“१०. उलट तपासणीत या साक्षीदाराने सांगितले की, प्रथम नियुक्त झालेल्या कर्मचा-याची नियुक्ती झालेल्या पदास अनुसरून त्यांची शैक्षणिक अहर्ता, वय, चारित्र्य, व वैध्यकीय तपासणी करणे हे कार्यालय प्रमुख म्हणून नैतिक जबाबदारी आहे हे मान्य आहे.”

The claim of the Applicant that he was not given opportunity to cross-examine departmental witnesses during the DE is not correct. Another ground to challenge the DE is that Enquiry Officer has recommended certain punishment. However, that cannot be a ground to hold that the entire DE was vitiated. The Applicant was given a copy of the Enquiry Report and he has submitted his say on the same on 21.5.2011. He was given full opportunity to defend himself. The claim of the Applicant that another show cause notice should have been given to him

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before imposing punishment, has no legal basis. It has to be concluded that there was no procedural infirmity in the conduct of the DE against the Applicant.

8. Coming to the issue of the qualification of the Applicant, he had claimed in his application form (as per the copy enclosed in OA at Exhibit 'A') that he had the degree of B.Sc. (Agro). The Applicant has submitted a copy of his degree certificate along with Additional Written Arguments. The degree certificate dated 8.8.1990 issued by the Marathwada University, Aurangabad is for Bachelor of Science i.e. B.Sc. It is definitely not B.Sc. (Agro.). The degree certificate mentions the subjects of study as Chemistry, Botany, Agro-Chemicals and Fertilizers. The suffix 'Agro' to B.Sc. is not there in the degree certificate at all. The whole claim of the Applicant is that his degree of B.Sc., to which he added suffix 'Agro', is same or equivalent to the degree of B.Sc. (Agri.). It is a known fact that degree of B.Sc. (Agri.) is awarded by Agricultural Universities and this degree is of four years' duration while ordinary B.Sc. is awarded by other Universities and such courses are of 3 years' duration. Maharashtra Agricultural Education and Research Council, Pune has categorically stated on 25.6.2008 in a letter to the Respondent No.3 (p.255 of the paper book) that any B.Sc. Degree of 3 years duration is not equivalent to B.Sc. (Agri.) awarded by an Agricultural University which is of 4 years' duration.

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9. Hon'ble Bombay High Court (Aurangabad Bench) judgment dated 2.3.2016 in a group of W.P. No.8030 of 2015 etc. has held as following:

“38. In the light of discussion in the foregoing paragraphs and the ratio laid down by the Hon'ble Supreme Court in the case of State of Rajasthan and Others Versus Late Arun (cited supra), and other judgments, referred hereinabove, it is not for courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.”

We are, therefore, unable to accept the contention of the Applicant that his B.Sc. degree (to which he has suffixed 'Agro') is equivalent to B.Sc. (Agri.). Decision of the Maharashtra Agricultural Education and Research Council, Pune should be treated as final in this regard.

10. The Applicant has claimed in Para 6(V) of the OA that qualification for the post of Agricultural Assistant is Graduation in 'Agricultural subject' of any recognized University or 2 years Agricultural School Course or six months study in Soil



Conservation. As per the recruitment rules notified on 5.8.1983, the Rule 6(2) reads:

“(2) Possesses any of the following qualifications, namely:-

- (i) Degree in Agriculture, or
- (ii) have undergone two years' course in Agriculture at any of one of the Agricultural School in the State recognized by the Government;
- (iii) have passed the Higher Secondary School Certificate Examination with vocational course under Agriculture Wing.”

From this rule, it is clear that 'degree in Agriculture' is the requisite qualification and not the 'degree in Agricultural subject' of any recognized university. In fact degree in Agriculture i.e. B.Sc. (Agri.) is granted only by the Agricultural Universities. Similarly, rules do not mention any six months' course, only two years' course is mentioned. The contentions at Para 6(v) of the OA are totally false. The Applicant did not have requisite qualification for the post, when he was selected for the post of Agricultural Assistant in 1990.

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11. The Respondents have placed copy of the Advertisement issued in 1990 (page 267 of the paper book). The following qualifications were mentioned:

“ग्रामसेवक/कृषी सहाय्यक :- ४४ पदे (अ.ज.४२, वि.भ.ज.२) अर्हता:- एस.एस.सी उत्तीर्ण तसेच २ वर्षांचा कृषि प्रशिक्षण अभ्यासक्रम उत्तीर्ण, कृषि पदवी धारकांना तसेच ग्रामीण भागातील सामाजिक सेवेचा अनुभव असणा-यांना प्राधान्य वेतन रु. १२००-१८००/-.”

From this advertisement also, it is clear that the applicant, who had neither passed 2 years course after HSC nor was he Agricultural degree holder was not eligible for the post.

