

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 Secretary,)
Maharashtra Public Service,)
Commission, 5th and 7th floor,)
Cooprej Telephone Exchange)
Bldg. Maharshi Karve Marg,)
Cooprej, 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 (E), 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 Secretary,)
 Maharashtra Public Service,)
 Commission, 5th and 7th floor,)
 Cooprej Telephone Exchange)
 Bldg. Maharshi Karve Marg,)
 Cooprej, 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 (E), Mumbai 400 051.) **...RESPONDENTS**

Mr. M.D. Lonkar, learned Counsel for the Applicant in O.A.No.325/2018.

Mr. S.S. Dere, learned Counsel for the Applicant in O.A.No.13/ 2020.

Mr. C.T. Chandratre and Mr. D.B. Khaire, learned Counsel for Respondent no.3.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar, Chairperson**
Ms. Medha Gadgil, Member (A)

RESERVED ON : **02.04.2024**

PRONOUNCED ON : **03.07.2024**

PER : **Justice Mridular Bhatkar, Chairperson**

J U D G M E N T

1. In these two Original Applications the applicants challenge the selection process conducted by the Maharashtra Public Service Commission for the post of Director, Vocational Education and Training in the cadre of Maharashtra Education Service, Group-A, pursuant to advertisement No. 84/2015, which was issued on 31.7.2015. In O.A 325/2018, applicant was working as Joint Director, and aspires to be appointed on the higher post of Director, Vocational Education and Training. The applicant in O.A 325/2018 was not short listed and therefore was not called for interview and applicant in O.A 13/2020 though was short listed and was called for interview, he was found ineligible and his candidature was rejected on the ground of not fulfilling the criterion of having experience of responsible position. M.P.S.C selected Respondent No. 3 and his appointment was made subject to the outcome of this Original Application. This Tribunal by detailed judgment dated 25.1.2021 partly allowed O.A 325/2018 and so also O.A 13/2020 thereby directing MPSC to conduct the interview afresh as it was found that MPSC has treated Respondent No. 3 favourable by giving time to Respondent No. 3 for producing the documents of his experience from the approved University and similar opportunity

was not given to the other candidates. However, the contention of the applicant in O.A 325/2018 that the shortlisting criterion applied by M.P.S.C in the present case was not consistent with Rule No. 3 of the Recruitment Rules for the post of Director, Vocational Education and Training was rejected holding that the applicant is not having any locus standi.

2. The said order of the Tribunal dated 25.1.2021 was challenged before the Hon'ble Bombay High Court by both the applicants in W.P 1652/2021 & W.P Stamp No. 5932/2021. The Hon'ble High Court by order dated 26.10.2021, set aside the order of this Tribunal dated 25.1.2021 and remanded the matter back to the Tribunal. However, Respondent No. 3 was allowed to continue on the said post till the matter is decided. The Hon'ble High Court noted down in para 4 of the said order that at the time of hearing at the Bar it was not disputed that the findings of the Tribunal rest on a document, i.e., Page 412 of the Writ Petition No. 1652/2021 and the said document was tendered across the Bar by the learned counsel for the Commission and the Tribunal not taking the said document on affidavit had committed error of not following the proper procedure of the Evidence Act. Therefore, the Hon'ble High Court in Para 10 of its order though directed to decide the same as early as possible, allowed the Parties to rely on the additional evidence. The matter could not be heard early as the Parties wanted to file the affidavit with additional averments, contentions and additional evidence. The Parties went on filing affidavit and reply till February, 2024 and notings to that effect are taken time to time.

3. Thereafter, the matter was heard afresh and it is necessary to consider two points raised by the Hon'ble High Court in its order dated 26.10.2021. Firstly, accepting and considering the documents which is

placed in the course of arguments without any affidavit and secondly locus standi of applicant in O.A 325/2018 on the background of applying short listing criteria in illegal manner.

