

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 1015/2021 (D.B.)

Sewakdas Pundlikrao Awale,
Age about 53 years, Senior Deputy Director,
Regional Office Directorate of Geology and Mining, 27,
Khanji Bhawan, Cement Road, Nagpur R/o Plot No. 24,
Shanti Park, Harihar Beltarodi Road,
Besa, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra
Through its Principal Secretary, Industry, Energy and Labour
Department, Industry (9) Madam Kama Marge,
Mantralaya, Mumbai-32.
- 2) The Secretary, Maharashtra Public Service Commission,
5, 7, 8th Floor Kuprej Telephone Nigam Building,
Maharshi Karve Marge, Kuprej,
Mumbai-21.
- 3) Shri Gajanan Domaji Kamde,
Mining Officer, Collector Office,
Collectorate Compound, Nagpur-01.

Respondents.

Shri P.S.Wathore and Shri B.Kulkarni, Id. counsel for the applicant.
Shri S.A.Deo, Id. C.P.O. for respondent nos. 1 & 2.
Shri S.S.Sanyal, Id. counsel for the R-3.

**Coram :- Shri Shree Bhagwan, Vice-Chairman and
Shri M.A.Lovekar, Member (J).**

Dated :- 25/03/2022.

JUDGMENT

Per : Member (J).

Heard Shri P.S.Wathore and Shri B.Kulkarni, Id. Counsel for
the applicant, Shri S.A.Deo, Id. C.P.O. for the Respondent nos. 1 & 2 and
Shri S.S.Sanyal, Id. counsel for the Respondent no. 3.

2. Principal contention of the applicant is that respondent no. 3 did not possess requisite experience for being appointed to the post of Joint Director, Directorate of Geology and Mining, Group-A from General/Open Category, and instead he, applicant, who possesses requisite experience should be appointed to the said post.

3. The applicant was appointed by way of direct recruitment by respondent no. 2. He joined on 01.08.1992. On 01.06.2020 he was appointed as a Senior Geologist by direct recruitment by respondent no. 2. On 26.09.2016 he was promoted to the post of Deputy Director. He has thus acquired experience of 28 years in Geological field and Mineral Administration work in a responsible position.

4. On 05.08.2020 respondent no. 2 published advertisement (A-1) to fill up the post of Joint Director, Directorate of Geology and Mining, Group-A (General/Open). It prescribed following eligibility criteria :-

" 4-3 'k%k.f.kd vgrk%& The candidate must –

Possess a post-graduate degree in at least 2nd Class in Geology or Applied Geology or any other qualification declared by Government to be equivalent thereto.

AND THEREAFTER

4-4 ~~vu~~ Possess *practical experience of Geological field work and mineral administration work in a responsible position for a period of not less than 10 years.*"

On internal page no. 6 of the advertisement proforma of certificate of experience to be furnished by the employer on letter head was given. By proclamation dated 12.03.2021 (at page no. 29) issued in furtherance of advertisement dated 05.08.2020, applications from eligible candidates, along with necessary documents, were called. On 20.07.2021 list of eight candidates who had qualified for the Interview was published (A-2). In this list names of respondent no. 3 and the applicant featured at Sr. Nos. 3 & 5, respectively. While shortlisting the candidates following criteria was adopted:-

zjk[khoP; k , dk i nkdjhrk eku; >kyYkk fud"k

Possess a post-graduate degree in at least 2nd Class in Geology or Applied Geology or any other qualification declared by Government to be equivalent thereto.

AND THEREAFTER

*Possess practical experience of Geological field work and Mineral Administration work in a responsible position for a period of not less than **23 years 10 month 17 days.**'*

5. On 28.10.2021 final result was declared (A-3). Respondent no. 3, having secured highest marks in the interview was declared fit for appointment. In merit list of 5 persons the applicant stood immediately below the topper i.e. respondent no. 3, at Sr. No. 2. Since there was only one vacancy name of respondent no. 3 was recommended.

