

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI, BENCH AT AURANGABAD
ORIGINAL APPLICATION NO. 184 OF 2013**

DISTRICT :Nanded

Mohammad Nadeem Hashmi Mohammad)
Saleem, Age:29 years, Occu. Education,)
R/o. Near Sana High School,)
In front of Hashmi Manzil,)
House No.796, Chaitanya Nagar,)
Nanded Tq. & Dist. Nanded)
Pine Code 431 605.)...**Applicant**

VERSUS

1. The State of Maharashtra,)
Through the Secretary,)
Department of Urban Development)
Mantralaya, Mumbai-32.)
2. The District Selection Committee,)
For the posts in Municipal Council,)
Through President Collector, Nanded.)
3. The Collector,)
Collector Office, Nanded.)
4. The Commissioner & Director)
Nagar Parishad,)
Administrative Directorate,)
M.S. Mumbai.)
5. Bachche Ramakant Nandiappa,)
Age: major,)
R/o.: C/o Ankita S.T.D. near bus)
Stand At. Ardhapur, Tq. Ardhapur.)
Dist. Nanded, Pin Code- 431 704.)

6. Chaudekar Shrihari Gangadhar,)
 Age major,)
 R/o. N D 1 A. 4-E-51)
 House No.11 - 5 - 320)
 Cidco Nanded)
 Dist. Nanded, Pin. Code. 431 603.)
7. Chavan Vijaykumar Subhashrao)
 Age major,)
 R/O. C/o Ram hiranman Chavan)
 In front of S.T. Workshop)
 Ambajogai Road, At. Latur)
 Tq. Dist. Latur, Pin. Code. 413512.)....**Respondents**

Shri M.R. Kulkarni, learned Advocate for the Applicant.

Shri M.P. Gude, learned Presenting Officer for the Respondent Nos. 1 to 4.

None for the Respondent No.5 to 7.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri B. P. Patil, Member (J)

DATE : 08.03.2017

PER : Shri Rajiv Agarwal, Vice-Chairman

ORDER

1. Heard Shri M.R. Kulkarni, learned Advocate for the Applicant and Shri M.P. Gude, learned Presenting Officer for the Respondent Nos. 1 to 4. None for the Respondent No.5 to 7.

2. This Original Application has been filed by the Applicant challenging the selection list for the post of Maharashtra Municipal Water Supply, Sewerage and Sanitation Engineering Service, Grade 'C' (Group 'C'), prepared on 4.2.2013 by the Respondent No.2. The Applicant's name was not included in the list, though he claims that he was eligible for selection to that post.

3. Learned Counsel for the Applicant argued that the Applicant belongs to O.B.C. category and at the time of advertisement, which was issued on 21.12.2012 by the Respondent No.2, he had Diploma in "Production Engineering". The Applicant had applied for the post viz. Maharashtra Municipal water Supply, Sewerage and Sanitation Engineering Service, Grade 'C' (Group 'C'), pursuant to the aforesaid advertisement. The Applicant's name was included in the list of qualified candidates, and he was allowed to appear in the written examination, in which he scored 116 out of 200 marks. The Applicant was interviewed on 3.2.2013. However in the selection list published on 4.2.2013 on the web-site, the Applicant name was not included. Candidates, who scored less marks than the Applicant were selected. The Respondent No.5 scored 113 marks, while the Respondent No.6 scored 118 marks. The Applicant had scored more marks in the Written Examination alone. Learned counsel for the Applicant argued that the decision of the Respondent No.2 is illegal, arbitrary and discriminatory.

4. Learned Counsel for the Applicant contended that the Diploma in Production Engineering is equivalent to Diploma in Mechanical Engineering. A Diploma holder in Production Engineering can be admitted to Degree Course in Mechanical Engineering. By G.R. dated 25.4.1990, degrees and diplomas in Production Engineering are recognized as equivalent to the Degrees & Diplomas in Mechanical Engineering. Accordingly, the Respondent No.2 had committed as grave mistake in not selecting the Applicant for the post for which he had applied.

