

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.751 OF 2023

DISTRICT : MUMBAI
Sub.:- Selection

Shri Imranali V. Basle.)
Age : 44 Yrs, Occu. : Service,)
Residing at 304/23B, New Dindoshi Hill)
View CHSL, New Mhada Colony,)
Opp. NNP 1 & 2, Malad (East),)
Mumbai – 400 065.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Secretary,)
Urban Development Department,)
Mantralaya, Mumbai – 400 032.)
2. The Secretary,)
Maharashtra Public Service)
Commission, having its office at)
Trishul Gold Field, Plot No.34,)
Opp. Sarovar Vihar, Sector 11, CBD,)
Belapur, Navi Mumbai – 400 604.)
3. Shri Ritesh A. Chavan.)
4. Shri Chandrashekhar V. Dighavkar.)...**Respondents**

Shri M.D. Lonkar, learned Counsel along with Shri S. Sakhare, learned Counsel for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents 1 & 2.

Shri P. Pradhan, Counsel for Respondent No.3.

Shri K.R. Jagdale, Counsel for Respondent No.4.

**CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Debashish Chakrabarty, Member-A**

DATE : 22.12.2023

JUDGMENT

1. The learned Counsel for the Applicant relies on Order dated 23rd May, 2023 passed by Shri R.P. Otari, Under Secretary, MPSC. There are two points, (i) There is variance in the information given in the application and experience discloses in Certificates and (ii) He does not hold the requisite experience of 5 years, but has experience of 3 years, 9 months and 17 days.

2. The learned Counsel for the Applicant relies on the Page No.30 i.e. Advertisement No.003/2022 for the post of Assistant Director, Town Planning, Group-A and this discloses the Educational Qualification and Experience. In the Column of Remarks, it is mentioned 'Not Eligible'. Columns 6 and 9 are correct. However, Columns 1 to 5 and 7 and 8 are not valid as per the requirement. The 'Experience Information' given in the Advertisement (Page 40 of OA) is as under :-

Sr. No.	Institution/ Department/ Organization/Court	Designation (Post Held)	Nature of Appointment	Nature of Job	Full Time/ Other	Pay Band/Pay Scale/ Professional Charge	Grade Pay	Monthly Gross Salary/Income	From Date	To Date	Years	Months	Days
1	M/s. CITYGOLD MANAGEM SERVICES PVT. LTD	V.P. DESIGN DEVELOPMENT	Permanent	Town Planner and Valuation of Lands and Buildings	-	70000-200000	5400	150000	11/04/2005	07/11/2012	7	6	28
2	ARCHITECT HAFEEZ CONTRACTOR	TRAINEE ARCHITECT	Internship	Architect	-	1000	-	1000	07/12/2020	02/03/2002	0	2	24

3	TRUPTI AND ASSOCIATES	ASSISTANT ARCHITECT	Professional	Architect	-	5000	5000	5000	01/06/2002	31/08/2003	1	3	0
4	AKRUTI NORMAL LTD	OFFICER ARCHITECTURAL	Professional	Architect	-	5250	5250	5250	16/09/2003	15/03/2004	0	6	0
5	ROYAL PALMS INDIA PVT LTD	ARCHITECT	Professional	Architect	-	12000	12000	12000	11/06/2004	10/01/2005	0	7	0
6	ALL INDIA INSTITUTE OF LOCAL SELF GOVERNANCE	PLANNER	Professional	Town Planner	-	55000	4600	55000	15/11/2015	30/09/2017	1	10	16
7	AACUSOL CONSULTANT	PRINCIPAL ARCHITECT	Professional	Town Planner AND Valuation of Lands and Buildings	-	60000	4600	45000	08/11/2012	14/11/2015	3	0	7
8	AACUSOL CONSULTANT	PRINCIPAL ARCHITECT	Professional	Town Planner AND Valuation of Lands and Buildings	-	70000	4600	80000	01/10/2017	01/09/2019	1	11	1
9	Idan Consultancy Services Pvt. Ltd.	Town Planner	Honorarium	Town Planner	Otherwise	50000	4600	77770	16/01/2017	31/08/2019	2	7	16

3. The learned Counsel for the Applicant then referred to Circular of 19th May, 2023 which disclosed the names of 7 Candidates who were required to bring their necessary documents as their experience had been held as valid for the post of Assistant Director, Town Planning, Group-A.

4. The learned Counsel for the Applicant submits that his name should have been included in waiting list, if there was no doubt about the period of experience. He submits that though Applicant has secured highest marks and above 7, he was not called for interview. Hence, this OA.

