

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2034 OF 2021

Dipak Keda Aher

.....Petitioner

V/s.

Bank of Maharashtra,
through its Assistant General
Manager

....Respondent

Ms. Gayatri Singh, Senior Advocate i/by. Ms. Meenaz
Kakalia, Advocate for the petitioner.

Mr. V.P. Vaidya i/by. Mr. Neel Helekar, Advocate for the
respondent-Bank.

CORAM : S.V. GANGAPURWALA, ACTING C.J. &

SANDEEP V. MARNE, J.

RESD. ON : 17TH JANUARY, 2023.

PRON. ON : 20TH JANUARY, 2023.

Judgment (Per Sandeep V. Marne J.)

1. Rule. Rule made returnable forthwith. With the consent of parties, taken up for final hearing.

2. By this petition, Petitioner assails the order dated 7th October, 2020 issued by the respondent-Bank cancelling his candidature for appointment on the post of Generalist Officer, Scale-II. The cancellation of candidature is done on account of petitioner not fulfilling the essential qualification of 60% marks in Bachelor's Degree in aggregate of all semesters/years.

3. Shorn of unnecessary details, the facts of the case are that Recruitment Notification issued by the respondent-Bank for recruitment *inter-alia* to the post of Generalist Officer, Scale-II on 10th December, 2019 requiring essential qualification of Bachelor's Degree in any discipline with knowledge in Computers, with a caveat that candidate must secure minimum of 60% marks in Bachelor's Degree in aggregate of all semesters/years. Petitioner possesses qualification of Diploma in Electronics and Telecommunication Engineering and on the strength of such a diploma, he secured lateral entry to second year of Bachelor of Engineering and completed the course. He applied in pursuance of the Notification and appeared for online examination and qualified

the same. He thereafter applied for personal interview/group discussion and came to be selected and was issued with a provisional offer of employment dated 27th July, 2020. One of the conditions of provisional offer was to seek a discharge from previous employer. Petitioner was employed in Axis Bank since 26th August, 2019 and tendered resignation on 27th July, 2020 with a view to join respondent-Bank. His resignation was accepted and he was relieved by Axis Bank on 25th August, 2020. On the same day, office order dated 25th August, 2020 was issued by the respondent-Bank, by which Petitioner came to be appointed and posted to Nashik Zone. It is averred that on 10th September, 2020, when he reported to the Zonal Manager, Nashik Zone, he was orally informed that his candidature was cancelled on account of non-fulfillment of eligibility criteria. By order dated 7th October, 2020, his candidature came to be cancelled on the ground of non-fulfillment of minimum 60% marks in Bachelor's Degree in aggregate of all semesters/years. Order dated 7th October, 2020 is the subject matter of challenge in the present petition.

4. Appearing for the petitioner, Ms. Gayatri Singh the learned Senior Advocate would contend that the aggregate marks scored by petitioner in Diploma Course and Degree Course are required to be taken into consideration. She would submit that since the petitioner underwent Diploma Course, he was given direct admission to Second Year of the Degree Course. As he completed only three years of Degree Course, he did not have the advantage of scoring marks in respect of 8 semesters/four years. It is on this count, she would urge that the marks obtained by him in 6 Semesters of Diploma Course are also required to be taken into consideration. Inviting our attention to the Chart produced by the petitioner at Exhibit-K, Ms. Singh would demonstrate that while petitioner secured aggregate marks of 57.82% in Degree Course, upon consideration of marks scored in Diploma Course, the aggregate percentage would rise to 60.34. Ms. Singh would therefore contend that he fulfilled the essential criteria of scoring 60% aggregate marks in all semesters/years. She would rely upon the judgment of the Delhi High Court in the case of **Moninder Singh V/s. Union of India & Anr** in Writ Petition (C) No. 7389/2008 dated 3rd May, 2010. She would

also rely on the judgment of the Apex Court in **Asha Kaul (Mrs.) and Another V/s. State of Jammu and Kashmir and Others**, (1993) 2 SCC 573.

5. *Per-contra*, Mr. Vaidya the learned Counsel appearing for the respondent-bank would oppose the petition and support the order rejecting petitioner's candidature. He would submit that 60% minimum marks in Bachelor's Degree was an essential qualification which cannot be relaxed. That the marks scored in Diploma Course are totally irrelevant while computing the aggregate score in Degree Course. Inviting our attention to Notification dated 12th January, 2007 of All India Council for Technical Education (AICTE), he would submit that the same is issued only for the purpose of providing admission to degree holders and BSc. graduates into second year of degree program of engineering by way of lateral entry. He would submit that if marks obtained in Diploma Course are to be computed, then even the candidates getting lateral entry in Bsc. Degree would demand computation of marks in Bsc. Degree. Inviting our attention to various terms and conditions of the Recruitment Notification, the provisional

offer of employment as well as final office order, he would submit that the petitioner was repeatedly warned about the cancellation of his candidature in the event of discovery of his non-eligibility.