6. Against the aforesaid recommendation the applicant made a representation (A-4) to the Additional Chief Secretary, Industry, Energy and Labour Department. In this representation the applicant stated:-

"egjk"V^a ykdI ok vk; ks] epbz; kpsfn- 20@07@2011 P; k fud"kkud kj I gl pkyd ; k inkl kBhpk vuttko gk ^Possess practical experience of Geological field work and Mineral Administration Work in a responsible position for a period of not less than 23 years 10 months 17 days* vl k ueq vkgs ek>; k ekfgrh i ek.ksJh- xtkuu Mkekth dkeMs gs Hkuty I Ogk.k vkf.k fodkl ; a.kk] egjk"V^a 'kkl u ; k foHkxkP; k vLkFkki uoj 'kkl dh; I or I u 2005 i kl u dfu" B HkKkfud ; k inkoj dk; jr vl Y; kps I etrs rI p Jh dkeMs gs ek- 'kkl u m | ks] mtKz o dkexkj foHkx] ea-ky; epbz; kpsvf/kuLr vl yY; k HkfoKku vkf.k [kfudeZ I pyuky;] ukxi j ; kpsvLkFkki uoj I jGI osusofj" B HkKkfud ; ki nkoj fn- 07-12-2013 jksth : tq >kysys vkgr- Jh dkeMs ; k k HkfoKku o [kfudeZ I pyuky;] egjk"V^a 'kkl u] ukxi j ; k foHkxkpk ^Geological Field Work & Mineral Administration Work* pk , duk 07 o"kkp vuttko vkgs ckdhP; k vuttkokckcr iz ufplg fuekZk >kysysvkgs R; keGsJh dkeMs; k k , duk 23 o"kk10

efgus 17 fnol kpk [kfut ,DI lykjsku o [kfut izkkl ukpk tokcnkjhp; k o egRokP; k inkoj dkedktkpk vuttko vkgs vl sxghr /kj .ks l a Dhrhd okVr ukgh- R; keGsegjk"V"ykdl ok vk; kskuso 'kkl ukusQj fopkj dj. ; kph vko'; drk vkgs R; kdjhrk eh l fou; fourh djhr vkgs

Rkl p] Inj inkckr ^Geological Field Work & Mineral Administration Work* P; k vuttkokckcr ek- egjk"V" izkkl dh; U; k; kf/kdj.k ¼eW½ ukxi ij ; fks 03 idj .ksnk[ky >kysys vl uu U; k; i fo"B vkgs R; ki sdh Jh dMw; kauh egjk"V"ykdl ok vk; kskdMsdsy; k vtke/; sl knj dsy; k [kktxh da uhp; k vuttkokckcrpk vkgs egjk"V" ykdl ok vk; kskus R; kb; k foghr uep; krhy ifjf'k" Bkuq kj Jh- dMw ; kpk [kktxh da uhp; k vuttko vl Y; kus ukdkjysy vl Y; kps egjk"V" ykdl ok vk; kx ; kauh ek- egjk"V" izkkl dh; U; k; kf/kdj.k ¼eW½ ukxi ij ; fksnk[ky dsy; k 'ki Fki =kr uep dsysys vkgs ghp ckc Jh dkeMs; kb; k idj .kh ykxngkrs"

In support of aforesaid objections the applicant relied on his experience certificate and experience certificates of respondent no. 3 (A-5 collectively).

According to the applicant various experience certificates relied upon by respondent no. 3 are not in prescribed form, experience certificate dated 17.03.2021 issued by the present employer of respondent no. 3 shows that respondent no. 3 has experience of only 07 years, respondent no. 2 ought to have verified the documents itself instead of asking respondent no. 1 to do so, this was done to favour

respondent no. 3 and thereby fairness and transparency have been compromised.

7. Further contention of the applicant is that 4 experience certificates [(A-R-3-B) collectively at pages 62 to 65)] will show that the experience mentioned therein cannot be treated to be practical experience of Geological field work and Mineral Administration Work in a responsible post as stipulated by clause 4.4 of advertisement dated 05.08.2020 (A-1).

