

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.908 OF 2015**

DISTRICT : BULDHANA

Shri Ganesh Narayan Nage,)
Age 30 years, occ. Nil, R/o A/P Palashi (Bk.),)
Taluka Khamgaon, District Buldhana)..Applicant

Versus

1. The Joint Director of Technical Education,)
Divisional Office, Govt. Polytechnic Campus,)
Nasik Road 422101)
2. The State of Maharashtra,)
Through Principal Secretary,)
Higher & Technical Education Department,)
Mantralaya, Mumbai 400032)
3. Kumari Leena Bharat Dhanagar,)
Technical Laboratory, Assistant in Government)
Engineering College, Jilha Peth, Jalgaon)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for Respondents No.1 & 2

Shri M.D. Lonkar – Advocate for Respondent No.3

CORAM : Shri Justice A.H. Joshi, Chairman
 Shri P.N. Dixit, Member (A)
 RESERVED ON : 4th April, 2019
 PRONOUNCED ON : 10th April, 2019
 PER : Shri P.N. Dixit, Member (A)

J U D G M E N T

1. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicant, Smt. K.S. Gaikwad, learned Presenting Officer for Respondents No.1 & 2 and Shri M.D. Lonkar, learned Advocate for Respondent No.3.

Brief facts:

2. Joint Director of Technical Education, Divisional Office, Nashik – Respondent No.1 issued an advertisement for filling up Group C and D posts through online process from 29.1.2014 to 12.2.2014 for the post of Technical Laboratory Assistant. The academic eligibility and experience was stipulated as under:

९.	तांत्रिक प्रयोगशाळा सहाय्यक	३. संबंधित क्षेत्रातील १ वर्षांचा प्रयोगशाळा / मॅन्युफॅक्चरिंग/ सर्किटिंग / मॅटेनन्स/ डिझाईन / CNC मशीन हाताळण्याचा अनुभव.	लेखी परीक्षा, कौशल्य चाचणी, मुलाखत
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(Quoted from page 16 of OA)

3. As the Applicant was not selected in the category of NT2(C) and Respondent no.3 was selected the Applicant has prayed in para 9(a) of OA to declare him as entitled for being appointed for the post of Technical Laboratory Assistant. He has further prayed in para 9(b) of OA to set aside the order of appointment of Respondent no.3 holding the same to be

illegal and non-est. In support of the same the Applicant has drawn attention to the copy of online application form filled in by the private Respondent no.3 wherein she has mentioned her work experience as under:

"S.N.	Organization Name	Designation	From Date	To Date	Exp Type	Exp (In Months)
1.	Visiting Lecturer	Lecturer	16.7.2013	Till today	Teaching	0 Year & 6 months

मी असे प्रमाणित करतो/करते की आपले आस्थापने वरील अर्ज केलेल्या पदासाठीची पात्रता काळजीपूर्वक वाचली असून सदर जाहिरातीतील अटी व शर्ती मला मान्य आहेत. या अर्जात दिलेली सर्व माहिती संपूर्ण खरी व योग्य आहे असे मी जाहीर करतो/करते कागदपत्रांच्या छाननी चे वेळी/मुलाखतीच्या वेळी अर्जात उल्लेख केलेली सर्व मूळ प्रमाणपत्रे सादर करावी लागतील याची मला जाणीव आहे. या पुढे असे हि जाहीर करतो/करते की, भविष्यात यापैकी कोणतीही माहिती खोटी व चुकीची आढळल्यास मी शासन सेवेसाठी अपात्र ठरून कायदेशीर कार्यवाहीसाठी पात्र ठरेन.

5. *In case any particulars given by me in this application are found to be false, incorrect and/or misleading, I shall be liable for being blacklisted or debarred from all further examinations and selection processes of the Selection Committee and I shall also be liable for disciplinary proceedings, if I am already engaged in any Government Service."*

(Quoted from page 20 of OA)

4. The Applicant has stated in the OA as under:

"6.12
That, however, as stated above the Respondent no.3 was totally ineligible to compete for the said post since she lacked the experience qualification of one year required to be possesses by the candidate on or before last day of submission of the application form i.e. on or before 12.2.2014 as per the advertisement issued by the Respondent no.1."

