

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NOS 91 OF 2024 WITH 345 OF 2023

DISTRICT :

1. ORIGINAL APPLICATION NO. 345 OF 2023

Raju Dhondiram Akrupe)
Occ-Service, R/at Flat No. B2-501,)
Vihang Garden, Pokhran Road No. 1,)
Samata Nagar, Thane [W] 400 606.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Principal Secretary,)
[Drugs], Medical Education and)
Drugs Department, G.T Hospital)
Complex, 9th floor, L.T Marg,)
New Mantralaya, Mumbai 400 001.)
2. The State of Maharashtra,)
Through Addl. Chief Secretary,)
G.A.D, Mantralaya, Mumbai 400 032)
3. The Maharashtra Public Service)
Commission, through the Secretary,)
5th, 7th & 8th floor, Cooperage)
Telephone Exchange, Near Cooperage)
M.K Marg, Mumbai 400021.)...**Respondents**

2. ORIGINAL APPLICATION NO. 91 OF 2024

Raju Dhondiram Akrupe)
Occ-Service, R/at Flat No. B2-501,)
Vihang Garden, Pokhran Road No. 1,)
Samata Nagar, Thane [W] 400 606.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Addl. Chief Secretary,)
G.A.D,)
Mantralaya, Mumbai 400 032.)
2. The State of Maharashtra,)
Through Addl. Chief Secretary,)
Finance Department,)
Mantralaya, Mumbai 400 032.)
3. The Maharashtra Public Service)
Commission, through the Secretary,)
Trishul Gold Field, Plot No. 34,)
Sector-11, Opp Sarovar Vihar,)
CBD Belapur, Navi Mumbai 400 614.)...**Respondents**

Shri S.S Dere, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Shri Debashish Chakrabarty (Member) (A)

DATE : **29.11.2024**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. The Original Applications No 91/2024 & 345/2023 are heard and disposed of by a common order. However, O.A 345/2023 wherein the Applicant has prayed for appearing in the examination which was conducted on 4.6.2023 is already over and the order denying interim relief passed by this Tribunal on 10.5.2023 was maintained by the Hon'ble High Court and the Hon'ble Supreme Court. Hence, the said O.A 345/2023 has become infructuous.

2. The Applicant working as a Food Safety Officer prays for age relaxation to participate in the selection process by nomination to the higher post of Designated Officer. However, the age as per the Recruitment Rules dated 8.6.20022 is 38 years and the applicant is today 46 years. The Applicant thus is in-service candidate from reserved category hence can appear for the examination till the upper age limit of 43 years.

3. Learned counsel for the Applicant prays that Age Relaxation is to be provided on the basis of Bombay Civil Services, Classification and Recruitment Rules 1939 and on the basis of Government Circular dated 1.11.2003 and so also on the basis of statutory directions issued by the Hon'ble High Court dated 7.1.2008 in W.P 6179/2007, Anil Motilal Nimbhore Vs. State of Maharashtra & Ors. He further seeks declaration that not incorporating the upper age limit in the Advertisement to in-service candidates pursuant to the above guidelines and the law is illegal and unconstitutional act of Respondent no. 3. He further prays that Respondent no. 1, be directed to adopt, amend the Recruitment Rules dated 8.6.2022 on the basis of Notification dated 16.1.2003 issued by the Ministry of Health and Family

Welfare, Government of India and also direct the Respondent no. 3 to incorporate the amendment as a qualification under Clause 3 of the Corrigendum dated 17.3.2023. He further prays that the Applicant should not be held disqualified on the ground of age and he be allowed to participate in the selection process for the post of State Services, Group-A and Group-B pursuant to the advertisement dated 24.2.2023.

4. The Applicant in O.A No 91/2024 has prayed that the Respondents be directed to provide upper age relaxation to enable him to participate in the Maharashtra Gazetted Civil Services Combined Preliminary Examination 2024 and subsequent Main Examination to be held in relation thereto on the basis of Rule 10 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. Further to hold and declare that the action of Respondent for not incorporating the clause of the upper age limit not applicable to Government Servants in the Notification of advertisement of Maharashtra Gazetted Civil Services Combined Preliminary Examination-2024 is illegal and unconstitutional in terms of Rule 10 of the M.C.S (General Conditions of Services) Rules, 1981. The applicant is from reserved category and holds B. Sc Agriculture.

