

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.817 OF 2023**

**District : Solapur**

Somanath Bhagwan Gore )  
Age : 27 years Occ. Advocate )  
R/at. Village Laul, Tal. Madha, )  
District : Solapur 413 208 ) **....Applicant**

**Versus**

1. The State of Maharashtra )  
Through its Chief Secretary, )  
Department of Law and Judiciary )  
Mantralaya, Mumbai 400 032 )
2. The Maharashtra Public Service )  
Commission, Through Chairperson/ )  
Secretary, having office at Trishul )  
Gold Field, Plot No.34, Sector 11, )  
Opp. Sarovar Vihar CBD Belapur, )  
Navi Mumbai. )
3. Mulani Ashpak Shahajahan )  
Age : 23 years, Occ. Advocate )  
R/o. Village Devadi, Tal Mohol, )  
Dist : Solapur 413 324 ) **....Respondents**

Mr. R.B. Khot, learned Advocate for the Applicant.

Ms. S.P. Manchekar, learned Chief Presenting Officers for the Respondents

Mr. Nikhil Vijay Adkine, learned Advocate for the Respondent No.3 & 4.

**DATE : 18.07.2023**

**CORAM : JUSTICE MRIDULA BHATKAR, CHAIRPERSON  
MS. MEDHA GADGIL, MEMBER(A)**

**J U D G M E N T**

1. Applicant has applied for the post of Legal Assistant, Group (B) (Non Gazetted) in OBC category pursuant to advertisement dated 21.10.2022. Applicant cleared the written examination, thereafter interviews were conducted and merit list was published wherein name Applicant's name appear at Sr. No.17 and Respondent No.3's name appear at Sr. No.11. Both, the Applicant and the Respondent No.3 have applied in OBC category. The marks secured by the Applicant and the Respondent No.3 are 140.50 and 143 respectively. Thereafter, recommendation list was published on 23.06.2023. Applicant's name did not appear in the said recommendation list.

2. Learned Advocate for the Applicant Mr. Khot relied on Clause 7.2 of the advertisement dated 21.10.2022. Learned Advocate has submitted that as per table shown in Clause 7.2, the cut off age of the candidate should be minimum 25 years as on 01.02.2023. The date of birth of Respondent No.3 is 30.10.1999, therefore as on 01.02.2023 he is 23 years and 3 months. Therefore, on the ground the Respondent No.3's appointment is challenged by the Applicant.

3. Learned C.P.O. for the Respondents Ms. Manchekar has filed short affidavit-in-reply dated 17.07.2023 on behalf of Respondent No.2, through Ms. Megha Shahaji Dhere, Under Secretary, M.P.S.C. on the point of age and eligibility to apply for the post of Assistant (Legal),

Group-B, Non-Gazetted. It is submitted that inadvertently the minimum age is mentioned as 25 years in the advertisement. While receiving the applications online the criteria of minimum age is applied as 19 years. Out of total 1869 applications, applications of 57 candidates were below 25 years. So the application forms of the candidates having the age between 19 to 25 years as on 01.02.2023 were accepted and were held fully eligible for the posts and thereafter screening test was conducted on 17.03.2023. As the result of screening test total 67 candidates were called for the interview for 12 posts and final result was published on 23.06.2023. The Respondent No.3 was held eligible on merit though he was 23 years and 3 months old and so duly recommended for the post as per the merit.

4. Learned Advocate for the Applicant has relied on the following judgments :

(i) Judgment of High Court of Judicature at Bombay, Aurangabad Bench in the case of **Supriya Vinayak Gawande Versus The State of Maharashtra in Writ Petition No.5294/2019, Civil Application No.9298/2021, dated 02.08.2022.**

(ii) **Renu & Ors. Versus District & Sessions Judge, Tis Hazari & Anr, Civil Appeal No.979/2014 decided on 12.02.2014**

5. The learned Advocate Mr. Nikhil Vijay Adkine, appearing for the Respondent No.3 & 4 has relied on the judgment of **Ashish Kumar Versus State of Uttar Pradesh and Other reported in (2018) 3 SCC 55.** which pertains to the recruitment process wherein it is held that if there is variance in the advertisement and the statutory rules, then the statutory rules would take precedence.

6. In the present case, there are Rules for the Recruitment of Assistant (Legal) wherein there is no specific age limit, so there is variance in the advertisement and Recruitment Rules. Under such circumstances, the Rules prevail. Moreover in the affidavit dated 17.07.2023 of the Under Secretary it is mentioned that inadvertent mistake has occurred in Clause 7.1 in the advertisement.

7. In the judgment of **Supriya Vinayak Gawande (supra)**, the Hon'ble High Court Bombay, Bench at Aurangabad the Petitioner aspiring to be Talathi has challenged the order of the Tribunal cancelling her selection in the category of NT-C Female Category. In the said judgment the Division Bench has relied on the case of **Bedanga Talukdar Versus Saifudaullah Khan & Ors. reported in AIR 2012 SC 1803** which states as follows :

“23. ... .. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There can not be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete.

In the present case there is no issue of having the power of age relaxation with the authority because there are already specific rules for the recruitment of Legal Assistant in existence where no age limit is prescribed, so the flaw which was occurred in the advertisement was rectified during the selection process which is consistent with the Rules.

In the judgment of **Renu & Ors (supra)** of the Hon'ble Supreme Court the issue was pertaining to the appointment of Class IV employees in the courts subordinate to Delhi High Court. In the said judgment the Hon'ble Supreme Court has made reference of the ratio laid down in the case of **State of Orissa & Anr. Versus Mamata Mohanty reported in (2011) 3 SCC 436** wherein it is held that Article 16 of the Constitution provides equality of opportunity to all in public employment and therefore appointments are to be made by open advertisement so as to enable all the eligible persons to compete on merit. It was further argued that due to mistake in the advertisement of putting the age limit, the candidates below the age group of 25 to 19 years were deprived off the opportunity to make applications for this post.

8. None of the persons between the age group of 19 to 25 years has approached the Tribunal on the ground of deprivation of opportunity in the public employment for the post of Legal Assistant on account of putting the specific minimum age limit in the advertisement. The Applicant has participated in the recruitment process. The Applicant's objection that Respondent No.3 is not having the minimum age as mentioned in the advertisement cannot be entertained mainly on the ground that there is no such specific age limit prescribed in the Recruitment Rules itself. On this point we take support of the ratio laid down in the case of **Ashish Kumar (supra)** wherein specially stated that in case of inconsistency in the advertisement and the rules, the Rules prevail.

9. In view of above, we hold that the selection of Respondent No.3 cannot be faulted only on the ground that he is below the minimum age. The Respondent No.3 is meritorious than the Applicant. We, therefore, find no merit in the O.A. and the same stands dismissed.

Sd/-  
**(Medha Gadgil)**  
**Member (A)**

prk

Sd/-  
**(Mridula Bhatkar, J.)**  
**Chairperson**