8. Affidavit in reply filed on behalf of the respondent no. 1 is at pages 69 to 78. In para 6 it is contended –

"6. In view of the above submission it is clear that respondent no. 3 has total experience of more than 26 years in Geological field work and mineral administration till date. The experience certificates of respondent no. 3 show that he has worked for mineral exploration of deposits like coal, limestone, soapstone and other mineral deposits and possesses vast experience in Geological field work, mineral exploration, administration, and mine planning, which is fully relevant to the experience required for the post of Joint Director in actual working and as desired by the advertisement dated 05.08.2020. The shown experience of respondent no. 3 is more

relevant and suitable for nature of working of the Directorate too. The respondent no. 3 has already annexed all the experience certificates alongwith the application submitted to respondent no. 2, that is M.P.S.C.. It clearly reveals that, respondent no. 3 has total experience of more than 26 years in this field."

In para no. 8 it is reiterated :-

"(i) It is submitted that after going through the recommendation of M.P.S.C. and perusal of relevant documents of respondent no. 3, it is crystal clear fact that the respondent no. 3 possesses the educational qualification i.e. M.Sc. in Geology (1st Class) and PhD in geology which is additional qualification.

(ii) Also the respondent no. 3 at the time of application was having a total experience more than 26 years in Geological field work and mineral administration along with administration as well. Therefore, the applicant's claim for non fulfilment of the criteria of experience by respondent no. 3 is denied."

9. Reply of respondent no. 2 is at pages 140 to 151. To this reply scrutiny report by expert is attached at pages 152 and experience certificates of respondent no. 3 are attached at pages 153 to 158. Relevant portion of this affidavit in reply is as follows:-

"I say and submit that, the Commission had appointed the expert to scrutinize the experience of the candidates. The expert had considered the experience of all the candidates from Government as well as from private organizations. The expert had considered the experience of the applicant as under:-

<i>Applicant:-Shri Sewakdas Pundlikrao Awale</i>						
<i>Sr. No.</i>	<i>Organization</i>	<i>Post</i>	<i>Period</i>	<i>Experience</i>		
				<i>M.</i>	<i>Y.</i>	<i>D.</i>
<i>1</i>	<i>Directorate of Geology and Mining</i>	<i>Assistant Petrologist</i>	<i>01.08.92 to 31.05.2000</i>	<i>7</i>	<i>10</i>	<i>--</i>
		<i>Senior Geologist</i>	<i>01.06.2000 to 25.09.2016</i>	<i>16</i>	<i>3</i>	<i>24</i>
		<i>Deputy Director</i>	<i>26.09.2016 to 25.08.2020</i>	<i>3</i>	<i>10</i>	<i>29</i>
<i>Total</i>				<i>28</i>	<i>--</i>	<i>23</i>

It is pertinent to note that the commission had considered the candidature of the applicant for the post in issue in accordance with his above experience. The copy of the

experience certificate of the applicant has already been annexed to the O.A. as annexure-A-5. So far as the experience of the respondent no. 3 is concerned. Respondent no. 3 had submitted 6 various experience certificates from private as well as from Government organizations. The expert had considered his experience as under:-

Respondent no. 3:- Shri Gajanan Domaji Kamde						
Sr. No.	Organization	Post	Period	Experience		
				M.	Y.	D.
1	Central Drilling Associate	Geologist	June 1995 to July 1997	2	1	18
2	Associated Soapstone Distributing Co. Pvt. Ltd.	Geologist	11.08.1997 to 23.11.1999	2	3	12
3	Vijaya Gimpex Mining Pvt. Ltd.	Geologist	December 99 to March 2002	2	4	-
4	Central Collieries Co. Ltd.	Junior Geologist	10.04.2002 to 30.06.2005	3	2	20
5	Groundwater Surveys and Development Agency	Junior Geologist	19.10.2005 to 14.12.2008	3	1	25
6	Groundwater Surveys and Development Agency	Assistant Geologist	15.12.2008 to 06.10.2012	3	11	22
7	Groundwater Surveys and Development Agency	Senior Geologist	07.12.2012 to 06.12.2013	1	-	-
8	Directorate of Geology and	Senior Geologist	07.12.2013 to	6	8	28

	<i>Mining</i>		<i>25.08.2020</i>			
			<i>Total</i>	<i>24</i>	<i>9</i>	<i>25</i>

The Commission had considered the candidature of respondent no. 3 in accordance with his above experience. Though the applicant is eligible to participate in the selection process of the post in issue, he is not entitled for selection because he has secured 46 marks and the selected candidate has secured 55 marks."