5. The learned counsel for the applicant has basically relied on the Recruitment Rules of 1939 which is a Pre-Independence enactment, wherein under Rule 7, it is stated that provision of age to be relaxed by 3 years to the persons in Government service. The said Rule 7 is referred in the case of Anil Motilal Nimbhore (supra). In the said case, similar issue of Government Servants praying for age relaxation on the basis of 1939 Recruitment Rules and Circular dated 1.11.2003 for selection by 'Nomination' was before the Hon'ble High Court. Learned Counsel for the applicant

therefore stated that as on today also 1939 Recruitment Rules hold the field because the said Rules are not superseded.

6. The learned C.P.O has submitted that there is no blanket provision of granting age relaxation to all the Government servants for all the posts. The 1939 Recruitment Rules are totally silent about age relaxation in the process of nomination, and therefore, they cannot be made applicable to the present process where the selection is made by nomination. She relied on paragraph 8 in the case of Anil Motilal Nimbhore (supra), wherein Note 3B to Rule 7 of the 1939 Rules are analyzed. Learned C.P.O submitted that Rules of 1939 today cannot be made applicable. She pointed out that on 13.9.2013 the State of Maharashtra has framed fresh Rules for appointment to the post of Assistant Commissioner, (Food)-cum - Designated Officer, (Group-A), wherein in Rule 4(b) for the process of selection by 'Nomination' the upper age limit was 33 years. But it was relaxed upto 50 years in case of candidates already in Government service. Thereafter, she pointed out to the Recruitment Rules subsequently amended and framed on 8.6.2022 for the post of Assistant Commissioner, (Food)-cum -Designated Officer, (Group-A) and Food Safety Officer (Group-B). She pointed out to Rule 4 of the said Recruitment Rules dated 8.6.2022 wherein for the selection by nomination for the said post of Assistant Commissioner, (Food)-cum -Designated Officer, (Group-A), the age limit for general category is 38 years and 43 years for reserved category and there is no mention of giving age relaxation to Government Servants. Thus, there is no age relaxation given to the Government Servants, unless it is specifically provided.

7. Considered the submissions of both the learned Counsel and the learned C.P.O. 'Age Relaxation' should be mentioned in the Rules. The State Government can take a 'Policy Decision' to relax

the age of in-service candidates or not to provide the same. The Rules of 1939 do not say about the selection by 'Nomination' because at the relevant time the mode of selection by 'Nomination' was probably not introduced. The avenue of appointment by 'Nomination' was made available Post Independence to a Government Servant. Thus, it is necessary to consider what policy is adopted by the State Government, as on today through the Recruitment Rules. It is not necessary to look into the Circular dated 1.11.2003. The State of Maharashtra with a view to regulate upper age limit for recruitment by nomination in Class-I, Class-II, Class-III and Class-IV posts in Maharashtra Civil Services framed the rules in 1986. In the said Rules, no age relaxation is provided to the Government servants. Moreover, the Rules of 1939, even after considering Rule 7, clearly states that no relaxation is to be given in age and relaxation in age is an exceptional case for which reasons in each case are to be separately recorded. Thus, the submissions of the learned C.P.O that the State Government has provided age relaxation to the persons in Government Service for posts in some cadre, but such provision is made in the Recruitment Rules of those respective cadres are correct and accepted. The Recruitment Rules dated 13.9.2013 and the Recruitment Rules dated 8.6.2022, which are framed by the State Government for the recruitment to the post of Assistant Commissioner, (Food)-cum-Designated Officer, (Group-A) are very clear. It is rightly pointed out by the learned C.P.O that Rule 4 in both the Rules states about the appointment to the post of Assistant Commissioner, (Food)-cum-Designated Officer, (Group-A) by 'Nomination'. In the earlier Recruitment Rules dated 13.9.2013, the 'Age Relaxation' up to 50 years was provided to in-service candidates and in the later Recruitment Rules of 8.6.2022, in Rule 4, in case of appointment by 'Nomination', age limit upto 38 years in case of general candidates and 43 years in case of persons

belonging to reserved category is provided. The provision which was made earlier of age relaxation up to age of 50 years to Government Servants is absent in the Recruitment Rules dated 8.6.2022. The Recruitment Rules dated 8.6.2022 are framed in exercise of powers conferred by proviso to Article 309 of the Constitution of India and in supersession of all the existing rules, orders or instructions issued earlier. Thus, there is no doubt that for the purpose of the recruitment to the post of Assistant Commissioner, (Food)-cum -Designated Officer, (Group-A), as on today only the Recruitment Rules dated 8.6.2022 are to be looked into. Thus, we hold that no age relaxation is provided to the candidates in service as on today.

8. The learned counsel relied on Rule 4(b) of the Recruitment Rule of 2013 dated 13.9.2013, which reads as under:-

“4. Appointment to the post of Assistant Commissioner (Food)-cum-Designated Officer (Group-A) shall be made either:-.....

