

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 590 of 2017 (D.B.)**

Jyoti Pundlik Manwatkar,
Aged about 34 years,
Occupation : Nil,
R/o Ganesh Nagar, Kanhan,
Post Kanhan, Tq. Parshioni,
District Nagpur.

Applicant

Versus

- 1) The State of Maharashtra
through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai-32.
- 2) The Commissioner,
Office of Social Welfare Commissionerate,
3 Church Path, Maharashtra State,
Pune.

Respondents.

Shri A.R. Ingole, Advocates for the applicant.

Shri A.M. Khadatkar, P.O. for the respondents.

**Coram :- Shri Shree Bhagwan,
Member (A) and
Shri A.D. Karanjkar, Member (J).**

JUDGMENT

Per : Member (A).

(Delivered on this 23rd day of January,2019)

Heard Shri A.R. Ingole, learned counsel for the applicant
and Shri A.M. Khadatkar, learned P.O. for the respondents.

2. In this O.A. the applicant is claiming appointment on the post of Assistant Teacher (Maths/Science) (Group-A/B) on the establishment of Government Resident School under the Social Welfare Commissionerate. The material facts are as under :-

3. The respondent no.2 has issued a Notification dated 05/09/2015 dated 07/09/2017 for filling up the posts of Assistant Teachers (consolidate salary) on the establishment of Government Residents School under the Social Welfare Commissionerate and in pursuance of the notification an advertisement dated 06/10/2015 (Anx. A-1) was published. In pursuance of the said advertisement the applicant applied under SC (female) category for the post of Assistant Teacher in Maths as well as Science. The applicant scored 89 marks in Maths and 87 marks in Science. The respondent no.2 prepared provisional merit cum select list on 01/03/2017 (Anx. A-2,P-20) in which the applicant stands at Sr.No.19 for Science category and at Sr.no.27 for Maths category. Thereafter the respondent no.2 issued letter no. I dvk@vklFkk&5 ¼v½@l I hki ef' k{k d 2016&17@dk&6@529] dated 04/03/2017 (A-3,P-28) to the applicant and directed her to produce the documents for verification and in the said letter there was no mention that the applicant shall produce domicile certificate. The applicant submitted the documents as demanded by respondent no.2 on 21/03/2017. After verifying the documents, the respondent no.2 published provisional select list for maths and science on 20/04/2017

(A-5,P-44) in which the applicant was declared as not eligible on the ground that she had not submitted domicile certificate. The applicant thereafter immediately got domicile certificate on 10/04/2017 and submitted the domicile certificate to the respondent no.2 with her letter which was received by respondent on 21/04/2017 (A-6,P-50). Thereafter the respondent no.2 published new selection list on 15/05/2017 which is at P.B. page nos. 52 to 56 in which the applicant's name was not included. Thereafter the respondent no.2 has issued letter on 17/05/2017 (A-7,P-57) to the selected candidates for verification of documents in which there is also no mention of requirement of domicile certificate. It is contention of the applicant that she was never called upon to produce the domicile certificate, it was not mentioned in the advertisement that the domicile certificate was essential, therefore the action of the respondents is illegal, therefore, the application be allowed.

4. The respondents nos.1&2 resisted the claim by filing reply-affidavit. It is submitted that it was mentioned in the advertisement that the candidate shall be resident of Maharashtra, therefore, the applicant was bound to produce the domicile certificate. It is contended that after preparation of the merit list, letter dt/ 4-3-2017 was issued to the applicant by the respondent no.2 and she was directed to produce original documents for verification on 21-3-2017. It is case of the respondent that the applicant submitted the

documents on 21/03/2017 but she did not produce the domicile certificate as per advertisement mentioned in para no.17, therefore, the applicant held ineligible on the ground that the applicant failed to produce domicile certificate at the time of verification of document.

5. It is submitted that the domicile certificate should have been submitted on the date fixed for the verification of documents, but it was not done. According to the respondents as the applicant submitted the domicile certificate dated 10/04/2017 on 21/04/2017 to the respondent no.2 i.e. after one month laps from the date of verification of document i.e. 21/03/2017, therefore, the applicant was held ineligible, therefore, there is no substance in the present O.A. and same is liable to be dismissed.

