

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 606 of 2015 (D.B.)

Mrs. Aparna Sanjay Agarkar,
(Ku. Aparna Sudhakar Rao Nakhate),
Aged about 47 years, Occ. Service,
R/o 305, Anand Palace no.1, Nandanwan Main Road,
Nagpur-09.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Department of Vocational Education & Training
Mantralaya, Mumbai-32.
- 2) The Maharashtra Public Service Commission,
Bank of India Building,
3rd floor Mahatama Gandhi Road, Hutatma
Chowk, Mumbai-01 through its Secretary.
- 3) Jt. Director,
Dept. of Vocational Education & Training,
Regional Office, Morshi Road, Amravati-444 603.

Respondents.

S/Shri P.C. and V.P. Marpakwar, S.M. Khan, Advs. for the applicant.

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

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J) and
Hon'ble Shri Shree Bhagwan, Member(A).**

JUDGMENT**PER: V.C. (J).****(Delivered on this 5th day of May,2018)**

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

2. The applicant is Diploma Engineer (Electrical). She has joined the Department of Vocational Education & Training w.e.f. 16/06/1999 and presently she is working as Junior Apprenticeship Advisor (Technical) w.e.f. 28/05/2009 at Industrial Training Institute (ITI), Khamgaon, District Buldhana.

3. The respondent no.2, the Maharashtra Public Service Commission (MPSC) has published an advertisement no.89/2013 on 01/11/2013 whereby total 26+6 posts were advertised for the posts of Principal, Industrial Training Institute (ITI), District Vocational Education & Training Officer, Assistant Director, Vocational Education & Training (Technical), Directorate of Vocational Education & Training, Maharashtra Education Service, Group (A) (Technical). Out of the total posts, 14 posts were kept for Open category and out of these 14 Open category posts, 4 posts were specifically kept for female candidates.

4. According to the applicant, she applied for the post and was being eligible and has also appeared for interview on 11/03/2015. On 31/08/2015, the MPSC published a merit list and the

list of "Not Eligible Candidates". The applicant's name did not appear in the said list. Thereafter, the MPSC published category wise list of eligible candidates and in the said list also the applicant's name did not appear. Thereafter, the MPSC published revised list as per Annex-A-7 on 31/08/2015, but in the said list also the applicant's name did not appear and surprisingly the posts of open female were reduced from 7 to 5.

5. It is the case of the applicant that she is having more than 14 years experience of working with Vocational Education & Training Department since her joining from 16/06/1999. Out of which, she has worked as a Craft Instructor from 16/06/1999 to 27/05/2009 and from 28/05/2009 till date as Junior Apprenticeship Advisor (Technical) in continuation without break. Thus there was absolutely no reason in not selecting the applicant. The applicant belongs to female category and the respondents instead of appointing her, has reduced the posts of open female category from 7 to 5. The applicant has received letter of rejection on the ground that she has less experience than required. The applicant has therefore claimed that the respondents be directed to declare her result and marks obtained by her in the written and personal interview and to state effect and operation of recommended list / select list.

6. The learned counsel for the applicant submits that the applicant has filed representation on 01/09/2015 and thereafter appeal to the Secretary of the concerned department on 04/09/2015 as per para no. 4.3 (c) of the advertisement, the respondents should have condoned the clause for experience. The Clause 4.3 (c) reads as under :-

“(C) If the candidates having experience for prescribed period are not available in sufficient number, then those having experience of a shorter period (to the extent 40%) may also be considered.”

7. The MPSC has filed reply-affidavit and stated that in para nos. 12&13 on his reply-affidavit the applicant has stated that the applicant was held prima facie eligible for interview, but before conducting interview, the documents of the applicant were verified by the Commission's Office. As per advertisement clause 4.3 (iv) eight years experience mentioned in the clause 4.3 (iii) is needed after acquiring the basic academic qualification mentioned in the advertisement. The applicant passed her diploma in engineering (electrical) with first class on 11/07/2008. Other educational qualification of the applicant is diploma in engineering (Electronic and T.C.) which is not admissible for the post in question as per the advertisement. The last date of filling of the application form was 29/11/2013 and therefore the applicant's experience from 11/07/2008

to 29/11/2013 is only acceptable and which is less than 8 years. At the time of verification of documents before interview, the experience was wrongly calculated and therefore the applicant was interviewed. However, when the final list was prepared and again all documents were checked, it was found that the applicant was ineligible and therefore she was rejected.