10. We shall discussed the annexures attached to reply of respondent no. 2 later on.

11. Reply of respondent no. 3 is at pages 48 to 58. So far as crux of the matter is concerned, respondent no. 3 has averred in his reply:-

"7. It is further submitted that the certificate filed by the answering respondent shows that he was engaged in Geological Mapping, Core Drilling, Mineral Exploration and Mine Planning from 11.08.1997 to 23.11.1999. This experience certificate clearly indicates that he has 2 years, 3 months and 14 days experience of Geological Field Work and Mineral Administration. Similarly, the answering respondent had also placed on record an experience certificate wherein it was

specifically pointed out that while working as Executive Geologists from December 1999 to March 2002, he has worked for preparation of Mining Plans and Environmental Management Plan with full attention to day to day mining activities and geological exploration work of the concerned mining lease areas. This work experience is of 2 years 4 months and 2 days.

8. The answering respondent has also placed on record another certificate showing that he has worked as Geologist from April 2002 to June 2005 and during this period was associated with geological and mining activities amongst others. In addition, he has also placed on record his experience with the Ground Water Survey and Development Agency of the State of Maharashtra as Executive Senior Geologist and his experience from October 2005 to December 2013 in various capacities in geological field in supervision and in execution. The experience certificates mentioned hereinabove are collectively annexed herewith at Annexure-R-3-B.

9. It is most respectfully submitted that the answering respondent has also undergone field training for Hydro Geological Survey, Systematic Survey, Geophysical Survey,

Drilling by DTH and Rotary Rigs and Groundwater Resource Assessments which amounts to Geological Field Work. His appointment as Senior Geologists itself was due to the experience and qualification that he had attained till 20.12.2013. His initial selection also was by the Maharashtra Public Service Commission."

12. Further, in para no. 13 he has averred:-

"It is respectfully submitted that the applicant has in fact not come up before this Hon'ble Tribunal with clean hands. He has specifically failed to state an important fact on oath that his initial recruitment in the year 1992 by the respondent no. 2 was on the post of "Assistant Petrologist". This post neither entails nor provides Geological Field Work Experience nor Mineral Administration Work Experience. The applicant may be put to strict proof thereof and place on record material to show that while working as "Assistant Petrologist" between 1992 to 2000, he had gained Geological Field Work Experience and Mineral Administration Work Experience."

13. Rejoinder of the applicant is at pages 95 to 119. According to him, experience gained by respondent no. 3 by working in private companies ought not to have been considered and only the experience

acquired by rendering services under the Directorate of Geology and Mining ought to have been considered which in the case of respondent no. 3 falls way short of the prescribed experience.

14. The applicant has contended that experience acquired by respondent no. 3 while working for Central Drilling Associate, Associated Soapstone Distributing Co. Pvt. Ltd., Vijaya Gimpex Mining Pvt. Ltd., Central Collieries Co. Ltd. ought not to have been taken into account as the said experience did not satisfy the criteria laid down in clause 4.4 of the advertisement dated 05.08.2020. We have quoted this clause. The experience certificates of above mentioned companies are at page nos. 153, 154, 155 and 156, respectively. Relevant portions of these certificates are as under:-

"He has worked for the detailed prospecting for limestone deposits which includes Topographical Survey, Surface Geological Mapping, Core Logging and Preparation of Samples for laboratory tests."

"This is to certify that Shri Gajanan D. Kamde has worked with us as Geologist from 11.08.1997 to 23.11.1999. His key functional areas are Geological Mapping, Core Drilling, Mineral Exploration, Mine Planning etc."

"This is to certify that Shri Gajanan D. Kamde has worked with us as a Geologist/ Executive Geologist from Dec. 1999 to March 2002. He possesses a sound knowledge in the field of Geological Exploration and Mine Planning.

He has worked for preparation of Mining Plans and Environmental Management Plans for our mines under guidance of company's ROP Geologists/ Mining Enggs. During his tenure of services he paid full attention to day to day mining activities and geological exploration work at our mining lease areas."