4. Learned Counsel Mr. Dere has submitted that for the Applicant Mr. Pawar it is not necessary to challenge the second Selection Process which was carried out pursuant to the order of this Tribunal dated 25.01.2021. After judgment dated 25.01.2021 shortlisting was done on 23.02.2021 as the Tribunal had held that the Applicant Mr. Pawar has no locus he was not called for the interview which was held on 04.03.2021 and appointment order dated 15.03.2021 was issued to Respondent No.3 and therefore Applicant Mr. Pawar could not appear for the interview. Learned Counsel Mr. Dere has further submitted that by order dated 26.10.2021 passed by the Hon'ble High Court, the judgment dated 25.01.2021 passed by this Tribunal was set aside and therefore the earlier shortlisting interviews held on 23.02.2021, 04.03.2021 and appointment order dated 15.03.2021 are all set aside. Further, appointment of Respondent No.3 is a stop gap arrangement. Learned Counsel Mr. Dere has relied on the judgment of *Mangal Prasad Tamoli Versus Narvedshwar Mishra 2005 (3) SCC 422*, wherein it is held that when the matter is remanded, then all the consequent proceedings would be non-est.

5. Learned Counsel Mr. Lonkar & Mr Dere have made three fold submissions :

- (i) Short listing criterion is contrary to Rule 9(b) and (d) of the M.P.S.C. Procedure Rules, 2014.
- (ii) Procedure adopted by M.P.S.C. at the time of interview that the candidate who failed to produce documents at the time of interview i.e. Respondent No.3 was allowed to participate.

(iii) Respondent No.3 do not possess the requisite experience of 26 years.

6. Learned Counsel Mr. Lonkar has basically challenged the short listing criteria. He has submitted that Applicant Mr. Jadhav was required to complete 26 years on responsible position and Respondent No.3 does not hold requisite qualification of 26 years, thus requisite cut-off would have been gone down in the event the applicant would have come within the ambit of criterion of eligibility.

7. Learned Counsel Mr. Dere has relied on paragraph 5 of the order dated 26.10.2021 passed by the Hon'ble High Court in Writ Petition No.1652/2021 (Anil Madanji Jadhao) with W.P. Stamp No.5931/2021 (Mr. R.S. Pawar) Versus M.P.S.C.& Ors. wherein it is mentioned that the short listing criteria laid down is not as per the Rules and thus it is a ground for remanding the matter. He has carried out amendment in Original Application and the said amendment is not refuted by other Respondents. He has submitted that the selection of Respondent No.3 is required to be set aside on the ground of experience. Respondent No.3 is required to have 26 years of experience in approved Institution. He has submitted that the period for which Respondent No.3 was employed and teaching in the college where he was working and which is affiliated to Kavikulguru Institute of Technology and Science is not having All Indian Council for Technical Education (AICTE) approval. The same is the case of another Institute i.e. Priyadarshini College of Engineering. If the College is not having All Indian Council for Technical Education (AICTE) approval then the experience of teaching in such college cannot be considered as valid experience and should not have been counted. He pointed out to page 39B of O.A.No.13/2020, wherein first time approval of AICTE was given by the University of Nagpur on

31.03.1994 and the applicant Mr. Pawar was appointed and he worked with the Institute of Kavikulguru Institute of Technology and Science. He further pointed out that with approval was given subsequently in the year 2010-2011 for Electronics and Respondent No.3 is Electrical Engineer so his trade of teaching was not Electronics but Electrical. Learned Counsel has further submitted that the Commercial establishment should have AICTE approval. The AICTE approval was first time given to the course of Electronic Engineer on 31.03.1994 and not to Electrical Engineer and for Priyadarshini College Institute the AICTE approval was given on 02.11.1993 and on 23.08.2010 the first approval to the course of Electrical Engineer was given. He has submitted that the shortlisting criterion was tailor made so that Respondent No.3 Mr. Dalvi should come in the service. Learned counsel Mr Dere submitted that Respondent No. 3, Mr Dalvi did not have the Professional Teaching experience as contemplated in clause 4 (3)(ii) of the Advertisement. In order to gain the experience of Professional Teaching then that Institute where a person is teaching should have approval of AICTE. Respondent No. 3 does not have that experience and if it is proved then the parameter of shortlisting would change and the applicant Mr Pawar who is Ph. D and has requisite experience of 19 years as Professional Teaching could be short listed. He pointed out that M.P.S.C has sought the clarification from the Government and the Government has explained that a person having a teaching experience in any Commercial Establishment should have AICTE approval. Learned counsel Mr Dere challenged the experience of Mr Dalvi in two Institutes. It is to be compared with KITS has got the first approval on 31.3.1994. But that was for Electronic Engineering and not of Electrical Engineering, which is a trade of Respondent Nol. 3. Respondent No. 3 was employed in KITS in the year 1989 to 1991.

