

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.321 OF 2016
WITH
ORIGINAL APPLICATION NO.323 OF 2016
WITH
ORIGINAL APPLICATION NO.644 OF 2016**

DISTRICT : PUNE, SOLAPUR, NASHIK

ORIGINAL APPLICATION NO.321 OF 2016

1. Shri Vivek D. Tambe.)
Age : 25 Yrs., Occu.: Nil,)
R/at. Marol Police Camp, Bldg.No.E-17,)
Room No. 13, Marol Maroshi Road,)
Andheri (E), Mumbai 400 059.)
2. Shri Ganesh S. Kharade.)
Age : 24 Yrs., Occu.: Nil,)
R/o. A/P. Shelgaon, Tal. Indapur,)
District : Pune.)
3. Shri Nitin Bhaskar Dhage.)
Age : 27 Yrs., Occu. Nil,)
R/o. C.T.S. No.464, Near Venunath)
Apartment, Pimple Nilakh Gavthan,)
Pune – 27.)...Applicants

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Transport Department,)
Mantralaya, Mumbai - 400 032.)
2. The Transport Commissioner,)
(M.S), Mumbai, having office at)
MTNL Building, Off Cooperage)
Ground, Mumbai 400 032.)
3. The Chairman / Secretary.)
Maharashtra Public Service)
Commission, M.S, Mumbai)
Having office at MTNL Building,)
Off Cooperage Ground, Mumbai – 32)...**Respondents**

WITH

ORIGINAL APPLICATION NO.323 OF 2016

Shri Bharat B. Vyavahare.)
Age : 28 Yrs., Occu.: Nil,)
R/O. A/P. Popale BK, Pandharpur,)
Tal.: Pandharpur, Dist : Solapur.)...**Applicant**

Versus

1. The State of Maharashtra & 2 Ors.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.644 OF 2016

Miss Aboli A. Pawar.)
Age : 23 Yrs., Occu.: Nil,)
R/O. T.D.A. Road, Satana, A/P/T : Satana)
District : Nashik.)...**Applicant**

Versus

1. The State of Maharashtra & 2 Ors.)...**Respondents**

Mr. A.V. Bandiwadekar, Counsel for the Applicants.

Ms. S.T. Suryawanshi, Presenting Officer for Respondents.

**CORAM : SHRI JUSTICE M.T. JOSHI (VICE-CHAIRMAN)
SHRI P.N. DIXIT (MEMBER-A)**

Closed on : 07.03.2018

Pronounced on : 06.04.2018

PER : SHRI JUSTICE M.T. JOSHI (VICE-CHAIRMAN)

J U D G M E N T

1. Heard Mr. A.V. Bandiwadekar, learned Counsel for the Applicants and Ms. S.T. Suryawanshi, learned Presenting Officer (P.O) for the Respondents.

2. All the present Applicants were declared by the Respondent No. 2 as “not qualified” for further participation in the selection process to the post of Assistant Inspector of Motor Vehicles separately dated orders, but on the same count of not holding the requisite driving licenses on the due date, and therefore, the present Original Applications are filed.

3. The Respondents called for applications to the said post vide Advertisement dated 11th October, 2013. The minimum age limit prescribed was 19 years while the upper age limit was 33 years and in case of Reserved Category, it was 38 years. The additional qualification for the post was that the Applicants should hold licenses to drive motor cycle, light motor vehicles, heavy goods, transport vehicles and heavy public transport vehicles till the date of last day of the filing of the application i.e. 1st November, 2013. It was further provided that, out of the driving licenses for heavy goods vehicles and heavy passenger transport vehicles, the Applicant shall hold any of the licenses till the last date of filing the application and the next license shall have to be obtained before completion of probation period, failing which, the appointed candidate would be terminated from the services.

4. The present Applicants filled-in the On-line application form. In the application form, against the column meant for this additional qualifications, the Applicants filled in that, each of them hold this requisite qualification. Therefore, they were allowed to participate in the process and their names did find place in the merit list. However, at the time of production of documents, it was found that, none of the Applicants fulfilled the criteria of the last of the condition that is holding of heavy goods vehicles license or heavy public transport vehicles license on the prescribed date. Therefore,

show cause notices were issued to them as to why their names should not be deleted.

5. Applicant in O.A.321/2016 vide his reply dated 28th October, 2014 at Exh. 'O' (Page 120) submitted that, he would be able to obtain one of those licenses i.e. heavy goods vehicles licenses by 13th November, 2013, and therefore, he asked for extension of time as against the condition in the Advertisement.

6. In O.A.323/2016, Applicant Mr. D.B. Vyavahare replied vide Exh. 'I' (Page 75) that, though he has applied for grant of permanent driving license for motor cycle or light motor vehicle on 18th September, 2012 and despite the fact, the test was taken, no license was issued to him and in absence of these licenses as per the Rules, he was unable to apply for issuing license to drive heavy motor vehicles license or heavy public transport vehicles license, and therefore, exemption may be granted to him.

7. Applicant Mr. A.A. Pawar in O.A.644/2016 vide Exh. 'K' (Page 80) submitted that, till 18th October, 2013, he was able to get learning license for a heavy vehicle and thereafter, on 16.12.2013, he obtained the regular license. Therefore, he submitted that his case be considered.

8. However, since the Respondent No.2 did not agree with the same, their candidature was cancelled. Hence, the present applications.

