

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

**ORIGINAL APPLICATION NO.325 OF 2018
WITH
ORIGINAL APPLICATION NO.13 OF 2020**

O.A.NO.325 OF 2018

Shri Anil Madanji Jadhav,)
Aged about 49 years, Joint Director,)
Directorate of Vocational Education,)
Regional Office, Polytechnic Campus,)
Kherwadi, Bandra (East), Mumbai 400 051)
and residing at Y-1/11, Government Colony,)
Bandra (East), Mumbai.) **...APPLICANT**

VERSUS

1. The Maharashtra Public Service Commission,)
Through its Secretary, having its office at)
Cooperage Telephone Nigam Building,)
Maharshi Karve Road, Cooperage,)
Mumbai 400 021.)
2. Government of Maharashtra,)
Through Principal Secretary,)
Skill Development & Entrepreneurship)
Department, Mantralaya Extension Bhavan,)
Mumbai 400 032.)

3. Shri Digambar Ambadas Dalvi,)
 Age about 51 years, Assistant Director,)
 Directorate of Vocational Education and)
 Training, 3-Mahapalika Marg, Mumbai)
 And Residing at Y-6/94, Government Colony,)
 Bandra (East), Mumbai 400 051.)...**RESPONDENTS.**

WITH

O.A.NO.13 OF 2020

- Shri Ramkisan Shrirang Pawar,)
 At post, Shirur, Tal.Shirur, Dist. Pune 412 210) ...**APPLICANT**

VERSUS

1. The Maharashtra Public Service Commission,)
 Through its Secretary, 5th, 7th and 8th floor,)
 Cooperage Telephone Exchange Building,)
 Cooperage, Mumbai 400 021.)
2. The State of Maharashtra,)
 Through the Principal Secretary,)
 Skill Development & Entrepreneurship)
 Department, Mantralaya,)
 Mumbai 400 032.)
3. Shri Digambar Ambadas Dalvi,)
 Assistant Director,)
 Directorate of Vocational Education and)
 Training, R/at. Y-6/94, Government Colony,)
 Bandra (East), Mumbai 400 051.) ...**RESPONDENTS**

Appearance in O.A.No.328/2018.

Shri M.D. Lonkar, learned Advocate for the Applicant.

Shri Abhijeet A. Desai, learned Advocate for the Respondent No.1.

Ms. S.P. Manchekar, learned Chief Presenting Officer for Respondent No. 2

Shri K.R. Jagdale, learned Advocate for Respondent No.3.

Appearance in O.A.No.13/2020

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

Ms. S.P. Manchekar, learned Chief Presenting Officer for Respondent No. 2

Shri C.T. Chandratre, learned Advocate for Respondent No.3.

CORAM : **JUSTICE MRS. MIRDULA BHATKAR, CHAIRPERSON
SHRI P.N. DIXIT, VICE-CHAIRMAN**

PER : **JUSTICE MRS. MIRDULA BHATKAR, CHAIRPERSON**

RESERVED ON : **18.12.2020**

PRONOUNCED ON : **25.01.2021**

J U D G M E N T

1. The two Original Applications i.e. O.A.No.325 of 2018 and O.A.No.13 of 2020 are heard and decided together as the challenge raised and the issues involved in both the matters are the same. The Applicant in O.A.No.325/2018 and the Applicant in O.A.No.13/2020, unsuccessful candidates, have challenged the appointment of Respondent No.3, Shri Digambar Ambadas Dalvi, who is successful and whose name is recommended by the Maharashtra Public Service Commission (M.P.S.C.) by order dated 24.04.2018 on the ground of faulty Selection Process and Eligibility.

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2. The Respondent no. 1 issued an advertisement no.84/2015 dated 31.7.2015 for the solitary post of Director, Vocational Education and Training in the cadre of Maharashtra Education Service, Group-A. The applicant was one of the candidate for the said post. Respondent no.1 after scrutiny of all the applications short listed the candidates on the basis of the Rules of the Maharashtra Public Service Commission Rules of Procedure, 2014 (hereinafter referred as 'Rules of Procedure of 2014' for brevity). The Rules came into force w.e.f. 16.5.2014. It is the case of the applicant that the M.P.S.C, regardless of its own rules by applying erroneous short listing criteria, prepared a list of 10 candidates. For one solitary post, minimum 5 candidates and not more than 10 candidates could be called for the interview. Out of 10 candidates, 2 remained absent and 3 were found not eligible.

3. The applicant seeks exception to short listing criterion adopted by Respondent no.1, i.e. M.P.S.C for filling up the post of Director, Vocational Education and Training, pursuant to Advertisement no.84/2015. He challenges his disqualification in the selection process of the said post. He prays that the criterion of short listing adopted by M.P.S.C, with reference to Advertisement no.84/2015 is illegal and bad in law. The applicant is working as a Joint Director, Vocational Education and Training, Regional Office, Mumbai. He is B.E, First class, M.E, First Class, P.G.D.B.A, First class. He was



pursuing Ph. D and holds the professional experience. The publication of Research Papers in renowned National and International Journals are to his credit. It is the case of the applicant that though the Respondent no. 3 did not fulfill the conditions of requisite experience of 26 years, he was short listed and selected. For the purpose of choosing those eligible candidates the short listing criterion adopted by M.P.S.C. was if higher the educational qualification, then lesser the experience and lower the educational qualification, then more the experience. As per the rules, the said criterion, if a person is Ph.D then he should have 19 years' experience and for the candidates who hold M.E or B.E, he should have 26 years' experience.

4. Learned Counsel for the Applicant submitted that total 84 candidates had applied, out of which 61 candidates were found eligible and 23 were not eligible. The applicant was found eligible, however, for short listing, criteria applied by the Respondent no. 1, M.P.S.C were not legal. He relied on Rule 9, 5(d) of the Rules of Procedure of 2014, which speaks about procedure of short listing. Respondent no.3 does not possess the requisite experience of 26 years. He relied on Rule 9, pertaining to direct recruitment. Rule 9 (ii), (iii), (iv) & (v). Rule 9(v)(b) & (d) of M.P.S.C. Rules of Procedure of 2014 on the point of minimum educational qualification without experience and minimum academic qualification together with minimum experience. He relied on the relevant paras from the

pleadings, i.e. paras 7.9, 7.10 and 28, so also affidavit in reply and argued para (C) in the affidavit-in-reply.

5. Respondent no. 1 has failed to observe the Rules contemplated under Rule 9(v)(d). He submits that if the ratio of the posts and availability of candidates are not reached then the M.P.S.C should go for the alternative. In the case in hand, this is not the situation that the candidates were adequate for filling the ratio. He argued that the aim and object of the rule is to try and find out best available talent in the market. The Procedural Rules cast duty to call at least eligible candidates after proper short listing and verification. He further submitted that the subjective satisfaction should be made with objective material at the time of scrutiny and short listing. Mr. Lonkar, further pointed out to Exh.'Z', which is called "उद्घोषणा" wherein it is made clear that all the candidates shall have University approval for their appointment and such certificate should be produced at the time of verification, non-production will amount to dis-qualification. He further submitted letter of approval from Technical Board or University which was produced by the Respondent No.3 after the actual interview. It is an inherent defect.

6. Learned Counsel for the Applicant Mr. Lonkar by comparison demonstrated the favourable treatment given to Respondent no.3. He submitted that the applicant has obtained the copies of the application of short listed candidates along with the remarks of

M.P.S.C at the time of verification and interview, noted down at the foot of the each application. Learned Counsel for the applicant relied on page nos.331 to 333. He pointed out the names of short listed eligible candidates as per M.P.S.C and so also the applications of those candidates and highlighted the remarks passed by the M.P.S.C. He pointed out the criterion of 19 years of experience for the candidates holding Ph. D and for candidates other than Ph. D, 26 years' experience was required to be strictly applied by M.P.S.C. However, the M.P.S.C itself did not honestly apply the said criterion while verifying and interviewing 1 to 10 candidates.

