

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.204/2015.

- 1) Yogesh Sayajirao Bahendwar,
Aged about 42 yrs.,
Occ-Service,
R/o C/o S.D. Bahendwar, Plot No.7-1,
Laxminarayan Apartment,
8 Rasta Square, Laxmi Nagar, Nagpur.
- 2) Sandeep Baburao Patil,
Aged about 38 yrs.,
Occ-Service,
R/o C/o Plot No.255-A,
Laxminarayan Apartment,
Baghulvan, Garoba Maidan, Nagpur.
- 3) Ramesh Diwakarrao Moon,
Aged about 39 yrs.,
Occ-Service,
R/o At and Post Zadgaon,
Teshil and District Wardha.
- 4) Chetan Purushottam Barhate,
Aged about 42 yrs.,
Occ-Service,
R/o At and Post Zadgaon,
Teshil and District Wardha.
- 5) Vasant Anandrao Chavan,
Aged about 48 yrs.,
Occ-Service,
R/o Vidarbha Colony, L/29,
Near Mainde Square, Yavatmal

Applicants

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Higher & Technical Education,
Mantralaya, Mumbai-440 032.
- 2) The Secretary,
Maharashtra Public Service Commission,
Bank of India Building, 3rd floor,
Mahatma Gandhi Road, Hutatma Chowk,
Mumbai-400 001.
- 3) The Dy. Secretary,
Maharashtra Public Service Commission,
Bank of India Building, 3rd floor,
Mahatma Gandhi Road, Hutatma Chowk,
Mumbai-400 001.
- 4) Shri Pravin Pundlikram Karde,
Aged about Major,
Occ-Service,
R/o Karde Bhavan, Baccharaj Plot,
Near Dhabebai Hospital,
Cotton Market Road, Amravati.

Respondents

Smt. S.K. Paunekar, Ld. Counsel for the applicants.
Shri P.N. Warjekar, learned P.O. for the respondents 1 to 3.
Shri A.P. Kalmegh, Ld. Advocate for respondent No.4.

ORIGINAL APPLICATION NO.400/2015.

Nitin Ajabrao Kubde,
Aged about 43 yrs.,
Occ-Service,
R/o D-402,s Vijaygad Society, Plot No.6,
Sector 25, Near Seawoods Railway Station,
Nerul, Navi Mumbai-400 706.
Address at present- C/o Babanrao S. Pusdekar,
Sant Tukdoji Ward, Sant Krupa Nagar,
Behind Petrol Pump, Hinganghat, Dist. Wardha.

Applicant**-Versus-**

- 1) The State of Maharashtra,
Through its Secretary,
Department of Higher & Technical Education,
Mantralaya, Mumbai-440 032.

- 2) The Secretary,
Maharashtra Public Service Commission,
Bank of India Building, 3rd floor,
Mahatma Gandhi Road, Hutatma Chowk,
Mumbai-400 001.

- 3) The Dy. Secretary,
Maharashtra Public Service Commission,
Bank of India Building, 3rd floor,
Mahatma Gandhi Road, Hutatma Chowk,
Mumbai-400 001.

Respondents

Smt. S.K. Paunekar, Ld. Counsel for the applicants.
Shri P.N. Warjekar, learned P.O. for the respondents.

**Coram:- Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)
and
Hon'ble Shri J.D. Kulkarni, Vice-Chairman (J)**

Dated: - 10th March 2017.