Secondly, he challenged the experience of Respondent No. 3 working in Priyadarshini Institute. Respondent No. 3 has claimed that he worked for nearly 5 to 6 years from 27.7.1991 to 10.9.1996. Priyadarshini Institute got the AICTE approval on 2.1.1993 and on 23.8.2010 got approval for Electrical Engineering. Hence that experience at Priyadarshini Institute as claimed by Respondent no. 3 is not an experience in Professional Teaching.

8. Learned Counsel Shri C.T Chandratre with Shri Khaire appearing for Respondent No.3 has submitted that while short listing the M.P.S.C. has rightly prepared two groups i.e. candidates who hold PhD degree they should fulfill the criterion of experience of 19 years and for candidates who do not hold PhD degree like Respondent No.3 the requirement of experience at responsible position was 26 years as per Rules. Learned Counsel Mr. Khaire has submitted that it is false that Kavikulaguru Kalidas Sanskrit University was not having AICTE approval. In fact as pointed out by learned Counsel Mr. Khaire the AICTE approval for four subjects was given on 31.03.1994. It means for others it was already granted and it further continued. Learned Counsel Mr. Khaire has further argued that the Applicant Mr. Pawar does not possess CTS & ATS qualification which is the requirement of this post.

9. Learned C.P.O. while arguing on the eligibility of Respondent No.3, Dalvi, as the question was raised about approval given to the University by AICTE, has submitted that no such approval of the University was required when the Advertisement was issued. She has pointed out that the Advertisement was issued on 31.07.2015. In the said advertisement no such condition of the approval of the University or AICTE required

for the period of teaching experience of the candidate was mentioned. This condition was introduced by way of pronouncement dated 28.03.2018 i.e. two days prior to the interview. Learned C.P.O submitted that M.P.S.C has rightly followed the shortlisting criteria as per the Recruitment Rules dated 27.8.1988 and M.P.S.C Procedure Rules of 1994. She has submitted that five candidates who were having a preferential qualification, i.e., Research in Ph. D were shortlisted and five candidates who were not having Research work but basic educational qualification were also selected by way of abundant precaution. Thus, ten candidates were shortlisted for one post and considering their performance at the time of interview, Respondent No. 3 was selected.

10. In the remand order the Hon'ble High Court has objected the procedure of taking the document, i.e., one Chart showing the placement of the applicant and the Respondents and therefore the said document was filed by the Respondent, M.P.S.C along with the affidavit in reply. The said document was filed by the Respondent, MPSC along with the affidavit in reply dated 11.1.2022 by Balchandra P. Mali, Under Secretary in the office of M.P.S.C. Chart AR-2 is annexed to the said affidavit. In this Chart at Sr. No. 13 is Mr Dalvi, Respondent No. 3, at Sr. No. 38 is Mr Jadhav, applicant in O.A 325/2018 and at Sr. No. 39, applicant Mr Pawar in O.A 13/2020. The MPSC by letter dated 6.2.2016 and 30.3.2016 made query and Government sent letter to MPSC, explained which are the Professional Institutions of which Membership is considered as preferential qualification and also which Research work is to be considered as Ph. D in Engineering. The said letter is annexed at Exh. AR-3 to the affidavit in reply dated 10.4.2019 filed by Sanjay P. Deshmukh, Under Secretary, M.P.S.C. Thus, the objection raised by the Hon'ble High Court is hereby properly removed by accepting the said document on affidavit.