7. The application of one Mr. Raj Kalvekar, who was Ph.D. was called at serial no.9 for interview. This is done only with a view to favour Respondent no.3, as the name of Respondent no.3 was deliberately put 1st in the race. He pointed out that some of the candidates remained absent at the time of verification and interview because they did not fulfill the conditions of experience of either 26 years or 19 years. He analyzed the experience of Mr. R.S Pawar, who is at serial no.8 and submitted that he was having experience of only 15 years as no Certificate of approval was issued by the University. Similarly, third candidate Mr. Vakde did not have required experience at the time of interview. Respondent no.3, who was not Ph.D. was no.4 in the interview, in his application though has claimed 27 years of experience, was not holding the University approval. As per his application, he in fact lacks 2 years to complete 26 years of

experience. Moreover, the learned Counsel pointed out that there was a gap in his service, i.e. from September, 2012 till April, 2013 of six months, and the said service cannot be considered as an experience. M.P.S.C has not given the same treatment to all the candidates and has violated the Fundamental Right of equality under Article 14 of the Constitution of India. He also pointed out application of one Mr. Pravin Sahebrao, Sr. No.3 who is Ph. D. This candidate is not having experience of A.T.S, i.e. Apprentice Training Scheme and C.T.S, i.e. Craftsman Training Scheme. Then he also further pointed out that one Shri Gajanan Awari, at serial no.7 holding Ph.D but does not have experience of A.T.S and C.T.S. Learned Counsel has submitted the application of one Mr. Neenale, candidate at serial no. 8 (page 354) in fact in all fairness was fulfilling all the criteria and he was the most eligible candidate. However, he was not appointed as the appointment of Respondent no. 3 was already fixed.

8. He referred to the affidavit in reply filed by applicant Mr. Anil Jadhav, by way of rejoinder and affidavit in reply filed by one Mr. Santosh Rokade, on behalf of Respondent no. 2. He relied on Exhibit 156, the order dated 5.5.2018 issued by M.P.S.C in favour of Respondent no. 3, wherein it is clearly mentioned that the appointment order has a condition, i.e. subject to verification of the years of service after going through the approval of the concerned University.



9. Learned Counsel Mr. Desai for Respondent no.1 in reply has submitted that application is not maintainable mainly on the ground that the applicant has no locus on two grounds; firstly he was not the candidate who was short listed and he could not have been affected even if instead of Respondent no. 3 any other candidate from short listing would have been considered, secondly the applicant cannot plead relief by artificially expanding the scope in the nature of Public Interest Litigation (PIL), which is not legally permissible before this Forum.

10. Learned Counsel for the Respondent no. 1 argued that the applicant has raised the objection on the method of short listing criterion adopted by MPSC completely on wrong assumption. Learned Counsel for the applicant ought to have considered that this power of short listing on screening test vest with the M.P.S.C in view of ratio laid down by the Hon. Supreme Court in **Dr. Chakradhar Paswan Vs. State of Bihar, AIR 1988 SC 959**, where there is a single isolated post. The present post of Director of Vocational Education & Training for which the candidates were going to be selected by nomination by MPSC is a single isolated post. The information is supplied by the applicants in respect of their educational qualification and experience as required in the advertisement issued on 31st July, 2015 (page 41 of the O.A.). MPSC has received many applications for one post and it is not feasible for MPSC to call the candidates for the said post. Therefore, ratio of 10 candidates for 1 post was laid down.

By applying this criterion, 10 eligible candidates were short listed among which Respondent no.3 was included and the applicant was not found eligible. Thus, learned counsel for Respondent no. 1 argued that the short listing criterion was in consonance with the rules and the screening of the candidates was conducted to bring the candidates in the ambit of consideration for eligibility. The credentials of Respondent no. 3 are at par with the eligibility criteria, and therefore, his shortlisting and so also his selection cannot be doubted and he was selected by following all the rules.

11. Learned Counsel for Respondent no.1 submitted that much is argued on behalf of the applicant on the point of regular and temporary employment of eligible candidates, especially the selected candidate, i.e. Respondent no.3. He submitted that Respondent no.3 was having continuous 26 years' service and it was approved by the recognized University or the Institution. He submitted as pointed out by learned counsel for the applicant, that Respondent no. 3 had first a gap of six months after leaving his service of Kavikulguru Institute of Technology and Science, Nagpur (pages 173 and 174). Thereafter, he was given a break in service (column 7 & 8). Learned Counsel Mr. Desai pointed out a corrigendum (सुध्दीपत्रक) dated 12.6.2020 (page 444 of the Petition), by which the Government has regularized the services of Respondent no. 3 as continuous service. While explaining the words 'duty' and 'service', he relied on Rule 9 (14) of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981. On this

point, the learned Counsel relied on the decision of **Suman Dhiva Vs. State of Rajasthan unreported judgment SB CWP 543/2016 decided on 15.6.2016**. The Single Bench of Rajasthan High Court held that the period of medical leave is to be counted as period of experience gained by the petitioner.

12. The Applicants have also questioned the eligibility of Respondent No.3 on the ground of his continuous 26 years service experience on the point that he was given break of six months in his service when he was working in the office of Directorate of Vocational Education. On perusal of this certificate of experience of the Respondent No.3, we find that he has worked as Assistant Director at Regional Office, Mumbai between 10.11.2008 to 30.09.2012. Thereafter he was given the appointment on 17.04.2013 as Secretary, Maharashtra State Board of Vocational Education Examination, Mumbai till today. Thus there was break of 6 ½ months. On this point it is useful to refer to Rule 9 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981, where 'duty' is defined in Rule 9(14) and compulsory waiting period is defined in Rule 9(14)(f) of the said Rules.

9(14) : Duty includes- (a) Service as a probationer; (b) Joining time; (c) A course of instructions or training authorised by or under the orders of Government.

9(14)(f) the period for which a Government servant is required to wait compulsorily until receipt of his posting orders in the cases mentioned below:- (i) whose orders of transfer are held in abeyance cancelled or modified while in transit, or (ii) who, on return from leave or deputation or on abolition of the post held by

him, has to await receipt of posting orders, or (iii) who, on arrival at the headquarters of the post to which he is posted is not in a position to take charge of the post from the Government servant to be relieved.

The period availed of to resume duties after the receipt of posting orders shall not exceed the joining time admissible under the rules and shall be treated as a continuation of the period of compulsory waiting.

Alongwith these Rules our attention is drawn to the corrigendum issued dated 23.06.2020, by Dr. Manish S. Milke, Desk Officer, State of Maharashtra, in which the period of 09.10.2012 to 13.10.2012 is sanctioned as Medical Leave and the period from 14.10.2012 to 30.11.2012 (48 days) is considered as extra ordinary leave.

13. He submitted that the rules and the procedure laid down by MPSC were published and known to all the candidates including the applicant and he had accepted the said procedure. Applicants, therefore, cannot subsequently object the said procedure after they are not found eligible. On this point, learned Counsel Mr. Desai, relied on ***Manish Kumar Shahid Vs. State of Bihar & Ors reported in (2010) 12 SCC 576.***

Submission of learned Advocate for the Applicant Shri S.S. Dere in O.A.No.13/2020.