(Quoted from page 9-10 of OA)

5. The Respondents no.1 and 2 have filed their affidavit in reply and in their response to the above contentions of the Applicant the Respondents have replied as under:

- “12. With reference to para no.6.7 of this Original Application I say and submit that the content ion in this para are denied. Respondent no.3 has submitted her application form No.900037270 Online on 11.2.2014. In column 1 of experience as Technical Laboratory Assistant she said ‘yes’ in the appropriate column on page no.1 in the application form. On page no.2 of the application form against work experience column experience of 0 years and six months has been mentioned but the experience of one year the details of experience could not be appeared in the Online form. Respondent No.1 has constituted two committees for scrutiny of original documents of the candidates vide Office Order No.Tanshi/vikana/lale/padbharti/2014/158, dated 19.6.2014. During the course of the scrutiny by the committee, it was found the difference in the documents mentioned in the Online form and actual verification on the scrutiny and verification of the documents. The Respondent no.1 has accepted the documents during the course of scrutiny and verification of the committee. It was found that in respect of 96 candidate in respect of whom there was difference in information mentioned in the Online application and actually found and in the scrutiny and the verification. Original Online application No.900037270 of Respondent no.3 is at Exhibit R-4. Along with this application copies of the relevant certificate including experience certificate have been attached. Respondent no.3 was working as a ‘Computer Servicing Engineer” in Adarsh Computers, Nasik Road during the period from 1st July, 2012 to 30th June, 2013 that it a period of one year experience has also been attached. Copy of the constitution of scrutiny committees order dated 19.6.2014 and 6.8.2014 is at Exhibit R-5. Orders is issued by the Respondent No.1 in his office note dated 25.6.2014 is at Exhibit R-6. List of 96 candidates in respect of whom there was difference in the information of online application form and verification by the committee is at Exhibit R-7.
13. In view of the fact that the Respondent no.3 got the required experience mentioned in the advertisement and in view of the fact that Respondent no.1 has accepted the certificate verified by the scrutiny committee. The candidature of the Respondent no.3 have been accepted.”

(Quoted from page 48-49 of OA)

6. In support the Respondent no.1 has attached copy of the experience certificate dated 31.7.2013 from Respondent no.3 at page 79 of OA, which states as under:

“I hereby declare that Miss Leena Bharat Dhangar was working as an Computer Servicing Engineer in my Institute from 1st July, 2012 to 30th June, 2013.

She was working as Computer Servicing Engineer. She has actual work Computer Software and hardware Maintenance & Repairing in my institute.

*Sd/-
Chairman,
Adarsh Computer Institute,
Nashik Road.”*

(Quoted from page 79 of OA)

7. The Respondents have also attached office note at Exhibit R-6 page 86 of OA which reads as under:

“विषय :- पदभरती प्रक्रिया २०१४- गट क व ड संवर्गातील पदभरतीबाबत.

दिनांक २५.६.२०१४ ते २.४.२०१४ दरम्यान उमेदवारांच्या कागदपत्र पडताळणीबाबत.

संदर्भ :- कार्यालयीन आदेश क्रमांक तंशि/विकाना/लले/पदभरती /२०१४/ १५८, दिनांक १९.६.२०१४.

मा. महोदय,

या कार्यालयामार्फत प्रसिध्द केलेल्या जानेवारी २०१४ मधील गट क व ड मधील पदभरती संदर्भातील जाहिरातीस अनुसरून भरती प्रक्रिया सध्या कार्यालयामार्फत सुरु आहे. सदरहू पदभरती प्रक्रियेबाबत वरील संदर्भाधीन कार्यालयीन आदेशान्वये उमेदवारांच्या मुळ कागदपत्रांची पडताळणी करण्याकरीता कागदपत्र पडताळणी समिती गठीत करण्यात आलेली आहे. सदरहू समितीमार्फत उमेदवारांचे कागदपत्र पडताळणीचे वेळी उमेदवारांनी ऑनलाईन भरलेली माहिती व प्रत्यक्ष कागदपत्र पडताळणीचे वेळी सादर केलेली माहिती यामध्ये तफावत आढळून येत आहे. ही बाब कागदपत्र पडताळणी समिती सदस्यांनी निदर्शनास आणून दिलेली आहे.

तसेच येथे असेही नमूद करण्यात येते की, एमकेसीएल यांचेकडे ऑन लाईन अर्ज स्विकारणेचे काम सोपविण्यात आले होते. त्यावेळी प्रत्येक पदाकरीता असणारी शैक्षणिक अर्हता, समांतर आरक्षणाकरीता लागणारी आवश्यक कागदपत्रे, सामाजिक आरक्षण इत्यादी बाबतचे field भरणेबाबत आवश्यक करून, तदनंतरच सदर

विद्यार्थ्यांचा अर्ज पुढील माहिती करीता जाईल किंवा तो submit होणार नाही हे ऑन लाईन अर्ज भरतांना संकेत स्थळावर करण्यात आले नव्हते.