5. The learned Counsel for the Applicant submits that no reason is given by the 'Expert Committee' that Applicant is not having the requisite experience.

6. The learned Counsel for the Applicant prays that the matter is to be referred to 'Expert Committee' for the reason of rejecting the candidature of the Applicant for not having the requisite experience.

7. The learned CPO relied on the Affidavit-in-Reply dated 03.08.2023 by Respondent No.2 of Mr. Sanjay T. Sherkar, Under Secretary, MPSC, Navi Mumbai. She submits that the objection raised by the learned Advocate for the Applicant in respect of declaring the list of 7 Candidates and calling upon them to produce their 'Experience Certificates'. She

relies on Para 15.1 of the said Affidavit. She further submits that the 'Experience' required in Advertisement No.003 and 004 of 2022 is considered.

8. The learned CPO points out to contents of Para 10 of the Affidavit-in-Reply of Shri Shrikant M. Deshmukh, Deputy Director, Town Planning. She further points out the 'Expert Report' of Assistant Director, Town Planning in respect of Advertisement No.003 and the 'Expert Report' of Town Planner in respect of Advertisement No.004/2022. In Advertisement No.003, the required experience is of 3 years, 9 months and 17 days and in Advertisement No.004, the required experience is of 3 years, 9 months and 15 days in a responsible position. The Reports are also different.

9. The learned CPO submits that the Applicant has applied for 'Assistant Director, Town Planning' having experience not less than five years in Town Planning or Town Planning and Valuation of Lands and Buildings but not in responsible position, after obtaining the above qualification. This is pertaining to the 'Experience' which is one of the criterion for that post. The learned CPO submits that at the same time, the Respondents have issued Advertisement for the post of 'Town Planner' which is a subordinate post for which the criterion of 'Experience' was only 3 years in Town Planning or Town Planning and Valuation of Lands and Buildings but not in responsible position.

10. The learned CPO points out that the 'Corrigendum' was published on 15.02.2022 and by this 'Corrigendum', a specific Pay Grade is specified. It was changed from 4400 to 4300 for 'Assistant Town Planner'. Learned CPO further submits that the experience given by the Applicant was verified by the State Government. The 'Experience' was given under Clause 9 and was scrutinized by the Department and it is mentioned in Para 10, which is as under :-

“(i) The Experience Certificates at Sr. No. 1 & 2 are before acquiring the degree. Hence, cannot be considered as experience.

(ii) The Experience Certificates at 1 to 8 are in Private Institutes, that too on contractual basis.

(iii) The work experience mentioned in the Experience Certificates at Sr. No. 3 & 4 is not in accordance with the experience mentioned in the above said Recruitment Rules.

(iv) The Experience Certificates at Sr. No. 6 to 9 are of different Institutes/Department but are of the same period i.e. overlapping period.

(v) From Sr. No. 9, it seems that, the Applicant is working in Municipal Corporation of Greater Mumbai in Architect Department as Sub Engineer Architect since 16.09.2019. In nature of post, it is mentioned as, Supervising/Administrative Professional. However, in Nature of Duty, it is mentioned as performing the duties in Development Plan, Development Permissions and Maharashtra Regional and Town Planning Act, 1966.”

The experience in Clause Nos.6 to 8 are over-lapping.

11. The learned Counsel for Respondent No.3 submits that there are 2 posts for OBC Candidates and even assuming that Applicant is going to succeed, it will not affect Respondent No.3, as he recommended at Serial No.1 and has secured 155 marks. The Respondent No.4 has secured 129.50 marks. The verification of documents was taken place on 14.07.2023 and therefore there should not be any reason to make him as party Respondent No.3.

12. The learned Counsel for Respondent No.4 submits that Clause No.9 does not match with information filled-in by the Applicant while submitting On-line Application. Learned Advocate submits that the 'Experience Certificate' is not in prescribed Form. There is variance in the information supplied by Applicant while submitting On-line Application and his 'Experience Certificate' was assessed by the 'Expert Committee' and it is found that the experience is over-lapping. The 'Experience Certificate' was after cut-off date.

13. The learned Counsel for Respondent No.4 relies on the report of 'Expert Committee' who assessed the work experience of the Applicant. It is mentioned in the report about which period is valid and which is not valid.

14. The learned Counsel for Respondent No.4 submits that the Applicant has given 'Non-Creamy Layer Certificate' to be considered his reservation in OBC Category. The said Certificate is of 08.06.2018 which was expired after 3 years i.e. 08.06.2021 and the Advertisement is dated 28.01.2022, and therefore, his case is not considered in the category of Non-Creamy Layer, but he can be considered in 'Open Category'.