14. The learned Advocate Shri S.S. Dere appearing for the Applicant Shri Ramkisan Shrirang Pawar in O.A.No.13/2020 has submitted that while conducting the selection process the M.P.S.C. did not give equal treatment to all the candidates. Respondent No.3 was shown favour,

when he was not holding the proper certificate of University approval at the time of verification, yet he was interviewed and recommended with a note to the Government that his experience is to be verified. Respondent No.1, M.P.S.C. has failed to follow the uniform procedure for all, leading to denial of equal opportunity to all the short listed candidates. Respondent No.3 was wrongly declared eligible in the selection process despite not having relevant documents i.e. University approval for his appointment for a period of 2 years on the date of the interview. Thus, entire process is vitiated and the applicant thus claims his right under Article 14 and 16 of the Constitution of India that he is entitled to be treated equally as he was also similarly situated candidate.

15. The learned Advocate Shri Dere submitted that the Applicant holds Ph.D therefore the applicant required 19 years of experience and though the applicant was called for the interview, his candidature was rejected on the ground that the experience of the applicant is not sufficient since the post of Lecturer in Marathwada Institute of Technology is not having approval of the University. The learned Advocate Shri Dere has submitted that the Applicant has received summary profile of Respondent No.3 under RIT which discloses that Respondent No.3 did not submit the University approval letter accordingly the objection was recorded. However, unlike the applicant, Respondent No.3 was allowed to appear for the interview. The Respondent No.3 had produced the letter of approval much later

i.e. by letter dated 28.08.2019. Thus it is after thought and manipulated. The learned Advocate Shri Dere argued that the Respondent No.3 is having the total experience of 2 years, 6 months and 24 days as a Lecturer at Kavikulaguru Kalidas Sanskrit University, Ramtek, District Nagpur. The total experience out of which the University approval was given only for the year 1989 and 1999 and thus, the Respondent No.3 falls short of same period to be eligible for the interview. Thus, the Respondent No.3 who was not having the complete document from the concerned University was interviewed and thus the selection of Respondent No.3 is illegal and against the principles of natural justice. The Applicant was not having the approval of the University along with the relevant documents. While meeting the objections of the eligibility of having experience of 19 years on higher grade pay he submitted that the applicant was working as Junior Engineer and was having the required Grade pay and thus was holding responsible position. The learned Advocate Shri Dere has submitted that the pay scale in the private sector is different than in the public sector and therefore the post of Junior Engineer in the private sector is to be considered as responsible post.

16. Mr. K.R Jagdale and Mr. C.T Chandratre, appearing for Respondent no.3, Shri Dalvi, in respective Original Applications state that he is the selected candidate and MPSC has rightly recommended

his name for the said post to the Government. He is not Ph. D therefore he needs experience of 26 years, which he has to his credit.

17. Mr. Jagdale has submitted that M.P.S.C. cannot demand the University's approval if the said condition is not expressly mentioned in the advertisement. Reliance is placed on the judgment of Hon'ble Bombay High Court, Nagpur Bench **in Writ Petition No.4488/2016, M.P.S.C. Vs. Dr. Rita and** judgment of Bombay High Court in **Writ Petition No.5919/2017, M.P.S.C. Versus Dr. Prashant Babarao Shamkuwar & Ors..**

18. Mr. Jagdale, learned counsel, on the point of experience and University approval stated that the requirement of University approval was not a condition mentioned in the advertisement issued by MPSC for the said post. The criterion of University approval was subsequently incorporated in "उद्घोषणा" (pronouncement) while declaring the short listing criteria. On this point, Shri Jagdale, learned Counsel relied on the judgments of **Dr. Rita and Dr. Prashant B. Khamkuwar (cited supra)** and relied on the ratio therein.

19. The learned Advocates Shri K.R. Jagdale and Shri C.T. Chandratre appeared for Respondent No.3, Shri Digambar Ambadas Dalvi in O.A.No.325/2018 and O.A.No.13/2020 respectively. Both of them adopted the reply given by the Respondent No.3, Shri Digambar Ambadas Dalvi. It was submitted that his recommendation is legal

and valid and he is eligible for the post. The learned Advocate Shri Jagdale has submitted that out of 10 shortlisted candidates Respondent No.3, Shri Digambar Ambadas Dalvi was at serial no.3, Applicant in O.A.No.13/2020, Shri Ramkisan Shrirang Pawar was at serial No.8 whereas the Applicant in O.A.No.325/2018, Shri Anil Madanji Jadhav was at serial No.35 and was not shortlisted. Both the learned Advocates Shri Jagdale and Shri Chandratre challenged the locus of the Applicant in O.A.No.325/2018 who was not shortlisted and argued that the Applicant in O.A.No.325/2018, Shri Anil Madanji Jadhav was much below than Respondent No.3 and therefore, the application be dismissed.

20. The learned Advocate Shri Jagdale has submitted that the objection of the Applicant that Respondent No.3 has not fulfilled the necessary criterion of 26 years is baseless. He has relied on the table of Respondent No.3 of his experience at various educational institutions. He pointed out that at the time of interview the Respondent No.3 was not holding the certificate of his appointment in Kavikulaguru Kalidas Sanskrit University. However, subsequently he produced the said certificate and thus he could fulfill the criterion of having the experience of 26 years of service. The learned Advocate Shri Jagdale further submitted that the University approval certificate of college and approval of Nagpur University for the appointment of Respondent No.3 for the period of 01.07.1989 to 20.07.1991 is to be necessarily counted in the total period of his experience. He further

pointed out the advertisement No.84 of 2015 dated 31.07.2015 and argued that no such criterion was mentioned for the post of Director, Vocational Education and Training in the said advertisement given by the M.P.S.C., Respondent No.1.

21. In ("Ghoshna")/pronouncement dated 28.03.2018 issued by M.P.S.C., the criterion was requirement of approval of the university or technical board for the appointment of the candidate, was added subsequently and it also mentions that otherwise the said experience would be invalid. He submitted that the change of criterion is not permissible as per the ratio laid down by the Bombay High Court, Nagpur Bench in case of ***Dr. Amrapali W/O Atul Akhare Versus Dr. Panjabrao Deshmukh Krishi, Writ Petition No. 2444/2019, decided on 27.02.2020.*** The said ratio was upheld by the Hon'ble Supreme Court. He submitted that the Respondent No.3 relies on this judgment by way of abundant precaution as it was argued by the applicant that at the time of interview the applicant was not holding the university approval for his appointment for the period of 01.07.1989 to 20.07.1991 in Kavikulaguru Kalidas Sanskrit University.

22. The learned Advocate Shri Jagdale has further submitted that the Applicant in O.A.No.325/2018, Shri Anil Madanji Jadhav does not possess the Ph.D and he does not have requisite experience of 26 years and therefore he was held ineligible for the interview. He

submitted that his interview was held on 12.04.2018 for the post of Director, Vocational Education and Training. He further argued that the Applicant in O.A.No.13/2020 Shri Ramkisan Shrirang Pawar is not eligible because he was not having the total experience in grade pay of Rs.6,600/- and above i.e. equivalent to the Managerial post or of the post of the Executive Engineer in Public Sector and however he has also produced the University approval certificate of college on 06.04.2018. He submitted that for only teaching post the approval of University is required. The O.A. is filed with mala fide intension with a view to prolong the appointment of Respondent No.3.