6. We have perused the various documents placed on record, we have also considered the rival submissions on behalf of the applicant and the learned P.O. It is material to note that there is no dispute about the fact that the applicant was successful in the examination and her name was included in the merit list and she was called upon to produce the original documents for verification. The applicant was present on 21-3-2017 and she produce the documents except the domicile certificate. It is contention of the applicant that the advertisement is silent on this point so also the letter dt/4-3-2017. It is case of the applicant that she learnt for the first time that the domicile certificate was essential when she saw Anx.A-5 dt/21-3-2017 and

learnt that as she did not produce domicile certificate she was disqualified. It is submitted that the applicant on 21-4-2017 wrote letter to the respondent no.2 and forwarded the domicile certificate. According to the applicant this was substantial compliance and as the final list was not prepared it was duty of the respondents to allow the applicant produce the domicile certificate and the respondents should have included her name in the final selection list.

7. It appears that the respondent no.2 issued letter no. I dvk@vkl.Fkk&5 ¼v½@l I Hki ef'k{k d 2016&17@dk&6@529] dated 04/03/2017 (A-3,P-28) to the applicant and directed her to produce the following certificates for verification :-

- 1- 'k{kf.kd ik=rph I oZdkxni =s¼TET xqki =dkl g½
- 2- tkrhpk nk[kyk vko'; d vkgs tkr oSkrk iæk.ki = vl Y; kl I knj djkos I nj inh fuoM >ky; kl fu; Ørh >ky; ki kl u 6 efgU; kP; k vkr tkr oSkrk iæk.ki = I knj dj.ks vko'; d vkgs
- 3- ukM fdæhys j iæk.ki = ¼efgykd kBh jk[kho vl yY; k inkd kBh rl p foeØr tkrh HkVD; k tekth] brj ekxkl oxZo fo'ksk ekxkl iDxZbR; knil kBh jk[kho vl yY; k inkd kBh 2 i rhr½
- 4- viæRokps I {ke vf/kdk&; kusfnysys iæk.ki = ¼fdeku 40%½ ¼viæ menokjkd kBh 2 i rhr½
- 5- [kGkps iæk.ki = ¼[kGMM kBh 2 i rhr½
- 6- ekth I sud vl Y; kclcrps@ ; qn dkGkr fdæk ; qn ul rkaik I sudh I or er >kyY; k fdæk viæRo ; ou ukdjhil kBh v; k; >kyY; k ekth I sudkps QDr , d iky; vl Y; kclcrph vko'; d dkxni = ¼2 i rhr½
- 7- vdkdlyhu@ i dYi xLr@/kj.kxLr@Hkplä xLr vl Y; kpsiæk.ki = ¼2 i rhr½
- 8- brj vko'; d dkxni =s ¼vkllykbZu vtikh Nk; kdr ir] Lor%ps vkG[ki =]i kl i kVZ I kbZt Qk/ksb-½ I knj djkor-
- 9- I ozeG dkxni =lph Nk; kdr ¼I k{kdr dsyht½ 1 ir Loræ I knj djkoh-

10- I nj dlxni = i MrkG.khl kBh vuq fLFkr jkfgY; kl emrok fnyh tk.kkj ukgh o i dgk
dlxni = i MrkG.khl kBh ckykfoystk.kkj ukgh ; kph ukh ?; koh**

8. It is material to note that in the above letter it is nowhere mentioned that the applicant shall produce domicile certificate. It seems that the applicant submitted the documents as demanded by respondent no.2. On perusal of the record it appears that the applicant had submitted following documents which were disclosing fact that she was resident of Maharashtra.

“(i) Certificate of Caste Validity done by the Caste Certificate Scrutiny Committee, Nagpur Division, Nagpur Maharashtra State, dated 29/05/2000.

(ii) Birth Certificate of Gram Panchayat, Kanhan Primpri, District Nagpur dated 09/12/2013 with registration dated 06/12/2013.