6. After hearing the learned Counsels for the parties, the short issue that is involved in the present petition is whether the marks obtained during Diploma Course can be taken into consideration while computing 60% marks in aggregate of all semesters/years. It would be appropriate to reproduce essential qualifications notified in the advertisement as under :

“Bachelor’s Degree in any discipline with knowledge in computers.
Passing of JAIIB and CAIIB is desirable.
Professional qualification like MBA (Finance)/CA/ICWA/CFA/FRM/
from a recognized University/ Institution/ Board recognized by Govt.
of India / approved by Govt. Regulatory bodies is desirable.

The minimum marks shall be 60% in Bachelor’s degree in the aggregate of all semesters/years.”

7. Thus, the advertisement clearly stipulated that only marks obtained in aggregate in all semesters/years of Bachelor’s Degree alone would be taken into consideration. Going by strict interpretation of the recruitment qualifications

specified in advertisement, it is difficult to accept the proposition advanced by petitioner for taking into consideration the marks obtained in Diploma Course as well.

8. The only ground on which consideration of marks of Diploma Course is sought by the petitioner is on account of the facility of lateral entry accorded to diploma holders to second year Bachelor's Degree Course. It would apposite to reproduce the relevant portions of Notification dated 12th January, 2007 issued by AICTE :

“(3) **Purpose-** These Regulations provide for admission of diploma holders and B.Sc. graduates into second year degree programmes in Engineering and Technology through lateral entry.”

“6.1(b) **Eligibility** - For being eligible to seek lateral entry to an Engineering degree programme at the second year/third semester level, a candidate must have passed the diploma in Engineering in the relevant branch with a minimum of 60 percent in the aggregate. Only candidates fulfilling these conditions would be eligible for appearing in the entrance test meant for selection of diploma holders for lateral entry to degree programmes. The selection of candidates will be based on an entrance test, the merit ranking in the test being the basis of admission.

At present students obtain diploma through different programmes in different States/Uts. Such programmes have different structures and for

9. True it is that, only diploma holders securing 60% marks in aggregate are permitted a lateral entry to Second

Year of Degree Course. However, what is provided by Notification dated 12th January, 2007 is merely a concession to such diploma holders of getting admission directly into the Second year of degree course. This, however, would not mean that, there is continuity of courses between Diploma and Degree. The two courses are entirely different and distinct and except the concession accorded by the Notification dated 12th January, 2007, there is absolutely no relation between the two courses. It must also be borne in mind that the AICTE Notification envisaged, even B.Sc. graduates can get concessional lateral entry to Second year of degree course. By no stretch of imagination, it can be contended that, there is continuity of courses in B.Sc. and Engineering. If the contention of the petitioner is accepted, that even marks obtained in B.Sc. will have to be taken into consideration while computing aggregate marks obtained in Bachelor's Degree. Therefore, merely on the basis of the AICTE Notification, it is difficult to accept the proposition that marks obtained by petitioner in Diploma course can also be taken into consideration while computing aggregate marks obtained by him in Degree course.

10. Reliance of the petitioner on the judgment of Delhi High Court in ***Moninder Singh*** (supra), does not assist his case. In ***Moninder Singh***, two issues were involved, viz; (i) non-possession of 10+2 Examination Certificate on account of undergoing diploma course and seeking lateral entry to degree course; and (ii) duration of degree course being less than four years. Petitioner therein undergoing Diploma Course, was essentially the reason why he could not undergo the course of 10+2 level, so also, he could not complete four years of degree course. The Delhi High Court set aside the order of cancellation of his candidature, holding that passing of 10+2 level examination was not mandatory for candidates undergoing B.E. course and that on account of concession allowed by AICTE for lateral entry to diploma holders to degree course, condition of duration of BE course being four years cannot be insisted upon. The issue involved before the Delhi High Court in ***Moninder Singh*** (supra) was entirely different and the judgment has no application to the facts of the present case.

11. In *Asha Kaul* (supra), relied upon by petitioner, the issue was about the cancellation of selection without a good and valid reason. The judgment has therefore no application to the facts and circumstances of the present case.

12. We have therefore no hesitation in holding that petitioner did not possess the requisite eligibility criteria of 60% marks in Bachelor's Degree in aggregate of all semesters/years. It is undisputed position that he secured only 57.82% marks in aggregate in Bachelor's Degree. True it is that, the respondent-Bank ought to have verified the eligibility criteria before issuance of the final appointment order and especially before calling upon him to seek discharge from previous employment. However, in provisional offer of employment, so also, the final appointment order dated 25th August, 2020, he was clearly made to understand that his candidature was liable to be cancelled in the event he did not fulfill the eligibility criteria. While we do sympathize with the petitioner, who was made to resign from Axis Bank in the hope of joining services in the Public Sector Bank, at the same time we are unable to grant him any relief since he does not fulfill the basic required

qualifications for appointment in respondent-Bank. We only expect the respondent-Bank to be more vigilant while processing cases of candidates and verifying the eligibility criteria well before issuing final orders of appointment so as to prevent recurrence of cases, where the candidates are made to resign from previous employment and they finally do not end up in securing employment in the respondent-Bank as well.

13. We therefore do not find this to be a fit case for interference in the impugned order of cancellation of candidature. The Writ Petition is dismissed without any orders as to costs. Rule is discharged.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

**NEETA
SHAILESH
SAWANT**

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NEETA SHAILESH
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