

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No.104 of 2024 (D.B.)**

Rina W/o Vijayrao Pendharkar,
Aged about 51 years, Occ: Service,
C/o Shobha Vijay Pendharkar, Mudholkarpeth,
Ambadevi Road, Amravati.

Applicant.

Versus

- 1) State of Maharashtra,
through its Director, Vocational Education & Training,
Office at 3, Mahapalika Marg, Mumbai-01.
- 2) State of Maharashtra,
Through its Deputy Director,
Directorate of Sports and Youth Services,
Maharashtra State, Shiv Chatrapati Sports Complex,
Mahalunge, Balewadi, Pune.
- 3) State of Maharashtra,
through its secretary, Vocational Education & Training,
Mantralaya Mumbai-32.

Respondents.

**S/Shri M.M. & A.M. Sudame, I.A. Fidvi, A.A. Potnis, Advs. for the
applicant.**

Shri S.A. Deo, learned C.P.O. for the respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 16/04/2024.

JUDGMENT

Heard Shri A.M. Sudame, learned counsel for the applicant and
Shri S.A. Deo, learned C.P.O. for the respondents.

2. The regular Division Bench is not available. The Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai issued Circular No.MAT/MUM/JUD/469/2023, dated 24/04/2023. As per the direction of Hon'ble Chairperson, if both the parties have consented for final disposal, then regular matter pending before the Division Bench can be disposed off finally.

3. As per the M.A.T., Principal Bench, Mumbai office order / letter No.MAT/MUM/JUD/1350/2023, dated 21/11/2023, the Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai has given direction to this Tribunal to decide the Division Bench matters if the matter is covered by the Judgments of Hon'ble Supreme Court, Hon'ble High Court and the Benches of the M.A.T. etc. Hence, the matter is heard and decided finally with the consent of learned counsel for both the parties.

4. The case of the applicant in short is as under –

The applicant belongs to N.T.(B) category (Gondhali caste). The applicant possesses the educational qualification of Secondary School Examination Certificate, Higher Secondary School Examination Certificate, MS-CIT Certificate, Certificate in Beauty Culture, Diploma in Beauty Culture and Hair Dressing and Bachelor of Arts.

5. The respondent no.1 issued an advertisement for recruitment of various posts vide Advertisement no.01/2022. The applicant applied for the post of Craft Instructor (Cosmetology) under N.T. (B) category at Amravati division. The documents verification list was published by respondent no.1 and the applicant was declared ineligible for not possessing required educational qualification. Being aggrieved by the document verification list published online by respondent no.1 for the said post as per advertisement no.01/2022, the applicant has approached to this Tribunal for the following reliefs –

“ (8) (i) Hold and declare that the impugned action of the respondent no. 1 in declaring the applicant ineligible for the post of Craft Instructor (Cosmetology) reserved for candidate belonging to NT (B) category pursuant to advertisement no. 01/2022 is illegal, arbitrary and bad in law.

(ii) Direct the respondents to consider the candidature of the applicant for the post of Craft instructor (cosmetology) reserved for candidate belonging to NT(B) as per the advertisement no. 01/2022 in the interest of justice;

(9) By an ad interim ex-parte order or an interim order stay the proceedings in respect of the recruitment on the post of Craft instructor (Cosmetology) during the pendency of this original application in the interest of justice;

Or, in the alternative;

Direct the respondents to keep the post of Craft instructor (Cosmetology) reserved for candidate belonging to NT(B) vacant during the pendency of this original application in the interest of justice.”

6. At the time of passing interim order dated 09/02/2024, the learned C.P.O. has submitted that, that reasons for rejection on the ground of qualification was wrongly mentioned. The real reason that the applicant is **overaged** and therefore she was not considered for the post applied for.

7. This Tribunal has passed the interim order on 09/02/2024. The Clause-3 of the said order is reproduced below –

“(3) The learned CPO has submitted that the applicant has given three different dates. In the application form she has given her date of birth as 5th January 1977. But in her Mark Sheet and Leaving Certificate her date of birth is shown as 01.05.1977. The learned CPO has pointed out birth certificate of applicant issued by the Municipal Corporation, Amravati. In this Certificate, her date of birth is shown as 19th May, 1978. It appears that there are three different dates. Therefore, the interim relief cannot be granted.

