

MAHARASHTRA ADMINISTRATIVE TRIBUNAL ;

NAGPUR BENCH ; NAGPUR.

ORIGINAL APPLICATION NO. 328/2012

Miss Rekha Jagan Kursunge,
R/o Jethbhawada, Post Futana,
Tq, Deori, Distt. Gondia.

-----APPLICANT.

= Vs =

1. State of Maharashtra,
Through : Secretary,
Vocational Education and Training
Secretariate, Bombay.

2. The joint Director, Vocational Education
and Training , Regional Office, Civil Lines,
Nagpur.

-----RESPONDENTS.

1. Shri S. Borakr , Advocate for the applicant.

2. Shri A.M. Ghogare, Presenting Officer for the Respondents.

CORAM : HON'BLE SHRI JUSTICE A.P. DESHPANDE : VICE-
CHAIRMAN

&

HON'BLE SHRI B. MAJUMDAR : M (A)

DATE : 6/2/2013

ORDER**PER: VICE-CHAIRMAN**

Heard Shri S. Borkar, the Id. counsel for the applicant and Shri A.M. Ghogare, the Id. P.O. for the respondents.

2 In response to an advertisement published by the R/2, the present applicant alongwith few others, had applied for the post of Craft Instructor (Cutting and Sewing). Perusal of the advertisement dt. 7/7/2011 reveals that 145 posts were advertised for different disciplines to be filled in from different categories. The present applicant had applied for the post reserved for ST (women) category. For ST, 2 posts were reserved and both the posts were horizontally reserved for women. The grievance of the applicant in the present O.A. is that though the schedule for conducting written examination was published in regard to various posts, the same was not published for the post of Craft Instructor (Cutting and Sewing) and few other disciplines. It is the case of the applicant that there is no valid reason for the respondents not to have

conducted written examination for the post of Craft Instructor (Cutting and Sewing). The schedule of examination dates published by the respondents on 7/7/2011 in regard to advertisement No. 2 of 2011, contains a note appended down below as Note No. 1. It reveals that the examination for the posts at Sr. No. 201, 203, 204, 226, 227, 232 and 235 will not be held on account of absence of enough number of candidates. The Note then mentions that as and when the next examination will be held, the candidates who have already applied in response to advertisement No. 2 of 2011, need not apply afresh. The Note does not clearly reveal as to whether age relaxation would be granted to the candidates who had already applied and whose candidature would be considered in response to the subsequent advertisement to be issued later on.

3. The subject of selection to the post in question is regulated by the G.R.dt. 19/10/2007, a copy of which is annexed at Annexure -A-7 to the O.A. The G.R. provides for constitution of the District Selection Committee and its

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composition. The said G.R. also regulates the procedure to be followed for conducting written test so also the oral interview and the bifurcation of marks for the same. Clause 6 of the G.R. provides that a written examination of 200 marks would comprise ~~of the~~ examination ⁱⁿ of Marathi, English, General Knowledge and arithmetic. The selection process would comprise ~~of~~ written examination, practical test and oral interview. Clause 6 does not lay down any guidelines in regard to cancellation of the examination or its postponement, on account of non availability of ~~the~~ enough number of candidates. The clause on which reliance is placed by the respondents to justify cancellation of the examination (not holding the examination) for the post in question, is Clause No. 7, which reads thus :-

Clause 7:- “ मुलाखतीस बोलविण्यासाठी उमेदवारांची संख्या :-

लेखी परिक्षेत उमेदवारांना मिळालेल्या गुणानुक्रमानुसार मुलाखतीसाठी बोलविण्यात येणा-या उमेदवारांची संख्या खाली नमुद केल्याप्रमाणे असावी :-

रिक्त पदांची संख्या

() ५ पदांपर्यंत

मुलाखतीसाठी बोलावयाच्या उमेदवारांची संख्या

रिक्त पदांच्या संख्येच्या ५ पटीत मात्र

उमेदवारांच्या १५ इतक्या संख्येपर्यंत मर्यादित.

() ६ व त्याहून अधिक ३ पटित

एखादा उमेदवार लेखी परीक्षेत अधिक गुण मिळवून देखील मुलाखतीला गैरहजर राहिल्यास त्याची नियुक्तीसाठी शिफारस करता येणार नाही. मात्र एखादया उमेदवाराला मुलाखतीत शुन्य गुण मिळाले असले तरी लेखी परीक्षेतील गुणांच्या आधारे तो जर गुणवत्ता यादीत येत असेल तर अशा उमेदवाराची शिफारस करण्यात यावी.”

The said clause comes into play after holding of the written examination as can be gathered from the language used. Clause 7 clearly lays down that the number of candidates to be called for interview would be 5 times the number of posts to be filled in when the posts are up to 5 or less than 5. If the posts are more than 6, then candidates to be called for interview would be 3 times. The very provision contained in Clause 7 reveals the object sought to be achieved ^{which} is to short list the number of candidates in case they are in excess so that interviews can be effectively

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conducted of reasonable number of candidates. It is a matter of common knowledge that ordinarily eligible candidates are much in excess ^{of} to the number of posts to be filled in and hence generally a method of short listing is adopted, which goes to restrict the number of candidates to be interviewed to five times or three times so that the candidates can be effectively interviewed and their merit properly judged. The respondents are trying to interpret Clause No. 7 so as to mean that if the candidates available are less than 5 times the number of vacancies to be filled in, then in that situation a written test ought not to be held because requisite number of candidates would not be available for oral interview. In our considered view, Clause No. 7 does not contemplate a situation wherein either examination ^{is} not to be held or the posts advertised are not to be filled in on account of non-availability of the candidates lesser than the proportion fixed in the said Clause. We are also of the considered view that Clause No. 7 of the G.R. is 'para materia' with Rule 9 of the Rules of Procedure framed by the MPSC for laying down a

short listing criterion. Fixing of proposition of candidates for oral interview is always a method adopted for short listing and not for, either cancellation of the examination or for denying consideration of candidature of those who have applied in response to an advertisement. The Id. P.O. then feebly tried to justify the action ^{by} for contending that the advertisement itself stated that power to cancel, postpone or stay the examination, is reserved by the respondents. We have no iota of doubt that the respondents have power even not to fill in the posts provided there is a valid justification for the same. The respondents cannot arbitrarily and unfairly refuse to conduct examination and stall the process of selection on non-existent grounds. The only reason that is put forth as a justification for not holding of the examination is non-availability of the requisite number of candidates, which we do not find to be justified under Clause 7 as discussed above. It will not be out of place at this juncture to mention that for 5 posts advertised for Craft Instructor (Cutting and Sewing), 11 eligible candidates have applied

and the said number can be gathered from Annexure-R/1 , which is placed on record by the respondents. If enough number of candidates are available for manning the post advertised, the respondents are obliged to go ahead with the selection process and complete the selection process within a reasonable period .

In the above facts and circumstances, the applicant has prayed for issuing direction to the respondents to hold the examination for the post of Craft Instructor (Cutting and Sewing) within a definite time frame. We do not see any reason to reject the said prayer , As we are convinced that the respondents have wholly misread the object sought to be achieved vide Clause 7 of the G.R. , Hence the present O.A. must succeed. Allowing the O.A., we pass the following order :-

The respondents are directed to notify the schedule of the examination and hold the examination for the post of Craft Instructor (Cutting and Sewing) within a period of 6

weeks from the date of communication of this order and complete the selection process within 3 months. The O.A. is disposed of in above terms with no order as to costs.

sd/-

(B. Majumdar)
Member (A)
Skt.

sd/-

(A.P. Deshpande)
Vice-Chairman.