(iii) Voter ID No. JVK1456284 issued by the Election Commission of India having address Kanhan Pipari, Bhag-12, Tq. Parshivani, District Nagpur- 441 401, dated 13/01/2008”.

9. The above three documents are quite sufficient to prove that the applicant is the resident of Maharashtra State. Even after verification of the documents by the respondent no.2, the applicant was declared not eligible on the ground that she had not submitted domicile certificate. However, the respondents did not consider the fact that the applicant immediately obtained domicile certificate on 10/4/2017 and submitted it to respondent no.2 on 21/04/2017 (A-5,P-44). In spite of receipt of the domicile certificate the respondent no.2

published new selection list after gap of about one month on 15/05/2017 in which the applicant's name was not included. Thereafter the respondent no.2 has issued letter no. I dvk@vklFkk&5 ¼v½@I I lki f'k{k d 2017&18@dk&6@1123] dated 17/05/2017 (A-7,P-57) to the selected candidates for verification of following documents :-

- 1- 'k{kf.kd i k=rph I oZdkxni =s¼TET xqki =dkl g½
- 2- tkrhpk nk[kyk vko'; d vkgstkr oškrk i ek.ki = vl Y; kl I knj djkos I nj inhfuoM >kY; kl fu; Ørh >kY; ki kl u 6 efgU; kP; k vkr tkr oškrk i ek.ki = I knj dj.ksvko'; d vkg
- 3- ukW fdæhys j i ek.ki = ¼efgykd kBh jk[kho vl yš; k i nkd kBh rI p foeØr tkrh HKVD; k tekri] brj ekxkl oxZo fo'ksk ekxkl i DxZbR; knhl kBh jk[kho vl yš; k i nkd kBh 2 i rhr½
- 4- vi æRokps I {ke vf/kdk&; kusfnys i ek.ki = ¼fdeku 40%½ ¼vi æ menokjkd kBh 2 i rhr½
- 5- [kGkpsi ek.ki = ¼[kGMW kBh 2 i rhr½
- 6- ekth I šud vl Y; kckrps@; qn dkGkr fdok ; qn ul rkuk I šudh I or er >kyš; k fdok vi æRo ; ou ukdjhI kBh v; kš; >kyš; k ekth I šudkps ODr , d i kY; vl Y; kckrph vko'; d dxni = ¼2 i rhr½
- 7- vakdkyhu@ i dYi xLr@/kj.kxLr@Hkplä xLr vl Y; kpsi ek.ki = ¼2 i rhr½
- 8- brj vko'; d dxni =s¼vWlykbZu vt kph Nk; kdr ir] Lor%ps vkG [ki =] i kl i kV I kbZt Qk/ksb-½ I knj djkor-
- 9- I oZeg dxni =hph Nk; kdr ¼I k{kdr dšyš½ 1 i r Loræ I knj djkoh-
- 10- I nj dxni = i MrkG.khl kBh vuq fLFkr jkfgY; kl eprok< fnyh tk.kj ukgh o i qgk dxni = i MrkG.khl kBh cšykyfoystk.kj ukgh ; kph ukn ?; koh**-

10. In the above letter also there is no mention that domicile certificate shall be produced. It seems that even though the applicant submitted the documents disclosing that she was residing in Maharashtra State i.e. Caste Validity Certificate, Birth Certificate and Voter ID even thereafter Domicile Certificate the respondent no.2

did not consider the name of applicant for appointment to the post of Assistant Teacher on the establishment of Government Resident School under the Social Welfare Commissionerate. This Tribunal also vide order dated 25th October,2018 has observed as follows :-

