



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12398 OF 2024

Shri. Harshal Baburao More,  
Aged 23 years, Occ. Service,  
R/o. Dreams Park, Row House No. 6,  
Adake Nagar, Jay Bhawani Road,  
Nashik Rroad, Nashik- 422 101.

...Petitioner

Versus

1. The Sate of Maharashtra  
Thr. GP, High Court of Bombay
2. The President,  
District Selection Committee  
and the Collector, Nashik.
3. The Member,  
District Selection Committee,  
Nashik, and the Chief Executive Officer,  
Zilla Parishad, Nashik.
4. The Member Secretary,  
District Selection Committee and  
The Deputy Chief Executive Officer,  
Zilla Parishad, Nashik.
5. Dipak Raju Sawant,  
Aged 47 yes. R/a
6. Chief Executive Officer  
Zilla Parishad, Nashik.

...Respondents

...

Adv. Sachin Gite for the Petitioner.  
Adv. Chaitrali Deshmukh,for Respondent No.2.

Adv. R. A. Salunkhe, AGP for the Respondent State.

...

**CORAM : RAVINDRA V. GHUGE &  
ASHWIN D. BHOBE, JJ.**

**DATE : 11<sup>th</sup> DECEMBER, 2024**

**Oral Order (Per Ashwin D. Bhobe J.) :-**

1. The Petitioner has approached this Court assailing the Final Selection List published by Respondent Nos. 2 to 4, by which Respondent Nos. 2 to 4 have selected the Respondent No. 5 for the post of Junior Account Officer, Class-C with Zilha Parishad Nashik. Petitioner is held ineligible, on the ground that the Petitioner does not possess the requisite experience criteria for the post of Junior Accounts Officer.

2. **Factual Matrix :-**

a) Petitioner was working with IDBI Bank, as Assistant Manager from 2017 upto 2021. Petitioner thereafter joined SBI Bank, as Assistant Manager.

b) Vide Advertisement dated 05.08.2023 (said Advertisement), the Zilla Parishad Nashik invited Applications to the post of Junior Account Officer. Last date for submission of applications

was 25.08.2023. Petitioner applied for the said post in Schedule Caste category.

c) Written examination were conducted online through the institute of Banking Personal Selection, Mumbai. Petitioner secured highest marks in the said examination i.e. 146 marks, whereas the Respondent No. 5 secured 144 marks.

d) District Selection Committee published Provisional Merit List in March, 2024, wherein, the Petitioner was shown at serial no.1 and Respondent No. 5 at serial no. 2.

e) District Selection Committee thereafter published the Final Selection List in the month of August, 2024 wherein, Respondent No. 5 was shown as selected candidate and one Sachin Ashok Shejwal was shown in the wait list. Petitioner being aggrieved by his non-selection, has filed the Petition, seeking for the following *substantial* reliefs:-

“ a] *This Hon'ble Court may be pleased to call for records of the un-dated Final Selection List published in August 2024 by the Respondent Nos. 2 to 4, and after going into the legality, validity and propriety thereof, this Hon'ble Court may be pleased to quash and set aside the impugned un-dated Final Selection List*

*published in August 2024 by the Respondent Nos. 2 to 4.*

*b] This Hon'ble Court may by an appropriate writ order or direction, may be pleased to direct the Respondent Nos. 2 to 4 to select the Petitioner for the post of Junior Account Officer with Zilla Parishad, Nashik and the appropriate appointment order to that effect may be given to the Petitioner forthwith.”*

3. Respondent No. 3, 4 and 6 have put in appearance and filed Affidavit-in-reply dated 11.10.2024, opposing the petition. Said Respondents contend that in response to the Advertisement No. 1/2023 dated 05.08.2023, issued by the Zilla Parishad Nashik, a total of 28 applications were received. Result of the written examination was published on 17.02.2024. Petitioner along with two (2) candidates were called for scrutiny. One of the requisite qualification / criteria for the post of Junior Account Officer was that the candidate must have 5 years of *uninterrupted service* as on the cut-off date. Scrutiny of the Petitioner's documents revealed that the Petitioner was not fulfilling the said criteria of 5 years of *uninterrupted service* as on the cut-off date, Petitioner being 5 days short to meet the said requisite qualification / criteria. Petitioner was therefore excluded and the final selection list was published on 16.08.2024. Vide communication dated 12.09.2024, Petitioner was notified of he being disqualified as per clause 10 of the said

**Advertisement.** Respondents therefore sought for dismissal of the petition.

4. Petitioner filed Affidavit-in-rejoinder dated 21.11.2024. Petitioner contends that at the time of verification of documents, the District Selection Committee did not raise objection with regard to the Petitioner not fulfilling condition No. 10 of the said advertisement. Petitioner though acknowledged of he being 5 days short to meet the criteria under condition no. 10 of the said Advertisement, sought to justify the same by contenting that the said 5 days were spent in transit, i.e. time taken to join State Bank of India, upon being relieved from his services from the IDBI Bank. Petitioner was relieved on 15.06.2021 from IDBI Bank and Petitioner joined SBI Bank on 21.06.2024.