8. It is the further case of the respondent, MPSC that total 32 posts were advertised and number of recommended candidates are 31. Result of one post of NT (B) category is being reserved as per the order of Hon'ble High Court in W.P. No.2534/2015 and the same was declared on 31/08/2015. Total 7 posts were reserved for female candidates, out of which 5 candidates are recommended among the available female candidates of respective categories and against two posts of open female category, candidates from among the open male category are recommended.

9. The MPSC further states that as per the Government Circular dated 13/08/2014 the reserved category female candidate cannot be considered for the open female post. If there is no candidate available from the open female category, then such open post can be filled from among the male candidates of open category only and therefore two male candidates are recommended against the remaining two posts of open female category.

10. As regard the clause no.4.3 (c) of the advertisement which states as under :-

“Para no.19 : with reference to para 4.14 I say and submit that the clause 4.3 (c) states that “If the candidates having experience for prescribed period are not available in sufficient number, then those having experience of a shorter period (to the extent 40%) may also be considered” In the present case total number of candidates eligible for the interview by the screening test are 120 which are definitely sufficient in number and hence there is no need to lower down the experience criteria.”

11. This Tribunal was pleased to direct the MPSC to file short affidavit vide order dated 9/2/2016. The MPSC was directed to file list of candidates who were called for interview from the category of open female showing therein the qualification and experience of each candidate. In order to meet out the contention of the learned counsel for the applicant that there was scope for MPSC to invoke para 4.3 (c) of the advertisement which provides that if a sufficient number of candidates with prescribed experience are not available, then those having experience of a shorter period (to the extent 40%) may also be considered, the MPSC has filed short affidavit on 17/06/2016.

12. The MPSC has also placed on record the details of the candidates called for interview from various categories along with the short affidavit. The MPSC has also filed a pursis on 23/04/2018 from which it seems that though the number of posts were available 32,

the total candidates applied for the posts were 2092, out of which 1573 candidates appeared for the examination and 120 candidates were called for interview.

13. The learned counsel for the applicant submits that clause 4.3 (c) as already referred states that if the candidates having experience for prescribed period are not available in sufficient number, then those having experience of a shorter period (to the extent 40%) may also be considered. The learned P.O. has invited our attention to the eligibility clause in the advertisement and particularly clause 4.3 which reads as under :-

(i) Possess a Bachelor's degree in Mechanical or Electrical Engineering or in both at least in second class or a Master's degree in Mechanical or Electrical Engineering or in both, or

(ii) Possess a Diploma in Mechanical or Electrical Engineering or in both at least in second class and have passed sections A and B of the Associate Membership Examination of the Institution of Engineers (India), and

(iii) Have professional experience in a responsible position or experience of teaching the subject in any recognised Technical Institute or combined professional, teaching and research experience, for not less than four years, gained after acquiring the basic academic qualifications mentioned above in the para (i) or (ii), or

(iv) Possess a Diploma in Mechanical or Electrical Engineering or in both at least in second class with eight years experience as mentioned in above in the para (iii).”

14. Admittedly, the applicant in this case is not possessing Bachelor's degree in Mechanical or Electrical Engineering as per Clause (i). She is a diploma holder. As per the aforesaid clause, a candidate possessing a diploma in Mechanical or Electrical Engineering or in both at least in second class must have eight years experience as provided in para (iii) and therefore as per clause (iii) such experience must be gained after acquiring the basic academic qualification mentioned in para (i) or (ii). The basic qualification acquired by the applicant is on 11/07/2008 since she has passed her diploma engineering in electrical with first class on 11/07/2008 and therefore the experience gained by the applicant only after 11/07/2008 has to be considered and such experience from 11/07/2008 to 29/11/2013 is less than eight years. From these facts, it is clear that the applicant was not eligible for the post though inadvertently she was called for interview. Merely because the applicant has been called for interview, that itself will not mean that she has right for selection. If the fact that the applicant is not eligible came to the knowledge of the competent authority and they have decided not to consider her, nothing wrong can be said to have been done by the MPSC.

15. So far as relaxation in case of less experience is concerned, as per para clause 4.3 (c) of the advertisement, from the record it seems that number of candidates were available having sufficient experience and therefore in such circumstances there was no reason for MPSC to exercise its jurisdiction under clause 4.3 (c) of the advertisement.

16. Considering all these aspects, we are satisfied that nothing wrong has been done by the MPSC in rejecting the applicant's claim. Hence, the following order :-

ORDER

The O.A. stands dismissed with no order as to costs.

(Shree Bhagwan)
Member(A).

(J.D. Kulkarni)
Vice-Chairman (J).

Dated :- 05/05/2018.

dnk.