"This is to certify that Shri Gajanan D. Kamde has worked with us as a 'Geologist' since 10th April, 2002 to 30th June, 2005. He was associated with Geological and Mining activities along with Liaisoning with various Government Organisations."

15. Respondent no. 1 has placed on record copy of letter dated 19.03.2021 (A-R-1 at pages 166) received by it from respondent no. 2.

The letter stated:-

"4-3 'k[k.khd vgr k%& The candidate must-

Possess a post graduate degree in at least 2nd Class in Geology or Applied Geology or any other qualification declared by Government to be equivalent thereto

AND THEREAFTER

4-4 *vutllko%*

Possess Practical experience of geological field work and mineral administration work in a responsible position for a period of not less than 10 years.

3- *tkfgjkrtr uem dsy% ; k rjrmh ; k rlf=d {ks=krthy vl Y; kus 'ks%kf.kd vgrk o fo'kskr%vutllkokuq kj ik=rk@vik=rk fuf'pr dj.; kdfjrk ; k {ks=krthy rK vf/kdk&; kph vko'; drk vks tskd: u xqkorrk/kkj d o ik= menokjkukp eyk[krthph l'kh iklr gkoi'kdsy rl p U; k; ky; hu idj.kn[ky >ky; kl R; kps mfrfjR; k l efku dj.k'sKD; gkb%y-*

4- *mi jkDr ckch fopkjk ?kou l nj inkp; k menokjkdlmu ekxfo.; kr vky% ; k 'ks%kf.kd vgrk vutllko iek.ki=kod: u R; kR; k ik=rk@vik=rckcrph rikl .kh dj.; kdfjrk l pkyd ntkp; k vf/kdk&; kR; k fu; D rh dj.ksvko'; d vks rjh ; k inkp; k iek.ki=kph rikl .kh vk; kskp; k dk; ky; kr djko; kph vks fu; D rh d% ; kurj l c%l/kr vf/kdk&; kP; k l gerhusekp] 2021 P; k 'kVP; k o , fi y] 2021 P; k ifgY; k vkBOM; kr dj.; kr ; b%y- rjh l c%l/kr vf/kdk&; kph mi yC/krk fopkjk ?kou l nj dkykof/kdfjrk vf/kdk&; kph fu; D rh dj.; kr ; koh- rl p gh ck vk; kskl rkrMhusdGfo.; kr ; koh] ghfourh"*

By reply dated 05.04.2021 (A-R-2 at pages 168) respondent no. 1 communicated to respondent no. 2 that for scrutiny of applications/ certificates Shri Ravindra Vasant Gurav, Joint Secretary (Industry) Industry, Energy and Labour Department would remain present on 8th and 9th April, 2021.

16. Respondent no. 2 along with his reply placed on record (at page 152) scrutiny report by expert Shri Ravindra Vasant Gurav. In this report, initially, on 09.04.2021 of Shri R.V.Gurav had opined that experience acquired by respondent no. 3 while working with 4 Private Companies was not admissible as per Clause 4.4 of the advertisement. This total experience was of 9 years, 11 months and 20 days. Subsequent experience of 14 years, 10 months and 5 days only was held to be admissible. In the column of remarks it was initially written:-

"Experience certificates of the work done on the posts mentioned at Sr. No. 1 to 4 in experience post column are not in prescribed format provided as per schedule/Annexure-14. So this experience cannot be counted as valid experience of work in the field of Geology and Mineral, Administration. But this experience is for the field of Geology and Mineral Administration."

17. Thereafter, on 02.07.2021 the report was changed/reviewed by the expert Shri R.V.Gurav. So far as experience with Private Companies was concerned, it was held to be admissible contrary to what was held earlier. In the relevant column the word "No" was replaced by the word "Yes". In remarks column changes were made so that the same could accord with the change in opinion about admissibility of experience. The remarks column, after changes read as under:-

"Eligible:-

Experience certificates of the work done on the posts mentioned at Sr. No. 1 to 4 in experience post column are not in prescribed format provided as per schedule/Annexure-14. So this experience can be counted as valid experience of work in the field of Geology and Mineral, Administration because this experience is in the field of Geology and Mineral Administration."