11. It is necessary to reproduce Rule 3 of the Recruitment Rules for the post of Director of Vocational Education and Training in the Maharashtra Educational Services (Class-I) in the Directorate of Vocational Education and Training of the Government of Maharashtra

“3. Appointment to the post of Director shall be made by:-

(a) promotion of a Joint Director of Vocational Education and Training -cum-Joint Apprenticeship Adviser on the basis of Selection possession the qualifications and experience mentioned in clause (b) of this rule; or

(b) nomination from amongst the candidates who-

- (i) Unless already in the service of Government are not more than 50 years of age;
- (ii) Possess a Bachelor's degree in Engineering at least in second class or a Post-graduate degree in Engineering;
- (iii) possess professional experience, gained after acquiring the qualifications mentioned in sub-clause (ii) in a responsible position for not less than ten years of which not less than five year shall be in the administration of Craftsman Training Scheme or in the Apprenticeship Training Scheme or in 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;
- (iv) adequate knowledge of Training Schemes and Apprentices Act, 1961 (52 of 1961)

Provided that:-

- (a) in the case of candidates possessing the Master's degree, the period spent in acquiring that degree, but not exceeding two years and in the case of those who have completed the Technical Teachers' Training Courses conducted by the Department of Technical Education, shall be counted in computing the period of experience prescribed in clause (iii);
- (b) the age-limit may be relaxed by Government on the recommendation of the Commission in favour of

candidates possessing exceptional qualifications or experience or both;

- (c) **preference may be given to a candidate who is a member of a Professional Institution or who has research work to his credit.**

The word 'responsible position' means a person who is having more grade pay scale as per the 6th Pay Commission, i.e., 2200/- grade pay and not less. The applicant was earning Rs. 2000/- grade pay and not the requisite pay.

12. It is also necessary to reproduce clause 4.3 of the Advertisement dated 31.7.2015.

“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).

In all 84 candidates had applied and out of which 61 candidates were found eligible and 23 were held not eligible. Further the post of Director, Vocational Education and Training is a single isolated post and therefore for short listing minimum 5 candidates were required to be called for interview. The MPSC, instead called 10 candidates. MPSC by applying the short-listing criteria as per 9(v) of the M.P.S.C Rules of Procedure, 2014 gave 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 ८४/२०१९

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 lists so 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. Thus, if a candidate is having the minimum educational qualification, then the experience of 26 years was fixed and if a candidate is having higher educational qualification like

Ph. D in Engineering or Technology, then the experience required is of lesser period, i.e., 19 years.

13. The Chart of 10 candidates who were short listed is given below:-

Sr n	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 00m24d
2	Dalvi Digambar Ambadas (Interview No.4) (RESPONDE NT NO.3)	B.E.- 18/08/1989- First Class M.Tech 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 11m29d
			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 Ph.D. – Engg&Tech 26/7/2007	Tulshiramji Gaikwadpatil college of Engg.	Principal	06	1	06	Considered	19y 07m22d
			Priyadarshani College of Engg.	Assistant Professor, Professor & HOD	02	9	11	Considered	
			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 11 m23d
			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 Shrirang (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 00 m02d
			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	MGM Engg. College	Lecturer	2	10	26	Considered	10y 3 m17d
			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 06 m23d
			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 ship advisor	4	10	13	Considered	

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	Days
KITS RAMTEK DIST NAGPUR	LECTURER	Teaching	Temporary	1950	0.00		28/12/1988	20/07/1991	2	6	24
PRIYADARSHINI COLLEGE OF ENGG NAGPUR	LECTURER	Teaching	Regular	2200	0.00		20/07/1991	23/09/1996	5	2	3
DIRECTORATE OF VOCATIONAL EDUCATION	DISTRICT VOCATIONAL EDUCATION	Administrative	Regular	3300-450	0.00		24/09/1995	20/04/1998	1	6	27
DIRECTORATE OF VOCATIONAL EDUCATION	DISTRICT VOCATIONAL EDUCATION	Administrative	Regular	11000-15200	0.00		27/04/1998	04/08/2002	4	3	8
DIRECTORATE OF VOCATIONAL EDUCATION	PRINCIPAL ITI JALGAON	Administrative	Regular	10000-15200	0.00		05/08/2002	09/07/2003	0	11	6
DIRECTORATE OF VOCATIONAL EDUCATION	PRINCIPAL ITI NASHIK	Administrative	Regular	15600-39100	0.00		10/07/2003	31/10/2008	5	3	
DIRECTORATE OF VOCATIONAL EDUCATION	ASSISTANT	Administrative	Regular	15600	6,60		10/11/	30/09/	3	10	21

