

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.18052 OF 2024

Vinayak Popat Wale and Ors. ...Petitioners
Versus
Brihanmumbai Municipal Corporation and Anr. ...Respondents

WITH
INTERIM APPLICATION NO.11557 OF 2025
IN
WRIT PETITION NO.18052 OF 2024

Yogesh Madhavrao Bodke and Ors. ...Applicants
Versus
Akash Santosh Deshmukh and Ors. ...Respondents

WITH
INTERIM APPLICATION NO.7217 OF 2025
IN
WRIT PETITION NO.18052 OF 2024

Rushikesh Pandurang Chiplunkar and Ors. ...Applicants
Versus
Akash Santosh Deshmukh and Ors. ...Respondents

WITH
INTERIM APPLICATION NO.7214 OF 2025
IN
WRIT PETITION NO.18052 OF 2024

Subhash Atmaram Pendharkar ...Applicants
Versus
Akash Santosh Deshmukh and Ors. ...Respondents

Ms Neeta Karnik, Senior Advocate, with Piyush Todkar, i/b Sangharsh Waghmare,
for Petitioners.

Mr Ram Apte, Senior Advocate, with Harshal Nahata and Santosh Mali, for
Respondent-BMC.

Mr Vinod Raut, Administrative Officer from Chief Engineer from Chief Engineer
Department, present in Court.

Mr Nishant R Katneshwarkar (V/C), with Sandeep Gupta i/b Shrirang
Katneshwarkar, for Applicant in IA No. 11557/2025.

Mr Shubham Sharma, with Aryan Yadav, for the Applicant in IA No. 7217/2025.
 Mr Tushar Dahibawkar & Co., for the Applicant in IA No. 7214/2025.
 Mr Aditya R Deolekar, AGP for State.

CORAM: **G. S. KULKARNI &
 DR. NEELA GOKHALE, JJ.**

RESERVED ON : 08th SEPTEMBER 2026
PRONOUNCED ON : 29th SEPTEMBER 2026

JUDGMENT (Per Dr Neela Gokhale, J.)

1. By this Petition under Article 226 of the Constitution of India, the
 Petitioners seek the following substantive reliefs: -

“(a) This Hon'ble Court be pleased to direct the Respondent No. 1 to allow the graduate degree holders to participate in the recruitment for the post of Junior Engineer (Civil) and Junior Engineer (Mechanical and Electrical) and thereby direct the Respondent No. 1 to allow graduate degree holders to fill up online application form with respect to Advertisement dated 25/11/2024 issued by the Respondent No. 1.

(b) Pending hearing and final disposal of the present writ petition, This Hon'ble Court be pleased to allow the graduate degree holders to participate in the recruitment for the post of Junior Engineer (Civil) and Junior Engineer (Mechanical and Electrical) and thereby direct the Respondent No. 1 to allow graduate degree holders to fill up online application form with respect to Advertisement dated 25/11/2024 issued by the Respondent No. 1.

(c) Pending hearing and final disposal of the present writ petition, this Hon'ble Court be pleased to stay the recruitment process conducted by Respondent No. 1 for the post of Junior Engineer (Civil) and Junior Engineer (Mechanical and Electrical) with respect to Advertisement dated 25/11/2024 issued by the Respondent No. 1.”

2. A Co-ordinate Bench of this Court (Coram: Ravindra V. Ghuge & Ashwin D. Bhobe, JJ.) issued notice to the Respondents, returnable on 16th January 2025, by its order dated 11th December 2024. Counsel for both Respondents waived notice; hence, this Court proceeded to hear the parties on the Petitioners' prayers for interim relief. This Court raised three issues at the stage of determining the grant of interim relief as follows: -

- a) Whether the advertisement dated 25th November 2024, to the extent of the recruitment to the post of 'Junior Engineer', prohibits all candidates who are engineering graduates from applying to the position of 'Junior Engineer'?
- b) Whether the advertisement is in tune with the Recruitment Rules modified in 2023? and
- c) Whether there was a violation of Articles 14 and 16 of the Constitution of India?