त्यामुळे उमेदवाराने अर्ज करतेवेळी एमकेसीएल यांचे संकेतस्थळावर ऑनलाईन अर्ज भरतांना एमकेसीएल यांच्याकडून कोणत्याही महितीबाबत mandatory column करण्यात आलेले नसल्याने, तसेच उमेदवाराकडून अर्धवट महिती भरले नंतरही त्यांचा अर्ज संकेतस्थळावर submit झाले आहेत. आता कागदपत्रे पडताळणीचे वेळी संबंधीत उमेदवारांकडे अर्ज करतेवेळी असलेली परंतु अर्जात माहिता न भरली गेलेली कागदपत्रे उमेदवारांकडे कागदपत्रे पडताळणीचे वेळी पडताळणी समितीसमोर सादर केलेली आहेत. अशा परिस्थितीत उमेदवाराने कागदपत्रे पडताळणीचे वेळी उपलब्ध करून दिलेली प्रमाणपत्रे उदा जातीचा दाखला, जात वैधता प्रमाणपत्र, नॉन क्रिमीलेअर प्रमाणपत्र, नावातील बदल, जन्मतारखेमधील तफावर, अनुभवाचे प्रमाणपत्र, शैक्षणिक अर्हता इत्यादी बाबतची कागदपत्रे स्विकारून उमेदवारांना संधी द्यावी किंवा कसे ? याबाबत कृपया योग्य ते आदेश द्यावेत ही विनंती.

प्रमाणपत्र पडताळणीचे वेळी
सादर केलेली प्रमाणपत्र
स्वीकारण्यास हरकत नाही.

Sd/-

प्रशासकीय अधिकारी

Sd/-

सहाय्यक संचालक (तांत्रिक)

Sd/-

सहसंचालक”

(Quoted from page 86 of OA)

8. Exhibit R-7 page 87 of OA mentions about the shortcomings in the online forms of 96 candidates wherein the private Respondent no.3 figures at Sr. No.2, which reads as under:

“तांत्रिक प्रयोगशाळा सहाय्यक पदासाठी निवड झालेल्या व प्रतिका यादीतील उमेदवारांचे ऑन लाईन अर्जातील तपासणीचे वेळी दिसून आलेल्या त्रुटी.

अ. क्र.	फॉर्म नंबर	उमेदवाराचे नांव	अर्जातील त्रुटी	कागदपत्र पडताळणीच्या वेळी केलेली कार्यवाही
०२.	९०००३७२७०	लिना भारत धनगर	एक वर्षाचा अनुभव असल्याचे नमूद केले आहे परंतु अर्जात अनुभवाची नोंद अपूर्ण.	अनुभव विचारात घेण्यात आला आहे.”

(Quoted from page 87 of OA)

9. The Respondent no.3 has filed the affidavit. The relevant portion of the same in response to the grounds raised by the Applicant in para 6.12 & 6.13 of his pleadings reads as under:

“16. With reference to para 6.12, I say and submit that I entirely deny the contention in para 6.12 of this OA. I say and submit that I was eligible for being considered and appointment for the post as the condition prescribed in the advertisement in respect of work experience was fulfilled in my respect.

17. With reference to para 6.13 of this Original Application, I say and submit that the entire contents in this paragraph is denied as sufficient work experience prescribed in the advertisement was fulfilled in my respect. I say and submit that the contention that my candidature should have been rejected and threshold as I possessed requisite work qualification.”

(Quoted from page 149 of OA)

10. The Applicant has filed rejoinder to the reply filed by Respondent nos.1 and 2. The relevant portion of the same reads as under:

“5. That it is clear from pages 71, 73 and 79, that the Respondent no.3 obtained degree qualification only on 31.7.2012 and therefore, the experience certificate submitted by the Respondent no.3 from the Adarsh Computer about servicing of Computer between 1.7.2012 to 30.6.2013 is illegal and as such could not be relied upon by the Respondents by holding the Respondent no.3 to be eligible for the said post for being appointed.

