

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.651 OF 2018

DISTRICT : MUMBAI

Miss Ruchita Vasant Somane,)
(since after marriage Mrs. Ruchita Sandeep Rane),)
Aged 45 years, R/o E/15, Deendayal Nagar,)
Navghar Road, Mulund (E), Mumbai 400081)..Applicant

Versus

1. The Secretary,)
Maharashtra Public Service Commission,)
Cooperage Telephone Nigam Building,)
Maharshi Karve Road, Mumbai 400021)
2. The State of Maharashtra,)
Through Principal Secretary,)
Marathi Language Department,)
Mantralaya, Mumbai 400032)
3. Shri Sanjay Madhukar Khadse,)
(Deleted as per order dated 18.12.2018))..Respondents

Miss R.V. Somane – Applicant in person

Miss S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman
Shri P.N. Dixit, Member (A)

RESERVED ON : 12th February, 2019
PRONOUNCED ON : 20th February, 2019
PER : Shri P.N. Dixit, Member (A)

J U D G M E N T

1. Heard Ms. R.V. Somane, Applicant in person and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. In response to the advertisement dated 29.9.2017 published by the Respondent no.1 for the vacancy of “सचिव (गट-अ), महाराष्ट्र राज्य मराठी विश्वकोश निर्मिती मंडळ”, for one post, the Applicant made online application. The eligibility for the post was as under:

“4.4 शैक्षणिक आर्हता - The candidate must

- (i) Possess a degree in Marathi or Sanskrit subject with at least fifty-five percent marks.*
- (ii) possess a Master's degree in Marathi or Sanskrit subject with at least fifty-five percent marks.”*

(Quoted from page 54 of OA)

3. The Respondent no.1 shortlisted 5 candidates in which the name of the Applicant also figured. She was called for interview and participated in the same. When the merit list was published the name of the Applicant did not figure in the same.

4. On learning that the name of the Respondent no.3 is going to be recommended (Exhibit G dated 15.6.2018 page 59 of OA), the Applicant has moved this Tribunal with a prayer that: “she should be held eligible to compete for the said post” (Para 9(a) page 13 of OA).

5. Foundation of applicant's claim is that since she has passed MA in Sanskrit as stated in clause (ii) of para 4.4 of the advertisement, even though she does not possess BA Degree in Sanskrit as stated in clause (i) of para 4.4.

6. Crucial averment on which applicant relies are contained in para Nos. 6.6A, 6.7-4, 6.7-5, 6.14-B. It shall be useful to refer to these averments being lengthy by Quotation as below:-

“6.6A *The Hon'ble Supreme Court in Chandakala Trivedi v. State of Rajasthan held that:-*

“In the instant case, we fail to appreciate the reasoning of the High Court to the extent that it does not consider higher qualification as equivalent to the qualification of passing Senior Secondary Examination even in respect of candidate who was provisionally selected. The word 'equivalent' must be given a reasonable meaning. By using the expression, 'equivalent' one means that there are some degrees of flexibility or adjustment which do not lower the stated requirement. There has to be some difference between what is equivalent and what is exact. Apart from that after a person is provisionally selected a certain degree of reasonable expectation of the selection being continued also comes into existence.”

Therefore, my M.A degree in Sanskrit is equivalent to passing B.A in Sanskrit. (“obtaining higher qualification is equivalent to passing lower examinations in the same line or stream”).

The copy of the judgment in Chandrakala Trivedi v. State of Rajasthan is annexed hereto and marked as “Exhibit-I”.

6.7-4 *The Ordinance 0.2237 Circular No. UG/Gen/104 of 1989 which deals with admission to M.A degree course says:-*

A candidate for being eligible for admission to the course leading to the degree of Master of Arts must have passed the examination for the degree of Bachelor of Arts (three year integrated course) of this University or the degree of Bachelor of Arts (old that is four year

course) of this University or a degree of another University recognized as equivalent thereto.