Initially, length of admissible experience was held to be 14 years, 10 months and 5 days. Subsequently, experience of 9 years, 11 months and 20 days which was initially held to be in admissible, was held to be admissible. Thus total admissible experience was held to be 24 years, 9 months and 25 days. Here, it may be mentioned that minimum experience of 23 years, 10 months and 17 days was prescribed to qualify

for the post. It can be gathered that in remarks column the word "Eligible" was inserted on 02.07.2021 and it could not have been written there at the top on 09.04.2021.

18. While passing the order dated 16.02.2022 this Tribunal observed in para no. 4:-

"4. The only point remains during course of hearing, Bench felt that document at pg. no. 152, there is some change but nowhere it is explained that under what circumstances it was changed, that answer is required from respondent no. 1 only. The Id. C.P.O. is directed to take instructions regarding the above same by respondent no. 1."

19. In response to the aforesaid directions Shri R.V.Gurav filed affidavit in reply on 21.02.2022. It is at pages 159 to 165. In this affidavit it is averred that initially experience certificates were not considered because the same were not in the prescribed proforma. It is further averred that as per Recruitment Rules of Directorate of Geology of Mining dated 15.01.1987 possession of practical experience of Geological field work and Mineral Administration work in a responsible position for a period of not less than 10 years is necessary for the post of Joint Director, Group-A which is to be filled by nomination. It is further averred that for the post of Senior Geologist to be filled by nomination

the Rules prescribe experience of not less than 5 years of identical nature and only after respondent no. 3 was found to possess such experience of requisite duration his name was recommended by letter dated 30.03.2013 for the post of Senior Geologist. So far as this averment is concerned, it may be stated that since 19.10.2005 respondent no. 3 was working in Ground Water Survey and Development Agency and in the year 2013 he did possess experience of more than 5 years which was needed for the post of Senior Geologist. Question involved in this application is whether experience acquired by respondent no. 3 prior to the year 2005 could be said to be admissible.

In written arguments respondent no. 3 has raised following contentions:-

"(1) The applicant worked as Assistant Petrologist from 1992 to 2000. This itself did not involve either Geological field Work or Mineral Administration Work. Hence, the said experience would be inadmissible.

(2) The advertisement in question does not distinguish between the experience gained in Geological Field Work and Mineral Administration Work in Private or Government organisation.

(3) *The applicant participated in the selection process. He did not succeed. Now he cannot be allowed to challenge it.*

(4) *Report of the expert on the point of admissibility of experience must be accepted since it was preceded by thorough verification.*

(5) *Part of the experience gained by one Shri Kadu was held to be inadmissible by the expert. The expert recorded the reason for the same i.e. it could not be verified whether the nature of work mentioned in the concerned experience certificates related to Geological work or Mineral field work. Therefore, case of Shri Kadu cannot be equated with the case of respondent no. 3."*

20. Respondent no. 3 has relied on the following rulings:-

(i) Pradeep Kumar Rai & Ors. Vs. Dinesh Kumar Pandey & Ors., (2015) 11 SCC, 493. In this case it is held –

"17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the

appellants did not challenge it at that time. Thus, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted. (See Vijendra Kumar Verma Vs. Public Service Commission and K.H. Siraz Vs. High Court of Kerala.)

(ii) Union of India & Ors. Vs. S. Vinodh Kumar & Ors., (2007) 8 SCC, 100. In this case it is held –

"18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See Munindra Kumar Vs. Rajiv Govil.) (See also Rashmi Mishra Vs. M.P. Public Service Commission)"

(iii) Madras Institute of Development Studies & Another Vs. K.Sivasubramaniyan & Ors., (2016) 1 SCC, 454. In this case by relying on the following rulings it is held that the person who consciously takes part in the process of