23. The learned C.P.O. Ms. Manchekar relied on the affidavit-in-reply and has adopted the submissions of Shri Desai and argued that the State has received the recommendation of Respondent No.3 for the post of Director, Vocational Education and Training. The Respondent-State has a small role to play i.e. to verify whether the recommended candidates who fulfill the criterion of the Rules dated 27.07.1988 issued by the Education and Employment Department. She pointed out that the appointment to the post of Director, Vocational Education and Training as per Rule 3 of the said Rule should hold the responsible position for not less than 10 years as mentioned in Rule 3 of Recruitment Rules. In the reply of Mr. Santosh Rokade, the Government did not verify the approval of the University as mentioned in the said order, but it is stated that to select the best candidate is the duty and responsibility of M.P.S.C and once the name is

forwarded, then the Government will verify whether the candidate fulfills all the conditions and eligibility as per the criterion mentioned in the rules and the advertisement.

24. The learned C.P.O. produced one order dated 12.06.2020 of Dr. Manish Milke. She pointed out that objections were raised about the break in service of the Respondent No.3. However, the Government has considered that the period of service from 01.12.2012 to 16.04.2013 i.e. the period of 137 days as compulsory waiting period, which is covered under the definition of service. She further submitted that on the contrary the applicant in O.A.No.13/2020 does not fulfill the criterion of having the experience in responsible position. She pointed out the 'responsible position' means a person who is having more Grade pay scale as per 4th pay commission i.e. Rs.6,600/- Grade pay and above. However, the Applicant, Shri Ramkisan Shrirang Pawar was not fitting in the required Grade pay. Applicant, Shri Ramkisan Shrirang Pawar working as Junior Engineer at PD V Vikhepatil Co-Operative Society and therefore, he was not holding the responsible position. Junior Engineer is not considered as the responsible post because he does not fall in the required Grade pay. The learned C.P.O. submitted that in private sector a person who holds the position of Manager then that can be considered as a responsible position. She argued that the post of Director needs a lot of administration and so also equal teaching experience and therefore this criterion should be strictly followed. The Applicant, Shri

Ramkisan Shrirang Pawar was getting less salary i.e Grade pay which was required for the responsible post and therefore his experience fell short to fulfill the criterion of 19 years.

25. Heard submissions of learned Counsel of both the sides. The challenge is mainly on the fulfillment of short listing criterion of the period of experience. Undisputedly both the applicants and the Respondent No.3 held the requisite educational qualifications but their eligibility is disputed by the opposite parties on the ground of inadequate experience as mentioned in the Recruitment Rules and short listed criterion. The recruitment rules for the post of Director of Vocational Education and Training, Maharashtra Educational Service (Class-I) in the Directorate of Vocational Education and Training of the Government of Maharashtra dated 03.09.2014 is hereinafter referred as 'Recruitment Rules' for brevity. Rule 9 of the Recruitment Rules is about the eligibility for appointment to the post of Director of Vocational Education and Training.

26. In the case of isolated post at the State level Directors, the procedure of direct recruitment is mentioned in Rule 9(v)(d). The same is quoted below:-

“(d) For the posts prescribing minimum academic qualifications together with minimum experience, the criterion of higher experience than the minimum prescribed shall be applied after the preferential qualification for short-listing and if the ratio is not reached, then only the criterion of higher academic qualification as provided for in clause (b) above shall be invoked.”

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Now let us examine the advertisement whether it in consonance with the rules. As the said post was vacant the Government demanded M.P.S.C. to initiate the procedure of selection and recommend the candidate. The advertisement dated 31.07.2015, the relevant clause on eligibility is as follows. Clause 4.3 of the Advertisement No.84/2015 dated 31.07.2015 is reproduced herewith:-

“४.३ शैक्षणिक अर्हता व अनुभव :-

- (i) *Possess a Bachelor's degree in Engineer at least a Second Class or a Post-graduate degree in Engineering.*
- (ii) *Possess professional experience, gained after acquiring the qualifications mentioned above in a **responsible position** for not **less than ten years** at which not less than **five years** shall be in the administration of Craftsman Training Scheme or in the Apprenticeship Training Scheme of the Government of India or in a Government Department or in an Industrial Undertaking or in a Commercial Establishment or Board constituted by Government or combined professional teaching and administrative experience in a responsible position in a recognized Engineering College, Polytechnic, Industrial Training Institute, Industrial Undertaking or Government department for not less than **ten years**.*
- (iii) *Adequate knowledge of Training Schemes and Apprentices Act, 1961 (52 of 1961).*

27. Thereafter applicants were short-listed. Out of 84 candidates, 61 were found eligible and 23 were ineligible. The names of the Applicants and Respondent No.3 appeared in the merit list. Respondent No.3 Shri Digambar Ambadas Dalvi and Applicant Shri Ramkisan Shrirang Pawar (O.A.No.13/2020) were on the higher side than the Applicant Shri Anil Madanji Jadhav (O.A.No.325/2018), whose name appeared at serial no.35 in the merit list. The Respondent No.1, M.P.S.C. thereafter applied the ratio of 1:10. Thus

1:5 short listing criterion was applied as the number of eligible candidates was much higher for one post. It is settled position of law and as per the rules of M.P.S.C. that during the selection process if the number is more, then the Public Service Commission may opt to shortlist the candidates by raising the yardstick of higher standard. Such shortlisting cannot be challenged once the candidates participate in the selection process. Had the Applicant's name appeared in the merit list he would not have even thought of challenging the selection process and therefore, the conduct of the Applicant clearly disentitles him from challenging the selection process.

28. While shortlisting, the M.P.S.C. has given more weightage to the higher education and according to that the required years of experience, were more or less.

“संचालक, व्यवसाय शिक्षण / प्रशिक्षण, व्यवसाय शिक्षण व प्रशिक्षण संचालनालय, महाराष्ट्र शिक्षणसेवा, गट-अ
(जाहिरात क्रमांक ८४/२०१५

अराखीव एकापदाकरीता मान्य झालेला निकष

अ) Candidates must possess -

१. B.E./B. Tech. in Engineering or Technology with second class आणि

२. M.E./M. Tech. in Engineering or Technology with second Class, आणि

३. Ph.D. in Engineering or Technology आणि

४. जाहिरातीतील परि ४.३ (ii) मध्ये नमूद केल्यानुसार प्राधान्यशिल अर्हतेसह एकूण १९ वर्षांचा अनुभव

५. Adequate knowledge of Training Schemes and Apprentices Act, 1961 (52 of 1961)

किंवा

ब) Candidates must possess -

१. B.E./B. Tech. in Engineering or Technology with second class आणि

२. M.E./M. Tech. in Engineering or Technology with second Class, आणि

३. जाहिरातीतील परि ४.३ (ii) मध्ये नमूद केल्यानुसार प्राधान्यशिल अर्हतेसह एकूण २६ वर्षांचा अनुभव

५. Adequate knowledge of Training Schemes and Apprentices Act, 1961 (52 of 1961)”

On this basis the ratio applied was 1:10 and the 10 candidates who were fulfilling this criterion had secured more marks as per the merit list were called for the interview. The Applicant in O.A.No.13/2020 was found eligible and so was called at serial no.8 and Respondent No.3 was also found eligible and so was called at serial no.3.