7. That it is clear from the page 83, that it is a mere office order dated 19.6.2014 issued by the Respondent no.1 thereby forming committee to scrutinize the applications of the candidates. That in fact, the Respondent no.1 has not made any reference in the said office order about any Government instructions or the Rule which would legally empower him to form such a committee. Thus apparently there is no source of power available with the Respondent no.1 and therefore, the committee formed by him is not a statutory committee and as such illegal committee and therefore any decision taken by any such committee or by the Respondent no.1 on the basis of the report of

such committee cannot be said to be legal. That this reply of the petitioner covers his reply to page 84.”

(Quoted from page 129-130 of OA)

11. The Applicant has filed rejoinder to the reply filed by Respondent no.3. The relevant portion of the same reads as under:

“3. *That in the circumstances stated above, the petitioner has reason to believe that the subsequent attempt on the part of the Respondent no.3 at the time of scrutiny of her application by the Scrutiny Committee appointed by the Respondent no.3, to claim to possess the experience of one year between 1.7.2012 to 30.6.2013 as the Computer Servicing Engineer in Adarsh Computer, Nasik Road, is an afterthought one and as such cannot be believed since the same would not inspire confidence in the mind of any prudent person. Thus that the petitioner has reason to believe that the Respondent no.3 has created such false and concocted record to justify her appointment in the said post. This bonafide belief of the petitioner gets strengthened when admittedly the father of the Respondent no.3 is working as P.A. to the Respondent no.1 and therefore the possibility of nepotism in her case by the Respondent no.1 cannot be ruled out.*

4. *With further reference to para 11 of the reply (middle of page 147), I say that according to the Respondent no.3, her one year experience is as a visiting Lecturer and not as a regular Lecturer. I say that according to me and as per the Recruitment Rules and the advertisement so also as per the GAD circular dated 3.7.2004 (Exhibit A) the candidate with experience as a visiting Lecturer is not at all eligible for the said post. That in any case such period of experience gained by the Respondent no.3 up to the cut of date of experience mentioned in the advertisement alone can be counted. That in view of this, any period of experience claimed to have been gained by the Respondent no.3 after such cut of date till the order of issuance of appointment, cannot be counted. Thus on the own showing of the Respondent no.3, that she is otherwise ineligible in terms of the required experience to compete for the post in question.”*

(Quoted from page 157-158 of OA)

12. The Respondents no.1 and 2 have also filed their sur-rejoinder. The relevant portion of the same reads as under:

“6. With reference to para 5 of rejoinder, I deny the contention that Respondent no.3 obtained degree qualification only on 31.7.2012 and therefore the experience certificate submitted by the Respondent no.3 from the Adarsha Computer about Servicing of Computer between 1.7.2012 is illegal and such could not be relied upon by the Respondents by holding the Respondent no.3 to be eligible for the said post for being appointed. I say and submit that advertisement to till in the posts mentioned in the advertisement was published on the website of the Maharashtra Knowledge Corporation Limited on January 2014 and the period for submitting the online application was 29.1.2014 to 12.2.2014. I say that although Respondent no.3 obtained degree qualification only on 31.7.2012, she was eligible to apply for the concerned post on the date of advertisement. I say that experience certificate submitted by the Respondent no.3 from the Adarsha Computer about servicing of computer between 1.7.2012 to 30.6.2013 is legal and relied upon by the Respondent nos.1 and 2 by holding the Respondent no.3 to be eligible for the said post. I say and submit that there is no mention in the advertisement that experience certificate before obtaining of degree qualification are not valid for being considered for the post.”

(Quoted from page 163 of OA)

13. The learned Advocate for the Applicant has relied on the following judgments:

(A) Rakesh Kumar Sharma Vs. Govt. of NCT of Delhi & Ors. Civil Appeal No.6116 of 2013 decided by Hon'ble Supreme Court on 29.7.2013, relevant portion of this judgment reads as under:

“6. There can be no dispute to the settled legal proposition that the selection process commences on the date when applications are invited. Any person eligible on the last date of submission of the application has a right to be

considered against the said vacancy provided he fulfills the requisite qualification.

16. *In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification etc. Clause 11 of the letter of offer of appointment dated 23.2.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.*

17. *It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.*

There is no obligation on the court to protect an illegal appointment. Extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an

ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance.

The appeal is devoid of any merit and does not present special features warranting any interference by this court. The appeal is accordingly dismissed.”