12. The Respondents have relied on the judgment of Hon'ble Supreme Court in **COLLECTOR OF VIZIANAGARAM VERSUS M. TRIPURA SUNDARI DEVI 1990(4) SLR 237,** which is quoted in GR dated 12.10.1993. This GR mentions ratio of the judgment of Hon'ble Supreme Court in Marathi as follows:

“त्याखेरीज सर्व संबंधितांनी याचीही जाणीव ठेवली पाहिजे की, ज्यावेळी जाहिरातीमध्ये विशिष्ट अर्हता नमूद केलेली असते आणि एखादी नेमणूक तिच्याकडे दुर्लक्ष करून करण्यात येते त्यावेळी ते प्रकरण केवळ नियुक्ती प्राधिकारी व नियुक्त व्यक्ती यांच्या पुरतेच राहत नाही. ज्यांच्याकडे नियुक्त व्यक्ती किंवा व्यक्तीच्या अर्हतेसमान अथवा त्यापेक्षा जास्त अर्हता असेल परंतु जाहिरातीत नमूद केलेली अर्हता नसल्यामुळे ज्यांनी अर्ज केले नसतील असे सर्वजण व्यथित असतात. अशा परिस्थितीत, अर्हता शिथिल

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करता येईल असे जर स्पष्टपणे नमूद केले नसल्यास, अशा कमी दर्जाची अर्हता असणा-या व्यक्तीची नेमणूक करणे ही जनतेची फसवणूक होईल. असे फसवणुकीचे व्यवहार चालू ठेवण्यात कोणत्याही न्यायालयाने सहभागी होऊ नये.”

It is clear that the decision of the Respondents is in conformity with the ratio laid down by Hon'ble Supreme Court in the aforementioned case.

13. The Applicant has relied upon certain judgments which are discussed below:

(i) Anil V. Shirpurkar Versus State of Maharashtra and Others, 2002(4) Mh.L.J. 365:

This judgment is regarding caste certificate of a candidate, who joined service on the basis of caste certificate of Scheduled Tribe, which was later found to be invalid. On the ground that the proceedings were not held within reasonable period, the order of dismissal was quashed. Learned Counsel for the Applicant argued that in the present case also, there is delay of more than 16-17 years, which is unreasonable and order of dismissal should be quashed. Learned PO argued that the judgments of Hon'ble Supreme Court in M. Tripura Sundari Devi's case (supra) and Umadevi's case will prevail over this judgment of Hon'ble High Court. In **SECRETARY, STATE OF**

KARNATAKA AND OTHERS VERSUS UMADEVI AND OTHERS, 2006 AIR SCW 1991 : (2006) 4 SCC 1, Hon'ble Supreme Court has held that:

“34. In A. Umarani Versus Registrar, Cooperative Societies, a three Judge Bench made a survey of authorities and held that when appointments were made in contravention of mandatory provision of the Act and statutory rules framed there under and by ignoring essential qualifications, the appointments would be illegal and cannot be regularized by the State.”

Further it is noted that:

“It was also held that the fact the some persons had been working for a long time would not mean that they had acquired a right for regularization.”

Hon'ble Supreme Court has quoted with approval this judgment in Umarani's case reported in (2004) 7 SCC 112. It will definitely prevail over earlier judgment of Hon'ble High Court.

- (ii) M.S. Mudhal and Another Versus S.D. Halegkar and Others (1993) 3 SCC 591.

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It was held that it would be inadvisable to disturb a person from his post at a late stage particularly when he was not at fault when his selection was made. In the present case, the Applicant had filled application form stating that he held the degree of B.Sc. (Agro), when he had the degree of B.Sc. only. In the DE, he was held guilty of furnishing inaccurate information at the time of appointment. It cannot be said that he was not at fault. The case is clearly distinguishable.

- (iii) Naushad Anwar and Others Versus State of Bihar and Others, (2014) 11 SCC 203.

It is held that a candidate must possess required qualification on date of application. If the qualification is recognized after the selection process is over, it will not help the candidates. In this case Hon'ble Supreme Court held that the degree of Library Science by distance education was recognized before the selection process was over, as the selection process dragged for four years. In the circumstances, it was held that such a degree will be treated as valid. In the present case, B.Sc. degree is not recognized as equivalent to B.Sc. (Agri.). The case is clearly distinguishable.

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14. The Applicant has not been able to challenge the DE against him on procedural grounds. On facts also, it is quite clear that he did not have requisite qualification when he was appointed as Agricultural Assistant and even today, he does not have requisite qualification for the post. In the circumstances, we are unable to grant him any relief. The OA is accordingly dismissed with no order as to costs.

Sd/-
(R.B. Malik)
Member (J)
28.6.2016

Sd/-
(Rajiv Agarwal)
Vice-Chairman
28.6.2016

Date : 28th June, 2016

Dictation taken by: S.G. Jawalkar.