RATE OF VOCATIONAL EDUCATION	ANT DIRECTOR OR TECHNICAL	rative		00-39100	0.00		2008	2012			
DIRECTOR RATE OF VOCATIONAL EDUCATION	SECRETARY OF MAHARASHTRA STATE	Administrative	Regular	15600-39100	6,600.00		16/04/2013	20/08/2018	2	4	5

The applicant in O.A 13/2020, who is Ph. D, he was required to have experience of only 19 years. His experience of 2 years 7 months and 18 days was not counted because he was not holding a responsible position. The responsible position is always considered on the basis of the pay scale of the candidates. The word 'responsible position' is used in the Recruitment Rules dated 27.8.1988 issued by the Education and Employment Department. The applicant in O.A 13/2020 could not fulfill the criterion of pay scale. He was working as Junior Engineer in the V.K Patil Cooperative Society and because Junior Engineer was not considered as a responsible position.

14. Let us analyze Rule 3 of the Recruitment Rules, 1988 which is about the eligibility of the persons for appointment to the post of Director, Vocational Education and Training.

Possess a Bachelor's degree in Engineering at least in second class or a Post-graduate degree in Engineering.

Professional experience gained after acquiring the qualifications (in a responsible position for not less than ten years' with break-up of not less than five years in the administration of Craftsman Training Scheme or in the Apprenticeship Training Scheme or in the Government of India or 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. Thus, the minimum ten years' experience should be on a 'responsible position'. Therefore, it is necessary to know what is the 'responsible position'. There is a provision of preference if a candidate has an experience from particular Professional Institution or has a Research work to his credit. In the present case alternative eligibility was mentioned as Ph. D which undoubtedly includes Research work and in that event the period of experience is shortened from 26 years to 19 years. It is also to be compared with Rule 9 of the Rules of Procedure of Maharashtra Public Service Commission.

Rule 9 pertains to direct recruitment and how the candidates can be short listed for interview. If one post is advertised, then candidates in the ratio of 1:5 is to be called for interview and the candidates to be shortlisted for interview should not exceed 10 times the number of vacancies.

15. After the remand of the matter and during the pendency of these Original Applications, the applicant Mr Anil M. Jadhav in O.A 325/2018 was involved in a bribery case and was arrested for the offence punishable under the Prevention of Corruption Act, 1977 and remained behind the bars for more than 10 months. This incident of prosecution though was not prior to filing of the Original Application or at the time of conducting the interview first time by MPSC had taken place, however, the fact remained that the applicant was behind the bars for the offence of moral turpitude. It is to be noted that still criminal case is pending against the applicant. We have asked M.P.S.C whether such candidate can be called for the interview and considered during the selection process. M.P.S.C did not file affidavit in reply or any answer is given to this particular query raised by us. Thus, we have doubt if a Government servant against whom a case of bribery or any case of moral turpitude is lodged, whether such persons can be considered for higher post

in Government service and especially for the post of Director, Vocational Education and Training.

16. However, we do consider his case of locus standi as directed by the Hon'ble High Court on the basis of short-listing criterion. So far as the argument of learned counsel Mr Lonkar and Mr Dere giving favourable treatment to Respondent No. 3 are considered, we find substance. We have perused the remarks of M.P.S.C at the time of interview and it reveals that M.P.S.C did not give the equal treatment to all the candidates. M.P.S.C did not allow and did not give extra time to the other candidates to produce Certificate. There may be some other candidates whose candidature might have been cancelled or not considered because they could not show that they have experience of working either 26 years or 19 years as per their educational qualification from the approved University.

17. Under Rule 9(iv) of the Rules of Procedure, M.P.S.C has power to debar the candidates on his failure to produce the original documents for verification or are found to have made false, incorrect, excessive, misleading claims in their application.

Rule 9(v) In case, the response to the advertisement exceeds the proportion laid down in Rule 9(i) above, the Commission may apply criteria for shortlisting of the candidates for interview as follows:-

- (a) Whenever there is a provision for preferential academic qualification or experience in the rules of recruitment of the post it shall be accorded the highest priority while shortlisting the candidates for interview.....
- (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.”

Rule 9 (v)(a) states about the provision for a preferential academic qualification or experience in the rules of recruitment itself and it shall be accorded the highest priority while shortlisting the candidates for interview.

