

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.136 OF 2015

Shri Gautam Jalaba Narwade)
 Residing at C/o. P.R. Koli,)
 Sr. No.49/1, Gangarde Nagar,)
 Pimple Gurav, Tal. Haveli,)
 Dist. Pune 411 061.)
 Working as Assistant Professor,)
 M.I.T. College of Engineering, Pune,)
 Survey No.124, Ex-Servicemen Colony,)
 Paud Road, Kothrud,)
 Pune 38) **...Applicant**

Versus

1. The Maharashtra Public Service)
 Commission, through its Secretary,)
 3rd floor, Bank of India Building,)
 M.G. Road, Hutatma Chowk,)
 Mumbai 400 001)

2. The State of Maharashtra,)
 The Principal Secretary,)
 Higher and Technical Education)
 Department, Mantralaya Annex,)
 Mumbai 400 032) **..Respondents**

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Ms. S.P. Manchekar, learned Counsel for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN
SHRI R.B. MALIK, MEMBER (J)

DATE : 18.02.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

J U D G M E N T

1. Heard Ms. S.P. Manchekar, learned Counsel for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.
2. This O.A. has been filed by the Applicant challenging the order dated 19.01.2015 issued by the Respondent No.1 rejecting the candidature of the Applicant for the post of Head of Department in Metallurgy Engineering in Government Polytechnic from Schedule Caste Category.
3. Learned Counsel for the Applicant argued that the Respondent No.1 had issued an advertisement on 27.09.2013 to fill posts of Heads of Departments in various disciplines in Government Polytechnics. 2 posts were to be filled in Metallurgy, out of which 1 was for open and one for Schedule



Caste Category. The Applicant has a degree in Metallurgy Engineering and he applied for the post reserved for S.C. category. The Applicant was declared unfit on the ground that his appointment as Lecturers in various colleges were not approved by the University or the Board of Technical Education. Learned Counsel for the Applicant argued that para 4.3 of the advertisement did not mention that the experience as teacher should have been after the appointment was approved by the University. Learned Counsel for the Applicant contended that the Applicant had more than 10 years of teaching experience which was as per the advertisement. However, the Respondent No.1 changed the rules of the game in between and put on the web-site the requirement of approval from University after the selection process has commenced. Learned Counsel for the Applicant argued that the decision of the Respondent No.1 to change the norms of selection after initiation of selection process is unfair and arbitrary and it is contrary to advertisement and recruitment rules. Learned Counsel for the Applicant argued that the Applicant was fully eligible to be considered for the post of Head of Department in Metallurgy, and the Respondent No.1 may be directed to interview him.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that appointment of a teacher in a University or



College requires approval of the University under the Maharashtra Universities Act, 1994. Any teacher appointed to teach in a University or affiliated college requires approval from the University, for the appointment to be valid. Learned P.O. argued that this requirement is implicit in the requirement of teaching experience as per recruitment rules, which was reproduced in para 4.3 of the advertisement dated 27.09.2013 issued by the Respondent No.1. Similarly, a teacher working in a polytechnic, requires approval from the Board of Technical Education, Maharashtra State for such appointment to be valid. A person cannot be said to be validly appointed as a teacher unless his appointment is approved by the University / Board of Technical Education. Learned P.O. contended that experience of a person, who is not validly appointed, cannot be called valid experience. Learned P.O. argued that the contention of the Applicant that this requirement of approval from University was brought in by the Respondent No.1 mid way in the selection process is incorrect. Learned P.O. argued that the advertisement is not the only documents relevant to the selection process. In fact, detailed instructions for the candidates are put on web-site, which were earlier given in a book-let. Some of these instructions are common for all selections, while some are specific to a particular selection. For selection of teachers, the instructions

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were put up on web-site of the Respondent No.1 that their experience will be considered valid only if their appointment as teacher was approved by the University. The Applicant could produce approval from University of Pune of his experience as Lecturer in Mechanical Engineering from 01.06.2009 for the academic year 2009-10 and as Lecturer in Metallurgy Engineering from 01.10.2010 onwards. Total approved experience of the Applicant was less than 10 years and therefore, he was not eligible to be appointed as Head of Department. Learned P.O. relied on the judgment of this Tribunal dated 23.12.2015 in O.A.No.980 of 2014, wherein this Tribunal has upheld the decision of the Maharashtra Public Service Commission to disqualify a candidate as his experience was not approved by the University.

