

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 245 OF 2022  
WITH  
MISCELLANEOUS APPLIATION ST. NO. 2361 OF 2023**

**DISTRICT:- AURANGABAD**

Mahendra Kumarrao Wadgaonkar,  
Age: 41 years, Occupation: Engineer,  
R/o. Savali, 32, Ranjanvan Housing  
Society, N-9, CIDCO,  
Aurangabad.

**.. APPLICANT**

**V E R S U S**

- 1) The State of Maharashtra,  
Through Principal Secretary,  
Department of General Admn.  
Mantralaya, Mumbai.
- 2) Principal Secretary,  
Department of Home,  
Mantralaya, Mumbai.
- 3) The Maharashtra Public Service  
Commission, Through its  
Secretary, Bank of India building  
3<sup>rd</sup> floor, Hutatma Chowk,  
Mahatma Gandhi Marg,  
Mumbai.

**.. RESPONDENTS**

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APPEARANCE : Shri Mahendra Kumarrao Wadgaonkar,  
party in person.  
: Shri M.S. Mahajan, learned Chief  
Presenting Officer for the respondent  
authorities.

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**CORAM : JUSTICE SHRI P.R. BORA, VICE CHAIRMAN  
AND  
: SHRI VINAY KARGAONKAR, MEMBER (A)**

**RESERVED ON : 31.10.2023**

**PRONOUNCEMENT ON : 10.01.2024**  
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**ORDER****[Per : Justice Shri P.R. Bora, Vice Chairman]**

Heard Shri Mahendra Kumarrao Wadgaonkar, applicant in person and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent authorities.

2. The applicant has preferred the present Original Application seeking quashment of the orders dated 21.3.2013 and 12.6.2018 issued by respondent No. 3 i.e. Maharashtra Public Service Commission (for short, 'the Commission'). The applicant had applied for the post of Deputy Superintendent/ Assistant Commissioner of Police (Wireless), State Police Service (Engineering), Group-A in pursuance of the advertisement bearing NO. 208/2012 dated 23.2.2012. The applicant possesses the degree of B.E. Electronics of Dr. Babasaheb Ambedkar Marathwada University, Aurangabad (for short 'BAMU). He passed the said examination from Marathwada Institute of Technology Aurangabad, which is affiliated to BAMU. The applicant claims to be belonging to Kasar community, which falls in OBC category. The applicant has placed on record the copy of his Caste Validity Certificate.

3. The Commission had published aforesaid advertisement inviting applications for the recruitment of 07

posts of Deputy Superintendent/Assistant Commissioner of Police (Wireless) State Police Service Engineering Group-A. Out of said 07 posts one was reserved for OBC category. The applicant had applied from the said category. The applicant was called for the interview on 7.9.2012. One of the Members in the interview committee however, raised an objection as about the qualification of the applicant. According to the said Member, B.E. Electronics degree held by the applicant was not equivalent to the degree in Telecommunication/Radio Engineering, which was the qualification prescribed in the advertisement. Upon such objection raised by the learned Member, the applicant immediately produced the Circular dated 18.8.2006 and the Circular issued in the month of August, 2012 by BAMU. As contended in the O.A. said circulars were indicating that the degree possessed by the applicant is equivalent with the qualification as prescribed in the advertisement i.e. degree in Electronics and Telecommunication Engineering and also equivalent with the communication or Telecommunication Engineering.

4. The aforesaid contention of the applicant was however, rejected by the Interview Committee. Thereafter, the applicant made correspondence with the Commission and the

State Government raising grievance about the rejection of his candidature for wrong reasons. The applicant communicated Commission and the State Government, that the qualification held by him was equivalent to the qualification prescribed for the subject post in the advertisement. It is the contention of the applicant that before publication of the list of successful candidates by the Commission he had raised an objection and made grievance about injustice caused to him that though he was duly qualified and was holding the qualification equivalent to the qualification prescribed in the advertisement, was wrongly held ineligible. In the above circumstances, the applicant has approached this Tribunal seeking reliefs as are noted by us hereinabove.

5. During pendency of the present Original Application advertisement No. 32/2022 was issued. The applicant had, therefore, filed an application seeking amendment in the O.A. to bring on record the subsequent events. The application was allowed and accordingly the facts pertaining to the advertisement published on 10.4.2022 have been introduced in the O.A. It is the contention of the applicant that the respondents had rejected his candidature for wrong reasons. It is the further contention of the applicant that the applicant was

also possessing AMIE certificate in Electronics and Telecommunication, which is equivalent to the degree in Electronics and Telecommunication and the said degree certificate was on record of Commission at the time of interview. It is the further contention of the applicant that the said fact was brought to the notice of interview committee; however, the interview committee did not consider his said submission.