(b) by nomination from amongst the candidates who,
 (i) are not more than thirty years of age;
 Provided that the upper age limit shall be relaxed up to fifty years in case of candidates already in Government service;

9. Recruitment Rules dated 8th June, 2022.

Rule 4. Appointment to the post of Assistant Commissioner (Food) cum-Designated Officer (Group-A) shall be made either:-

(ii) by nomination, on the basis of result of competitive examination held by the Commission from amongst the persons who:-

(a) are not less than eighteen years and not more than thirty-eight years in case of persons belonging to General category and not more than forty-three years of age for the persons belonging to Reserved Category.

(b) possess the educational qualification as may be prescribed by the Central Government from time to time under the Act.

(c) Reckoning of age limit- Reckoning of age limit is done as per date mentioned in the Advertisement.

10. The learned Counsel for the Applicant submits that his application stands on Rule 4(ii)(a) & (b) of the Recruitment Rules dated 8.6.2022. Advertisement dated 24.2.2023 was issued for the post of Maharashtra Gazetted Civil Services Combined Preliminary Examination 2024. By way of Corrigendum dated 17.3.2023, the post of Food Safety Officer was added in the said advertisement. Notification dated 16.1.2023 issued by the Ministry of Health and Family Welfare, Government of India.

1. In sub-rule 2.1.2 relating to 'Designated Officer'-

(a) in clause 1 relating to qualification:-

“(i) The Designated Officer shall be a whole time Officer, not below the rank of Sub-Divisional Officer or equivalent and shall possess a Bachelor’s **or** Master’s or Doctorate degree in Science with chemistry as one of the subject **or**

shall possess at least one of the educational qualifications prescribed for the Food Safety Officers under these rules **or**

who has possessing not less than five years of experience as Food Safety Officers **or**

has not less than seven years combined experience as Food Safety Officer and Food Inspector of which minimum four years as Food Safety Officer after commencement of the Food Safety and Standards Act.”

11. The learned Counsel has submitted that as per sub clause a(i) it is divided into three parts each stating different eligibility for the same post of 'Designated Officer'. The Applicant fulfills third/forth part that he has requisite years of experience in the feeder cadre. Learned Counsel further submits that applicant fulfill

category 3 & 4, i.e., seven years combined experience as Food Safety Officer and Food Inspector. The Applicant is having total experience of 17 years. Four years as Food Inspector and 13 years as Food Safety Officer.

12. The learned Counsel has submitted that the Recruitment Rules dated 8.6.2022 are framed in such a way that a person who is appointed at the age of 43 years who is within age limit is unable to acquire the experience of five years or seven years to reach the eligible age of 43 years. Learned Counsel further submitted that by the Notification dated 8.6.2022 issued by State Government, the Recruitment Rules dated 8.6.2022 for the post of Designated Officer should have been consistent with the Notification issued by the Ministry of Health and Family Welfare, Government of India on 16.1.2023. However, the State Government has not taken care of updating the Recruitment Rules. The qualifications prescribed in the 'Advertisement' dated 17.3.2023 is different from the educational qualification. The qualification mentioned are 'Bachelor's or Master's or Doctorate degree in Food Technology or Dairy Technology or Biotechnology or Oil Technology or Agricultural Science or Veterinary Sciences or Bio-Chemistry or Microbiology or Chemistry or medicine from a recognized University. Learned counsel submits that the Advertisement dated 24.2.2023 is short fall the Recruitment Rules. It violates the basic eligibility prescribed by the Central Government. It amounts to breach of Article 16 of the Constitution of India. Thus, the Advertisement dated 24.2.2023 is contrary to the Recruitment Rules dated 8.6.2022. Learned counsel relied on the decision of the Hon'ble Supreme Court in the case of The Employees' State Insurance Corporation Vs Union of India & Ors, Civil Appeal No. 152 of 2022 and Ashish Kumar Vs. State of Uttar Pradesh

13. The learned Counsel has submitted that part of the Advertisement dated 24.2.2023 is contrary to the Recruitment Rules dated 8.6.2022. It is settled principle of service jurisprudence that in the event of conflict between the statement in the advertisement and service regulations, the latter shall prevail. Learned Counsel further submitted that in the present case clause 3 of the 'Advertisement' dated 17.3.2023 is contrary to the Notification issued by Ministry of Health & Family Welfare, Government of India dated 16.1.2023, read with Recruitment Rules dated 8.6.2022. Learned Counsel further submitted that the Applicant has filed the present O.A immediately within 15 days from the date of issuance of the Advertisement on 17.3.2023.