5. Learned Presenting Officer (P.O.) argued on behalf of the Respondent Nos. 1 to 4, that the Respondent No.3 e.g. Collector of Nanded District, was the Chairman of the District Selection Committee viz. the Respondent No.2 in this O.A. This Committee has issued advertisement dated 21.12.2012 for selection to various Group 'C' (Class III) posts in the Municipal Councils in Nanded District. As per the Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships State Services (Absorption, Recruitment and Conditions of Service) Rules, 2006 notified on 11.1.2007, the qualifications required for appointment by nomination for posts are given in Appendix III. For Maharashtra Municipal Water Supply, Sewerage and Sanitation Service, Grade 'C' (Group 'C') the following qualifications prescribed:-

- (c) Maharashtra Municipal Water Supply, Sewerage and Sanitation Engineering Service Grade 'C'.
1. **Recruitment to the post of Grade C in the service shall be made.-**
- (A) By nomination on the basis of result of combined competitive examination to be held by the Consultative Authority in accordance with the rules prescribed by Government.
- To be eligible for appearing to such examinations, a candidate shall,
- (i) Hold a Degree or Diploma in Engineering (Mechanical/ Environmental)
- Or**
- A Post Graduate Degree or Diploma in Environmental Science.
- (ii) Have passed MSCIT Exam.
- (iii) Possess sufficient knowledge of Marathi.

It is clear that a Diploma or degree in Mechanical or Environment Engineering alone is recognized as qualification for the post. There is no provision in the rules for recognizing 'equivalent' degree/ diploma. Learned P.O. argued that Aurangabad Bench of Hon'ble H.C. in W.P.No.8030 of 2015 in the case **of Pallavi Sadashiv Bande Vs. Government of India and Others** by judgment dated 2.3.2016 has held it is not for the courts to decide whether a particular education qualification should or should not be accepted as equivalent to the qualification prescribed by the Authority. Here the statutory rules framed under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial, Townships Act, 1965 do not recognize any equivalence. Degree or Diploma either in Environmental

Engineering or Mechanical Engineering is required for the post in question. Admittedly, the Applicant had Diploma in Production Engineering, and therefore, he was rightly not considered for the post for which he had applied. Learned P.O. argued that the Applicant was allowed to participate in the selection post by mistake but that will not confer any right upon him to claim appointment or challenge the selection process.

6. We find that the Applicant is claiming that he was allowed to participate in the selection process on the basis of his application form and certificate of diploma in Production Engineering. He is, therefore, claiming that once the Respondent no.2 had allowed him to participate in the selection process, the Respondent No.2 has no legal authority to cancel his candidature later. We are unable to accept this argument. The Respondent No.2 has full authority to rectify any mistake at any stage of the selection process or even after the process is complete. Obviously, a candidate not qualified for a post, if selected and appointed by mistake, does not acquire any vested right for appointment or continuation in that post.

7. The main issue for our consideration in this O.A. is whether the Respondent No.2 correctly canceled the candidature of the Applicant for the post in question. Admittedly, the Applicant does not hold diploma either in Environmental or Mechanical Engineering. The rules do not

stipulate that any degree/diploma equivalent to the degree/diploma in the Environmental / Mechanical Engineering will be sufficient for selection for the post. The Applicant's reliance of equivalence certificate dated 2.4.2013 issued by the Maharashtra State Board of Technical Education, Mumbai, may be used for educational purposes, but it cannot be used to determine eligibility under statutory Rules for employment. Hon'ble H.C. in the case of Pallavi Sadashiv Bande (supra), relying upon the judgment of Hon'ble S.C. in the case of State of Rajasthan and Others Vs. Lata Arun and other judgments of Hon'ble S.C. has clearly held that degree of B.Sc. (Agricultural Bio-Technology) may or may not be equivalent to degrees mentioned in the recruitment rules viz. B.Sc. in Agriculture, Horticulture, Animal Husbandry etc. However, if that degree is not mentioned in the Recruitment Rules or advertisement, and no equivalence is provided, it is not for the courts to decide whether a particular educational qualification should or should not be accepted. The facts in the aforesaid W.P. are remarkably similar to the facts in this O.A. The Applicant cannot claim eligibility for selection to the post in question on the basis of equivalence, when the rules do not recognize any equivalence.

8. Learned Counsel for the Applicant has relied on the judgment of Aurangabad Bench of Hon'ble H.C. dated 6.7.2012 in W.P.No.2516 of 2011. Hon'ble H.C. has held that the qualification in the rules appeared to be only

illustrative. In the present case, qualification is definitive and this judgment is clearly distinguishable.

9. In another judgment dated 6.7.2007 in W.P.No.5251 of 2006, Aurangabad Bench of Hon'ble High Court the issue was whether the qualification of B. Tech. (Agricultural Engineering) was sufficient for the post of Agriculture Officer, Extension Officer (Agriculture) and Gram Sevak. In that case, the Government had issued instructions on 27.4.2007 clarifying that B. Tech. (Agricultural Engineering) is a degree pertaining to the subject of Agriculture. In the present case, the Department has not accepted equivalence of various Diplomas. The case is clearly distinguishable.

10. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

(B.P. PATIL)
MEMBER (J)

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 08.03.2017

Place : Aurangabad

Dictation taken by : SBA

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