6. It is the further contention of the applicant that the Commission must have consulted the State Government in regard to the equivalence of the degree possessed by him with the qualification prescribed in the advertisement and without such consultation the applicant could not have been held ineligible for the subject post. It is the further contention of the applicant that before concluding the interview, fax message was sent by BAMU to Commission to the effect that the degree possessed by the applicant is equivalent to the degree in telecommunication/ Electronics and telecommunication. It is the further contention of the applicant that at the relevant time he was told that the fax machine at the Commission's office was not working and in the circumstances the fax sent by the University could not be received to the Commission and was, therefore, not considered by the interview committee. It is the

further contention of the applicant that email was also sent by BAMU to the Commission, however, the same was also not received to the Commission as there was some technical problem at the end of the Commission. It is the further contention of the applicant that thereafter the applicant was constantly pursuing the Government to consider him for his appointment since he was holding the requisite qualification. It is the contention of the applicant that he could get the copy of the letter written by the Commission to the Principal Secretary, General Administration Department, Mantralaya, Mumbai, in which it is mentioned that marks obtained by the applicant in the interview are more than required marks for recommendation, however, as the applicant was considered not holding the necessary qualification prescribed in the advertisement, he was held ineligible and as a consequence his name was dropped by the interview committee. The applicant has placed on record the copy of the said letter as Annexure 'D'. One another letter having similar opinion is also secured by the applicant and the same is placed on record by him as Annexure 'E'.

7. It is further contention of the applicant that in the subsequent advertisements issued by the Commission for the

post of Deputy Superintendent/ Assistant Commissioner of Police (Wireless), State Police Service (Engineering), Group-A, the degree possessed by the applicant has been held the requisite qualification. It is further contention of the applicant that in fact, the 'qualification issue' should have been left to be decided by the State Government and the Commission at its own should not have taken any decision in that regard. It is further contention of the applicant that though the applicant was not considered at the relevant time and was declared ineligible for appointment, the subject post is still available with the respondents and the respondents can be directed to consider the case of the applicant for his appointment since subsequently it has been accepted by the respondents that the qualification held by the applicant is equivalent to the qualification as was prescribed in the advertisement published in the year 2012.

8. The respondents have resisted the contentions raised and prayers made by the applicant in his O.A. The affidavit in reply is filed by respondent No. 3 i.e. the Commission. The other respondents have not filed any reply in the O.A. Respondent No. 3 in his affidavit in reply has denied the objections raised by the applicant in his O.A. Respondent

No. 3 however, has not denied or disputed that the applicant is holding the qualification of B.E. Electronics and that he belongs to OBC category. It is further contended that as per the letter dated 4.11.2004 of the State Government, qualification 'B.E. Electronics and Telecommunication' was considered as equivalent to the educational qualification mentioned in paragraph 4.3 of the advertisement for the post in issue. It is further stated that since the applicant in his application had mentioned his qualification as B.E. Electronics and telecommunication, he was considered *prima facie* eligible for the subject post subject to verification of his documents. It is further contended that since the applicant was fulfilling the short-listing criteria fixed for OBC category candidate, he was called for interview along with other candidates on 7.9.2012; however, the degree of B.E. Electronics held by him was not considered as equivalent to the educational qualification mentioned in paragraph 4.3 of the advertisement on the basis of the letter dated 4.11.2004 of the Government and hence, the applicant was held not eligible. It is further contended that the applicant submitted false information regarding his degree as B.E. Electronics and Telecommunication in the application form, when he was possessing the degree as B.E. Electronics. It is further contended that if the applicant had any doubt or

query about the qualification prescribed for the subject post in the advertisement, the applicant must have raised the said issue with the Commission; but instead of adopting such course the applicant knowingly submitted false information. According to respondent No. 3, the applicant misled the Commission.

9. It is further contended that respondent No. 3 has accepted the fact of representation made by the applicant on 17.10.2012 and with reference to that it is further submitted that vide letter dated 7.11.2012 the applicant was communicated the decision of the interview committee that he is not held eligible for the reason of not possessing required educational qualification as per clause 4.3 of the advertisement.

10. The respondents have admitted that on 7.9.2012 fax machine and email services in the office of the Commission were not functioning. It is further contended that the applicant has misled the Tribunal by comparing two different advertisements i.e. advertisement No. 208/2012 and advertisement No. 032/2022. It is further submitted that the Recruitment Rules suffered change in the year 2016 and were notified by the Home Department on 26.4.2016 and the advertisement No. 032/2022 was carried out as per the said new Recruitment Rules; whereas the recruitment in the year 2012 as per the advertisement No.

208/2012 was conducted as per the then prevailing Recruitment Rules notified on 11.4.1977 and as per the said old rules B.E. Electronics was not considered as equivalent educational qualification mentioned in paragraph 4.3 of the said advertisement. Respondent No. 3 has however, further admitted that B.E. Electronics qualification is now included as educational qualification for the post of Deputy Superintendent/ Assistant Commissioner of Police (Wireless), State Police Service (Engineering), Group-A by the Government. On the aforesaid grounds, respondent No. 3 has resisted the Original Application filed by the applicant.