14. In sum and substance case of Applicant is five years' experience as Food Safety Officer or seven years' experience collectively as Food Inspector and Food Safety Officer in the feeder cadre is to be counted for fixing the upper age limit. This cannot lead to breach of 'Article 16' of the 'Constitution of India'. Learned Counsel further submitted that no advertisement for the post of Assistant Commissioner (Food) cum Designated Officer was given by the State Government for many years since the Applicant was appointed as Food Safety Officer.

15. The learned C.P.O relied on Recruitment Rules dated 8.6.2022 & Notification dated 16.1.2023 of Ministry of Health and Family Welfare. Learned C.P.O pointed out that as mentioned in G.R the word 'Educational Qualification' is used and she pointed out that in the Notification dated 16.1.2023 of Central Government the word used is only 'Qualification'. Four Categories are considered as eligible as per Rule 4 of the Notification dated 16.1.2023. Learned C.P.O submitted that first two part speaks about the Educational Qualification and the last two parts speak

about the 'Combined Experience'. Learned C.P.O submitted that the contentions raised by the Applicant that the advertisement dated 24.2.2023 and the G.R is not consistent with the Notification dated 16.1.2023 issued by Ministry of Health & Family Welfare, Government of India, is not correct and is to be dismissed.

16. In the case of The Employees' State Insurance Corporation (supra), the Hon'ble Supreme Court held as under:-

“20 The advertisements issued by the appellant mentioned that the DACP Scheme would be applicable for its recruits. However, it is a settled principle of service jurisprudence that in the event of a conflict between a statement in an advertisement and service regulations, the latter shall prevail.

In Malik Mazhar Sultan V. U.P.O Public Service Commission a two-judge Bench of this Court clarified that an erroneous advertisement would not create a right in favour of applicants who act on such representation. The Court considered the eligibility criteria for the post of Civil Judge (Junior Division) under the U.P. Judicial Service Rules, 2001 against an erroneous advertisement issued by the U.P. Public Service Commission and held:-

“21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC (Public Service Commission) when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules.”

17. In Ashish Kumar's case (supra), the Hon'ble Supreme Court held as under:-

21. A two-judge Bench of this Court followed the decision in Malik Mazhar Sultan (supra) in interpreting an advertisement issued by the Director, Social Welfare Department, Uttar Pradesh for the position of a psychologist. This Court declined to give precedence to the erroneous qualifications prescribed in the advertisement against the relevant recruitment rules and held:-

“27. Any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription. Thus, looking to the qualification prescribed in the statutory rules, the appellant fulfils the qualification and after being selected for the post denying appointment to him is arbitrary and illegal. It is well settled that when there is variance in the advertisement and in the statutory rules, it is the statutory rules which take precedence....”

The findings given on the two Judgments above mentioned is in fact in favour of the Respondents. We also rely on them.

18. At the outset, we find that the submissions made by the learned Counsel for the Applicant is not only fallacious but absurd. By way of Educational Qualification and by way of Combined Experience as Food Inspector & Food Safety Officer, the persons can be held eligible for appointment to the post of 'Designated Officer'. The Applicant is having the necessary Educational Qualification and Combined Experience. However, he is age barred. The counting of five years' service after attaining the upper age limit of 43 years is very ridiculous. For a candidate from reserved category Age Relaxation is given at the time of appointment., i.e., up to 43 years. He may avail of it or he may not. Only because the Applicant although having requisite 'Educational Qualification' and also fulfilling the 'Combined Experience criteria could not or did not appear for the higher post

of 'Assistant Commissioner (Food)-cum-Designated Officer before he attained the age of 43 years and therefore he should be given five years extension beyond 43 years to fulfill the conditions of Advertisement dated 24.2.2023 is too much of stretching the rationale behind the Age Relaxation under Police of Reservation.

19. Moreover, the Applicant holds requisite Educational Qualification always had other avenue open to appear for the earlier examination for appointment to the post of Assistant Commissioner (Food)-cum-Designated Officer. Hence there is no violation of Article 16 of the Constitution of India.

20. Thus, we find no merit in O.A No 91/2024 and O.A 345/2023 and they stand dismissed. We further state that the applicant has unnecessarily sought the relief in O.A 91/2024 once the earlier Order dated 10.5.2023 in O.A 345/2023 holds the field and the said Interim Order is as good as Final Order. We deprecate this practice of filing matter for the same cause by the same Applicant. Therefore, we saddle cost of Rs. 25000/-, which should be paid to (PETA), People for Ethical Treatment of Animals within four weeks.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 29.11.2024
Dictation taken by : A.K. Nair.