6.7-5 *The process by which I got admission to M.A Degree course in Sanskrit i.e. B.Sc plus Diploma in Sanskrit followed by clearance of Entrance Text, becomes equivalent to B.A in Sanskrit.*

“6.14B *The condition no.4.4(i) clearly indicate that the Applicant is required to possess a Degree in Sanskrit and not Three Years’ Degree in Sanskrit because the condition does not mention a specific degree in Sanskrit which has duration of 3 years. Therefore, it is enough for a candidate to possess Degree in Sanskrit.*”

(Quoted from pages 5A, 5F to 5I and 10A of OA)

7. Thus the summary of applicant’s plea as seen in para No. 6.7-5 is that:-

“The process by which I got admission to M.A. Degree Course in Sanskrit i.e. B.Sc. plus Diploma in Sanskrit followed by clearance of Entrance Test, becomes equivalent to B.A. in Sanskrit.”

(Taken from page 5I of OA)

8. The Applicant has relied on rule 2.1 of the University Grants Commission (Minimum Standards of Instruction for the Grant of the Master’s Degree through Formal Education) Regulations, 2003, which reads as under:

“In exercise of the powers conferred by clause (f) of sub-section (1) of Section 26 of the UGC Act 1956 (No.3 of 1956), the University Grants Commission makes the following Regulations, namely: Short title, application and commencement:

2.1 *No student shall be eligible for admission to a Master’s degree programme in any of the faculties unless he/she has successfully completed three years of an undergraduate degree or earned*

prescribed number of credits for an undergraduate degree, though the examinations conducted by a university/autonomous institution or possesses such qualifications as recognized by the concerned university as equivalent to an undergraduate degree.”

(Quoted from page 31A of OA)

9. The Applicant has placed strong reliance on the judgment of the Hon'ble Supreme Court in **Chandrakala Trivedi Vs. State of Rajasthan (2012) 3 SC 129**, wherein it held that, obtaining higher qualification is equivalent to passing lower examination in the same line or stream.

10. The Applicant has also relied on the judgment of Hon'ble Calcutta High Court in **Rina Dutta & Ors. v. Anjali Mahato & Ors. FMA No.757 of 2005 decided on 18.5.2010**. The relevant portion reads as under:

“11.
When a particular qualification is laid down in a advertisement relating to a distinct class of candidates, the candidates possessing a qualification higher than that advertised can ordinarily not be FMA 757 of 2005 debarred or disqualified, but it is open to the employer to make a rule providing for disqualification of candidates possessing qualification higher than the prescribed qualification, but the burden would be on the employer to justify such a rule.”

(Quoted from page 56F of OA)

11. The Respondent no.2 has filed affidavit for opposing present O.A. The relevant portion of the same is as under:

“(3) *I say that the Applicant was a candidate for the post of the Secretary, Maharashtra State Marathi Vishwakosh Nirmiti Mandal (hereinafter stated as the Mandal) vide advertisement published by the Maharashtra Public Service Commission (hereinafter stated as the Commission) on 29.09.2017. The Interviews for the post were conducted by the Commission on 06.02.2018.*

- (4) *I say that during the selection process the Commission checked the certificates of the candidate as claimed by them in their online applications. It is submitted that doubts were raised regarding the essential qualifications of the Applicant. Therefore the matter was referred to the Marathi language Department (hereinafter stated as the Department) by the Commission vide letter dated 23.04.2018. In the said letter Commission has mentioned that the Applicant in her online application stated her qualifications as B.A Sanskrit with 76% and M.A. Sanskrit with 68%. As the Applicant prima facie fulfilled the qualifications mentioned in advertisement, she was called for interview. But when the Applicant at the time of interview produced her Diploma certificate, which clearly indicated that she has passed diploma in Sanskrit and did not possess degree in Sanskrit. The eligibility criteria qualification education mentioned in the advertisement was as per provisions of the recruitment rules for the said post which is reproduced below :-*

The candidate must -

- i) possess a degree in Marathi or Sanskrit subject with at least fifty-five percent marks.*
 - ii) possess a Masters degree in Marathi or Sanskrit subject with at least fifty-five percent marks.*
- (5) *It was further mentioned in the letter dated 13.04.2018 of Commission that the Applicant at the time of interview process has claimed to the Commission that this Diploma Course is equivalent to the Degree. Therefore she was allowed to participate in the interview process subject to decision about her qualifications and the undertaking given by her to that effect on 6.2.2018. The Commission accordingly sought guidance from the department about eligibility of the Applicant.*
- (6) *It is further submitted that the Department consulted with the Law and Judiciary Department and communicated the Commission as follows:*