11. In his argument applicant reiterated his contentions raised in the O.A. and brought to our notice the documents produced on record by him in support of his said contentions. The applicant has argued that even at the relevant time the degree possessed by the applicant was equivalent to the qualification prescribed in the advertisement, however, the interview committee did not consider the submissions made by him and on wrong interpretation of earlier communication of the State dated 4.11.2004 erroneously held the applicant ineligible for appointment on the subject post. The applicant further submitted that thereafter also the applicant has been

constantly following of the matter with the Government and submitted all required information showing that the degree possessed by him was equivalent to the qualification prescribed in the advertisement, however, his request was not considered by the said authorities and, therefore, ultimately he was required to approach this Tribunal.

12. In his argument the applicant has clarified that in the application form unless qualification is mentioned as B.E. in Electronics and Telecommunication, the form was not being uploaded. The applicant pointed out that on 13.3.2012 when he attempted to fill in online application form for the subject post and when he noticed that the form was not being accepted if the educational qualification is mentioned as B.E. in Electronics Engineering, he had made a written communication in that regard seeking advice from the Commission. Copy of the said communication is placed on record by the applicant, which is at page No. 185 of the paper book. In the said communication the applicant had also mentioned that he contacted the concerned officer of Commission on telephone and the said officer told him that he will appraise the grievance of the applicant to the senior officers and ask the applicant to contact him on the next day. It is further mentioned in the said

communication that on the next day when the applicant contacted the said officer he gave evasive answers. The applicant had also informed vide the said communication that the necessary clarification be immediately given. It is the contention of the applicant that since he did not receive any guidance from the Commission he mentioned his qualification as B.E. in Electronics and Telecommunication, so that his form shall get uploaded and accepted.

13. We have carefully gone through the contents of the correspondence made by the applicant with the Commission. It appears that due efforts were made by the applicant to seek required explanation, however, when no response was received, he mentioned his qualification as B.E. in Electronics and Telecommunication so that his form shall be uploaded. It appears that there was no intention of the applicant to submit any false or improper information. It is further evident that he had immediately contacted the office of Commission and has also made a written communication in that regard with the Commission. Copy of the said communication is placed on record by the applicant. The Commission has not denied the said fact. In the circumstance, the objection as has been raised

by the respondents that the applicant misrepresented about his qualification cannot be accepted.

14. We have duly considered the submissions made by the party in person and the learned Chief Presenting Officer appearing for the State authorities. We have also gone through the documents produced on record by the parties. In the advertisement published on 23.2.2012 bearing advertisement No. 208/2012 the qualification prescribed for the subject post was

(i) a degree in Telecommunication or Radio Engineering of statutory University or qualification recognized as equivalent thereto by the Government of Maharashtra; or

(ii) a post-graduate degree of a statutory University in Physics with Radio communication as a special subject or diploma in Telecommunication or Radio Engineering.

The applicant possesses the degree of B.E. in Electronics conferred by B.A.M.U. Aurangabad. It is the contention of the applicant that the degree possessed by him is equivalent to the degree in Telecommunication or Radio Engineering.

15. The Commission however, did not accept the contention of the applicant as aforesaid. Giving reference of the letter dated 4.11.2004 received to the Commission from the

Home Department of the State, the Commission held the applicant ineligible being not holding the requisite qualification prescribed for the subject post. The copy of the said letter is produced on record by the Commission. We deem it appropriate to reproduce the said letter as it is, which reads thus,

“क. रापोसं१२९५/प्र.क.५००/पोल-१अ  
गृह विभाग, मंत्रालय, मुंबई ४०० ०३२  
दिनांक : ४ नोव्हेंबर, २००४

प्रति,

उपसचिव,  
महाराष्ट्र लोकसेवा आयोग,  
बँक ऑफ इंडिया इमारत,  
महात्मा गांधी मार्ग, मुंबई-४०० ००१.

विषय :- सरळ सेवाप्रवेश  
पोलीस उप अधीक्षक/सहाय्यक पोलीस आयुक्त,  
बिनतारी संदेश (अभियांत्रिकी), राज्य पोलीस सेवा,  
गट-अ.

संदर्भ :- १. शासन पत्र, समकमांक दि. २७.२.२००३  
२. आपले पत्र क. ९८६(७)/१४५९/दहा, दि. ९.३.२००४.