29. CHART OF THE TEN CANDIDATES WITH DETAILS :-

sr	Name of the Candidates	Edu. Qualification	Experience Claimed in Online Application					Considered /Not Considered	Total Experience Considered
			Organisation	Designation	Y	M	D		
1	Wakde Prafulla Madhukar (Interview No.4)	B.E.- 16/06/1986- First Class M.Tech - 18/11/1992 - First Class	Higher & Technical Edu. Dept.	Lecturer, Head Master, Principal, Joint Director	28	-	24	Considered	28y 00m 24d
2	Dalvi Digambar Ambadas (Interview No.4) (RESPONDENT NO.3)	B.E.- 18/08/1989- First Class M.Tech - 15/06/1999 - First Class	KITS Ramtek	Lecturer	2	6	24	Considered	26y 27d
			Priyadarshani College of Engg	Lecturer	5	2	3	Considered	
			Directorate of Vocational Edu.	Principal , Assistant Director, Secretary	18	4	-	Considered	
3	Patil Pravin Sahebrao (Interview No.6)	B.E.- 10/08/1989- First Class M.E. - 05/05/1995 - First Class Ph.D. - Engg& Tech - 10/8/2013	Bharti Vidyapeeth College of Engg.	Lecturer	0	7	29	Not Considered	20y 11m 29d
			SST College of Engg	Lecturer	2	10	19	Not Considered	
			SSVPS B S Beore college, of Engg.	Assistant Professor, Associate Professor, Professor & HOD	20	11	29	Considered	
4	Awari Gajanan Kondbaji (Interview No.7)	B.E.- 30/12/1991- First Class M.E. - 30/12/1995 - First Class	Tulshiramji Gaikwadpati 1 college of Engg.	Principal	06	1	06	Considered	19y 07m 22d
			Priyadarshani College of Engg.	Assistant Professor, Professor & HOD	02	9	11	Considered	

		Ph.D. - Engg & Tech 26/7/2007	Sant Gajanan Maharaj college of Engg.	Lecturer, Asstt. Professor	10	9	05	Considered		
			J S P Ms Polytechnic	Lecturer	01	7	25	Not Considered		
			Universal Industrial Service	Service Engineer	0	5	25	Not Considered		
5	Ninale Chandrakant Atmaram (Interview No.8)	B.E.- 25/06/1986- First Class M.E. 04/03/1993 First Class	Tarana Engg College	Lecturer	1	11	04	Considered	27y 23d	11m
			College of Applied Science	Lecturer	2	05	28	Considered		
			Govt. Poly. A'bad	Lecturer	4	5	15	Considered		
			Directorate of Vocational Edu	Lecturer, Joint Director	19	01	06	Considered		
6	Pawar Ramkrishna Shirang (Interview No.1) (Applicant in O.A.No.13/2020)	B.E.- 11/07/1995- First Class M.E. 18/07/2007- First Class Ph.D - Engg & Tech- 8/1/2015	Marathawad a Insitute of Tech.	Lecturer	2	7	18	Not Considered	16y 02d	00m
			Jawaharlal Neharu Engg. College.	Lecturer	1	11	13	Considered		
			PD V Vikhepatil Co-Operative	Jr. Engg.	0	11	15	Considered		
			Hitech Institute of Technology	Asstt. Professor	7	01	09	Considered		
			Hitech Insitute of Technology	Associate Professor of Vice Principal	6	11	16	Considered		
			Shreeyash College of Engg.	Principal	0	0	9	Considered		
7	Jagtap Dattatray Shamrao (Interview No.5)	B.E.-8/07/88- Distinction M. Tech - 12/09/07- Second Class	MGM Engg. College	Lecturer	2	10	26	Considered	10y 17d	3m
			Bharti Vidyapeeth College of Engg	Lecturer	1	04	07	Considered		
			Higher & Technical Edu.	Vice Principal/ Asstt. Appretice ship Adviser/ Principal/ Headmaster	22	9	2	6 years 14 days Considered		
8	Rajesh Eknathrao Shelke (Interview No.9)	B.E.- 20/06/1995 - First Class M.E. 17/02/2001 - First Class Ph.D. - Engg. & Tech. - 9/11/09	B N College of Engg. Yawatmal	Lecturer	1	8	23	Not Considered	14y 23d	06m
			P R M Institute of Tech. & Research, Amravati	Lecturer	2	5	08	Not Considered		
			K I T S Ramtek	Lecturer	0	05	29	Not Considered		
			Govt. I T I	Principal	9	8	10	Considered		
			Govt. I T I	Asstt. Appretice	4	10	13	Considered		

				ship advisor					
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Sr. No	Name of the Candidates	Edu. Qualification	Total Experience	
9	Wagh Abhay Eknath (Interview No.2)	B.E. - 04/07/1987 - First Class M.E. 04/08/1992 - First Class Ph.D.-Engg. & Tech. - 18/6/1999	27y 1m	Absent
10	Talvekar Raju Haridas (Interview No.10)	B.E. - 05/01/1994 - First Class M.E. 19/11/1997 - First Class Ph.D.-Engg. & Tech. - 09/04/13	19y 7m 1d	Absent

Experience Details of Respondent No.3 Shri Dalvi Digambar Ambadas

Organization/ Department	Designation	Nature of Post	Nature of Appointment	Pay Band	Grade Pay	Monthly Grade Salary	From Date	To Date	Yrs	Mth	Dys
KITS RAMTEK DIST NAGPUR	LECTURER	Teaching	Temporary	195 0	0.00		28/12/ 1988	20/07/ 1991	2	6	24
PRIYADARSHINI COLLEGE OF ENGG NAGPUR	LECTURER	Teaching	Regular	220 0	0.00		20/07/ 1991	23/09/ 1996	5	2	3
DIRECTORATE OF VOCATIONAL EDUCATION	DISTRICT VOCATIONAL EDUCATION	Administrative	Regular	330 0- 450	0.00		24/09/ 1995	20/04/ 1998	1	6	27
DIRECTORATE OF VOCATIONAL EDUCATION	DISTRICT VOCATIONAL EDUCATION	Administrative	Regular	110 00- 152 00	0.00		27/04/ 1998	04/08/ 2002	4	3	8
DIRECTORATE OF VOCATIONAL EDUCATION	PRINCIPAL ITI JALGAON	Administrative	Regular	100 00- 152 00	0.00		05/08/ 2002	09/07/ 2003	0	11	6
DIRECTORATE OF VOCATIONAL EDUCATION	PRINCIPAL ITI NASHIK	Administrative	Regular	156 00- 391 00	0.00		10/07/ 2003	31/10/ 2008	5	3	
DIRECTORATE OF VOCATIONAL	ASSISTANT DIRECTOR	Administrative	Regular	156 00- 391	6,60 0.00		10/11/ 2008	30/09/ 2012	3	10	21

NAL EDUCATI ON	R TECHNIC AL			00							
DIRECTO RATE OF VOCATIO NAL EDUCATI ON	SECRETA RY OF MAHARA SHTRA STATE	Administ rative	Regular	156 00- 391 00	6,60 0.00		16/04/ 2013	20/08/ 2018	2	4	5

30. The shortlisting criteria is challenged by both the applicants especially in O.A.No.325/2018. The cases relied by the learned Counsel are considered and the ratio culled out of the rulings itself is answer to the challenge. The objection on shortlisting criterion taken by the Applicants is not tenable in view of the settled law laid down by the Hon'ble Supreme Court. ***Madhya Pradesh Public Service Commission Vs. N.K. Poddar & Ors, reported in C.A 6105/1994 arising out of SLP (C) 8968/1989.*** The question of validity of an order issued by the Madhya Pradesh Public Service Commission raising the period of practice as an Advocate from 5 years to 7 ½ years while calling the applicants for interview for the post of Presiding Officers of the Labour Court, was challenged. The Supreme Court held:-

“As we have already pointed out that where the selection is to be made purely on basis of interview, if the applications for such posts are enormous in number with reference to the number of posts available to be filled up, then the Commission or the Selection Board has no option but to short list such applicants on some rational and reasonable basis.