8. The applicant has challenged the said order before the Hon’ble Bombay High Court, Bench at Nagpur in Writ Petition No.1106/2024. The Hon’ble High Court has directed this Tribunal to decide the O.A. within a period of eight weeks.

9. The respondent no.1 has filed the reply and submitted that the applicant has given 3-4 documents in respect of age. As per Birth Certificate her date of birth is 19/05/1978, as per mark sheet her date of birth is 01/05/1977 and in the application form she has mentioned her date of birth as 05/01/1977. It is submitted by respondents that the

applicant is overaged and therefore she is not eligible for the post. Hence, the O.A. is liable to be dismissed.

10. During the course of submission the learned counsel for applicant has pointed out the Rule 38 (2) (a) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and submitted that the rules are amended and as per the amended rules the date mentioned in the School record is to be taken into consideration.

11. The Rule 38 (2) (a) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 is reproduced below –

“(38) Procedure for writing the events and recording the date of birth in the service book –

(2) After the commencement of the Maharashtra Civil Services (General Conditions of Services) (Amendment) Rules, 2021 while recording the date of birth, the following procedure shall be followed:-

(a) Every person newly appointed in the service or a post under Government shall, at the time of the appointment, declare his date of birth according to the Gregorian calendar with confirmatory documentary evidence. Where prescribed qualification for appointment is Matriculation or above in such cases Matriculation Certificate shall be treated as valid document. In other cases, Birth Certificate issued by Local bodies or Certificate from the recognized school last attended shall be treated as a valid document. He shall give undertaking in Appendix-5-A for his date of birth.

Note - *At the time of appointment of a person in Government service, the undertaking for date of birth shall be obtained from the*

concerned employee for recording the date of birth in his service book. The undertaking shall be kept in his service book and in personal file. After recording the date of birth on the first page in the service book his signature shall be obtained in the column of signature of Government servant with date.”

12. The learned C.P.O. submits that the respondents have considered the applicant's date of birth as mentioned in the application. Her date of birth is mentioned in the School record is 01/05/1977. The learned CPO submits that the applicant has mentioned her date of birth in the application as 05/01/1977 and therefore she is **overaged**. It appears that it is a mistake committed by the applicant. Even her Birth Certificate is taken into consideration, then her date of birth is 19/05/1978. If this Birth Certificate is considered, then she is below 43 years. Therefore, she is eligible. The Hon'ble Bombay High Court, Bench at Nagpur has recorded its findings in para-7 and 8 which are reproduced below –

“(7) The fact remains that the petitioner is seeking public employment and such services are governed by the provisions of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (for short, the said Rules). The learned counsel for the petitioner also draws support from the contents of Government Resolution Dated 17/12/2021.

(8) The amended Rule 38 (2)(a) of the said Rules contemplates the matriculation certificate to be relevant document for consideration of correct date of birth to be entered in service record at the time of granting employment. The date of birth in matriculation certificate of

the petitioner which is produced at Annexure-A/3 to the petition is 01/05/1977. If the aforesaid date of birth that is 01/05/1977 is considered still fact remains that the petitioner is within the age limit criteria of 43 years.”

13. In view of the Judgment of the Hon’ble High Court and more particularly the date of birth recorded in the Birth Certificate which is most important. The applicant is not over-aged as submitted by the respondents. Hence, the following order –

ORDER

(i) It is hereby declared that the action of the respondents declaring the applicant ineligible for the post of Craft Instructor (Cosmetology) reserved for candidate belonging to N.T. (B) category is illegal and hereby quashed and set aside.

(ii) The respondents are directed to consider the candidature of the applicant for the post of Craft Instructor (Cosmetology) reserved for candidate belonging to N.T. (B) category as per the Advertisement no.01/2022.

(iii) The O.A. is disposed of with no order as to costs.

Dated :- 16/04/2024.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 16/04/2024.