महोदय,

उपरोक्त विषयाच्या अनुषंगाने संदर्भाधीन पत्रांस अनुसरून मला असे कळविण्याचे निर्देश आहेत की, पोलीस उपअधीक्षक/सहाय्यक पोलीस आयुक्त, बिनतारी संदेश (अभियांत्रिकी) या पदासाठी एकूण ११ पदांचे मागणीपत्र संदर्भ क्र. १ येथील पत्रान्वये पाठविण्यात आले आहे. सदर मागणीपत्राच्या अनुषंगाने संदर्भ क्र. २ येथील पत्रान्वये उपस्थित करण्यात आलेल्या मुद्द्यांबाबत खालीलप्रमाणे खुलासा करण्यात येत आहे.

मुद्दा क्र. १ : प्रस्तुत पदासाठी Electronics and Telecommunication मधील स्नातक पदवी (B.E.) अर्हताधारकांनी आवेदन पत्र सादर केल्यास त्यांना प्रथमदर्शनी अर्हता प्राप्त समजण्यात यावे.

मुद्दा क्र. २ : उपरोक्त नमूद शैक्षणिक पात्रताधारकास (B.E.) शासकीय किंवा निमशासकीय संस्थांमधील किमान पाच वर्षे सेवेचा किंवा दळणवळण क्षेत्रातील नामवंत संस्थामधील किमान ५ वर्षे सेवेचा अनुभव असणे आवश्यक आहे.

मुद्दा कं. ३ : पोलीस उपअधीक्षक, बिनतारी संदेश (अभियांत्रिकी) या पदाच्या जबाबदा-या व कर्तव्ये याबाबतची इंग्रजी/मराठी संक्षिप्त टिप्पणी सोबत जोडली आहे.

आपला,

सही/-

(यु.ल.वाघमारे)

उपसचिव, महाराष्ट्र शासन, गृह विभाग.”

16. From the contents of the letter dated 4.11.2004 it is revealed that the Government vide its letter dated 27.2.2003 had given requisition to the Commission for the recruitment of 11 posts of the Dy. Superintendent of Police/ Assistant Police Commissioner, Wireless (Engineering). There is reason to believe that after having received the requisition the Commission might have issued an advertisement inviting applications for the subject post. The copy of the said advertisement has not been produced on record either by the applicant or by the Commission. However, from the contents of the letter dated 4.11.2004 it is evident that the educational qualification as B.E. (Electronics) and/or B.E. Telecommunication was held equivalent to educational qualification, which was prescribed for the subject post. At the relevant time i.e. in the year 2004 the Recruitment Rules of 1977 called as, “Dy. Superintendent of Police, Wireless (Engineering) Recruitment Rules, 1977 were in vogue. The aforesaid Recruitment Rules are hereinafter referred to as

“Recruitment Rules of 1977”. In the said rules following was the educational qualification prescribed for the subject post: -

“(2) Possesses -

*(i) a degree in Telecommunications or Radio Engineering of a statutory university or qualifications recognized as equivalent thereto by the Government of Maharashtra: or*

*(ii) a post-graduate degree of a statutory university in Physics with Radio Communications as a special subject or with a Diploma in Telecommunications or Radio Engineering.”*

17. It is obvious that the qualification prescribed by the Commission at the relevant time would certainly be not other than the qualification as prescribed in the Recruitment Rules of 1977 and the qualification of B.E. (Electronics) and Telecommunication was held equivalent to the said qualification.

18. The educational qualification prescribed in the advertisement of 208/2012 is exactly as prescribed in the Recruitment Rules of 1977. An inference, therefore, can be drawn that in the year 2004 also the Commission had prescribed the same qualification and State Government in its letter dated 4.11.2004 informed the Commission that qualification of ‘degree in electronics and telecommunication’

shall be held equivalent to the said qualification. From the pleadings in the affidavit in reply filed by the Commission and the documents filed on record by it, it is however, explicit that at the time of recruitment in pursuance of the advertisement No. 208/2012 Commission did not seek opinion from the State Government or did not consult the State Government on the point whether the qualification possessed by the applicant of B.E. (Electronics) is equivalent to the qualification prescribed in the Recruitment Rules, as well as, in the advertisement No. 208/2012. It appears that without adopting the aforesaid course the Commission at its own on the basis of the earlier information given by the State vide its letter dated 4.11.2004 held that the applicant does not hold the requisite qualification as prescribed in the advertisement.

19. Perusal of the document dated 4.11.2004 further reveals that explanation was received from the Government to the query made by the Commission vide its letter dated 9.3.2004. The copy of the said letter dated 9.3.2004 is not filed on record by the Commission. The fact has, therefore, remained undisclosed as to what was the query exactly made by the Commission vide its letter dated 9.3.2004. At the relevant time which was the qualification prescribed in the concerned

advertisement for the subject post to which the qualification of B.E. (Electronics) and Telecommunication was held by the State to be equivalent qualification, is also not disclosed by the Commission.

