

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 456 OF 2020

DISTRICT : MUMBAI

1. Dipak Kisan Shinde,)
Occ : Service,)
At/Post Rohane, Tal-Shindkheda,)
Dist-Dhule 425 407.)
2. Anil Dhanaji Chavare,)
Occ : Service,)
Chavare Wasti, Near Bus Stand,)
At/Post Madha, Tal-Madha,)
Dist-Solapur 413 209.)...**Applicants**

Versus

1. The Secretary,)
Maharashtra Public Service Commission)
Cooperage Telephone Exchange Bldg,)
M.K Marg, Mumbai 400 021.)
2. The Director,)
Directorate of Forensic Science Laboratories)
Mumbai, Maharashtra State.)
3. The Secretary,)
Department of Home,)
Mantralaya, Mumbai.)
4. Shri Yuvraj Balasaheb Deshmukh,)
Revenue Colony, College Road,)

Shrirampur, Tal-Shrirampur,)
Dist-Ahmednagar.)...**Respondents**

Dr Gunratan Sadavarte with Dr Jayshree Patil, learned advocate for the Applicants.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

Shri R.K Adsure with Shri K.R Jagdale, learned counsel for Respondent no. 4.

CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)

DATE : 26.10.2021

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicants who have appeared as per advertisement dated 15.10.2018, for the post of Scientific Officer in the Department of Cyber Crime, pray that the disqualification declared by Respondent no. 1, MPSC, be quashed and set aside and they be declared as eligible for the said post. The applicants have pressed for interim relief as the process was on going and this Tribunal by order dated 10.9.2020 has directed the Respondents to keep two posts of Scientific Officer vacant for the applicants.

2. Pursuant to the advertisement dated 15.10.2018 for the post of Scientific Officer, the applicant no. 1 has applied from Scheduled Caste category and applicant no. 2 has applied from Open category. As per the advertisement, along with necessary educational qualification, 3 years' experience was required from

recognized Laboratory or recognized Clinical Institution, after acquiring the qualification. As per the case of the applicants, they were eligible candidates. However, the Respondents published the list of the eligible candidates on 13.8.2020 and the names of the applicant no. 1 and 2 were not mentioned. But the names were mentioned in the list of ineligible candidates with the reason at Serial No. 58, for applicant no. 1, having 2 years and 11 months experience and at serial no. 19, shown for applicant no. 2, having 2 years and 9 months experience. The applicants submitted their representations. However, the Respondents did not consider the said representations and therefore, the applicants have filed the present Original Application.

3. Affidavit in reply dated 15.10.2020 is filed by Respondent no. 1, MPSC, through Sanjay Divakar Thakur, Under Secretary. So also further affidavit in reply dated 17.8.2021, is filed by Deepak S. Urade, Under Secretary in the office of MPSC. Mr Yuvraj Balasaheb Deshmukh, the private Respondent no. 4 and affected selected candidate has also filed affidavit in reply dated 3.6.2021. Respondent no. 1, MPSC and private Respondent no. 4 have opposed the application and have denied the allegations and contentions raised therein.

4. Learned counsel for the applicants Mr Sadavarte, pointed out the advertisement and has submitted that there are 43 posts of Scientific Officers vacant in the Respondent-Department. Out of which, 22 are for open category and 21 for reserved category. In the advertisement, the break-up of the reservation is shown. Learned counsel for the applicants has submitted that the experience of the applicants is not counted properly by the Respondents. The applicants have experience of more than 3 years as they have worked in various Institutions. The experience of Data Security

Officer also should have been counted. Learned counsel argued that the applicants have made detail representations. However, it was not considered. He relied on the Recruitment Rules and Notification dated 25.9.2014 and submitted that the said Notification for the post of Deputy Director, Cyber Crime and Scientific Officer, Cyber Crime were published on the same day and as per Rule 9 of the Notification, MPSC has power to relax the period of experience up to 3 years for the candidates belonging to S.C, S.T, N.T. etc. Learned counsel for the applicants submitted that the experience of both the applicants who have worked in different Institutes ought to have been taken into account by the Respondents and even if it was found less, the Respondent, MPSC has power to relax the same. He further submitted that the posts in reserved as well as open category are available and both the applicants could be accommodated.