Similarly, in the case of ***Union of India & Anr Versus T. Sundararaman & Ors. reported in (1997) SCC (LS) 988.*** The three posts of Assistant Professors of Medicine is to be filled up by UPSC in

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the year 1987. The minimum qualification was recommended for the post. In the said case the Supreme Court relied on the ratio laid down in the case of **Government of A.P. Versus P. Dilip Kumar & Anr. Reported in (1993) 1 SCR 435**, wherein it has held that,

“it is always open to the recruiting agency to screen candidates due for consideration at the threshold of the process of selection by prescribing higher eligibility qualification so that the field of selection can be narrowed down with the ultimate objective of promoting candidates with higher qualifications to enter the zone of consideration.”

Thus challenge given to selection process of the MPSC by the applicant that the short listing criterion cannot be entertained as shortlisting was in consonance with Rule 9(5)(d) of the ‘Recruitment Rules’. In the case of **Mukulika S. Jawalkar & Ors Vs. State of Maharashtra & Ors in W.P 3930, 4644, 4645/2007** decided on 19.7.2007 by the High Court of Bombay, legality and application of criterion and process of selection were questioned by the Petitioner, Judges who were not selected. The High Court held that a criterion of high standard of scrutiny cannot be said illegal because the candidates of high caliber are to be selected and appointed. In **Union of India (UOI) & Ors Vs. T. Sundaraman & Ors 1997 SCC (L & S) 988**, the Supreme Court laid down a ratio:-

“It is always open to the recruiting agency to screen candidates due for consideration at the threshold of the process of selection by prescribing higher eligibility qualification.”

In **Dipti Dipak Kolapkar & ors reported in 2009 Vol. III (5) BLR 2131**, the Petitioner challenged the process of selection of Civil

Judge, Junior Division and Judicial Magistrate, First Class. The Division Bench of the Bombay High Court held:-

“Competent Authority has the power to introduce and provide cut off marks or criteria for shortlisting in accordance with law to ensure fair and meritorious selection to the posts in question and once that has been done in the fair manner same cannot be termed as arbitrary.”

In case ***Sowmya Nagesh Nayak Versus State of Karnataka &Anr. dated 12.08.2013 of SC in Special Leave To Appeal (Civil) No.(s).13676 /2012***, it is unanimously held that there should not be any arbitrariness in the selection process and no undue favour was to be shown to any candidates. No condition is to be relaxed which is applied at the time of shortlisting criterion, unless such powers are specifically reserved by the authority. The judgment of ***Ramchandra Keshav Adke (Dead) by Lrs. And Ors. Versus Govind Joti Chavare and Ors., Civil Appeal Nos.58 and 810 of 1968*** is not relevant.

31. Mainly the two points are raised by the Applicants and the Respondents for our consideration. Firstly, these Respondents, the M.P.S.C. and the State have challenged the maintainability of the O.A.No.325/2018 on the ground of locus standi of the applicant Shri Jadhav. Secondly, giving unequal treatment to the Applicants and Respondent No.3 by interviewing Respondent No.3 though he did not produce the certificate of University approval to his appointment.

32. We are not inclined to consider the case of the Applicant in O.A.No.325/2018 basically on the ground that he has no locus to

approach the Tribunal as he stands at serial No.35 in the merit list. He was not even in the consideration Zone of first 10 candidates and therefore even if the process is found illegal at the stage of the interview, the applicant has no locus and his application is not maintainable on this ground alone. Once the person has no locus his other submissions are not to be considered. This is not a Public Interest Litigation, where the locus is immaterial. On the point of locus we rely on the judgment of Hon'ble Supreme Court in case of **Trivedi Himanshu Ghanshyambhai Versus Ahmedabad Municipal Corporation reported in (200) 8 SCC 644** wherein it is held in paragraph 8 that,

"8. As noted herein earlier, respondents 2 and 3 who had filed the writ petition before the High Court, challenging the appointment of the appellant were themselves, unsuccessful in the examination, even though they claimed that they had passed the written examination but failed in the interview. Since the names of respondents 2 and 3, who were the writ petitioners before the High Court, did not figure in the merit list, in our view, it was not open to them to challenge the said selection list and the appointment of the appellant before the High Court."

33. The submissions of learned Advocate Shri Desai are convincing and he has earlier objected to the maintainability of the application on the ground of locus itself. The Tribunal has no power to entertain any Public Interest Litigation as the Tribunal deals with only the matter regarding within the service jurisprudence. This Tribunal has no power to deal with P.I.L. though enjoys the power of judicial review in service matters. The grievance voiced by the Applicant Shri Anil Madanji Jadhav in O.A.No.325/2018 is of general in nature and it is

not a PIL. He has no locus. For seeking relief in the application before us one has to prove his locus and then only it can be adjudicated. In support we rely on the judgments of the Hon'ble Supreme Court in ***Utkal University Versus Dr. Nrusingha Chavan Sarangi and Others, reported in (1999) 2 Supreme Court Cases 1993***, at paragraph 8 has held that,

"8. It is in this context that the submission of the University regarding the locus standi of the first respondent to file the writ petition must also be considered. The University has rightly pointed out that the original writ petition does not disclose any legal injury to the original petitioner/ present first respondent, because there is no reason to come to a conclusion that he would have been selected even if all his contentions in the writ petition were accepted. The University has relied upon the decision of this Court in Jasbhai Motibhai Desai v. Roshan Kumar SCR at p.71 for the purpose of pointing out that the first respondent stands more in the position of the meddlesome interloper than a person aggrieved. There is much force in this contention also."

And in the ***Jasbhai Motibhai Desai Versus Roshan Kumar, Haji Bashir Ahmed, reported in (1976) 1 Supreme Court Cases 671***), at paragraph 34 has held that,

"34. This Court has laid down in a number of decisions that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warrant this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest in hearing in the petitioner is necessary to give him a locus standi in the matter."

34. We agree that in fact the locus would have been considered as initial objection. This matter was earlier part heard 2 to 3 times and

due to retirement of the Members of the Tribunal and change of the Bench, the lawyers had to again labour on and re-argue the matter and therefore this point was also considered at the stage of final hearing.

35. The objection raised mainly was that the Respondent No.3 was not holding the certificate of the approval of the University for the period of 1 year at Kavikulaguru Kalidas Sanskrit University and due to break in service he has no requisite experience of 26 years.

The relevant portion stating requirement of the certification of approval in उदघोषणा (pronouncement) is quoted below :-

उदघोषणा

महत्वाची टीप :- उमेदवारांनी शिकविण्या-चादावा केलेल्या अनुभवाच्या कालावधीच्या नियुक्ती सविद्यापीठाची अथवा टेक्नीकल बोर्डाचा (लागू असेल त्यानुसार) मीन्यता असल्याचे प्रमाणपत्र मुलाखतीच्यावेळी सदर करणे आवश्यक राहिल, अन्यथातो अनुभव ग्रहण घरता येणार नाही, याची उमेदवारांनी कृपया नोंद घ्यावी.