“महाराष्ट्र राज्य मराठी विश्वकोश निर्मिती मंडळातील सचिव (गट-अ) व सहाय्यक सचिव (गट-ब) (राजपत्रित) (सेवाप्रवेश) नियम, २०१६ च्या नियम-२ पोटनियम-(ग) मध्ये “पदवी” याचा अर्थ सांविधिक विद्यापीठाची पदवी, असा नमूद केला आहे.

नियमांमध्ये "पदविका" या संज्ञेचा उल्लेख केलेला नाही किंवा अर्थही दिलेला नाही. सबब, "डिप्लोमा इन संस्कृत" या पदविकेस "डिग्री इन संस्कृत" या पदवीशी समकक्ष मानता येणार नाही. ६

Copy of the letter/opinion dated 04.06.2018 of the department containing opinion of Law and Judiciary Department is annexed hereto and marked as EXHIBIT "R-2".

- (8) *The Applicant has completed her B.Sc. in Micro Biology in 1993. Thereafter she completed M.Sc. with Bio-Chemistry in 1995. According to Ordinance no. 2237, the candidates who possess Degree in faculties other than Arts, can seek admission for M.A. course in Mumbai University, after following the procedure laid down therein. It does not mention about the equivalence of courses.*
- (9) *The Applicant while filing the application for the post under consideration, stated that she has acquired degree in Sanskrit, but failed to produce the certificate to that effect. On the contrary she claimed that diploma in Sanskrit is equivalent to the degree in Sanskrit but could not produce supporting evidence for her say during or after the interview as well as in this application for consideration before the Hon'ble Tribunal. At the time of interview the Applicant has given an undertaking to the Commission stating that the decision of the Commission in respect of the equivalence is binding to her. In the present O.A., the Applicant has raised another point before the Hon'ble Tribunal.*
- (10) *According to the recruitment rules for the post under consideration the candidate must possess both the qualifications i.e. Degree in Marathi or Sanskrit as well as Masters degree in Marathi or Sanskrit and thereafter must possess the required experience as mentioned in recruitment rules which is enumerated in the advertisement. It is stated that, in the absence of the word "or", both the qualifications are considered to be essential for the purpose. Hence the argument of the Applicant in respect of the word "and" or "or" is not tenable.*
- (11) *As regards admission of the Applicant for the interview, from the communication received from the Commission enclosed hereinabove and from para 6.9 of this application, it appears that the Applicant has clicked on the B.A. degree in Sanskrit. However, at the time of verification of certificates, the Applicant could not produce B.A.*

Degree in Sanskrit. The Applicant claimed that the Diploma in Sanskrit is equivalent to the Degree and submitted an undertaking to that effect to the Commission. However, as per the clarification /opinion of the Law and Judiciary Department, the Applicant is not eligible for appointment on the post of the Secretary, Maharashtra State Marathi Vishwakosh Nirmiti Mandal.”

(Quoted from page 63-67 of OA)

12. In the affidavit of Respondent no.1 it is stated that the advertisement has been published prescribing the requirement as:

- (i) *A degree in Marathi or Sanskrit with at least 55% marks.*
- (ii) *Masters Degree in Marathi or Sanskrit with at least 55% marks.*

13. The Respondent no.1 has urged that the candidate was fully aware of the provisions and has participated in the same. She did not possess Degree in Marathi or Sanskrit but possess Diploma in Sanskrit as such she does not fulfill the condition mentioned in para 4.4(i) of the advertisement. Granting of permission for admission to MA Course on the basis of some qualification in other faculty and conferring a B.A. Degree are totally different things, which cannot be equated with each other.

14. Ld. CPO has relied on the following judgments:

- (1) *Yogesh Kumar & Ors. v. Govt. of NCT, Delhi & Ors., (2003) 3 SCC 548. Para 8 reads as under:*

“8. This last argument advanced also does not impress us at all. Recruitment to public services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the rules allows entry to ineligible persons and deprives many others who could have competed for the post.”