9. The learned Counsel for the Applicants made the following submissions :

- (a) That the Recruitment Rules on the basis of which, the additional qualification was sought, did not specify that the candidate should possess heavy goods vehicles license and heavy passenger vehicles, but the said condition has suffered amendment / corrigendum on 11th February, 1998 that, instead of the word 'and' the word 'or' should be placed. Thus, the Advertisement is against the conditions prescribed by the Rules;
- (b) That even the Advertisement permits relaxation to the extent of one of these two licenses;
- (c) That in view of the amendment to Section 8 of the Motor Vehicles Act, 1988 on 14.11.1994, the learners license to drive a transport vehicle cannot be issued unless a person holds a driving license to drive a motor vehicle for at least one year. Further, license to drive a motor cycle, cannot be granted for a person

under the age of 18. Not only this, but a person seeking license to drive a heavy goods vehicle become eligible only after he holds a driving license for at least two years for driving a light motor vehicle or a medium goods vehicle. Same is the criteria for obtaining a heavy passenger motor vehicle license. Thus, though the Advertisement prescribed 19 years of age as a minimum age limit seeking the additional essential condition of holding heavy goods vehicle or heavy passenger vehicle license as per law, a person cannot obtain such license at this age.

10. In the circumstances, it was submitted that as the word 'or' is placed in the Recruitment Rules by Corrigendum, it should be read that the Applicant would be qualified in case, he holds any of the four licenses on the date of filing of the application. Amendment to the Rules carried by certain other States in India like Orissa, etc. were pointed out and it was, therefore, submitted that the impugned communication of the Respondent No.2 be set aside and the Applicants be allowed to participate in the further process.

11. On the other hand, the learned P.O. Ms. S.T. Suryawanshi submitted that, all the present Applicants fully aware of the conditions prescribed in the Advertisement,

participated in the selection process. Not only this, when the show cause notices were issued to them, all of them instead of challenging the condition even at that belated stage, asked for extension of time or for exemption. They did not challenge the selection process. They underwent the same and now having been unsuccessful, are now raising challenge to the said selection process which is not permissible in law.

12. The learned P.O. further submitted that the present selection process was challenged by some of the candidates by three other O.As. The decision of this Tribunal in these applications dated 15th September, 2015 in O.A.No.150/2015 and another, would show that the said challenge has failed, and therefore, a fresh challenge would not survive.

13. The learned P.O. further submitted that the candidature of the present Applicants was not cancelled by the Respondent No.2 on the ground that, any of the Applicants was below 19 years old. On the other hand, all the present Applicants were above 23 years of age at the time of selection process, and therefore, the challenge to the condition in the Advertisement regarding minimum age is merely of academic interest and need not be considered.

14. Mr. Bandiwadekar, learned Counsel for the Applicants in reply submitted that, since the recruitment process itself is vitiated being against the Recruitment Rules,

the mere fact that the present Applicants had underwent the same cannot be a ground to oust the present Applicants.

15. Having considered the rival contention, in our considered view, there is no force in the present O.As. The same are, therefore, dismissed without any order as to costs for the reasons to follow.

: Reasons :

(a) The Advertisement prescribes that the candidate shall hold the licenses as mentioned above. The Applicants were fully aware of these conditions. Not only this, when show cause notices were issued to them, they did not challenge the conditions may be belatedly being against the Rules or Provision, but simply either asked for time or for exemption.

(b) Mr. A.V. Bandiwadekar, the learned Counsel for the Applicants submits that, since the conditions in the Advertisement were against the Rules, the entire selection process is vitiated. Therefore, the fact that the Applicants have acquiesced in the selection process would not be material.

(c) Mr. Bandiwadekar further submitted that, since this issue was not raised in the earlier O.As decided by this

Tribunal, as referred supra, the decision of this Tribunal on other issues would not be binding.

(d) To counter this, the learned P.O. has relied on the Judgment of the Hon'ble Supreme Court of India in the case of **Manish Kumar Shahi Vs. State of Bihar and Ors.: CDJ 2011 SC 492 (Appeal (Civil) No(s) 26223/2008, dt. 19.05.2010.**

(e) In the case of **Manish Kumar Shahi** (supra) also, as against the Recruitment Rules, more marks were earmarked for *viva voce* test for the post of Civil Judge Junior Division against law contrary to the same. The Applicants therein took part in the selection process being aware of this fact and thereafter raised the challenge to it. In these circumstances, after relying on various decisions, the Hon'ble Supreme Court ultimately observed as under :

“We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for *viva voce* test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article

226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in *Madan Lal v. State of J. & K.* (1995) 3 SCC 486, *Marripati Nagaraja v. Government of Andhra Pradesh and others* (2007) 11 SCC 522, *Dhananjay Malik and others v. State of Uttaranchal and others* (2008) 4 SCC 171, *Amlan Jyoti Borooah v. State of Assam* (2009) 3 SCC 227 and *K.A. Nagamani v. Indian Airlines and others* (supra). In the result, the special leave petition is dismissed.”

(f) The next of the reliance of the learned P.O. in the case of **Dhananjay Malik and others v. State of Uttaranchal and others (2008) 4 SCC 171** wherein also, the similar issue has arisen and the Hon'ble Supreme Court did not uphold the similar challenge.

(g) Mr. Bandiwadekar relied on the various authorities to show the difference between the classes of driving licenses. However, the same are not relevant here for the above reasons.

(h) The issue as to whether one would be able to get driving license as prescribed in the Advertisement at +the age of 19 years, is merely of academic interest and need not be considered in the present O.As.

16. In that view of the matter, the following order.

ORDER

All the Original Applications are hereby dismissed without any order as to costs.

Sd/-

(P.N. Dixit)
Member-A
06.04.2018

Sd/-

(M.T. Joshi, J.)
Vice-Chairman
06.04.2018

Mumbai

Date : 06.04.2018

Dictation taken by :

S.K. Wamanse.

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