18. In the present case as per Rule 3(c) of the Recruitment Rules, the preference may be given to a candidate who is a member of a Professional Institution or who has research work to his credit. There is no mention of experience in Rule 3(c) of the said Rules. Further as per Rule 9(b) of the Rules of Procedure of M.P.S.C, for the post only minimum educational qualification is prescribed, the criterion of higher experience than the minimum prescribed shall be applied and preference shall be given to the higher academic qualifications. In the present case, the minimum educational qualification is also prescribed under Rule 3 of the Recruitment Rules and the minimum work experience is also mentioned as ten years.

Rule 9(v)(d) of the Rules of Procedure of MPSC is with regard to the post prescribing minimum academic qualifications together with minimum experience. Rule 3(c) of the Recruitment Rules deals with preference to be given to a candidate who is a member of a Professional Institution or who has research work to his credit. As per Rule 9(v)(d) preferential qualification as prescribed in Rule 3(c) is to be applied and thereafter the criterion of higher work experience is to be applied for short listing and if the ratio is not reached then the criterion of higher academic qualification as provided in clause (b) shall be invoked.

19. Learned counsel for the applicant in O.A 325/2018 has relied more on the later part of Rule 9(v)(d) of M.P.S.C Rules of Procedure, 2014, that after higher experience the higher academic qualification is to be considered. Learned counsel has misread the Rule 9(v)(d) of M.P.S.C, Rules of Procedure, 2014 along with Rule 3(c) of the Recruitment Rules. Rule 3(c) states about preference which includes Preferential work and which is akin to the higher

academic qualification, i.e., Ph. D. Therefore, the degree of Ph. D is to be given preference as per Rule 3(c) and *the criterion of higher academic qualifications shall be invoked*. The Ph. D necessarily involve It is to be treated as a preferential qualification which is mentioned in Rule 3(c) and thereafter the higher experience is to be considered. In the present case the preferential qualification and higher academic educational qualification is one and same form and that is why apparently one can think that the short-listing criteria applied by MPSC is contrary to the Rules, but it is not so.

20. Much is argued about having the work experience of 10 years in the Institution having the approval of AICTE. However, as argued before us on behalf of Respondent No. 3, let us consider the chronology. When the advertisement was issued on 31.7.2015, the condition of work experience of more than 10 years though was mentioned, further condition of the Institution having approval of AICTE or the University was absent. So also the same is not mentioned in Rule 3 of the Recruitment Rules. This condition was made applicable by way of pronouncement dated 28.3.2018 which is as follows:-

उदघोषणा

महत्वाची टीप :-उमेदवारांनी शिकविण्याचा दावा केल्या अनुभवाच्या कालावधीच्या नियुक्तीस विद्यापीठाची अथवा टेक्नीकल बोर्डाची (लागू असेल त्यानुसार) मान्यता असल्याचे प्रमाणपत्र मुलाखतीच्यावेळी सादर करणे आवश्यक राहिल, अन्यथा तो अनुभव ग्रहण धरता येणार नाही, याची उमेदवारांनी कृपया नोंद घ्यावी.

दिनांक : २८/०३/२०१८

सं.पा.देशमुख
अवर सचिव
महाराष्ट्र लोकसेवा आयोग

Thus, Government thought about this condition nearly after 2 years and 9 months after the advertisement was issued. We are of the view that this condition cannot be applied for this recruitment process and nobody's candidature can be rejected on the ground that the candidate though having the requisite experience from the Institution or College may not have the

approval of the University or AICTE. On this point, we place reliance on the judgment of the Hon'ble Bombay High Court in **Writ Petition No. 44488/2016, The M.P.S.C Vs. Dr Rita and anr.** Similar issue was agitated before the Division Bench of the Nagpur Bench of the Bombay High Court wherein the parameters of the eligibility were changed. Subsequently, 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 Marathwada University & Ors. 2017(4) AIR BOM R 459.**