(B) Shyamal w/o Santosh Musande Vs. State of Maharashtra & Ors., 2016(1) Mh.L.J. 106, W.P. No.2768 of 2013 decided by Bombay High Court (Aurangabad Bench) on 30.4.2015, in which Hon’ble High Court observed in relevant portion thereof which reads as under:

- “11. *In our opinion, the petitioner at the relevant time was not eligible to be considered for the post of Anganwadi Karyakarti, in as much as, she was not possessing the requisite experience of two years. Not only this, at the time of filing of Writ Petition, the petitioner was short of 2 years experience, and therefore, the petitioner has rightly mentioned in the petition that the petitioner has completed the service near about two years.*
12. *It is not in dispute that, the petitioner did participate in the selection process and was appointed as Anganwadi Madatnis. The legitimate claim of other candidates, who are on the relevant date fulfill all criteria laid down in Government Resolution dated 5th August, 2010 and also requisite qualifications were entitled for the said appointment. Therefore, in our opinion, the petitioner deserves no consideration. In the present case, the selection process is almost over except issuing appointment orders, therefore, the said selection process is governed by the earlier Government Resolution and in particular, Government Resolution dated 5th August, 2010.”*

(C) O.A. No.277 of 2018 Dr. Mohan Apparao Jadhav Vs. The State of Maharashtra & Ors. decided by this Tribunal on 11.5.2018 holding that:

“10. The MPSC has placed reliance on the judgment and order dated 11.10.2013 passed by Aurangabad Bench of Tribunal in OA No.410 of 2012 Anil Prakash Sarkate Vs. MPSC & Anr. where this Tribunal took a view that claims once made in the application (information once submitted) cannot be altered.

20. From the foregoing discussion that what emerges is summarized as below:

(a) Once a candidate makes any claim in the online application submitted by him, the claim that cannot be altered or changed.

(b) Whenever evidence in support of claim already made is to be furnished, permission to furnish the same has to be granted.”

14. Issues for consideration:

- (i) Whether the Respondent no.3 possessed necessary academic qualification and work experience as required in the advertisement?
- (ii) Whether the appointment of Respondent no.3 is influenced by extraneous factors and therefore is illegal?

Discussion and findings:

15. Admittedly, the Respondent No.3 obtained her qualifying degree on 31.7.2012. The Respondent No.3 claims that she had work experience from 1.7.2012 to 30.6.2013.

16. The Respondent No.1 has claimed that on 19.6.2014 a committee was constituted to scrutinize the applications. It is evident that the constitution of the committee was done admittedly because many candidates did not possess requisite experience. Opportunity to fill in deficiency in experience certificate was not made public for the knowledge of all the candidates through advertisement Exhibit A. This act of respondents in providing opportunity to candidates to cure deficiency/furnish certificate is not disclosed in the application has vitiated the selection.

17. The fact that the Respondent No.3 had stated in response to the question whether she possessed necessary work experience as 'Yes', is patently misleading and is contrary to her own declaration that she possesses experience in teaching. In the online application form, applicant mentions that the Respondent No.3 possesses experience of six months starting from 16.7.2013. The subsequent production of experience certificate at the time of verification does not inspire confidence and cannot be depended upon as it states that Respondent No.3 was working in the said institute from 1.7.2012 to 30.6.2013.

18. The work experience is expected to begin after completing the degree and being declared as passed. We do not wish to go into the oral allegations that the decision of the Respondent No.1 might have been influenced by the father of the Respondent No.3 as he was working as Personal Assistant of Respondent No.1.

19. This Tribunal has observed in O.A. No.277 of 2018 *Dr. Mohan Apparao Jadhav* (supra) as under:

“20. From the foregoing discussion that what emerges is summarized as below:

(a) *Once a candidate makes any claim in the online application submitted by him, the claim that cannot be altered or changed.”*

20. The Hon'ble Supreme Court in *Rakesh Kumar Sharma* (supra) has held that, an illegal appointment cannot be defended as it defeats the rights of others and creates arbitrariness. Moreover, Respondent No.3 does not appear to have been eligible at the relevant time as seen from the facts mentioned above. In view of the same, we find that Respondent No.3 did not possess necessary work experience as required in the advertisement.

21. The Original Application is, therefore, partially allowed in terms of prayer clause 9(b) and order of appointment of Respondent No.3 is quashed and set aside.

22. The claim of the Applicant as made in prayer clause 9(a) to appoint him, may be examined by Respondent No.1 on the basis of merits and suitable decision may be taken within a period of two months.

23. In view of the above directions, the Original Application is disposed off with no order as to costs.

Sd/-

(P.N. Dixit)
Member (A)
10.4.2019

Sd/-

(A.H. Joshi, J.)
Chairman
10.4.2019

Dictation taken by: S.G. Jawalkar.