20. Whether a particular degree is equivalent to the qualification prescribed in the advertisement cannot be decided by the Commission. It can be decided either by the State or by the University, which has conferred the said degree. In the present matter it is the assertion of the applicant that BAMU of which he is holding the degree of B.E. (Electronics) has certified that the degree held by the applicant of B.E. (Electronics) is equivalent to the degree prescribed in the advertisement no. 208/2012. It is the further contention of the applicant that on the date of interview, he has urged before the interview committee to permit him to call for the necessary certificate from BAMU. It is the contention of the applicant that on 7.9.2012 BAMU has faxed the required information to the Commission as about the equivalence of the B.E. (Electronics) degree with B.E. (Electronics & Telecommunication) degree but it could not be reached to the Commission as the fax facility was out of order. Same happened in regard to e-mail service. Though e-mail was also sent by BAMU it could not be received

as e-mail service was also not in operation. Later on, applicant obtained the information from the University under Right to Information Act also about the equivalence of the degrees. The following information was provided by BAMU I deem it appropriate to reproduce herein below the said letter as it is in verbatim, which is thus :-

*“It is hereby notified that with reference to circular no. ACAD/ENGG./27/2006-2007 and by the syllabus of below mentioned Engineering braches resembles. The below mentioned Engineering branches degree are equivalent;*

- 1. Electronics engineering equivalent with electronics & telecommunication engineering and vice versa.*
- 2. Electronics engineering equivalent with communication or telecommunication engineering and vice versa.*

*The above branches are equivalent.*

*sd/-*

*Dean faculty of engineering*

**DEAN**

*Faculty of Engineering & Technology*

*Dr. Babasaheb Ambedkar*

*Marathwada University, Aurangabad.”*

21. The Commission has admitted that on the date of interview the toner of fax machine was deficient, as well as, email facility was also not working. It is thus evident that the applicant has immediately made all prompt efforts to bring on record the requisite information in support of his claim as about the equivalence of his degree with the qualification prescribed in the advertisement. In such circumstances instead of making

haste in declaring the applicant ineligible on the ground of not holding the educational qualification as prescribed in the advertisement, the Commission must have given an opportunity to the applicant to substantiate his contention as about equivalence of his degree with the qualification prescribed in the advertisement or ought to have consulted the State Government seeking opinion specifically in relation to the degree held by the applicant.

22. As has come on record, in the recruitment carried out vide advertisement bearing No. 208/2012, the seat which was reserved for OBC candidate could not be filled in for non-availability of the candidate from the said category.

23. It is the matter of record that on 25.6.2015 the Commission again issued an advertisement bearing No. 65/2015 for filling 03 posts of Dy. Superintendent of Police/Assistant Commissioner of Police, Wireless (Engineering), Maharashtra State Police Service, Group-A. Out of the said 03 posts 01 was newly vacant post and 02 were of the carried forward backlog. In the said advertisement the educational qualification was prescribed thus: -

(1) A degree in Telecommunications or Radio Engineering of a Statutory University or qualification

recognized as equivalent thereto by the Government of Maharashtra OR

(2) A post-graduate degree of a statutory University in Physics with Radio Communications as a special subject or with a Diploma in Telecommunications or Radio Engineering.

24. It is not in dispute that the qualification held by the applicant that of B.E. Electronics was accepted to be equivalent to the qualification prescribed in the aforesaid advertisement No. 65/2015 and the applicant was permitted to participate in the said recruitment process. The fact apart that the applicant was not selected on account of certain other reason that he did not comply with the norms applied for the candidates claiming reservation meant for the OBC seat.

25. The applicant has placed on record the copy of the letter dated 12.6.2018 written by the Desk Officer, the Commission to the Additional Chief Secretary (Service), State of Maharashtra, General Administration Department, Mantralaya, Mumbai. In paragraph No. 3 thereof it is stated thus,

“३. श्री. वडगांवकर यांनी पोलीस उपअधिक्षक/सहायक पोलीस आयुक्त, बिनतारी संदेश (अभियांत्रिकी), गट-अ या पदाच्या विज्ञापित केलेल्या जाहिरात क्र.६५/२०१५ वा संदर्भ देऊन सदर जाहिरातीच्या अनुषंगाने आयोगाने प्रसिध्द केलेल्या घोषणेनुसार जाहिरातीमधील शैक्षणिक अर्हतेस समकक्ष असलेली अर्हता ते धारण करतात हे सिध्द होते असे नमूद केले आहे. श्री. वडगांवकर हे सदर पदाचे सुध्दा इ.मा.व. वर्गवारीचे उमेदवार आहेत. शासनाच्या गृह विभागाने दि. ०६/०९/२०१८ रोजीच्या पत्रान्वये सदर पदाच्या जाहिरातीतील नमुद शैक्षणिक अर्हतेस B.E. - Electronics ही पदवी समकक्ष समजण्यात यावी असे आयोगास कळविले होते (सदर पत्राची प्रत सोबत जोडली आहे.)