5. Smt Kranti S. Gaikwad, learned P.O for Respondents no 1 to 3 and Shri R.K Adsure with Shri K.R Jagdale, learned counsel for Respondent no. 4, submitted that the Respondent no. 1, MPSC has decided the representation of applicant no. 2 by letter dated 31.8.2020. The Respondent, MPSC, thereafter conducted the interviews on 7.9.2020 as per the schedule. The applicants have rightly being held not eligible for the interview because they were not possessing the experience of 3 years required as per the provisions contained in para 4.4 of the advertisement. It was further submitted that in the general instructions to the candidates, it was specifically directed that all the candidates should read meticulously the conditions of eligibility. The experience should be from recognized Laboratory or Clinical Institution.

6. Learned counsel Mr Adsure with Mr Jagdale, for Respondent no. 4 while opposing the application have pointed out that the private Respondent has directly suffered because of the interim stay granted in favour of the applicants. The Respondent no. 4 is from the open category and the last candidate in the select list from the open category. Learned counsel submitted that the Government has kept one post of differently abled person reserved from the open category, and therefore, out of 14 available posts from the open general category, now 13 posts are available. He argued that such post should not have been kept reserved from the open category. Much more was argued, as to how the reservation for the differently abled persons can be carved out and whether it can be carried forward.

7. We have gone through the provisions of Section 34 of the Rights of Persons with Disabilities Act, 2016 and also through the various G.Rs and Memorandum issued by the State Government as well as by the Government of India on this point. In the Office Memorandum dated 15.1.2018, DoPT has, on the point of reservation for the persons with bench mark disability have specifically mentioned in clause 8.1 that if there is non-availability of a suitable person with benchmark disability, such vacancy shall be carried forward in the succeeding recruitment year. Therefore, we are of the view that this all discussion on the point of whether one post from the open category is to be taken to maintain reservation of differently abled person is not relevant in the present case in view of the facts and the clear instructions given by the DoPT and the provisions of Section 34 of the said Act.

8. The essential qualification and experience required as per the provisions contained in paras 4.3 and 4.4 of the advertisement is reproduced below:-

“4.3 Educational Qualification:- The candidate must possess a degree and post graduate degree in science faculty with Physics OR Computer Science OR Electronics OR Information and Technology at least in second class OR possess Engineering Degree in Computer Science OR Electronics OR Information and Technology at least on second class OR any other qualification declared by the Government to be equivalent thereto;

4.4 Experience:- possess experience in the relevant subject for a period of not less than three years in any recognized laboratory or recognized Clinical Institute after acquiring the qualification mentioned in para 4.3.”

9. The experience of applicant no. 1, in Cypherkode Infosec Company on the post of Assistant Info. Security Analyst was not considered as it was not registered and recognized. The remaining experience of the applicant no.1 from the Directorate of Forensic Science Laboratories has been considered and it was 2 years and 11 months, which is less than the required 3 years. In the case of applicant no. 2, his experience on the post of Data Security Officer in the ARD, Incredible Software Solutions Company could not be taken into account for want of requisite recognition. However, remaining experience was counted and it was 2 years, 10 months and 29 days, which is less than 3 years. Hence, both the applicants were not called for interview.

10. Thus, it appears that it was a proper scrutiny of the period of experience put by the applicants and specific reasons were mentioned for the rejection of the candidature of the applicants. The experience was required prior to the last date of submission of application form, i.e. on 5.11.2018. Thus, the experience acquired by the applicants after the said date rightly could not be counted.

11. In view of the above, we pass the following order:-

(a) The Original Application is dismissed.

- (b) The interim relief dated 10.9.2020 granted by this Tribunal stands vacated.
- (c) Respondent no. 4 is to be appointed as Scientific Officer, Cyber Crime and he be granted deemed date of appointment from the date his colleagues were appointed.
- (d) We make it clear that the deemed date should be considered for counting his seniority, continuity of service and for pensionary benefits. However, he will not be entitled for arrears of salary on account of grant of deemed date of appointment as he has not actually worked.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 26.10.2021
Dictation taken by : A.K. Nair.