दिनांक : २८/०३/२०१८

सं.पा.देशमुख
अवर सचिव
महाराष्ट्र लोकसेवा आयोग

At the time of interview, Respondent no.3, was not holding the Certificate of approval of University given to the Institution, where he has taught. However, he was interviewed, which the panel should not have done, especially, when the Panel did not interview other candidates similarly situated as pointed out by Mr. Lonkar. Candidate Shri Ninale Chandrakant Atmaram, at serial no.8 had fulfilled all the criteria, but was absent and one candidate at serial no.5, Mr. Jagtap Dattatray Shamrao, (Page 342) was not given the same treatment, which concession was given to Mr. Dalvi, Respondent

no.3. MPSC gave concession to Mr. Dalvi to produce the University approval and other candidates were refused permission at the threshold and denied to appear for interview. It is answered by learned Advocates Shri Jagdale and Shri Chandratre by producing the letter of the University that the appointment of Respondent No.3 was approved by the University. However, it is clear that at the time of verification of the documents Respondent No.3 was not in possession of the certificate. A person may hold requisite qualification at the time of interview, however, the production of the documentary proof to that effect is also necessary to allow the candidate for the interview. We have taken into account the record of the summary profiles along with remarks of the Interviewing Committee of M.P.S.C. of all the candidates which are pointed out by the learned Counsel Shri Lonkar disclosing that some candidates like the Applicant Shri Ramkisan Shrirang Pawar were not allowed to appear for the interview and they were sent back at threshold on the ground that they were not holding the necessary certificate of approval of their respective appointments. Undoubtedly, the M.P.S.C., Interviewing Committee at this point gave favourable treatment to Respondent No.3 than the other candidates who were not interviewed on the ground of not having certificate of University or Institution's approval.

36. However, we note very important point that demand of such certificate of approval in pronouncement (उद्घोषणा) itself was contrary to the law and the procedure, hence the entire process of interview is

vitiated. In the Rule 3 of the 'Recruitment Rules' and so also in Clause 4 of the advertisement (reproduced earlier) the condition of approval of the University for experience is absent. Thus, the condition of approval of the University to the appointment as Lecturer or Professor in Educational Institution (mentioned above) was subsequently added in 'Udghoshna' by M.P.S.C which was published on 28.03.2018 two days earlier before the date of the interview. We rely on the judgment in **Writ Petition No.4488/2016, The M.P.S.C. Versus Dr. Rita and anr (cited supra)**. The identical issue was addressed by the Division Bench of Nagpur Bench of Bombay High Court where the M.P.S.C. after issuing the advertisement for applicants for the post of Assistant Professor of Pharmacology, subsequently demanded that the applicants should have certificate on the letter-head of the concerned institution or the college in regard to the teaching experience of five years and it is to be approved or issued by the University or Technical board in respect of the said technical experience. The Hon'ble High Court held,

"In the initial advertisement, the MPSC had permitted the candidates to submit an experience certificate from the concerned Institution or College in respect of their experience and suddenly the rules were changed by the petitioner-MPSC by imposing a condition in the list of candidates who were called for interview that the candidates should produce a certificate issued by the University/ Technical Board in respect of their experience. The Tribunal rightly held that the MPSC could not have changed the rules of game after the same commenced."

Further in the judgment in case of **Maharashtra Public Service Commission Versus Dr. Prashant Baburao Shamkuwar &**

Anr. in Writ Petition No.5919 of 2017, decided on 18.06.2018, the Division Bench of the Bombay High Court confirmed the settled position in earlier Writ Petition of **Dr. Rita (cited supra)**. On the same lines, also referred to the case of **Kirankumar Dagadu Wanve & Anr. Versus Dr. Babasaheb Ambedkar Marathwadda University & Ors. 2017(4) AIR BOM R 459.**

37. In the case of **Union of India and Ors. Versus O. Chakradhar, Appeal (Civil) 1326 of 2020, decided on 19.02.2002,** the Hon'ble Supreme Court held that the process of selection of Junior Clerk cum Typist by Railway Recruitment Board, the candidate who was selected had obtained the required certificate at later stage. In case of **Karnataka State Seeds Development Corporation Limited and Anr Versus Smt. H.L. Kaveri & Ors., Civil Appeal No(S).344 of 2020 decided 21.01.2020,** the Hon'ble Supreme Court has rejected the application of the candidate for non-fulfillment of necessary experience certificate which was to be enclosed along with the application as required in terms of the advertisement dated 11.11.2013. In case of **Bedanga Talukdar Versus Saifudaullah Khan and Ors, Civil Appeal Nos.8343-8344 of 2011, decided on 28.09.2011,** the Hon'ble Supreme Court has held that the selection process was to be conducted strictly in accordance with stipulated selection procedure and further held that relaxation of any condition in advertisement without due publication

would be contrary to the mandate of quality contained in Articles 14 and 16 of the Constitution of India.

38. We also rely on the ratio laid down by the Bombay High Court, Nagpur Bench in case of ***Dr. Amrapali w/o Atul Akhare Versus Dr. Panjabrao Deshmukh Krishi, Writ Petition No.2444 of 2019, decided on 27.02.2020.*** To change condition subsequently, than the conditions mentioned in the advertisement is not allowed. Though it is not disputed that the Education and experience eligibility criterion in Clause 4 of the advertisement is consistent with Rule 3 (B) of the Recruitment Rules, the condition of approval of the University in 'Udghoshna' is not consistent with the Rules or the advertisement and therefore that condition ought not to have been applied to test the period of experience of the candidates. Thus, the candidates who did not hold the approval of the University but have completed the short-listed requisite period of experience i.e. 19 years for candidates holding Ph.D and 26 years for graduation and post graduation should have been admitted for interview irrespective of such approval certificate. No candidates should have been asked to produce such certificate of approval of the University to clear the test of requisite period of experience.

39. In case of ***The Maharashtra Public Service Commission Versus Sandeep Shriram Warade & Ors., Civil Appeal No(s).4597 of 2019, decided on 03.05.2019,*** it is held that experience could not



be equated with and considered to be at par with the essential eligibility to be considered for appointment. The Hon'ble Supreme Court clarified that if there is any ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. The Court has considered that how preference can be given to the practical exercise and the research exercise. In case of **Gopal Krushna Rath Versus M.A.A. Baig (Dead) By Lrs. and Ors, reported in (199) 1SCC 544** the Hon'ble Supreme Court decided the qualifications prescribed by the University Grants Commission was 10 years experience of teaching and/or research and on the last date of the receipt of the application, the Applicant passed with qualification so that the application was held dismissed. In case of **National Fertilizers Ltd. and Ors. Versus Somvir Singh, Civil Appeal Nos.6337 of 2003, 465, 465, 466 and 467 of 2004 & 7575 of 2005, decided on 12.05.2006**, there was gross violation of the procedural rules as the advertisement had no clause of reservation policy and therefore, appeals were allowed. In the case of **G. Sundareswararao Versus Government of A.P. and Ors. reported on SLP (C) Nos.5934-35 of 1996 (CC No.687 of 1996)** the Hon'ble Supreme Court held that it is necessary for the posterior have acquisition of the qualification and in the case of promotion same interpretation may not be just or warranted. In case of **N. Suresh Nathan and another Versus Union of India and others, Civil**

Appeal No.4542 of 1991, decided on 22.11.1991, the Diploma holders with three years experience after completing degree were eligible and not prior that for counting 3 years experience. 3 years service for only in the Grade of a Degree holder and so the view taken by the Tribunal was not corrected.

40. On this ground the procedure followed at the time of interview is found illegal and thus we find it is a valid reason and good ground to upset the recommendation of the Respondent No.3 and direct the M.P.S.C. to conduct the procedure of interview as per the ratio 1:10 by recalling all the shortlisted candidates including the Respondent No.3 afresh for interview. It is necessary to state that while counting the period of experience of 26 years of Respondent No.3, we have not taken into account the letter dated 12.06.2020 given by Dr. Manish S. Milke, wherein it is informed that the Government has taken the decision to consider the period from 01.12.2012 to 16.04.2013 i.e. 137 days as the compulsory waiting period and so it is covered under the definition of 'service'. This certificate dated 12.06.2020 was neither available nor produced on the date of interview in 2018. We need to consider the documents which were available and produced at the time of the interview. Therefore, this period of 137 days which is considered subsequently as compulsory waiting period and so is covered under the definition of 'service' under Rule 9(14)(f) cannot be given weightage at the time of the interview. However when it is counted before us we were informed that the Respondent No.3 at the

time of interview was having the experience of 26 years and 4 days. Thus further it is made clear that the procedure followed by M.P.S.C. till short listing criterion is found legal and cannot be faulted with as it is consistent with the Rules and advertisement.

