

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATIONS NO.668/2022 & 533/2023

ORIGINAL APPLICATION NO.668 OF 2022

DISTRICT : PUNE

Shri Shubham Suresh Misale,)
Age 23 years, occ. Workman, R/at Akshay Park,)
Room No.1, Saptshrungi Housing Society, Nigadi, Pune)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Public Health Department, Mantralaya, Mumbai)
2. Deputy Director of Health Services,Pune Division)
New Administrative Building, Third Floor,)
Opp. Vidhan Bhavan, Pune)
3. Shri Kiran Suresh Dongare,)
Age 28 years, Occ. Service, R/at Wardha,)
Post Girda, Taluka Manora, District Washim)..Respondents

WITH

ORIGINAL APPLICATION NO.533 OF 2023**DISTRICT : PUNE**

Shri Kiran Suresh Dongare,)
 Age 28 years, Occ. Plumber, Shrikrishna Plumbing)
 Services, Haveli, Pune 412 216)
 R/At & Post: Shikrapur, Tal. Shirur, Dist.Pune 412208)

Versus

1. The State of Maharashtra,)
 Through the Secretary,)
 Public Health Department, 10th Floor,)
 G.T. Hospital Building, Mumbai 400001)
2. The Deputy Director of Health Services,)
 Pune Division, New Administrative Building,)
 3rd Floor, Opp. Vidhan Bhavan, Sasoon Road,)
 Pune 411 001)..Respondents

Shri L.S. Deshmukh – Advocate for Applicant in OA No.668/2022

Shri U.V. Bhosale – Advocate for Applicant in OA No.533/2023 and for
 Respondent No.3 in OA No.668/2022

Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson

Smt. Medha Gadgil, Member (A)

RESERVED ON : 31st January, 2024

PRONOUNCED ON: 9th February, 2024

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. The facts in both the above two cases are similar and therefore they are being disposed off by this common order as they are interconnected.

2. The applicant in OA No.668/2022 challenges his non selection to the post of Plumber as per advertisement dated 22.2.2019 issued by respondent no.2. He also challenges appointment order dated 31.5.2022 issued in favour of respondent no.3.

3. The applicant in OA No.533/2023 prays that be he allowed to join on the post of Plumber in view of the appointment order dated 31.5.2022 issued by respondent no.2.

Brief facts of the case:

4. The respondent no.2 issued an advertisement dated 22.2.2019 for various posts including the post of Plumber. Total 2 posts of Plumber were notified in the said advertisement. One post out of two was meant for candidate belonging to Scheduled Caste. As per the said advertisement the eligibility criteria for the post of Plumber was as under:

- (i) have passed Secondary School Certificate Examination and
- (ii) possess at least 2 years experience in the line.
- (iii) preference shall be given to a candidate possessing a certificate awarded by the Department of Technical Education Bombay for having completed the plumbers course.

5. Thereafter a written test was conducted for the said post. The applicant in OA No.668/2023 secured 100 marks out of 200 marks and was at Sr. No.12 in the general merit list, whereas respondent no.3 secured total 116 marks and was placed at Sr. No.8 in the general merit list. Respondent no.3 was at Sr. No.1 and applicant at Sr. No.2 as far as SC category is concerned. Respondent No.3 in OA No.668/2022 has filed OA No.533/2023.

6. The applicant in OA No.668/2022 challenges the selection of respondent no.3 and his non-selection to the said post of Plumber. Ld. Advocate for the applicant in OA No.668/2022 on the basis of information received under RTI pointed out that respondent no.3 has a certificate of Fitter course whereas as per Recruitment Rules of 1959 and conditions of the advertisement the candidates who have completed the Plumber course shall be eligible for appointment. He further pointed out that respondent no.3 has completed a two years Fitter course in the academic year 2013-14 to 2014-2015 and also his HSC in the academic year 2014-15. He pointed out that two qualifications in one academic year are not permissible. He also challenges the experience of respondent no.3 with Bhosekar Construction as a Plumber from 5.11.2016 to 7.5.3019. He states that the said certificate is false.

7. Ld. Advocate for respondent no.3 in OA No.668/2022, who is also advocate for applicant in OA No.533/2023, pointed out that though respondent no.3 has been appointed on 31.5.2022 he has not been allowed to join the said post due to pendency of this OA, although this Tribunal has not stayed the impugned order. Ld. Advocate for respondent no.3 further pointed out that he has already been given appointment letter as he has necessary qualification and moreover he secured 116 marks in the written test while the applicant secured 100 marks. He pointed that respondent no.3 has passed the HSC examination and has requisite

experience of 2 years. He refers to the 3rd condition in the advertisement, which reads as follows:

“(iii) preference shall be given to a candidate possessing a certificate awarded by the Department of Technical Education Bombay for having completed the plumbers course.”

8. Ld. Advocate for the respondent no.3 pointed out that this condition is not mandatory and it says preference shall be given to a candidate having completed the plumbers course. He further pointed out that preference is normally given when all things are normal amongst the candidates. He pointed out that his qualifications are higher than the applicant as he has passed HSC Examination whereas the applicant has only passed SSC Examination apart from securing higher marks in the written test. He also states that certificate submitted by the applicant of Plumber's course is not awarded by the Department of Technical Education, Bombay and hence cannot be considered.

9. Ld. Advocate for respondent no.3 submits that the applicant has not produced any documentary evidence to prove that experience certificate submitted by respondent no.3 is false. He also pointed out that applicant was pursuing his education up to December, 2018 and cannot be said to be working at the same time.

10. Ld. PO relies on the affidavit in reply dated 4.5.2023 filed by Arif Ahmed Sayyad, Chief Administrative Officer in the office of Deputy Director of Health Services, Pune Circle, Pune. He pointed out that applicant was held ineligible for appointment to the post of Plumber on the grounds of merit. He pointed out that both the applicant and respondent no.3 applied in SC category. He pointed out that the applicant does not have requisite merit as he did not have required experience for

the said post. He pointed out that the applicant got 100 marks whereas respondent no.3 got 116 marks and he has requisite experience and which is why appointment order in favour of respondent no.3 was issued.

11. We have heard both the sides and considered the facts of both the cases. It is a fact that the advertisement for the post of Plumber was issued with following criteria:

- (i) have passed Secondary School Certificate Examination and
- (ii) possess at least 2 years experience in the line.
- (iii) preference shall be given to a candidate possessing a certificate awarded by the Department of Technical Education Bombay for having completed the plumbers course.

12. It is seen that respondent no.3 has secured 116 marks in written test whereas applicant secured 100 marks. Moreover, respondent no.3 has certificate of requisite experience of working as Plumber with M/s. Bhosekar Construction for 2 years and 6 months. The applicant has been unable to produce any proof that the said certificate is false. Now we need to consider clause (iii) of the advertisement wherein it is stated that, preference shall be given to a candidate possessing a certificate awarded by the Department of Technical Education Bombay for having completed the plumbers course. It is a fact that preference is normally given when all things are equal amongst the candidates.

13. Considering all these factors, we pass the following order:

- (A) Original Application No.668 of 2022 is dismissed.

(B) Original Application No.533 of 2023 is allowed. The respondent no.2 is directed to allow the applicant to join the post of Plumber as per appointment order dated 31.5.2022 within a period of three weeks from today.

(C) No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
9.2.2024

Sd/-

(Mridula Bhatkar, J.)
Chairperson
9.2.2024

Dictation taken by: S.G. Jawalkar.