- (2) *State of Maharashtra & Ors. Vs. Tukaram Tryambak Chaudhari & Ors., Civil Appeal No.863 of 2007 decided by the Hon'ble Supreme Court on 20.2.2007.*

15. According to the Respondents, therefore, she is not entitled for this post. The Respondents, therefore, have prayed that the OA should be dismissed as it is devoid of any merit.

16. Issue for consideration:

Sr. No.	Issue
(1)	<i>Is the applicant claiming deviation or relaxation from the prescribed qualifications, when the rules prescribe one degree.</i>
(2)	<i>When the applicant raises a question of equitation, whether it would be open for this Tribunal to adjudicate on the point of fulfillment of qualifications based on undisputed rules and regulations.</i>
(3)	<i>Whether the Applicant is eligible for being considered eligible for the post in question since she has Diploma in Sanskrit and Entrance Test which makes her eligible to appear for the Post Graduate Degree in Sanskrit?</i>
(4)	<i>Whether applicant's qualification of graduation in Science faculty with Diploma in Sanskrit which is a prescribed qualification for change of faculty as an eligibility copes up with a comparability to degree of Bachelor of Arts?</i>

17. Our answers and findings for reasons recorded hereinafter are as below:-

- (1) No. Applicant is not claiming any relaxation but prays for reading down or prays for permissible and liberal construction of the prescription.
- (2) Affirmative for the following reasons.

- (3) Affirmative for the following reasons.
- (4) Affirmative for the following reasons.
18. Case proceeds in the background of totally admitted facts namely:-
- (i) Applicant holds degree of B. Sc in Microbiology & M.A in Sanskrit.
- (ii) Because applicant does not hold the degree of B.A Sanskrit from any University and she belongs to faculty of Science, due to her desire to take admission to M.A Sanskrit, she was required to pass two papers to qualify herself for change of faculty for which she was awarded Diploma in Sanskrit which entitles her to stand at par with B.A in Sanskrit which is the eligibility prescribed for admission to M.A Sanskrit.
19. We have perused the judgments relied on by the applicant as well as by the Respondents. What emerges as a dictum is summarized as follows:-
- (a) Recruitment Rules have to be adhered to, strictly in order to ensure denial of opportunity and departure from rules does not occur.
(Yogesh Kumar's case supra).
- (b) When two qualifications are prescribed and a candidate holds higher qualification, the purpose and object behind prescribing variety of qualification must be looked into for attaining the object behind the prescription, by giving reasonable meaning to the word or idea of equivalence, without lowering the standards with reasonable flexibility.
(Chandrakala Trivedi's case supra & Rina Dutta & Ors Vs. Anjali Mahato & Ors – unreported judgment of Calcutta High Court, Appellate Side, FMA No. 757/2005 decided on 18.5.2010, copy at page 56A of O.A).
20. After considering the legal proposition emerging from the facts of the case, respective pleadings and the citations, this Tribunal considered that

in the present case the Recruitment Rules, copy whereof is at page 107, provides for:-

(i) *A degree in Marathi or Sanskrit with at least 55% marks.*

(ii) *Masters Degree in Marathi or Sanskrit with at least 55% marks.*

21. As we see what is prescribed in an academic qualification, as averred by the applicant is described as “Degree in Marathi or Sanskrit subject” and it does not contain additional tag or a prescription so as to add any special proficiency and to prescribe any different or superior level of study / proficiency such as B.A with Hons, or B.A with all papers in a particular subject Marathi / Sanskrit. It will even comprehend B.A with Sanskrit or Marathi as only one of the subjects.

22. It has thus to be inferred while acting reasonably and logically that the law makers did not intend to attach excessive or uncompoundable importance to the level of study or proficiency of the degree at first level along with Master’s Degree in Marathi or Sanskrit. Thus the prescription of O.A barely along with M.A needs to be viewed as one of the collateral qualifications of directory character than mandatory or imperative essential qualification. Inclusion of higher degree – Master’s degree in one subject connotes the weightage thereto which is higher. Weightage for B.A is attached only for holding of the said degree, thereby rendering the degree at Graduate level, barely a path than an uncompoundable requirement or eligibility.