selection cannot turn around and question the method of selection

"3 (1976) 3 SCC 585 : 1976 SCC (L & S) 474

4 Manak Lal V. Prem Chand Singhvi, AIR 1957 SC 425

5 (1995) 3 SCC 486 : 1995 SCC (L & S) 712 : (1995) 29 ATC 603

6 1986 Supp SCC 285 : 1986 SCC (L & S) 644

7 (2010) 12 SCC 576 : (2011) 1 SCC (L & S) 256

8 Manish Kumar Shahi Vs. State of Bihar, 2008 SCC Online Pat 321 : (2009) 1 AIR Jhar R 1015

9 (2013) 11 SCC 309 : (2013) 3 SCC (L & S) 129

10 Anil Joshi Vs. State of Uttarakhand, 2012 SCC Online Utt 521

11 Ravi Shankar Joshi Vs. Anil Joshi, 2012 SCC Online Utt 766

12 K.Sivasubramaniyan Vs. Madras Institute of Development Studies, Writ Appeal No. 167 of 2008. Order dated 09.01.2012 (Mad)"

(IV) Sudershan Singh Vs. Harinder Mohan Sharma & Ors., (2003) 12 SCC, 47. In this case it is held:-

"We feel that the question as to whether the appellant Sudershan Singh fulfilled the required qualification for the job or not was a question basically for consideration of the Expert Committee which held the selection. Learned counsel appearing for the Bhakra Beas Management Board submits that the Selection Committee had selected the appellant Sudershan Singh on being satisfied that he possessed the required qualification. That being the position, there was hardly any occasion for the Court to have recorded any other finding or substitute its own opinion about the qualification possessed by the appellant Sudershan Singh."

21. The question which goes to the root of the matter is whether respondent no. 3 possesses requisite experience for the post of Joint Director, Group-A. Respondent no. 2 carried out the process but asked respondent no. 1 to get the experience certificates of candidates who were in the fray verified. Respondent no. 1 entrusted this task to Shri R.V.Gurav. He issued the report on 09.04.2021 which is at page no. 152. He then changed it on 02.07.2021. By carrying out these changes experience of respondent no. 3 which was initially held to be inadmissible, was held to be admissible. We have referred to the contents of affidavit of Shri R.V.Gurav whereby the reasons for carrying

out the changes are tried to be explained. Bare perusal of the report at page no. 152 would indicate that it would be risky to implicitly rely on the same. We have elaborately dealt with what the report stated initially and what changes were made therein later on. The reasons for carrying out these changes do not strike us as plausible. It may be stressed that in matters of public appointments clarity and transparency are paramount.

22. We have referred to the rulings relied upon by respondent no. 3. Admittedly, the applicant participated in selection process. The question is whether, in the facts and circumstances of the case, especially considering the nature of report of expert which is at page no. 152, this Tribunal can sustain challenge of applicant to the appointment of respondent no. 3 to the post of Joint Director, Group-A. To answer this question in the affirmative we are relying on **“Md. Zakir Hossain & Ors. Vs. The State of West Bengal & Ors. in WPST 99 of 2018 delivered on 18.02.2019 (Calcutta High Court)”** In this case it is held:-

“20. Let us now take a look at two decisions of the Supreme Court which had not been placed before the relevant Benches while deciding the aforesaid cases. The first decision is reported in AIR 1965 SC 491 (University of Mysore v. C. D. Govind Rao) and the other decision is reported in AIR 1990 SC 434 (Dalpat Abasaheb Solunke v. Dr. B. S. Mahajan). These

decisions are authorities for the proposition that selection process can be challenged on limited grounds, i.e., if a binding rule has been contravened while making selection, or if the selection is tainted by illegality, or patent material irregularity in the constitution of the committee or its procedure vitiating the selection or proved mala fide affecting the selection, etc.

21. *While deciding FMA 1285 of 2013 (University of Kalyani v. Asitabha Das), a Division Bench of this Court had the occasion to consider all the aforesaid decisions as well as other decisions of the Supreme Court and went on to hold as follows:*