सदर पत्रानुसार श्री. वडगावकर हे B.E. - Electronics ही पदवी धारण करीत असल्याने त्यांना प्रथमदर्शनी पात्र करण्यात आले. तथापि, ते इ.मा.व. वर्गवारीसाठी निश्चित करण्यात आलेल्या निकषाची पूर्तता करीत नसल्याने त्यांना सदर पदाच्या मुलाखतीसाठी निकषानुसार अपात्र करण्यात आले. सदर वस्तुस्थिती त्यांना आयोगाच्या संकेतस्थळावर प्रसिध्द करण्यात आलेल्या निकषानुसार अपात्र ठरलेल्या उमदवारांच्या यादीद्वारे कळविण्यात आली (सदर यादी व निकष सोबत जोडण्यात आला आहे.)

याबाबत असे स्पष्ट करण्यात येते की, समकक्षता ठरविण्याची बाब ही शासनाच्या कक्षेतील आहे आणि शासनाने आयोगास संदर्भांकित क्रमांक ५ येथील पत्राने कळविल्यानुसार पोलीस उपअधिक्षक/ सहायक पोलीस आयुक्त, बिनतारी संदेश (अभियांत्रिकी), गट-अ या पदाकरीता B.E. - Electronics ही पदवी केवळ जाहिरात क्रं.६५/२०१५ साठी समकक्ष ठरविण्यात आली आहे. सदर समकक्षता ही जाहिरात क्रं. २०८/२०१२ ला पूर्वलक्षी प्रभावाने लागू करता येणार नाही. त्यामुळे श्री वडगावकर यांचा सदर पदाच्या जाहिरात क्रं. २०८-२०१२ साठीचा दावा मान्य करता येणार नाही. तसेच श्री. वडगावकर यांना यापुर्वी कळविण्यात आलेल्या निर्णयात बदल करण्याची आवश्यकता नाही.”

26. From the contents as aforesaid there remains no doubt that in the recruitment carried out vide advertisement No. 65/2015 for the post of Dy. Superintendent of Police Wireless (Engineering), Group-A the qualification which the applicant is holding was held equivalent to the qualification prescribed for the said post in the advertisement. It is, however, the further contention of the respondents that equivalence was only for the recruitment carried out in the year 2015 pursuant to the advertisement No. 65/2015 and that cannot be retrospectively applied for the recruitment carried in the year 2012. The Commission has averred in the said letter that the Government, vide its letter dated 6.1.2018, though had held the said qualification equivalent to the qualification prescribed in the advertisement No. 65/2015, that could not be made retrospectively applicable.

27. The contention raised by the Commission as aforesaid is wholly unacceptable. The recruitment of the subject post was admittedly governed by the Recruitment Rules of 1977 when the recruitment was carried out vide advertisement No. 208/2012 and advertisement No. 65/2015. As we have noted hereinabove in the advertisement No. 208/2012, as well as, in the advertisement No. 65/2015 the educational qualification was prescribed exactly as prescribed in the Recruitment Rules of 1977. The decision of the Government of holding qualification of B.E. (Electronics) equivalent to the qualification prescribed in the advertisement No. 65/2015, therefore, impliedly means that the State Government has held the qualification of B.E. (Electronics) equivalent to the qualification prescribed in the Recruitment Rules of 1977. In the circumstances plea raised by the Commission that the qualification of B.E. (Electronics) was accepted to be equivalent by the State only to the extent of advertisement No. 65/2015 is unconscionable and illogical.

28. When the recruitment rules and the educational qualification prescribed in the said rules were same while carrying out both the recruitments first vide advertisement No. 208/2012 and the other vide advertisement No. 65/2015 and when degree of B.E. (Electronics) possessed by the applicant is

held by the State equivalent to the educational qualification prescribed in the recruitment rules, in no case it can be said that the said qualification was not equivalent in the year 2012. The fact is that in the year 2012 the Commission did not seek the opinion of the Government and at its own held the qualification possessed by the applicant not equivalent to the prescribed qualification.

29. As has come on record new recruitment rules came in force in the year 2016. The said rules called as “Deputy Superintendent of Police, Wireless (Engineering)/Assistant Commissioner of Police, Wireless (Engineering), (Recruitment) Rules, 2016” were notified by the Home Department of the Government on 26.4.2016 (for short “the Rules of 2016”. In the Rules of 2016 the educational qualification is prescribed as follows: -

- “(a) degree in Electronics and Telecommunication Engineering; or*
- (b) degree in Electronics Engineering; or*
- (c) degree in Communication Engineering.”*

The prescription of the degree of B.E. in Electronics Engineering as the required qualification in the Rules of 2016 strengthens the plea of the applicant that the qualification of B.E. in Electronics (Engineering) was equivalent to the qualifications prescribed in the then prevailing rules of 1977 and further that

the said aspect was acknowledged by the State Government during the recruitment process carried out pursuant to the advertisement No. 65/2015.