“2. From the admitted fact on record, it is clear that the applicant has applied under SC (Female) for the post of Assistant Teacher in Maths as well as Science. She has got 89 marks in Maths and 87 marks in Science. As per communication dated 4.3.2017, she was directed to produce the certificates for verification (A-3) and in the said letter, there was no mention that the applicant shall produce domicile certificate. Though in the advertisement, according to the the learned P.O., it is mentioned that the applicant shall produce domicile certificate to prove that she is resident of Maharashtra State. It seems that the applicant has produced relevant documents which include date of birth certificate and school leaving certificate etc., from which it is clear that the applicant was born at Kanhan Pimpri, Tehsil-Parseoni, District Nagpur. Had she produced the domicile certificate, she should have been appointed without any objection. In short, though the applicant stood on merit for appointment, the same has been denied to her only because she could not produce domicile certificate. Admittedly subsequently, within a short span of time, the applicant has produced domicile certificate also and there is no dispute that she is domicile of Maharashtra State. In such circumstances, the applicant’s claim has been denied only on technical ground.

3. Vide order dated 31.8.2018, the Ld. P.O. requested to take instructions as to whether the post in the category of SC (Female) in Maths or Science was available and what is the status of process of recruitment and whether it is completed in all respects. The Ld. P.O.

accordingly made a statement and submitted that no post of Assistant Teacher in Maths or Science is available. He has also produced some documents to that effect which are marked "X" for the purpose of identification.

4. We have perused the communication received by the Ld. P.O. from the Commissioner of Social Welfare (M.S.), Pune, so also various documents placed on record alongwith Exh.X. From the said documents, we are satisfied that the respondents are making vague statement before this Tribunal. At one stage, they admit that nine posts of Assistant Teachers in Maths or Science were to be filled in. However, total six posts are only filled in. Minutes of the meeting dated 1.3.2018 shows that even under the reserved category, out of 33 posts, only 27 posts are filled in, whereas on merit, only 33 posts are filled in. In para 4, it is mentioned that 10 posts are excess. The respondent authorities have also requested the Government to grant sanction to 100 (84 +16) more schools. In para 4 of the minutes, it is mentioned that in 126 posts are vacant in various categories. Naturally, if the posts are sanctioned, more teachers will be required. Information given by the respondents is, therefore, very vague and, therefore, we direct the respondents to file an affidavit on following points:-

(i) How many exact vacancies are available in the cadre of Assistant Teacher in Maths and Science ?

(ii) Sanction of how many more schools are sought from the Govt. and if such sanction is given, how many posts of Assistant Teachers in Maths and Science will be available ?

(iii) Whether the process is fully complete or not and whether the applicant can be accommodated, if such posts are sanctioned ?

(iv) Whether the respondents can give undertaking to the effect that they will issue the appointment order to the applicant, if the posts are sanctioned.

(v) Affidavit shall be filed within three weeks.”

11. Even second affidavit filed by the Department is vague and not justified clearly actions taken by the Department.

12. In our opinion in the above situation the action of the respondent no.2 is illegal. As the applicant was never called upon to produce domicile certificate, therefore, it is not possible to accept that the applicant was at fault. In the advertisement specific instructions were given to the candidates. The instruction no.4 was no educational document shall be annexed with the application the candidate shall upload TET passing certificate along with the application. It was also mentioned in the advertisement that the candidates in the merit list will be called for verification of documents. On perusal of the letter dt/4-3-2017, it seems that the respondents have specifically demanded the documents of ten category, then who had prevented them to demand the domicile certificate. After considering the entire facts it must be said that issue of domicile certificate was kept silent in the advertisement and the letter, therefore, the respondents had no right to reject the applicant for this reason. In view of the discussions in forgoing paras, it clearly appears

that grave injustice is caused to the applicant as she is disqualified and not selected, hence, we pass the following order :-

ORDER

(i) The O.A. is partly allowed in terms of relief clause 7 (i) and (ii).

(ii) The Commissioner, Social Welfare, Maharashtra State, Pune is directed to appoint the applicant as Assistant Teacher (Maths/Science) (Group A/B) on the establishment of Government Resident School under the Social Welfare Commissionerate whenever in future vacancy occurs, in that cadre, on the same terms and conditions mentioned in Notification dated 05/09/2015. (iii)

No order as to costs.

(A.D. Karanjkar)
Member(J).

(Shree Bhagwan)
Member (A).

Dated :- 23/01/2019.

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