"51. Disputes relating to selection and appointment invariably involve the question as to who can challenge such process, when, and on what ground(s)? Obviously the beneficiary of an illegal act or process, being the appointee, will not challenge such act/process. Public interest litigation in service matters is generally not maintainable, except in exceptional cases. More often than not, it is the persons aggrieved by their non-selection/non-appointment, and consequent selection/appointment of others, who seek to pursue

their remedy in accordance with law would approach the court to have such process, which they perceive to have been tainted, invalidated. If the challenge is nipped in the bud on the basis of the authorities cited which lay down the law that having participated in the selection process without demur the participating candidate forfeits his right to challenge the process, does it not sort of extend an immunity from judicial scrutiny to such selection process even though the process might have been illegal? Our understanding of the law on the subject does not persuade us to hold that an unsuccessful aspirant for a post can never challenge a selection process after his participation therein. There could be cases where the selection committee selects a candidate, who lacks the essential eligibility criteria for appointment, as in the present case. How would the eligible candidate know that an ineligible candidate would be preferred to him? There could be a case where a candidate is selected, who had not applied within the last date for making the applications fixed in the advertisement. How would a candidate, not selected, know before his appearance before the board of

selectors that the selectee had not applied within time. Take the case of a candidate who is selected by a board of selectors, one of whom is the close relative of the selected candidate and such relationship is not made known to the other selectors. If the unsuccessful candidate does not have such vital information prior to his appearance before the board of selectors for an interview and if he has access to such information subsequent to the appointment and the selection of the appointee is challenged on the ground of patent illegality or manifest bias, could the selection not be challenged and such challenge entertained on the ground that there has been a patent illegality in the procedure of selection or even mala fides? Or should the door be closed on the face of such an unsuccessful candidate merely because he had not raised any objection at the time of appearance before the board of selectors? If the latter question is answered in the affirmative, we have no hesitation to hold that an illegal selection made by a selecting body would remain beyond the realm of judicial scrutiny. We are also of the view that the decisions in C.D. Govinda Rao (supra), Dalpat

Abasahed Solunke (supra) and Raj Kumar (supra) are authorities which permit interference with the decision to appoint following an illegal selection process and in case of glaring illegalities, such as the present one, estoppel, waiver and acquiescence may not have any application depending upon the facts that are presented and established before the court.

22. We share the views expressed in University of Kalyani (supra).

23. In our considered view, what needs to be ascertained by the tribunal/court is whether the aggrieved candidate, who complains of illegality in the selection process had, or had not, due knowledge of such process being conducted illegally prior to participating in the process and taking a chance of selection. If it is found that he had knowledge and the deviation from or disregard to the applicable recruitment rules is not glaring but minimal, in the sense that it does not shock its conscience, the court/tribunal ought to stay at a distance. But, in a case where the candidate has knowledge of an illegality, yet, participates in the process but the extent of illegality is such that it can be viewed as "glaring illegality", it

is for the tribunal/court to decide the point of maintainability of the challenge judiciously. However, if the candidate does not have knowledge and the process suffers from glaring illegality, the decisions relied on by the tribunal to dismiss the original application of the petitioners would not apply but C. D. Govind Rao (supra), Dalpat Abasaheb Solunke (supra), and Raj Kumar (supra) ought to be applied."

On the basis of report of the expert at page no. 152 it cannot be concluded with certainty that respondent no. 3 possesses requisite experience for the post. This aspect is, therefore, required to be determined afresh by a committee which respondent nos. 1 & 2 shall constitute in consultation with each other. Needless to say that the committee which may comprise a solitary number or more than 1 member shall not consist of or include the expert who issued the report of scrutiny at page no. 152. We make it clear that the only part of the process which will have to be undertaken again is verification of experience certificates of respondent no. 3 for deciding the question of admissibility or otherwise of experience mentioned therein. Hence, the order:-

ORDER

The original application is allowed in the following terms:-

1. The impugned order dated 28.10.2021 declaring respondent no. 3 fit for the post of Joint Director, Group-A from General/ Open Category is quashed and set aside.
2. Respondent nos. 1 & 2, in consultation with each other, shall constitute a committee to verify experience certificates furnished by respondent no. 3, and to decide whether or not experience mentioned in each of these certificates would be admissible in terms of clause 4.4 of the advertisement dated 05.08.2020.
3. The expert who issued scrutiny report at page 152 shall not be part of the committee to be constituted for the purpose.
4. Final result shall be declared after verification of experience certificates of respondent no. 3 is carried out by the committee and scrutiny report is prepared.
5. No order as to costs.

(M.A.Lovekar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 25/03/2022.

*aps.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : A.P.Srivastava

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 25/03/2022.

Uploaded on : 28/03/2022.