30. After having discussed the facts as aforesaid we revert back to the letter dated 4.11.2004 on the basis of which the Commission held that the educational qualification possessed by the applicant is not equivalent to the educational qualification prescribed in the advertisement and consequently held the applicant ineligible for the subject post on the said ground. The contents of the aforesaid letter reveal that the Commission vide its letter dated 9.3.2004 had sought clarification on 03 issues of which the first was in respect of qualification. The commission has neither placed on record the copy of the letter dated 9.3.2004 nor has disclosed in its affidavit in reply as to on which points the clarification was sought by it from the Government.

31. We reproduce the clarification given by the Government in its letter dated 4.11.2004 on issue/point No. 1, which reads thus,

*“मुद्दा क्र. १ : प्रस्तुत पदासाठी Electronics and Telecommunication मधील स्नातक पदवी (B.E.) अर्हताधारकांनी आवेदन पत्र सादर केल्यास त्यांना प्रथमदर्शनी अर्हता प्राप्त समजण्यात यावे.”*

The clarification as aforesaid cannot be interpreted to mean that the State Government has held the qualification of B.E. (Electronics) as not equivalent to the qualification prescribed in the advertisement No. 208/2012. The clarification nowhere provides that only such candidates who possess the degree of B.E. in Electronics and Telecommunication shall be held holding the prescribed qualification for the subject post. When the clarification says that for the subject post the candidates holding the qualification of B.E. (Electronics) and Telecommunication shall *prima facie* be held to be holding the eligibility, it does not mean that the candidates possessing the degree of Electronics are held disqualified for the said post. The Commission has manifestly erred in interpreting the aforesaid explanation as bar for the candidates holding the qualification of B.E. (Electronics) to be qualified for the subject post.

32. We reiterate that whether the degree possessed by the applicant can be held to be equivalent to the qualification prescribed in the advertisement could not have been decided by the Commission. The Hon'ble Supreme Court has time and again held that equivalence of qualification is the matter for the State as recruiting authority to determine. In the case of **Devendra Bhaskar & Ors. Vs. State of Haryana & Ors., (2021) 7**

**S.C.R. 506**, the Hon'ble Supreme Court has reiterated the said view. Thus, the Commission was not having any right or authority to hold that the qualification of B.E. in Electronics possessed by the applicant was not equivalent to the qualification prescribed in the advertisement. Only course open for the Commission was to consult the State Government and to seek the opinion of the Government as about the claim of the applicant that degree possessed by him is equivalent to the qualification prescribed in the advertisement.

33. As we have noted earlier the next authority which could have authoritatively stated about equivalence was the concerned University i.e. BAMU of which the applicant was holding the degree of B.E. in Electronics. The applicant has placed on record the opinion given by the said University, which says that the degree of Electronics in Engineering is equivalent with the degree of Electronics and Telecommunication and vice versa, as well as, the degree of Electronics in Engineering equivalent with the degree of Communication or Telecommunication Engineering and vice versa. On the date of interview the applicant had earnestly urged the Interviewing Body of Commission to give him an opportunity to produce the certificate from the University certifying degree of Electronics in

Engineering as equivalent with the degree of communication or Telecommunication Engineering. The applicant had also endeavored for bringing on record the certificate of equivalence from BAMU by way of inviting fax and e.mail. It is not in dispute that the efforts of the applicant in that regard failed as neither fax machine was in operation in the office of the Commission nor the e.mail service was in function. In the aforesaid circumstances in fact the Interviewing Committee of Commission having regard to the principles of natural justice must have afforded an opportunity to the applicant to produce on record the relevant certificates from the University as about the equivalence of his degree with the qualification prescribed in the advertisement; and secondly shall have referred the matter to the State Government seeking its opinion. In denying both the opportunities to the applicant the Commission has exercised the power vested in it in an arbitrary manner. In the circumstances, the decision of the Commission of declaring the applicant ineligible for the subject post on account of not holding the qualification as prescribed for the said post has to be held patently illegal and deserves to be quashed and set aside.