41. As discussed earlier the case of the Applicant Shri Anil Madanji Jadhav in O.A.No.325/2018 cannot be considered at all because he does not fall in shortlisted merit list of first 10 candidates. He stands very low i.e. at serial no.35 in the merit list. Assuming his name would have appeared at serial no.11 or 12, then his name could have been entered in the short listed candidates. Thus he could not be a beneficiary even if we set aside the short list prepared by M.P.S.C. as he is unsuccessful on merit to get short listed.

42. We have considered the case of the Applicant Shri Ramkisan Shrirang Pawar in O.A.No.13/2020 and it is found that though he holds Ph.D he falls short in the requisite experience on a responsible position of 19 years. The applicant in O.A.No.13/2020 is Ph. D and is at Sr. No.8 in the shortlist. He needs experience of 19 years. Unfortunately, he cannot fulfill the criterion of period of 19 years' experience as he falls short by few months. The point raised by the learned C.P.O. that while meeting the submissions of the Applicant in O.A.No.13/2020 as per the requirement of Rule 3 and also advertisement in Clause 4 (iii), a person should possess not less than 5 years administrative experience in the responsible position in

recognized Engineering College or either Technical Institutes as mentioned therein. Thus, the word used "responsible" needs explanation. The learned C.P.O. has assisted to get the correct meaning of the word "responsible" in terms of pay scale. Applicant in O.A.No.13/2020 Shri Ramkisan Shrirang Pawar has worked as Junior Engineer in the Private Sector. Admittedly, he was getting the Salary in the pay scale of Rs.2000-4500. His experience on the post of Junior Engineer of 11 months and 15 days period cannot be treated as a responsible post. The said service period is to be deducted from experience of 19 years. Thus his experience comes to 18 years, 8 months and 5 days and therefore he does not fulfill the criterion of 19 years. His experience as Junior Engineer of 11 months and 5 days if considered then only his experience can be counted as 19 years 7 months and 20 days experience. The learned Counsel though has pointed out that the Applicant was working as Junior Engineer till July 2001 on the pay scale of 2000-4500 is responsible position, that pay scale is to be compared with the pay scale available to the Government servant in public sector as per 5th Pay Commission.

43. On query made by us regarding responsible position, the learned C.P.O. pointed out the detail remarks by the office of Directorate of Vocational Education and Training, Mumbai. In this remarks the Government has informed that the pay scale of the Director of Vocational Education and Training is of Rs.36400 + Grade Pay Rs.8900/-. The Pay with Pay Band of Rs.15600 - 39100 and

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Grade Pay of Rs.6600/- is for the post of Principal. The pay with Pay Band of Rs.15600 – 39100 + Grade Pay 6600/- and above is to be considered as responsible position in the Government service. Therefore, the post of Executive Engineer is equivalent post, but the post of Junior Engineer or Assistant Engineer falls in the lesser Grade Pay and cannot be considered to have experience of working on a responsible position. As per the remarks the post of Manager is to be considered equivalent in the case of candidates working in Private Sector. Thus, the Applicant in O.A.No.13/2020 cannot fulfill the requirement of working experience of 19 years on responsible position.

44. The Pay scale of 5th Pay Commission was Rs.6,600/- was of the Executive Engineer and not of the Junior Engineer, the post the applicant was holding. Thus, the applicant could not bring any evidence or record to show that he was holding the responsible position in private sector. The post of Director needs sufficient Managerial and Administrative experience at a higher level. The Applicant was not in Managerial post at any stage of his carrier, but has worked as Junior Engineer which is not equivalent to the post of Executive Engineer so his experience was not covered by the requisite responsible position. In short-listing criterion Clause No.4 and 3(ii) are mentioned and thus yardstick of experience was enhanced from 10 years to 19 years and 26 years. Thus we are satisfied that the M.P.S.C. has followed the correct procedure till short listing of the

candidates and therefore the list of 10 candidates cannot be faulted with. However, the interview procedure is to be conducted afresh.

45. For that purpose the M.P.S.C. is directed to call all the 10 candidates who are available as on today, except the applicant in O.A.No.13/2020 as he is not eligible. The candidates who remained absent, call letters are also to be issued to them as they might not have taken trouble to come for the interview for want of approval from the University, so they are also to be called along with the remaining candidates who were shortlisted. This process of interview is to be completed within one month from today. The name of the candidate is to be informed to the Government within a week thereafter to enable the Government to take further steps.

46. On the ground of locus standi, the applicant in O.A.No.325/2018 is not entitled to get any relief and otherwise. The Relief clause 15(a) in O.A.No.325/2018 challenging the short-listing criterion is not maintainable. Relief Clause 15(b) is prayed for considering the Applicant is rejected because he stands much below at serial no.35, while Respondent No.1 is in the shortlisted list of 10 candidates. Whatever reliefs claimed by him in respect of challenge to shortlisting criterion and challenge to the selection of Respondent No.3 are discussed, the same challenges are raised by the applicant in O.A.No.13/2020. Therefore, though the prayer in Relief Clause 15(a) and 15(b) in the O.A.No.325/2018 are rejected and the reliefs prayed

by the applicant in O.A.No.325/2018 in Relief Clause 15(e) and 15(f) are already granted in Relief Clause while allowing similar prayers made in the O.A.No.13/2020.

47. The Applicant's prayer in O.A.No.13/2020 of conducting his interview is rejected because his case was already considered and he was not having the necessary required experience on responsible position and therefore the same is rejected. The Relief Clause 15(b) is rejected. The Relief Clause 15(c) is allowed as we hereby quash and set aside letter dated 23.04.2018 issued by the Respondents No.1 and 2 recommending the name of Respondent No.3 for the post of Director of Vocational Education and Training. The prayer 10(d) in O.A.No.13/2020 is partly allowed and further prayer of conducting interview of the applicant is rejected for want of sufficient experience on responsible position. Respondent No.1 to conduct fresh round of interviews of shortlisted candidates of :-

- (a) Those candidates who were rejected for want of certificate of University approval for the interview.
- (b) Those candidates who remained absent.

48. The notices of four clear days are to be served to all these candidates mentioned above afresh and interviews are to be conducted by the expert Committee within 4 weeks from the date of

this order and thereafter the name of the selected candidate is to be recommended within two weeks to the State of Maharashtra.

Sd/-
 (P.N. DIXIT) 20/11/2021
 VICE-CHAIRMAN

Sd/-
 (MRIDULA BHATKAR, J.)
 CHAIRPERSON

LATER ON :-

1. After pronouncement of the judgment, learned Counsel Shri M.D. Lonkar, appearing for the applicant in O.A.No.325/2018 prays for stay of this judgment and order for the period of 4 days.
2. The learned C.P.O. opposes the stay mainly on the ground that the post is lying vacant since 2013 and it needs to be filled-in on priority.
3. Considered the submissions of both the sides. We are of the view that there should not be more delay in filling up the post and the request for stay is therefore rejected.

Sd/-
 (P.N. DIXIT) 20/12/2021
 VICE-CHAIRMAN

Sd/-
 (MRIDULA BHATKAR, J.)
 CHAIRPERSON