Order

Per: VC(J)

O.A. No. 204/2015 has been filed by eight applicants. However, during the pendency of the O.A., names of the applicant Nos. 6, 7 and 8 have been deleted. O.A. No.400/2015 has been filed by the applicant Shri Nitin Ajabrao Kubde. For the purpose of convenience, the applicants in both these O.As so also the respondents, except respondent No.4 Pravin Pundlikram Karde in O.A.No. 204/2015 shall hereinafter refer to as applicants and non-applicants respectively. In

both these O.As, the applicants have asked for relief to declare that the action of respondent Nos. 2 and 3 changing eligibility criteria all of a sudden at the time of interview in respect of candidates who have passed written examination and not considering their candidature for advertised posts as illegal, arbitrary and in violation of principles of natural justice and same decision be quashed and set aside. The applicants are also claiming directions to respondent Nos. 2 and 3 to consider the candidature of the applicants and to call them for interview for the post of Head of the Department as per advertisement dated 27.9.2013 and to cancel the appointment of candidates on the basis of interview dated 15.4.2015 held by respondent Nos. 2 and 3 who are also claiming that the respondents 2 and 3 be restrained from appointing to the post of Head of the Department on the basis of advertisement. In addition to these reliefs, the applicants in O.A. No. 204/2015 are claiming cancellation of appointment of non-applicant No.4 i.e. Pravin Pundlikram Karde.

2. From the facts, as pleaded, it reveals that the applicants participated in the process of recruitment of the post of Head of the Department in various subjects. The advertisement was published on 27.9.2013 by M.P.S.C. Admittedly, all the applicants have applied for the post of Head of the Department in various subjects

and since they were qualified and were having requisite experience as per the advertisement, respondent Nos.2 and 3 accepted the forms submitted by the applicants and also issued hall tickets for written examination after verification of the forms. The interview was held on 20.4.2015, though the personal interviews were started from 15.4.2015. It is stated that the applicants appeared for the interview at Mumbai on 20.4.2015. At that time, documents were verified and suddenly the concerned officers of non-applicant Nos. 2 and 4 told the applicants that they were not qualified for the interview. It was also stated that the applicants were not having requisite experience of ten years after post graduation. They were forced to make signatures on one note to that effect.

3. The applicants submitted representation and requested that they be called for interview. However, their representation was not considered.

4. According to the applicants in O.A. No. 204/2015, non-applicant No.4 Pravin Pundlikram Karde is not qualified in the sense that he was not having requisite experience and still he is appointed.

5. During the pendency of the O.A., the respondent Nos. 4 to 6 were considered in O.A.No. 204/2015 for interview and, therefore, their names have been deleted.

6. Respondent Nos. 2 and 3 have filed affidavit in reply and submitted in para Nos. 13 and 14 as under:-

13. With reference to para 6 (m), I say and submit that, general instructions to the candidates have been provided on the Commission's website www.mpSC.gov.in para 2.2.12.2 mentions the provisions as follows:-

Experience required for the respective post (unless specifically mentioned otherwise) should be after acquiring the requisite educational qualifications of the post advertised, as per the Govt. of Maharashtra in G.A.D's circular No.RTR-1079/1160-XII, 18.7.1979q

A copy of the said Govt. circular dated 18.7.1979 is attached herewith and marked as Annexure R.3.

The required qualifications for the post are as follows:

A candidate must possess Bachelors and Masters degree of appropriate branch of Engineering / Technology with first class or equivalent either at

Bachelor or Master level as per the Recruitment Rules.

Thus as per the Recruitment Rules, one has to have both the Bachelor and Master degree as a compulsory requirement. Therefore, the experience for the post was counted after acquiring the Master degree as per the Govt. circular dated 18.7.1979.

In the present case, the applicants possess Master degree. Taking into consideration the date of declaration of the result of the Master degree, the applicants did not possess the requisite experience of 10 years until the date of determination. Therefore, the applicants were held in-eligible for want of experience and were therefore not interviewed.

14. With reference to para 6 (n), I say and submit that, according to the Maharashtra Universities Act, 1994, for claiming relevant experience as a Lecturer, Assistant Professor, Associate Professor, Professor (means as a teacher) the candidate must have approval of the respective Universities for their teacher appointment.

Sub-Section 34 of the Section 2 of the said Act defines the term "Teacher" as follows:-

"Teacher" means full time approved Professor, Associate Professor, Assistant Professor, Reader, Lecturer, Librarian (Principal, Deputy or Assistant Librarian and Documentation Officer in the University

and College Librarian), Director or Instructor of Physical Education in any University department, conducted and affiliated or autonomous college, autonomous institution or department of recognised institution in the University.