3. The Court, on 11th December 2024, directed Respondent No. 1, the Corporation, to publish a corrigendum on 13th December 2024, clarifying that Engineering Graduates would be eligible to apply, since applications were to be accepted online as per the schedule published by the Corporation. The Court, however, added that, as the order was passed as an interim measure, all such graduates applying for the said posts would be subject to the outcome of the Petition, in the event they are selected and appointed. Paragraphs 27, 28 and 29 of the said order read as below: -

"27. In view of the above, we find that the first option would avoid postponement of the recruitment process and would not result in scuttling the process which has already commenced. Time for filling in the online forms is upto 11.59.59 pm on 16th December, 2024. Since Engineering graduates have been allowed to participate in the selection process, because they have Diploma certificates, it would be appropriate to allow all Engineering Graduates to participate in the said selection process. We, therefore, direct that the Corporation shall publish a corrigendum on 13th December, 2024, on its website and in those leading newspapers in which the advertisement was published, making it clear that Engineering Graduates - Mechanical/Electrical (M.E.) and Civil, would be eligible to apply, since applications are to be accepted online upto 11:59:59 p.m., as per the existing schedule published by the Corporation.

28. Needless to state, this being an interim order, all such Graduates, who would now be applying for the said posts, would be subject to the result of this Petition, in the event they are selected and appointed.

29. The learned Advocate for the Corporation submits on instructions that this order may be stayed, thereby preventing such Graduates from applying and the Corporation be permitted to proceed with the selection process. We find such a request to be unconscionable. When all Engineering Graduates having Diploma certificates are permitted to apply, there is no reason, logic or justifiable distinction in restricting Graduates from applying for the said post. So also, we do not intend to suspend the selection process or defer it. Hence, we are allowing all Graduates to apply and their selection and appointment, if any, shall be subject to the result in this Petition. This appears to be appropriate, reasonable and equitable, at this stage. Hence, the request for stay is rejected.”

4. Several Diploma holder candidates, being aggrieved by the interim order passed as hereinabove, took their grievance to the Supreme Court by filing separate Special Leave Petitions. The SLPs were accompanied by applications seeking permission to file them, since the aggrieved persons were not parties to the present petition, and they have since filed separate intervention applications in the petition. By various orders, the Supreme Court, granting permission to file the SLPs, stayed the operation of the order dated 11th December 2024. Thereafter, by order dated 9th March 2026, in SLP No. 32464/2025, the Supreme Court passed the following order: -

“O R D E R

As agreed by the learned counsel for the parties, We request the High Court to dispose of the Writ Petition, which is pending before it so as to decide the legal claim of various parties. The same be done within a period of eight weeks.

2. In the meantime, the interim order passed by this Court on 07.11.2025 shall continue.
3. Accordingly, the Special Leave Petition stands disposed of.
4. Pending application(s), if any, shall also stand disposed of.”

5. Thus, the matter was placed before us for final determination on the issue. We heard Ms Neeta Karnik, learned Senior Advocate, appearing for the Petitioners; Mr Ram Apte, learned Senior Advocate, appearing for the Respondent-BMC; and Mr Aditya Deolekar, learned AGP, appearing for the Respondent-State.

6. Ms. Karnik raised the following propositions: -

6.1. The Recruitment Rules dated 18th April 2023 ('Rules') prescribe only the minimum educational qualification and therefore candidates possessing higher qualifications, i.e. Engineering Degrees, cannot be excluded from consideration.

6.2. Rule 4(B) of the Rules expressly recognises all degree and diploma holders, demonstrating that degree holders are within the contemplation of the Rules.

6.3. The Government Resolution ('GR') dated 9th September 2021 mandates that recruitment rules prescribe minimum educational qualifications so that candidates possessing higher qualifications are not rendered ineligible.

6.4. Clause 7 of the Advertisement dated 25th November 2024 states that GRs issued from time to time shall be applicable to the present recruitment. Therefore, GR dated 9th September 2021 is applicable to the present Advertisement.

6.5. Respondent No. 1 itself permitted and selected Engineering Degree holders in previous recruitment processes conducted in 2013 and 2015 by holding that the Degree in Engineering is a higher qualification than Diploma in Engineering.

6.6. The impugned Advertisement is contrary to the Rules and the GR dated 9th September 2021 and is liable to be correctly applied and/or modified to the extent of holding degree holders eligible and allowing them

to participate in the recruitment process.

6.7. Excluding candidates possessing only an engineering degree, while permitting candidates possessing both diploma and Degree qualifications, amounts to hostile discrimination and violates Articles 14 and 16 of the Constitution.