23. Seen from this angle and reading of the prescription made by University Grants Commission laying down the path of eligibility for entry to the channels of the Masters – Post Graduation, in a subject to be based on equivalence being accredited by the University to be a substitute for a

degree or graduation as a 'faculty change eligibility test', deserves to be recognized / accredited with due weightage.

24. It has to be borne in mind that the Circular issued by U.G.C, which is followed and accepted by the University, is the foundation on which the applicant got admission to M.A Sanskrit, renders applicant's graduation in Science together with the qualifying examination of two papers qualifies the applicant for eligibility to M.A Sanskrit to be equivalent to B.A and/or a substitute for holding the degree of B.A in Sanskrit. The relevant text of the Circular of U.G.C is at page 31-A, which is reproduced below:-

"2. Admission

2.1 No student shall be eligible for admission to a Master's degree programme in any of the faculties unless he/she has successfully completed three years of an undergraduate degree or earned prescribed number of credits for an undergraduate degree, through the examinations conducted by a university/autonomous institution or possesses such qualifications as recognized by the concerned university as equivalent to an undergraduate degree."

(Quoted from page 31-A of the O.A)

25. Moreover, on facts it is admitted that applicant has secured 76% marks in her eligibility, i.e. qualification examination i.e. the Diploma.

26. In view of the foregoing discussion, we are satisfied that the applicant is neither disputing legality of any of the prescription nor claiming an exception. All that applicant is claiming is the inclusion based on admitted set of rules which are not barely admitted, rather have been acted upon by U.G.C and by the University of Bombay.

27. We have to bear in mind that in the process of recruitment, the selector is in search of candidates, by following the processes first of elimination which later culminates into process selection for excellence.

28. In the process of elimination those who do not fulfill or withstand the prescribed qualifications do get eliminated. Where there is a room for doubt the process of interpretation comes into play. Applicant's case has got stuck up at the stage of application and interpretation. In the premises of foregoing discussion, we hold that the prescription of degree level is adequately met by the applicant due to the eligibility which she possess due to the faculty change eligibility diploma along with graduation of other faculty.

29. Moreover, in recruitment for higher posts, talent amongst eligible candidates is searched for. When the applicant holds multiple degrees and a objection is raised doubt about degree deficiency at lower level but not as regards its genuineness, and candidate holds higher degree, while gauging the compliance, the interpretation ought to be with liberal construction and not with arithmetic or literal precision. Spirit and sense of permitting inclusion to accelerate the search of better talent, by considering the totality of the fact of exhibit of competence ex-facie emerging from the marks secured at the equivalence level as well as the marks secured at the Mater's level be duly accredited to, instead of being hyper technical and losing sight of aim of securing better than best talent.

30. We, therefore, answer all the questions framed by us in affirmative as noted in para 14 for foregoing reasons.

31. Therefore, we are of the considered view that it would amount to injustice, if the Applicant is not considered eligible for the present post

and search for talent would get misdirected. The process of selection to our mind to meet ends of justice has to lean towards by object by construction of words to suit the aims and objects than adherence to liberal construction.

32. In view of the peculiar circumstances, we direct the Respondents to treat that the case of the Applicant fulfills the criteria mentioned in para 4.4(i) due to eligibility equivalent to degree of B.A. Applicant's candidature be processed further subject to her merit rank as per the criteria laid otherwise prescribed, such as written or oral interview as and whatever may be applicable. Applicant is held and declared to be eligible pursuant to of the condition No. 4.4 about educational qualification, in the advertisement dated 29.9.2017 issued by the Respondent no. 1 to compete for the post of Secretary (Group-A) and accordingly the Petitioner's candidature be processed in accordance with law.

33. Hence, the Original Application is allowed in terms of para 32 foregoing.

34. No order as to costs.

Sd/-
(P.N. Dixit)
Member (A)
20.2.2019

Sd/-
(A.H. Joshi, J.)
Chairman
20.2.2019

Dictation taken by: A.K Nair.