

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 10 OF 2021

DISTRICT : PUNE

Shri Nilesh Narayan Ghode,)
R/o: Survey No. 67/B, Road no. 13,)
Bhairva Nagar, Dhanori Road,)
Pune-15.)...**Applicant**

Versus

1. The Joint Director of Vocational)
Education and Training,)
Having Regional Office at 49,)
A.J Marg, Kherwadi, Bandra [E],)
Mumbai 400 051.)

2. Shri Kiran Sanjay Deshmukh,)
Working as Craft Instructor,)
[Wireman], I.T.I, Murud, Tal-Murud,)
Dist-Raigad.)...**Respondents**

Shri B.A Bandiwadekar, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)**

RESERVED ON : 08.02.2024

PRONOUNCED ON : 15.04.2024

J U D G M E N T

1. The applicant prays that this Tribunal be pleased to quash and set aside the impugned order dated 24.9.2020 passed by Respondent No. 1, under which he issued the order of appointment in favour of ineligible candidate [in terms of experience qualification] like Respondent No 2, in the post of Craft Instructor [Wireman] and instead the Respondent No. 1 be directed to appoint the applicant in the said vacancy and to grant him all consequential service benefits including deemed date of appointment, as if impugned order had not been passed.

2. Learned counsel for the applicant submits that pursuant to the advertisement dated 30.12.2019, the applicant applied for the post of Craft Instructor [Wireman]. The applicant participated in the said selection process. Learned counsel has submitted that as per the examination result, one Mr. Yalkatwad, topped the merit list whereas Respondent No. 2 figured at Sr. No. 1 and Application at Sr. No. 2 of the waiting list. Accordingly, all the three candidates were called for verification of the original documents. As Mr. Yalkatwad, who topped in the merit list did not turn up for verification of document and therefore, Respondent No. 2, being the candidate at Sr. No. 1, in the waiting list was called for verification of original documents. Learned counsel further submitted that as per the knowledge of the applicant, the candidature of Respondent no. 2 was rejected on the ground that he did not possess the requisite experience of 4 years as mentioned in the advertisement. Thus, the applicant expected his appointment in the said post, but Respondent No. 2 was issued the order of appointment by Respondent No. 1 on 24.9.2020. Learned counsel further submitted that in order to get the documentary proof from the custody of the Respondent No. 1, about the

experience qualification of the Respondent No. 2, the applicant made application under R.T.I on 9.11.2020 seeking all the documents and detail information about the eligibility of Respondent No. 2 for the said post including the report of the Committee which examined the original documents of Respondent No. 2. The applicant received the report of Respondent No. 2 and after going through the report he found that Respondent No. 2 does not possess the requisite experience of 4 years as per the advertisement. Learned counsel has submitted that the applicant has secured 134 marks and the Respondent No. 2 has secured 138 marks out of 200 marks.

3. Learned counsel for the applicant has submitted that as per the Recruitment Rules, the eligibility and qualifications are reproduced in the advertisement dated 30.12.2019. The applicant is holding Diploma in Electric Engineering which falls in clause (a) of the educational qualification and Respondent No. 2, who holds I.T.I, Electronics, falls in clause (b) (i) & (ii) of the educational qualification. Learned counsel for the applicant submits that Respondent No. 2, has completed two years of his Apprenticeship and that is counted as experience. Respondent No. 2 completed National Trade Certificate in appropriate trade and after completing two years of Apprenticeship, he did National Apprenticeship Course in appropriate trade of Wireman. Learned counsel has submitted that the period while acquiring educational qualification cannot be computed for the purpose of practical experience. Learned counsel for the applicant relied on decision of this Tribunal dated 20.10.2021 in O.A 755/2012, Dinesh S. Mujgond Vs. The Government of Maharashtra & Ors, especially paragraph 9 of the said judgment. Learned counsel for the applicant relies on Rule 18 of the Apprenticeship Rules dated 25.9.2019. Rule 18 is reproduced below:-

“18 (a) Every apprentice undergoing apprenticeship training in an establishment shall be a trainee and not a worker.”