A copy of sub-section (34) of Section 2 of the said Act is attached herewith and marked Annexure as R.4.

Thus the applicants must have an approval letter for their appointment of teacher post issued by the University. However, in the present case, the applicants did not have such an approval letter.

Detailed statement showing reason of ineligibility of the applicants is already attached and marked Annexure as R.2.

The chart reveals that the applicants do not possess the requisite experience for the post in question. Therefore, the applicants were held ineligible for want of requisite period of experience.

It is further submitted that the applicants did not produce any approvals to their appointment from the concerned University, which is required according to the the Maharashtra Universities Act, 1994+.

7. Respondent No.1 also filed an affidavit and justified the action for not calling the applicants for interview. Additional affidavit is also filed by respondent Nos. 2 and 3 on 29.3.2016 in which appointment of non-applicant No.4 Shri Pravin Pundlikram Karde has been justified. It is stated that non-applicant No.4 Shri Pravin Pundlikram Karde has more than five years of experience after passing master degree and he has acquired Ph.D. degree also and, therefore, he is eligible as per clause 4.3 (b) of the advertisement.

8. We have heard Smt. S.K. Paunikar, the learned Counsel for the applicants and Shri P.N. Warjekar, the learned P.O. for the respondents. We have perused the affidavit, affidavit in reply, additional affidavit and documents on record.

9. From the admitted facts on record, it is clear that all the applicants participated in the process for recruitment of the post of Head of the Department in various subjects as per advertisement dated 27th September 2013. However, at the time of oral interview, it was noticed that the applicants were not qualified in the sense that they have not acquired requisite experience as stated in the advertisement. Clause 4.3 regarding educational qualification and experience runs as under:

शैक्षणिक अहता व अनुभव-

(A) (i) Bachelors and Masters degree of appropriate branch of Engineering / Technology with first class or equivalent either at Bachelors or Masters level.

(ii) Minimum of 10 years relevant experience in teaching / research / industry.

OR

(B)(i) Bachelors and Masters degree of appropriate branch of Engineering / Technology with first class or equivalent either at Bachelors or Masters level And Ph.D. or equivalent in appropriate discipline in Engineering / Technology.

(ii) Minimum of 5 years relevant experience in teaching / research / industry.

(a) Equivalence for Ph.D. is based on publication of 5 International journal papers, each journal having a cumulative impact index of not less than 2.0, with incumbent as the main Author and all 5 publications being in the authors area of specialization.

(b) In case of research experience, good academic record and books / research paper publications/ IPR / Patents record shall be required as deemed fit by expert members of the Selection Committee.

(c) If the experience in industry is considered, the same shall be at the managerial level equivalent to the Head of the Department with active participation record in designing, executing, analyzing, quality control, innovating training, technical books / research paper publications / IPR/ Patents/etc. as deemed fit by expert members of the Selection Committee.

(d) For the post of the Head of the Department flair for management and leadership is essential as deemed fit by expert members of the Selection Committee.+

10. Admittedly, all the applicants have acquired educational qualification as stated in the advertisement and the said qualification is Bachelor and Master degree of appropriate branch in Engineering / Technology with first class or equivalent either at Bachelors or Masters level. Perusal of clause 4.3 (a), (b), (c) and (d) clearly shows that the minimum educational qualification required for the post of Head of the Department is Bachelors or Masters degree of appropriate branch in Engineering / Technology with first class or equivalent either at Bachelors or Masters level. However Clause A (ii) shows that in addition to this, minimum educational qualification, the candidate must possess minimum ten yearsq relevant experience in teaching / research / industry. Clause (B) however seems to have given special concession in respect of candidates who are possessing Ph.D. or equivalent degree in appropriate discipline in Engineering / Technology. Clause B (ii) says that minimum five yearsq relevant experience in teaching / research / industry is necessary for those candidates who hold degree of Ph.D.

