

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI, BENCH AT AURANGABAD
ORIGINAL APPLICATION NO. 774 OF 2012**

DISTRICT :Jalgaon

Suhas S/o Padmakar Kulkarni)
Age:34 years, Occ: Service)
R/o Hanuman Nagar Near)
T.S. Zope School,)
Bhusawal, Dist. Jalgaon.)...**Applicant**

VERSUS

1. Chairman/ Secretary,)
The Maharashtra Public Service)
Commission, Bank of India Bldg.)
3rd Floor, Mahatma Gandhi Rd.,)
Hutatma Chowk, Mumbai.)

2. The State of Maharashtra)
Through Secretary, Department of)
Labour, Mantralaya, Mumbai.)
[Copy to be served on respondents)
Through PO MAT Bench at Aurangabad)]...**Respondents**

Shri Sanket S. Kulkarni, learned Advocate holding for Shri Chandrakant P. Patil, learned Advocate for the Applicant.

Shri N.U. Yadav, learned Presenting Officer for the Respondents.

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 Sanket S. Kulkarni, learned Advocate holding for Shri Chandrakant P. Patil, learned Advocate for the Applicant and Shri N.U. Yadav, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant who has challenged the decision of the Maharashtra Public Service Commission (M.P.S.C.), the Respondent No.1, in not calling him for interview for the post of Assistant Commissioner of Labour (A.C.L.) pursuant to the advertisement dated 23.04.2010.

3. Learned Counsel for the Applicant argued that the Respondent No.1 had issued an advertisement dated 23.4.2010 to fill up posts of A.C.L., Group 'A'. The Applicant had applied for the same. The Applicant had a degree of B.A. and Master of Social Work (M.S.W.). As per para no.5.3 of the advertisement dated 23.4.2010, a candidate was required to have experience of three years in a responsible position. The Applicant had experience of more than 5 years but he was not called for interview. Learned Counsel for the Applicant stated that the Respondent No.1 had arbitrarily changed the eligibility requirement of experience from 3 years to 5 years. Even than the Applicant had the experience of 5 years, and the Respondent No.1 committed a mistake by not calling the Applicant for interview.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent, that in para 8.3 of the advertisement, the Respondent No.1 had made it clear that if a large number of applications were received, short listing criteria based on higher educational qualifications or experience may be prescribed. This is as per Rules of procedure of the Respondent No.1, which are framed in exercise of powers under Article 320 of the Constitution of India. Hon'ble S.C. in the case of **B. Ramakichenin Alias Balagandhi Vs. Union of India & Others: (2008) 1 SCC (C & S) 177** has held that a selection Authority was within its powers to fix any reasonable short listing criteria. Learned P.O. stated that the Respondent No.1 has fixed short listing criteria of 5 years of Minimum experience. As the Applicant's valid experience was found to be less than 5 years, he was not called for interview.

5. We find that the Applicant has challenged the decision of the Respondent No.1 in not calling him for interview for the post of ACL on two counts, viz.

- (i) The Applicant had 5 years of experience and the Respondent No.1 erred in holding that he had less than 5 years of experience, and,
- (ii) If it was held that the Applicant did not have 5 years experience, his experience was more than 3 years and as per para 5.3 the advertisement, the Respondent No.1 was not entitled in Law to enhance the requirement of experience.

6. In para no.5.3 of the O.A., the Applicant had given details of the experience he possessed when he applied for the post of ACL, pursuant to the advertisement dated 23.4.2010. This experience is as follows:-

Sr. No.	Name of the organization/ Employer/ Dept.	Exact dates to be given	Total Period
1	Nirmal Oil Industries	4.7.2001 to 17.4.2004	2 years, 9 months, 14 days.
2	Matoshri Ginning & Pressing Factory	11.8.2004to 26.11.2005	1 years, 3 months 16 days.
3	Shri Ashtavinayak Education & Cultural Mandal	1.10.2007 to 31.8.2009	1 years, 11 months.
4	Mahila Arthik Vikas Mahamandal	16.9.2009 to 15.4.2011	1 year, 7 months.

The Respondent No.1 has not considered the experience of the Applicant in an Educational Body viz. Shri Ashtavinayak Education & Cultural Mandal as relevant experience. Also experience is considered only till 21.5.2010. The Applicant had an experience of 4 years 9 months and 21 days on that basis. These details are given in the affidavit in reply of the Respondent No.1 dated 14.3.2014. We find that the Respondent No.1 has committed no wrong in calculating the experience of the Applicant and he did not have 5 years relevant experience when he applied for the post of A.C.L.

7. Coming to the issue of the short listing, there was a clear mention in para 8.3 of the advertisement dated 23.4.2010, that the Respondent No.1 may apply short listing

criteria, to limit the number of candidates called for interview. This para reads as below:-

“8.3 The Commissioner at its discretion, may shortlist the applications for interview, based on reasonable criteria i.e. experience and /or higher qualification etc. OR may conduct Written objective type Screening test (multiple choice question) to shortlist candidates for interview. The syllabus and medium of question paper and other details for the test shall be displayed on the Commissioner’s web site.”

The Respondent published the short listing criteria on its web site, which, *inter-alia*, provided for experience not less than 5 years (Exhibit R-4). The Respondent No.1 has framed the Maharashtra Public Service Commission Rules of Procedure, 2005 under Article 320 of the Constitution of India (Exhibit R-3). Rule 9 (ii) reads:-

“ (ii) In case, the response to advertisement exceeds the proportion laid down in Rule 9 (i) above, the Commissioner may apply criteria for short listing of candidates. The criteria may pertain to preferential academic qualification or preferential experience as prescribed in the notification issued by the Commission in this regard. If however, no such criteria is prescribed in the notification, the Commission may depending upon the response have to adopt any other suitable criteria for short listing the candidates for interview.”

The right to fix short listing criteria has been upheld by Hon’ble S.C. in the case of Balgandhi (supra). It has been clearly held that valid short listing criteria should be based on some rational and objective basis. Once a short listing

criteria is mentioned in the advertisement, that method alone has to be followed. The Respondent No.1 had published short listing Criteria before the interviews were held. The Respondent No.1 has fixed short listing criteria which is rational and objective. It cannot be challenged.

8. We find that the Applicant has not been able to point out any fault in the decision of the Respondent No.1 in not calling him for interview. There is no merit in this O.A. and it 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

E:\savita\2017\Feb\Aurangabad judgments\O.A.No. 774 of 2012 Vc. & M(J) Appointment.doc