34. The facts which are brought on record by the applicant as about the subsequent events occurred during

pendency of the present O.A. are necessary to be taken note of. As about the appointments made in pursuance of the advertisement No. 65/2015 we have made some discussion. The backlog of the seat for OBC was carried forward in the said advertisement, however, no OBC candidate could be selected even in the said recruitment. Thereafter, advertisement No. 32/2022 was issued for recruitment of only 02 posts, 01 for SC and 01 for Open General. In the said advertisement there is nothing mentioned about the backlog of the seat reserved for OBC. Recently advertisement No. 129/2023 has been issued inviting applications for 06 posts of which 02 seats are reserved for OBC candidates. In the M.A. St. No. 2361/2023 filed by the applicant the said fact is noted and the copy of the said advertisement is also annexed therewith. The aspiring candidates were to apply for the post so advertised on or before 1<sup>st</sup> January, 2024 and the last date for depositing the examination fees was 4<sup>th</sup> January, 2024. As has been submitted by the applicant in his arguments, the backlog of the OBC seat has yet not been cleared. There is reason to believe that, out of 02 posts reserved for OBC candidates in advertisement No.129/2023, 01 post may be of the said backlog.

35. As we have elaborately discussed hereinbefore, the applicant was holding the requisite qualification, when he applied for the subject post in pursuance of the Advertisement No.208/2012. Though, it was sought to be contended by the learned P.O. that, no interview of the applicant was taken on 07-09-2012, it is difficult to agree with the contention so raised. Applicant has placed on record the copy of the letter written by the Desk Officer, namely, Shri S.B. Taware of the Commission to the Principal Secretary (सेवा) of the General Administration Department of the State, wherein it is clearly stated that the applicant secured more than the cut-off marks in the interview and as such was liable to be held eligible to be recommended for his appointment on the subject post. The receipt of the said letter is duly acknowledged by the General Administration Department. The said letter appears to have written on 21-03-2013. In the said letter, it is further observed that the applicant was, however, declared not eligible on the ground that the educational qualification possessed by him was not equivalent to the qualification prescribed in the advertisement.

36. We have recorded an unambiguous finding that educational qualification possessed by the applicant was equivalent to the qualification as prescribed in the

advertisement. From the facts as have come on record there has remained no doubt that the Commission has grossly erred in holding that the educational qualification possessed by the applicant was not equivalent to the educational qualification prescribed in the advertisement. The aforesaid erroneous decision has caused serious prejudice to the applicant. For no fault on the part of the applicant, he was denied his legitimate claim over the subject post.

37. Had the Commission consulted the State Government instead of relying upon the earlier communication dated 04-11-2004, by this time, the complainant must have completed the tenure of more than 10 years on the subject post. From the averments taken in the O.A. and the documents placed on record to substantiate the said contentions, it is explicit that the applicant after having been declared ineligible, has been pursuing his matter at various levels and collected substantial documentary evidence to establish his claim. While allowing the application filed by the applicant for condonation of delay, the Tribunal has considered those aspects and after having noticed the substance in the contentions so raised, allowed the said application.

38. We reiterate that, the applicant has secured distinction in B.E. (Electronics). The said qualification was equivalent to the qualification as was prescribed in the advertisement No. 208/2012. However, without consulting the State Government, the Commission held the applicant ineligible on the ground that the qualification possessed by him was not equivalent to the qualification prescribed in the advertisement. It was an erroneous decision. The qualification possessed by the applicant is now expressly prescribed in the advertisement subsequently issued for recruitment of the subject post. For all aforesaid reasons the impugned order deserves to be set aside and the injustice caused to the applicant has to be removed by directing the Commission to recommend the name of the applicant for his appointment on the subject post. It has come on record that the advertisement No. 129/2023 has been recently issued for recruitment of 06 posts of the Deputy Superintendent/ Assistant Commissioner of Police (Wireless), State Police Service (Engineering), Group-A, out of which 02 posts are reserved for OBC. The said recruitment process is presently at the preliminary stage. In the circumstances, the Commission in consultation with the State Government may withdraw 01 seat out of 02 reserved for OBC in the aforesaid advertisement. In the result, the following order is passed: -

**ORDER**

(i) The order dated 21.3.2013 passed by the Maharashtra Public Service Commission thereby declaring the applicant ineligible on account of not having requisite qualification as prescribed in the advertisement is quashed and set aside.

(ii) Respondent No. 3, in consultation with the State Government, shall withdraw one seat out of 02 shown to be reserved for OBC candidates in the advertisement No. 129/2023 and shall recommend the name of the applicant to respondent No. 2 and/or to respondent No. 1, as the case may be, for his appointment to the post of Deputy Superintendent/ Assistant Commissioner of Police (Wireless), State Police Service (Engineering), Group-A against OBC seat within 4 weeks from the date of this order and respondent No. 2 and/or respondent No. 1, as the case may be, shall issue the order of appointment in favour of the applicant within 4 weeks from receipt of the recommendation from the Maharashtra Public Service Commission.

(iii) The Original Application stands allowed in the aforesaid terms.

(iv) Since the Original Application itself stood disposed of today, nothing survives in the Miscellaneous Application St. No. 2361/2023 and the same also stands disposed of.

(v) There shall be no order as to costs.

**MEMBER (A)****VICE CHAIRMAN**