11. The relevant chart regarding experience acquired by the applicants in O.A. No. 204/2015 has been placed on record and it is at Exh.R.2 at page 209. From the said chart, it is clear that the applicant Shri S.M. Bhosle and M.S. Salunke, though produced certificate of experience, it is stated that the said experience certificate is not approved and, therefore, their experience was not held valid. However, as already stated they were allowed to appear for interview and their names have been deleted from the O.A. and, therefore, their case need not be considered in this O.A. So far as the other applicants are concerned, as regards the applicant S.T. Katkar, S.B. Patil and Y.S. Bahendwar, it is mentioned that their experience is less than ten years after acquiring Masters degree. It seems that these applicants have submitted experience certificates which include the experience after they acquired graduate degree and not their experience after acquisition of Masters degree. Thus, they have no sufficient experience as required in the advertisement. Clause 4 (3) in the advertisement makes it crystal clear that the experience in the teaching must be after acquiring requisite educational qualification. As already stated, requisite educational qualification for the post of Head of the Department is passing of Bachelors degree as well as Masters degree and, therefore, the experience after passing of the Masters degree has relevance and not the experience after passing of the Bachelors

degree. It is clear that those who acquired Bachelors degree of appropriate branch in Engineering / Technology with first class or equivalent either at Bachelors or Masters level must have minimum of ten years relevant experience in teaching / research / industry and these words, "relevant experience" means experience after acquiring requisite educational qualification for the post of Head of the Department. At the cost of repetition, it must be mentioned that requisite educational qualification for the post of Head of the Department is Bachelors and Masters degree of appropriate branch in Engineering / Technology with first class or equivalent either at Bachelors or Masters level as stated in clause 4.3 (a) (i) of the advertisement. Since all the applicants are claiming requisite qualification under clause 4.3 (i), they must possess minimum of ten years relevant experience as required in clause 4.3 (a) (ii). The respondents, therefore, seem to have rightly not allowed the applicants to appear for oral interview.

12. So far as non applicant No.4 in O.A. No. 204/2015 Shri Pravin Pundlikram Karde is concerned, it is an admitted fact that he has acquired Ph.D. or equivalent degree in appropriate discipline in Engineering / Technology and thus admittedly his case falls within the clause 4.3 (b) of the advertisement and as per the said clause,

minimum of five years relevant experience in teaching / research / industry is necessary for the candidates who acquired Ph.D. or equivalent degree. The learned counsel for the applicants submits that this five years relevant experience in case of Ph.D. candidates must be five years after acquiring Ph.D. We are unable to accept the contention of the learned counsel for the applicants for the simple reason that the minimum qualification required for the post of Head of the Department and Bachelor and Master degree of appropriate branch in Engineering / Technology with first class or equivalent either at Bachelor's or Master's level and ten years minimum experience after acquiring such qualification. However, since the candidates acquiring Ph.D. or equivalent degree in appropriate discipline in Engineering / Technology are more qualified, they have been given relaxation so far as the experience is concerned and in case of such candidates, minimum five years experience is required after acquiring Master's degree as per clause 4.3 (a) (i) of the advertisement. Admittedly, the non-applicant No.4 is Ph.D. degree holder and his experience after acquiring Master's degree is more than five years. We, therefore, do not find any illegality in the appointment of non-applicant No.4. The non-applicant No.4 has also filed an affidavit and justified his appointment. In para 3 of his affidavit, non-applicant No.4 has stated that he has teaching

experience after basic qualification of post graduation i.e. Master of Engineering (M.E.) of 6 years, 8 months and 11 days till 25.10.2013 as mentioned in the advertisement dated 27.9.2013. The non-applicant No.4 has been rightly selected and appointed.

13. In view of the discussion in foregoing paras, we are satisfied that there is no merit in both these O.As and hence we pass the following order:-

(i) The O.A. Nos. 204 and 400 of 2015 both stand dismissed with no order as to costs.

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

(Rajiv Agarwal)
Vice Chairman(A)

Pdg