21. If the chronology of the Advertisement and pronouncement is taken into account it is surprising that M.P.S.C. nearly after 2 ½ years from the date of the Advertisement pronounced the condition of the approval of University or AICTE and therefore the candidates who have applied 2 ½ years back

pursuant to the Advertisement cannot be held ineligible by way of introducing this pronouncement and condition just two days prior to the interview. On this point reliance is placed on the judgment in **Writ Petition No.4488/2016, M.P.S.C. Versus Dr. Rita & Anr. of High Court of Judicature at Bombay, Nagpur Bench Nagpur**. In the said matter the candidate was declared ineligible on the ground that certificate on the letterhead of the concern Institute and the College of the 5 years' experience was not produced. In **Rita's case**, M.P.S.C. published the select list as footnote on 01.10.2014, and interviews were conducted on 04.10.2014. The M.P.S.C. held that the candidature of the applicant should not have been rejected on this ground and the Hon'ble High Court has stated that M.P.S.C. could not have changed the Rules of the games after the recruitment process commenced and directed to ignore the subsequent note of the requirement of the certificate and university or technical board. In the present case identical situation is found as the M.P.S.C. published this condition in the pronouncement which was published after 2 1/2 years from date of the Advertisement and 213 days prior to the interview.

So far as responsible position of the Applicant Mr. Pawar (O.A.No.13/2020) is concerned learned C.P.O. has submitted that his Pay Scale was not equivalent to the Executive Engineer, but was of Junior Engineer, with pay scale of Rs. 2000/- and not as per the 6th Pay Commission, i.e., Rs. 2200/-, so he was not holding the responsible position.

22. The same view was reiterated in the case of **Dr Amrapali w/o Atul Akhare Vs. Dr. Panjabrao Deshmukh Krishi, W.P 2444/2019** decided on 27.2.2020. Thus, the change in condition subsequently than the condition mentioned in the advertisement was not allowed. The said judgment was confirmed by the Hon'ble Supreme Court. Thus, while shortlisting the candidates at the time of interview, the Respondents cannot assess the

eligibility and the merit by applying this condition of 10 years' experience from any University or AICTE.

23. In the case of **Bedanga Talukdar Vs. Saifudaullah Khan & Ors, Civil Appeal Nos 8343-8344 of 2011** decided on 28.9.2011, there was other way round that the condition mentioned in the advertisement was relaxed without due publication so it would be contrary to the mandate of quality contained in Articles 14 and 16 of the Constitution of India. Thus, once the selection process is initiated, subsequent change by putting further condition of eligibility criteria at the time of interview, when such condition is absent in the recruitment rules or in the advertisement is illegal. On this point, the learned counsel for the applicant could not argue any counter or place any ruling of the Hon'ble High Court or Hon'ble Supreme Court. Thus, considering the facts of the present case, we found that the MPSC has given a favourable treatment to Respondent No. 3 by giving him time to produce the Certificate showing AICTE approval which is in fact not required. The candidature of other candidates was rejected and they were not informed accordingly.

24. Thus, the entire selection process is required to be recalled and reconducted in order to assure equal treatment and equal opportunity in public employment as per Articles 14 & 16 of the Constitution of India. Though after our judgment second time interview was conducted, however, the matter is remanded back, hence as held in the case of *Mangal Prasad Tamoli (supra)*, all consequent proceedings have become non-est, so the process of second interview. Our conclusion is that at the time of the first interview, Respondent, M.P.S.C has favoured Respondent No.3, Mr Dalvi and M.P.S.C should have made publicly clear to all the eligible candidates that AICTE approval criterion is not applicable and should have called the candidates for interview so that should not be hurdle for them to attend the interview.

25. In view of the above, we pass the following order:-

ORDER

- (1) The M.P.S.C is directed to conduct the interview afresh by giving necessary notice to all the eligible candidates and complete the selection process within a period of three weeks.
- (2) The Hon'ble High Court by order dated 26.10.2021 in W.P 1652/2021, allowed the Respondent No. 3, Mr Dalvi to continue as Director, Vocational and Education & Training till the matter is finally decided by the Tribunal. Hence, we allow Respondent No. 3, Mr Dalvi to continue on the said post till the selection process is completed by M.P.S.C.
- (3) With the above directions, Original Applications stand disposed of.

Sd/-

(Medha Gadgil)
Member (A)

Sd/-

(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai

Date : 03.07.2024

Dictation taken by : A.K. Nair.