5. As the controversy in the petition revolves around condition No. 10 of the said Advertisement bearing No. 1/2023, the same is copied in verbatim :-

“१० कनिष्ठ लेख अधिकारी

ज्यांनी मान्यता प्राप्त विद्यापीठाची पदवी धारण केली असेल व कोणतेही सरकारी कार्यालय व्यापारी भागीदार संस्था अथवा स्थानिक प्राधिकारण यातील किमान ५ वर्षांचा अखंड सेवेचा ज्यांना अनुभव असेल अशा अमेदवारामधून नामनिर्देशनाद्वारे नेमणुक करण्यात येईल.

या बाबतीत लेखाशास्त्र आणि लेखा परीक्षा हे विशेष विषय घेऊन वाणिज्य शाखेतील पदवी धारण करणा—यांना अथवा प्रथम वा व्दितीय

वर्गातील पदवी धारण करणा—यांना अधिक पसंती दिली जाईल किंवा गणित अथवा सांख्यिकी अथवा लेखा शास्त्र व लेखा परिक्षा हे प्रमुख विषय घेऊन पदव्युत्तर पदवी धारण करीत असतील अशा उमेदवारांमधुन नामनिर्देशनाव्दारे नेमणुक करण्यात येईल. याबाबतीत कोणत्याही सरकारी कार्यालयातील अथवा व्यापारी संस्थेतील अथवा स्थानिक प्राधीकरणातील लेखा कार्याचा अनुभव असणा—यास अधिक पसंती दिली जाईल.”

6. Ms. Chaitrali R. Deshmukh, learned Advocate appearing for Respondent Nos. 3, 4 and 6, submits that the said Advertisement mandates that the candidate seeking to apply for the post of Junior Account Officer must comply with all qualifications and the criteria as mentioned in the said advertisement. It is her contention that though the Petitioner had scored highest marks in the written examination conducted, however, upon scrutiny of the documents submitted by the Petitioner at the stage of document verification, it was noticed that the Petitioner was 5 days short to meet the condition No. 10 of the said Advertisement. Thus, according to Ms. Deshmukh, the Petitioner was rightly disqualified.

7. Mr. Gite, learned Advocate appearing for the Petitioner though agrees that the Petitioner is short of 5 days in satisfying the condition No. 10, however, it was his contention that the Petitioner spent the said 5 days for joining the State Bank of India, branch which is situated in a remote village. Mr. Gite contends that the said period (5

days) was spent in transit. Mr. Gite submitted that the Petitioner having secured highest marks in the written examination the period of 5 days needs to be condoned.

8. The question that falls for determination before us is whether a candidate who does not meet the qualification/criteria prescribed in the said Advertisement as on the cut-off date would be entitled for consideration to the post (Junior Account Officer)? Whether the facts of the present case would entitle the Petitioner to relaxation of the period of 5 days, so as to qualify for the said post ?

9. Indisputably, the Petitioner is short of 5 days to qualify for the period of 5 years of uninterrupted service experience, as required under condition No. 10 of the said Advertisement. Thus, as on the cut-off date, the Petitioner did not possess the requisite qualification / criteria.

10. The Hon'ble Supreme Court in the case of Rakesh Kumar Sharma vs. State (NCT of Delhi) and Ors reported in (2013) 11 SCC 58, has held that the relevant date for determination of the eligibility criteria/condition, is the last date of submission of the Application. Relevant paragraph Nos. 11, 12, 13, 14, 16 to 21 are as under :-

*“11. There can be no dispute to the settled legal*

*proposition that the selection process commences on the date when applications are invited. Any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfils the requisite qualification.*

*12. In U.P. Public Service Commission v. Alpana, this Court, after considering a large number of its earlier judgments, held that eligibility conditions should be examined as on the last date for receipt of applications by the Commission. That too was a case where the result of a candidate was declared subsequent to the last date of submission of the applications. This Court held that as the result does not relate back to the date of examination and eligibility of the candidate is to be considered on the last date of submission of applications, therefore, a candidate, whose result has not been declared up to the last date of submission of applications, would not be eligible.*

*13. A three-Judge Bench of this Court in M.V. Nair v. Union of India held as under: (SCC p. 434, para 9)*

*"9.... It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date." (emphasis supplied)*

*14. In Harpal Kaur Chahal v. Director, Punjab Instructions this Court held: (SCC p. 707, para 2)*

*"2. It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications. Such of those candidates, who possessed of all the qualifications as on that date, alone are eligible to apply for and to be considered for recruitment according to the rules." (emphasis supplied)*

*16. In Ashok Kumar Sharma v. Chander Shekher*

*[hereinafter referred to as Ashok Kumar (1993)], the majority view was as under: (SCC pp. 616-17. para 15)*