15. The learned Counsel for Respondent No.4 challenges the locus. The Respondent Nos. 3 and 4 belongs to OBC Category. The learned Advocate further submits that unless Applicant proves his case that his application under OBC Category withholding a valid NCL Certificate, then only he can prove his locus.

16. The Experience Information submitted in On-line Application by the Applicant at Serial Nos.6, 7, 8 and 9 are disputed. The Clause No.8.2 of Advertisement No.003/2022 in respect of 'Experience' dated 28.01.2022 reads as under :-

“Having experience not less than five years in Town Planning or Town Planning and Valuation of Lands and Buildings in a responsible position, after obtaining the above qualification.”

[emphasis placed]

17. The contents of Para 8.1 which is captioned as “शैक्षणिक अर्हता” includes ‘Degree in Civil Engineering or Civil and Rural Engineering or Urban and Rural Engineering or Architecture or Construction Technology or Urban Planning of a University or Equivalent Qualification’. The Applicant therefore is evidently fulfilling the ‘Educational Qualifications’.

18. The contents of Para 8.2 which is captioned as “अनुभव” have to be read together with contents of Para 8.4 which is captioned “अनुभवाच्या दाव्याबाबत”. Para 8.4 reads as follows :-

“८.४ अनुभवाच्या दाव्याबाबत :-

- (अ) शासन पत्र, नगर विकास विभाग, क्रमांक :- नियुक्ती - ११२१/प्र.क्र.१८३/नवि-२७, दिनांक १२ जानेवारी २०२२ अन्वये उपरोक्त ८.२ मध्ये नमूद आवश्यक अनुभव - शासकीय संस्था अथवा निम्न-शासकीय संस्था अथवा शासनाचे अंगीकृत उपक्रम अथवा शासन नियंत्रित संस्था अथवा कंपनी अधिनियमांतर्गत नोंदणीकृत संस्था किंवा शासनाच्या कोणत्याही कायद्यान्वये नोंदणीकृत असणा-या संस्था यामध्ये संचालनालयातर्गत सहाय्यक नगर रचनाकार (गट-ब) (६व्या वेतन आयोगानुसार वेतन श्रेणी रुपये ९,३००-३४,८००, ग्रेड पे रु. ४,४००) (७व्या वेतन आयोगानुसार एस-१५: ४१,८००-१,३२,३००) या वेतनश्रेणी पेक्षा कमी वेतनश्रेणी नसेल अशी वेतनश्रेणी असलेल्या पदावरील नगर रचना व जमीन अथवा इमारतीचे मूल्यांकन या विषयांवरील ५ वर्षांपेक्षा कमी नसेल एवढा प्रत्यक्ष अनुभव ग्राह्य धरण्यात येईल.
- (ब) आयोगाच्या ऑनलाईन अर्ज प्रणालीद्वारे विविध स्वरूपाचे दावे करताना अथवा दावे अह्यावत करताना प्रस्तुत जाहिरातीस अनुसरून अनुभवाच्या दाव्यानुसार पात्र होण्यासाठी उमेदवाराने Nature of Job-Town Planning/Town Planning and Valuation of Lands and Buildings /Town Planner/Town Planner and Valuation of Lands and Buildings/Assistant Town Planner/Assistant Town Planner and Valuation of Lands and Buildings असे नमूद करणे अनिवार्य आहे त्याशिवाय ऑनलाईन अर्ज प्रणाली द्वारे अर्ज स्वीकृत होऊ शकणार नाही.’’

19. The Applicant has claimed to have experience of more than 5 Years in Town Planning or Town Planning and Valuation of Lands and Buildings while working in responsible position. Hence, it is necessary to match the entries of Column No.2 – Designation (Post Held) and Column No.5 – Nature of Job with regard to disclosure of information by the Applicant about his

‘Experience’. The relevant extract of ‘Experience Information’ submitted by Applicant is as follows :-

Sr. No.	Designation (Post Held)	Nature of Job
1	V.P. DESIGN DEVELOPMENT	Town Planner and Valuation of Lands and Buildings
2	TRAINEE ARCHITECT	Architect
3	ASSISTANT ARCHITECT	Architect
4	OFFICER ARCHITECTURAL	Architect
5	ARCHITECT	Architect
6	PLANNER	Town Planner
7	PRINCIPAL ARCHITECT	Town Planner AND Valuation of Lands and Buildings
8	PRINCIPAL ARCHITECT	Town Planner AND Valuation of Lands and Buildings
9	Town Planner	Town Planner

