

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.287of 2015****With C.A. No. 136/2016**

Narendra S/o Sawairam Pawar,
Aged 44 years, Occ. Lecture in Mechanical Engineering,
Govt. Polytechnic R/o Plot no. 47/48,
Sudarshan-6 Apartment, Kalpataru nagar,
Manewada Besa Road, Nagpur-440 027.

Applicant

Versus

- 1) State of Maharashtra,
Through its Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai-32.
- 2) Maharashtra Public service Commission,
through its Secretary, MTNL Office, Kukreja,
in front of football ground, Mumbai.

Respondents

Shri P.S. Wathore, Mrs. K.P. Wathore, Advocates for the applicant.

Shri M.I. Khan, P.O. for the respondents.

**Coram :- Hon'ble Shri B. Majumdar, Vice Chairman
&
Hon'ble Shri S.S. Hingne, Member (J).**

Dated :- 15/05/2016.

ORDER -**Per : Member (J).**

Heard Shri P.S. Wathore, Id. counsel for the applicant and Shri M.I. Khan, Id. P.O. for the respondents. The O.A. is heard finally and decided at the admission stage with consent of Id. counsel for parties.

2. The applicant aspiring the post of Principal, Govt. Polytechnic has filed this O.A. challenging the declaration dated 25-6-2014 (A-1,P-36) cancelling the advertisement dated 28-1-2009 (A-7,P-56).

3. The M.P.S.C. (R/2) has issued an advertisement dated 28-1-2009 for filling 13 posts of Principal in Polytechnic Colleges on receipt of requisition from Govt. of Maharashtra. Accordingly, the advertisement was published and the process was carried out and interviews were held from 28-7-2011 to 3-8-2011.

4. The applicant appeared for the interview, however, the process of recruitment was entangled in the legal battle and several O.A.Nos. 440,489,748,766 & 892 of 2011 came to be filed at the different Benches of the Administrative Tribunals in Maharashtra.

5. The respondents' case is that the different orders came to be passed by the different Benches as several objections were raised challenging the criteria of age, experience etc. The new recruitment rules were in the offing and notified on 10-9-2012 (A-23

P-126 to 148). The advertisement was issued as per the old rules of 2008 and therefore the Govt. has decided to cancel the process and accordingly issued the communication dated 27-11-2012 (A-10,P-61) and other communication dated 29-4-2014 (A-18,P-102) and finally issued the declaration dated 25-6-2014 (A-15,P-85) cancelling the process.

6. The applicant's case is that he has a very good academic career and had a chance to be selected but for the vested interest and ulterior motive the process is cancelled.

7. Thereafter the Govt. had issued the fresh advertisement dated 26-2-2016 (Advt.No.9/2016) under the new recruitment rules of 2012. The applicant had also filed the C.A. No. 136/2010 for grant of stay.

8. The applicant attributed ill motive to the respondents in cancelling the recruitment process. It is also submitted that the reasons given by the respondents are not reasonable and logical to cancel the process. It is worthwhile to note that the process in entirety is cancelled after the decision is taken by the Govt. at various levels. As such, it is hard to hear that the decision can be taken to serve the vested interest of particular persons, unless cogent and clinching material is placed on record. There is no an iota of material on record to reach to the conclusion that the decision is tainted with

oblique, object, to serve the interest of particular person or any way the decision is taken with a vested interest with a malice to some persons. In the absence of such material the bald averments are of no use and cannot be sufficient to reach to the conclusion that the cancellation of the process is illegal.

9. On the contrary, when several matters were filed before the Tribunal and different types of orders came to be passed and the new recruitment rules which were more liberal extending the age limit for the employees in service, were in offing the concerned department took opinion of the General Administration Department which advised to cancel the process and on that basis the declaration of cancellation was issued. In the absence of data on record, it cannot be said that several departments of the government have vested interest as averred.

10. It is pertinent to note that the results were not declared. As such it cannot be said that the applicant had succeeded and thereby any right is accrued in his favour.