*"15. The fact is that the appellants did pass the examination and were fully qualified for being selected prior to the date of interview. By allowing the appellants to sit for the interview and by their selection on the basis of their comparative merits, the recruiting authority was able to get the best talents available. It was certainly in the public interest that the interview was made as broad based as was possible on the basis of qualification. The reasoning of the learned Single Judge was thus based on sound principle with reference to comparatively superior merits. It was in the public interest that better candidates who were fully qualified on the dates of selection were not rejected, notwithstanding that the results of the examination in which they had appeared had been delayed for no fault of theirs. The appellants were fully qualified on the dates of the interview and taking into account the generally followed principle of Rule 37 in the State of Jammu & Kashmir, we are of opinion that the technical view adopted by the learned Judges of the Division Bench was incorrect...." (emphasis supplied)*

*However, the opinion of R.M. Sahai, J. had been that these 33 persons could not have been allowed to appear for the interview as they did not possess the requisite eligibility/qualification on the last date of submission of applications.*

*17. A three-Judge Bench of this Court in Ashok Kumar Sharma v. Chander Shekhar reconsidered and explained the judgment of Ashok Kumar Sharma (1993) observing: (Chander Shekhar case, SCC pp. 21- 22, para 6)*

*"6. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires*

*the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment." (emphasis added)*

*The Court in Ashok Kumar Sharma further explained that the majority view in Ashok Kumar Sharma (1993) was not correct, rather the dissenting view by R.M. Sahai, J. was correct as the Court held as under: (SCC p. 22, para 6)*

*"6. ... The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview." (emphasis added)*

*18. It may also be pertinent to mention here that in the aforesaid case reference to Rekha Chaturvedi appears to have been made by a typographical error as the said judgment is by a two-Judge Bench of this Court. In fact the Court wanted to make a reference to the case of Ashok Kumar Sharma (1993).*

*19. In Bhupinderpal Singh v. State of Punjab this Court placing reliance on various earlier judgments of this Court held: (SCC p. 268, para 13)*

*"13.... The High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with."*

*(emphasis supplied)*

*20. This Court lately in State of Gujarat v. Arvindkumar T. Tiwari 13 held: (SCC p. 550, para 14)*

*"14. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See Prit Singh v. S. K. Mangal and Pramod Kumar v. U.P. Secondary Education Services Commission)"*

*(emphasis supplied)*

*A similar view has been reiterated by this Court in Pramod Kumar v. U.P. Secondary Education Services Commission's and State of Orissa v. Mamata Mohanty.*

*21. In the instant case, the appellant did not possess the*

*requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification i.e. eligibility, character verification, etc. Clause 11 of the letter of offer of appointment dated 23-2-2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.”*

11. The Hon’ble Supreme Court in the case of Himachal Pradesh State Electricity Board Ltd. vs. Dharminder Singh, in Civil Appeal No. 8828 of 2022, by relying on the decision of Rakesh Kumar Sharma (supra) and Ashok Kumar Sonkar vs. Union of India has held that the cut-off date for acquiring the qualification advertised, is the last date of application. The relevant paragraph Nos. 7, 8, 9, 10 and 11 are read as under :-

*“ 7. Being aggrieved thereby, the respondent No.1 filed writ petition. The High Court in the impugned judgment held that since on the date of interview, the respondent No.1 was possessing requisite qualification, his termination was bad in law and as such allowed the petition.*

*8. The issue is no more res integra.*

*9. This Court in the Ashok Kumar Sonkar Vs. Union of India reported in (2007) 4 SCC 54 and in the case of Rakesh*

*Kumar Sharma Vs. State (NCT of Delhi) and Ors. reported in (2013) 11 SCC 58 has held that the cut-off date for acquiring the qualification advertised is the last date of application.*

*10. It is sought to be urged on behalf of the respondent No.1 that since he has appeared in the examination in July, 2018, though the result has been declared on 19.12.2018, he should be deemed to have acquired the qualification in July, 2018, i.e. prior to the date of advertisement.*

*11. The said contention is also without merit. The said issue is also considered in the case of Ashok Kumar Sonkar (Supra) and rejected.”*

12. From the factual background, the Petitioner does not fulfill the criteria of 5 years of uninterrupted service experience, as required under condition no. 10 of the said Advertisement. By placing reliance on the precedents of the Hon’ble Supreme Court, we find that the Petitioner would not be eligible /entitled to be considered for the said post of Junior Accounts Officer. We find no fault in the rejection of the Petitioners candidature by Respondent No. 3.

13. Mr. Gite was unable to point out any provision in the said Advertisement, whereby the District Selection Committee could grant exemption or relaxation of any qualification/criteria. Ms. Chaitrali R. Deshmukh submits that the said Advertisement does not provide for granting exemption or for relaxing any of the qualifications / criteria.

14. We therefore, hold that there is no infirmity or illegality in the disqualification of the Petitioner.

15. The Petition is without merits, and is dismissed.

16. There shall be no order as to costs.

**(ASHWIN D. BHOBE, J.)**

**(RAVINDRA V. GHUGE, J.)**