5. Learned Counsel for the Applicant contented that the aforesaid judgment of this Tribunal is not applicable, as it was delivered in the context of later advertisements, where the Respondent No.1 has specifically mentioned this requirement in the advertisement.

6. The Applicant has challenged order of the Respondent No.1 dated 19.01.2015 informing him that his teaching experience required approval from the University / Board and

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as his approved experience was less than what is required in the recruitment rules, he was not eligible to be considered for the post of Head of Department. The relevant recruitment rules viz. Rule 4 of the Principal, Head of Department, Lecturer and Workshop Superintendent in Government Polytechnics and Equivalent Institutes (Recruitments) Rules, 2012 provides that a person should possess the qualification in the related Branch of Engineering and experience as prescribed by A.I.C.T.E. or relevant statutory body for the concerned post from time to time. All India Council for Technical Education (A.I.C.T.E.) has issued "Pay Scales, Services Conditions and Qualifications for the Teachers and Other Academic Staff in Technical Institutions (Diploma) Regulations, 2010" on 22.01.2010. The educational qualifications and experience for the post of Head of Department are as follows :-

Bachelor's and Master's degree of appropriate branch in Engineering / Technology in with first class or equivalent either at Bachelor's or Master's level, with minimum of 10 years relevant experience in teaching / research/ industry, or Bachelor's degree and Master's degree of appropriate branch in Engineering / Technology with

first class or equivalent either Bachelor's and Master's level and Ph.D. or equivalent in appropriate discipline in Engineering / Technology with minimum of 5 years relevant experience in teaching / research / industry.

7. From these regulations, it is clear that a candidate must have a Master's degree (with first class either a Master's or Bachelor's level) with 10 years of experience or Ph.D. degree and 5 years experience. In the present case, the Applicant has Master's degree and he was required to have 10 years of teaching experience (he does not claim to have experience in research or industry). The question is what type of experience will be held to be valid. The Regulations framed by A.I.C.T.E. are silent on this issue. The Applicant's claim is that neither the Recruitment Rules / which are based on A.I.C.T.E. Regulations) nor A.I.C.T.E. Regulations provide for teaching experience to be approved by the University. The Applicant is relying on Government Circular dated 03.07.2004 which provides that experience on contract basis, daily wages, work charged etc. has to be treated as valid experience. The contentions made by the Applicant are no doubt correct. However, Government circular dated 03.07.2004 is general in nature and applies to all posts in the Government. The



Respondent No.1 has not rejected experience of the Applicant as it was contractual, but because it was not approved by the University. The requirement of approval of appointment as a teacher is there in the Maharashtra University Act, 1994. If the law requires that approval of University is necessary for appointment of a person as a teacher, every person is bound by that law. The Applicant had worked in many colleges affiliated to University. Obviously, his appointment as a teacher would be considered valid, only if it is approved by the University. Naturally, experience will be considered valid, only if a person has valid appointment. The absence of this requirement in Recruitment Rules or Regulations of A.I.C.T.E. will not make that requirement unnecessary or illegal. The Respondent No.1 has stated in para 3 of the affidavit-in-sur-rejoinder dated 13.10.2015 as follows :-

“3. With reference to para 2 of rejoinder, I say and submit that the applicant did not produce the approval to his appointment from the concerned University, which is required according to the Maharashtra Universities Act-1994. Therefore, his experience was not concerned as valid experience.”

8. The Applicant has admitted that the requirement of approval from University was published on the web-site of the Respondent No.1 along with the list of eligible candidates.

Other selected candidates have brought the necessary approval from the University. It is not that only the Applicant was asked to bring this certificate. We are unable to accept the contention of the Applicant that the Respondent No.1 changed the rules of selection mid way through the selection process. Requirement of approval of University for appointment as a teacher was always there under the Maharashtra Universities Act, and the Applicant cannot be said to be prejudiced because of that.

9. There is other issue regarding experience in Mechanical Engineering. We are not getting into that as, even if all the experience of the Applicant, which has approval of the University is counted, he did not have 10 years of experience and the issue is only academic.

10. Having regard to the aforesaid facts and circumstances, of the case, this O.A. is dismissed with no order as to costs.

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Sd/-
(R.B. MALIK)
MEMBER (J)

Sd/-
(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 18.02.2016
Typed by : PRK