4. Learned counsel submitted that the period of apprenticeship is only the prescribed period and the earlier period that is from the date of admission to a particular Trade cannot be counted for the purpose of determining experience. Learned counsel for the applicant referred to the Scrutiny Form of Respondent No. 2, wherein it is mentioned as “अनुभव लागू नाही”. Learned counsel for the applicant has submitted that Respondents No. 2 is not clearing the criterion of experience. Learned counsel for the applicant further submits that very recently the Respondents have promulgated the Recruitment Rules dated 23.11.2022 for the Full Time Teacher (Practical), Assistant Lecturer, Group-C (Technical), Maharashtra Education Service, in the Directorate of Vocational Education and Training (Recruitment) Rules, 2022.

5. Learned counsel for the applicant files affidavit dated 7.2.2024 along with two documents, Exh. A & B. Same is taken on record. Exh. A is Office Memorandum issued by the Ministry of Skill Development & Entrepreneurship Director General of Training dated 3.1.2020. Learned counsel for the applicant relies on clause 3.1 of the Office Memorandum. It is an invitation of suggestions from various stakeholders on Draft Recruitment Training and Career Progression Policy document for Craft Instructors/Trainer of Industrial Training Institutes. Learned counsel for the applicant relied on clause 3.1.1. The relevant portion is reproduced below:-

- (i) National Trade Certificate (NTC) or National Apprenticeship Certificate (NAC) in the relevant trade from a recognized Institution with Craft Instructor Training Certificate (for those trades where courses under Crafts Instructor Training Courses are available), (ii) Three years' experience in teaching /

working in a relevant industrial unit/organization in relevant field after acquiring the requisite qualification and (iii) CITS Certificate.”

Learned counsel for the applicant relied on the Syllabus for the post of Wireman. Learned counsel for the applicant presses for constitution of Larger Bench, if this Tribunal is going to disagree with the judgment dated 20.10.2021 in O.A 755/2012, D.S. Mujgond Vs. Government of Maharashtra. On this point, he relies on the judgment of the Hon'ble Supreme Court in the case of Gopabandhu Biswal Vs. Krishna Chandra Mohanty & Ors, (1998) 4 SCC 447. Learned counsel further submitted that in the rules it is mentioned that after acquiring the requisite qualification minimum experience should be counted.

6. Learned P.O in order to explain clause (b)(ii) of the Recruitment Rules, relied on the affidavit in reply dated 18.1.2024 filed by Anil Gotiram Gavit, Joint Director, in the office of Joint Director, Vocational Education & Training, Regional Office, Mumbai. In the said Act, he pointed out to definition clause 2(l) which reads as under:-

“2(l) ‘National Council’ means the National Council for Training in Vocational Trades established by the resolution of the Government of India in the Ministry of Labour.

Learned P.O relied on the affidavit in reply dated 12.8.2021 filed through Kailas S. Ravte, Inspector, in the office of Joint Director, Vocational Education & Training, Regional Office, Bandra [E], Mumbai, wherein it is stated that as per the Recruitment Rules, total experience of 4 years is required for appointment to the post of Craft Instructor. Accordingly, Respondent No. 2 holds the experience of total 4 years, i.e., two years for the period from 2013 to 2015 as a Training as I.T.I, Wireman and further two years as a Linesman Apprenticeship at MSEDCL for the period from

2016 to 2018. Learned P.O files affidavit in reply dated 6.2.2024 by Anil G. Gavit, Joint Director, in the office of Joint Director, Vocational Education & Training, Regional Office, Mumbai. Learned P.O submitted that the Recruitment Rules dated 23.11.2022 are made applicable to the recruitment process for future appointments. Learned P.O submitted that in the case of Mujgond there was a Caste claim and it was dismissed by this Tribunal and the said matter was not challenged.

7. The relevant rule regarding educational qualification and experience for the post of Craft Instructor is produced below:-

“(1) Possess:-

(a) A Diploma at least in Second Class in appropriate branch of Engineering or Technology of the Board of Technical Examination, Bombay or its equivalent qualification

OR

(b) Have passed the Secondary Schools Certificate Examination with Mathematics and Science or its equivalent Examinations; and possess either

(i) National Apprenticeship Certificate in the appropriate trade of the National Council for Training in Vocational Trades or its equivalent.