11. According to the applicant the reasons for cancellation of process are not logical and reasonable. If the respondents under the above state of affairs cancelled the process their act cannot be seen with suspicious eye. Moreover, when at the threshold the matter is involved in litigation and the respondents

thought it proper to cancel it so as to avoid further complications which would have aggravated the process. Moreover relying on the new rules made by AICTE the decision can be said to be reasonable and logical.

12. It is also contended that in the meantime some O.As. were withdrawn and some are disposed of. However that does not weaken the respondents' stand because the O.A. 489/2011 is disposed of in the absence of applicant. When the new rules were likely to come into force which were approved by AICTE the stand of respondents to undertake the process under the new rules can be said to be proper and correct.

13. It is also urged that the applicant belongs to DT (A) category and there was no dispute about that category and therefore there was no reason to cancel the entire process. The Govt. or the MPSC cannot do the process in piece meal in such manner. It may create further complications. In effect, the contention that the process for the particular category should have been continued does not appeal to reason.

14. The learned counsel for the applicant has relied on some citations in support of his case. The first is Anamika Mishra & Ors. U.P. Public Service Commission, Allahabad & Ors. [1990 (Supp) SCC,692]. In this case there was improper feeding in the

computer. There was an error at the stage of calling candidates for the interview. In this peculiar circumstances, their Lordships of the Apex Court held that cancellation of entire examination was not justified but holding of fresh interview on the basis of same written examination was sufficient. Such are not the fact in the case in hand. In that case the objection was confined to exclusion of group of successful candidates. Reliance is also placed on a case **Bhavik Kumar Shriramji Tandale & Ors. Vs. State of Maharashtra & Ors., [2013 (2) Mh.L.J., 226]**, wherein the reservation was not provided post-wise and the services of the petitioners were terminated. Their Lordships of the Mumbai High Court held that there were no allegations of either malpractice or illegal selection or appointment by some ulterior motive. Therefore, the cancellation of earlier selection process was not proper. In the said case the services were terminated. Support is also sought from the **Union of India & Ors. Vs. Rajesh P.U. Puthovalnikathu & Ano. [(2003) 7 SCC, 285]**, whereas it is observed when the selection of some candidates was not vitiated in any manner, the cancellation of all the candidates in entirety was not proper, particularly when it was possible to weed out the beneficiaries of irregularities or illegalities. In the case in hand even the selection is not done. In **Girjesh Shrivastava & Ors. Vs. State of Madhya Pradesh & Ors. [(2010) 10 SCC 707]**, the element

of personal interest was involved in the process. The matter was bad for non-joinder of necessary parties and the appellant appointees were not impleaded before the High Court. In these peculiar facts Their Lordships of the Summit Court of law held that striking down the entire process was not proper, particularly when such particular persons would have been weeded out. In the case of A.M.S. Sushanth & Ors. Vs. M. Sujatha & Ors. [(2000) 10 SCC 197] the general principles of natural justice is reiterated that the persons is likely to be adversely affected should have been given opportunity of being heard. In that case the inquiry report was submitted that the recruitment was in violation of statutory provisions. So also the affected persons were not impleaded before the High Court.

15. Having regard to the facts of the instant case, the above Citations do not help to the applicant.

16. The applicant has also filed the C.A. seeking to stay the fresh advertisement dated 26-2-2016 to fill up the posts in question or prayed that one post be kept vacant. Needless to mention that the election or selection process are to be rarely stalled, if the strong prima-facie case is made out. The applicant has lost battle as failed to get the relief in the O.A. In effect, the C.A. deserves to be rejected.

SST

17. As a sequel to these reasons, the case propounded by the applicant is devoid of merit. Consequently, the O.A. and C.A. are rejected. No order as to costs.

Sd/-

(S.S.Hingne)
Member (J).

dnk.

Sd/-

(B.Majumdar)
Vice-Chairman.