

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

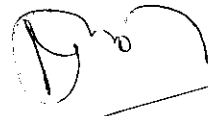
ORIGINAL APPLICATION NO.966 OF 2015

DISTRICT : MUMBAI

Shri Rahul Ramesh Bhosle.)
Age : 47 years, Presently residing at)
Flat No.B-904, Bakeri Swara CHS Old NH)
8, Maneja Road, Baroda, Gujrat 390 013.)
Address of Service of Notice :)
C/o. Madhav V. Thorat, Advocate High)
Court, 3/B, C & D, 2nd Floor, 35,)
Ambalal Doshi Marg, Fort, Mumbai - 21.)...**Applicant**

Versus

1. The Maharashtra Public Service)
Commisson, Bank of India Bldg.,)
3rd Floor, M.G. Road, Hutatma)
Chowk, Fort, Mumbai - 1.)
2. The State of Maharashtra.)
Through its Ministry of Tourism &)
Culture, Mantralaya, Mumbai 32.)
2. Director.)
Department of Archeology & Museum)
St. George's Hospital Compound,)
Fort, Mumbai 400 001.)...**Respondents**



Shri M.V. Thorat, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 01.07.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This Original Application (OA) is made by the Applicant seeking directions to the Respondent – MPSC to hold him eligible for being interviewed for the post of Director, Archeology & Museum, State of Maharashtra for which he has apparently been held ineligible for the reasons to be discussed hereinbelow.

2. We have perused the record and proceedings and heard Shri M.V. Thorat, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

3. The facts in so far as they can be culled out from the OA are that he did his Bachelor of Arts (BA) from Nagpur University in 1988. He did his post graduation in Ancient Indian History Culture and Archeology in the year



1990 from Nagpur University. He then cleared a two year Post Graduate Diploma in 1993 in the subject Archeology from Indian Institute of Archeology, New Delhi. In May, 1997, he successfully cracked UPSC Competitive Examination and came to be ultimately appointed as Assistant Archeologist in Archeological Survey of India under the Central Government. W.e.f. 1st April, 2010, he was sent on deputation to the Respondent No.3 – Director, Department of Archeology and Museum in the State of Maharashtra which deputation was for two and a half years. Thereafter, he came to be repatriated and reposted back under the Central Government. On 17.1.2013, he was promoted as Assistant Superintendent, Archeologist and in that capacity, he is even currently posted at Vadodara in the State of Gujarat.

4. The Respondent No.1 is Maharashtra Public Service Commission (MPSC) and the Respondent No.2 is the State of Maharashtra in Ministry of Tourism and Culture.

5. By an advertisement of 19th May, 2015, the MPSC advertised the post of the Director, Archeology and Museum, a copy of which advertisement is at Exh. 'A' (Page 12 of the paper book). The Applicant claiming to be eligible

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for being considered to that post applied On-line, but ultimately his candidature was not considered for the reasons to be presently discussed and which is why he brought this OA seeking the relief as set out already.

6. Affidavit-in-reply of Respondent No.1 - MPSC was filed while other Respondents did not file their respective Affidavits. In view of the fact that once postponed interviews have now been scheduled for 4th July, 2016, this OA was heard expeditiously on the request of Mr. M.V. Thorat, the learned Advocate for the Applicant.

7. Now, it is a common ground that in so far as age aspect of the matter is concerned, the Applicant is now aged 47 and had crossed the age of 45 which per advertisement was the maximum age limit, even when he responded to the advertisement. In so far as the relaxation aspect of the matter is concerned, under Clause 4.2 that relaxation is available only to the employees of the State of Maharashtra and the Applicant as already discussed hereinabove, is an employee of the Central Government (Union of India).

8. Mr. Thorat, however, told us that Clause 4.3 of the advertisement and vide the provisions of Rule 3(2)(c)(iv)



proviso, the Applicant is so exceptionally qualified or experienced or both as to be eligible to be interviewed. The said proviso in fact needs to be fully reproduced hereinbelow.

“Provided further that the age limit may be relaxed in favour of candidates who acquire exceptional qualification or experience or both.”

9. Mr. Thorat told us that, therefore, we should direct the concerned authorities to consider the case of the Applicant on the anvil of exceptional qualification or experience or both. That request was obviously countered by Mrs. Gaikwad, the leaned P.O. In our view, however, while it is no doubt possible for a candidate to lay legitimately a claim for exceptional qualification or experience or both, but that will have to be considered in the context of the post, nature of the duties and availability of candidates. They are some of the factors that must weigh with the judicial forum. The attitude of the judicial forum cannot be too rigid as to result in even good causes getting defeated but at the same time, just for the asking, the judicial forum cannot give direction to a constitutional recruiting agency to act in accordance with the opinion of the judicial forum. Now, it is precisely for this purpose



that the party claiming such a privilege has to set out a clear case by necessary particularization. No doubt, the judicial forum may not be an expert body in such matter but then there would be some material before it to adjudge as to whether there is a strong ground to consider claim of exceptional qualification, etc. On a mere self-serving claim of a party, the judicial forum obviously cannot act. Once at least some material is laid before it, the judicial forum can then call upon the concerned authorities to examine the matter on that particular anvil. Although Shri Thorat emphasized the fact of his client having 19 years of experience in the field under the Central Government, but then both as to the qualification and experience, we find nothing that could fall within the realm of, "exceptional". That is because that, after-all, is the criterion already fixed and all the competitors of the Applicant in all probability will have qualifications like that or similar and also experience.

10. Therefore, we do not think we can accept the request of Shri Thorat and give the directions to the authorities to consider the Applicant on the anvil of exceptional qualification or experience or both. For that, we must repeat that there has to be some material on



record for otherwise there may be more exceptional candidates than normal ones.

11. The above conclusion, therefore, in fact for all practical purposes decides the OA and that it does against the Applicant. However, in all fairness, we must make it clear that if the duration of the period on deputation was considered by the Respondents as temporary employment that is erroneous. We cannot disagree with Mr. Thorat that in view of the options that were given to the candidates, deputation did not fit in any of the available options.

12. The said options on Page 5 of the Affidavit-in-reply are Permanent, Contributory, Without pay, Visiting Additional Charge, Regular, Contract Basis, Periodical, Daily Wages, Professional. Now, quite clearly, deputation would not fit in any of these options and we completely disagree with Mrs. Gaikwad, the learned P.O. which submission would ultimately place a person in the category of, "Visiting" better placed than the one on deputation. Therefore, the authorities were not quite accurate in treating the deputation period as temporary. After-all, on first principles by being on deputation, one does not snap his ties with his parent department and does not forfeit the



rights attached to his post in the parent department. As to what all could have been done in such circumstances while filling the On-line Form need not engage our attention, but one fact is clear that it could not have been treated as an undoing of the Applicant.

13. However, in the ultimate analysis, last finding is of no practical benefit to the Applicant for the reasons already set out hereinabove and, therefore, the Original Application stands dismissed with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
01.07.2016

Sd/-
(Rajiv Agarwal)
Vice-Chairman
01.07.2016

Mumbai
Date : 01.07.2016
Dictation taken by :
S.K. Wamanse.