The ‘Experience Information’ submitted by Applicant indicates that for Sr.Nos.3, 4 and 5; the ‘Designation (Post Held)’ is of ‘Architect’; while ‘Nature of Job’ is also of ‘Architect’. Further for Sr. No.6 and 9; the ‘Designation (Post Held)’ is of ‘Planner’ & ‘Town Planner’ while ‘Nature of Job’ is also ‘Town Planner’. However, the mismatch occurs in Sr.No.7 and 8; wherein ‘Designation (Post Held)’ is of ‘Principal Architect’ but the ‘Nature of Job’ is of ‘Town Planners and Valuation of Land and Building’.

20. The professional practice in areas of ‘Town Planning’ and ‘Valuation of Land & Buildings’ and ‘Architecture’ are as different as ‘Chalk and Chiese’. While ‘Architecture’ is mainly concerned with ‘Design and Construction of Buildings in Towns & Cities’, the ‘Town Planning’ and ‘Valuation of Land & Buildings’ principally deals with overall Planning and Development of Towns & Cities. The basic Educational Qualifications of ‘Architecture’ and ‘Urban Planning’ at the University Level are not only different, but also are their ‘Professional Bodies’ the ‘Council of Architects’ and ‘Institute of Town Planners’.

21. The experience of candidates as per Para 8.2 has to be specifically of in field of 'Town Planning or Town Planning and Valuation of Lands and Buildings' which has to be read with Para 8.4(अ) which 'Nature of Job' - 'Town Planning/Town Planning and Valuation of Lands and Buildings /Town Planner/Town Planner and Valuation of Lands and Buildings/Assistant Town Planner/Assistant Town Planner and Valuation of Lands and Buildings" but it does not include experience as 'Architect or in Architecture'. Further, 'Para 8.2' which specifically mentions that experience has to be 'In a Responsible Position' which is to be understood with reference to Urban Development Department Letter dated 12.01.2012 which only mentions about such responsible positions which are in Government Organization or Semi Government Organization in Government Corporation, etc. and carries Pay Scale of at least of 'Assistant Town Planner' which is Town Planner (Group-B) as per 6th Pay Commission Pay Scale of Rs.9300-34800 + Grade Pay 4400 and as per 7th Pay Commission Pay Scale S-15 : Rs.41800-132300.

22. The Hon'ble Supreme Court of India in the case of **Secretary (Health) Department of Health & F.W. and Anr. Vs. Dr. Anita Puri & Ors. [Civil Appeal No.11453 of 1996 decided on 30th August, 1996 : (1996 6 SCC 282)]** has made the following observations about the sanctity of opinion of 'Expert Body' like the 'Public Service Commissioner' in considering the suitability of Candidates.

"It is too well settled that when a Selection is made by an expert body like public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of mala fide are made established. It would be prudent and safe for the courts to leave the decisions on such matters to the experts who are more familiar with the problems they face than the courts. If the expert body considers suitability of a candidate

for a specified post after giving due consideration to all the relevant factors, then the court should not ordinarily interfere with such selection and evaluation. Thus, considered we are not in a position to agree with the conclusion of the High Court that the marks awarded by the Commission was arbitrary or that the selection made by the Commission was in any way vitiated.”

23. The assessment of the ‘Experience Information’ of the Applicant as made by the ‘Expert Committee’ constituted by MPSC therefore cannot be interfered with. The contentions of Applicant that he fulfills experience of ‘Town Planning’ or ‘Town Planning and Valuation of Lands and Buildings’ while serving in a ‘Responsible Position’, as required in Para 8.2 read with Para 8.4 of the MPSC Advertisement No.003/2022 therefore holds no merit. The Applicant has attempted to masquerade his experience to try and achieve the threshold of ‘5 Years’ in a ‘Responsible Position’ in the field of ‘Town Planning or Town Planning and Valuation of Lands and Buildings’. Hence, we find no merit in the case of Applicant whose attempt has been no better than to somehow try to ‘Fit a Square Peg in a Round Hole’. Hence, the following order.

ORDER

- (i) The OA is Dismissed.
- (ii) No Order as to Costs.

Sd/-
(DEBASHISH CHAKRABARTY) (MRIDULA BHATKAR, J.)
Member-A Chairperson

Mumbai
Date : 22.12.2023
Dictation taken by :
S.K. Wamanse.

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