OR

(ii) National Trade Certificate in the appropriate trade of the National for Training in Vocational Trades or its equivalent

OR

(iii) Trade Certificate in respective trade awarded by the State Council for Training in Vocational Trades of the Maharashtra

OR

(iv) Persons from Defence Service having basic qualifications and possessing Trade Certificate and two years' experience in the respective trade in mentioned in sub-clause (ii) below

AND

(ii) Have practical experience in appropriate trade for a period of not less than four years including minimum period prescribed for training by the persons possessing the qualification mentioned in sub clauses (a) and (b)(i), (ii) and

(iii) of clauses of this rule and for persons possessing the qualifications mentioned in sub-clause (b)(iv) of clause (l) of this rule, two years practical experience in appropriate trade after acquiring the qualifications in a respective trade in an industry of Government Department of Industrial Undertaking or Commercial concern or Corporation or Board established by Government.

Provided that, preference may be given to the candidates who have successfully completed training in the Central Training Institute for the post of Instructors.

8. We are of the view that the Scrutiny Form relied on by the learned counsel for the applicant as criterion of experience is not to be made applicable.

9. In the case of **Gopabandhu Biswal (supra)**, it was observed that on the point of precedent, it is held that the Administrative Tribunal is bound by earlier order and in the event of difference of opinion, it is necessary for the other Bench to refer the matter to Larger Bench and for this purpose the Tribunal should invoke Section 26 and 5(4)(d) of the Administrative Tribunals Act, 1985.

10. We reproduce the relevant portion of our judgment dated 20.10.2021 in O.A 755/2012, Shri Dinesh S. Mujgond Vs. The Government of Maharashtra & Ors:-

“Generally experience is counted after acquiring the educational qualification, i.e. Degree or Diploma in a faculty. If the years spent in acquiring Degree or Diploma are to be considered as period of experience, then it is necessary that it is a very specialized form of Diploma in a particular trade, where the practical training starts from the beginning. In that circumstance, it is necessary for the Respondent-State to amend and clarify specifically the 1983 Recruitment Rules accordingly. However, as on today, we find the method of counting the experience is not correct and not consistent with the Recruitment Rules of 1983. However, as explained by the learned P.O on instructions that the State has followed and has been following this formula of computation throughout and other candidates who appeared for the examination pursuant to the said advertisement have also

been selected in this manner and are appointed and working since 2012 as Craft Instructors in various Departments. Hence, it is unjust to disturb their selection. The Rules are made applicable incorrectly. However, it is made applicable so universally. Therefore, it will lead to a cascading and disastrous effect if we disturb the selection now.”.....

13. However, we direct the Respondent-State to correct their procedure hereafter regarding computation of the period of experience which is after acquiring the Degree or Diploma in the trade. Alternatively, it is necessary for the State Government to amend the Recruitment Rules of 1983 to make suitable to their procedure.”

11. In the present case it is the recruitment of the year 2019. Admittedly, merit wise the applicant has secured 134 marks and Respondent No. 2, whose appointment is objected by the applicant has secured 138 marks. The challenge rests on the period of experience and computation of the same. We are aware of our judgment passed in Mujgond’s case (supra). We have observed that as there is no clarification about how the department computes the prescribed ‘period of experience’ hence the amendment in the Rules is suggested. Similar issue is involved in this matter. The applicant Mr. Ghode in the present case is holding Diploma in Electrical Engineering which falls in clause (a) of the educational qualification and Respondent No. 2 holds I.T.I Electronics, falls in clause (b)(i) & (ii) of the educational qualification. We questioned the Respondents on the point of computation of the “prescribed” period of experience. We have pointed out that the legislature used the adjective “prescribed” before the words “period of experience”, thus it is not merely computation of period of experience, but it is a computation of the “prescribed” period of experience. It is necessary that period of experience includes actual practical experience. In the case of Mujgond we have considered that if the year spent in acquiring diploma or degree are considered as the period of experience then it is necessary that it should be very specialized form of diploma in

a particular trade where the practical training starts from the beginning. We made a query accordingly to the State whether the course of ITI Electronics, the trade choose by Respondent No.2 is specialized course where the practical training starts from beginning of the said course. The answer given to us is positive. It is up to the State to decide what should be the nature of practical experience in which court cannot interfere. It is further to be noted that we had given suggestion to the State in Mujgond's matter that they need to amend the Rules by clarifying the nature of experience. We are informed that now they have amended the Rules on 28.32024.

12. In view of this, considering the marks obtained by the Respondents and the Applicant no indulgence is required by us. Hence, O.A. stands dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 15.04.2024
Dictation taken by : A.K. Nair.