6.8. The rationale of providing opportunities to Diploma holders, as they are persons who could not afford or attempt a degree, is unworkable, since there is no mechanism by which a candidate holding both qualifications can be filtered out.

6.9. Reliance is placed on the following decisions:

- i. *Jyoti KK v. Kerala Public Service Commission*¹
- ii. *Puneet Sharma v. Himachal Pradesh State Electricity Board*².
- iii. *Shekhar Kaduba More v. State of Maharashtra*³.

7. Mr Ram Apte submitted as follows:

7.1. Respondent No. 1 – Corporation is a statutory body with its own rules and regulations governing employment, and, as an employer, is best placed to determine the requirements for selecting candidates. The Petitioners admittedly do not hold the essential qualification of a Diploma. A candidate who possesses a Diploma and subsequently acquires a Degree in Engineering would be eligible, since the candidate possesses a Diploma in Engineering.

7.2. The principle that a higher qualification is deemed to fulfil a lower

1 (2010) 15 SCC 596.

2 (2021) 16 SCC 340.

3 2025(2) Mh.L.J. 568.

one operates only where both lie in the same channel, which a degree and a diploma in engineering do not. A diploma course is designed to impart the practical aspect of engineering and to train persons for the execution of works, whereas a degree course provides theoretical training with less emphasis on the practical, so the two cater to different situations.

7.3. The Petitioners claim that degree holders have higher qualifications than Diploma holders; the incumbent post is not acceptable, as having a diploma is the essential qualification for the recruitment process.

7.4. Candidates having degree qualifications but not diploma qualifications are not entitled to participate in the recruitment process.

7.5. The qualification of having a diploma is not a basic qualification for admission to a degree course.

7.6. Clause 2 under the Model Rule No. 3 of the Model Recruitment Rules does not assist the Petitioners as the same are not applicable unless adopted by the corporation. Moreover, the note below Clause 2 clarifies that minimum qualification for the post must be prescribed as per the duties and responsibilities to be discharged by a person to be appointed on the said post. Mr Apte also pointed out that the qualification required for the post of Sub-Engineer is a Degree as per the said Advertisement.

7.7. Mr Apte placed reliance on the following decisions:

- i. *Md. Firoz Mansuri & Ors. v. State of Bihar*⁴
- ii. *Zahoor Ahmad Rather v. Sheikh Imtiyaz Ahmad*⁵

4 (2026) 5 SCC 363.

5 (2019) 2 SCC 404.

iii. *Vivek Onkar Chavan and Anr. v. Union of India*⁶

Hence, Mr Apte urged the Court to dismiss the petition.

7.8. There are several applications seeking intervention in the present matter. The intervenors contend that they satisfy the eligibility prescribed under the Recruitment Rules dated 18th April 2023 and the Advertisement dated 25th November 2024. The Petitioners' prayers seek enlargement of the eligibility criteria in favour of persons not possessing the prescribed diploma qualifications. Such a prayer necessarily prejudices candidates who fulfil the statutory eligibility in the recruitment process. It is also submitted that neither the Recruitment Rules of 2023 nor the Advertisement dated 25th November 2024 is challenged in the petition. The petition proceeds on the assumption that an Engineering Degree automatically includes or supersedes a Diploma qualification, which assumption is untenable. The intervenors also relied on the Supreme Court's decision in *Mansuri* (supra) and submitted that the controversy is no longer *res integra*. It is further submitted that the Corporation consciously maintained two distinct streams for filling up the post of Junior Engineer and Sub-Engineer. A diploma is required for the Junior Engineer post, while a degree is required for the Sub-Engineer post. Such classification is based on intelligible difference and bears a nexus with the nature of duties attached to the respective cadres. For these reasons, the intervenors pray that the petition be dismissed.

6 2026: BHC-OS:19531-DB.

8. The kernel of Ms Karnik's legal propositions is that once the Recruitment Rules prescribe minimum qualifications for a particular post, a higher degree is an implied eligibility criterion. Thus, according to her, if a Diploma holder is found eligible for a particular post, a degree holder will necessarily qualify for appointment to that post. She has based her arguments on the Recruitment Rules dated 18th April 2023, which prescribe only the minimum qualifications. The Recruitment Rules dated 18th April 2023 set out the educational qualifications required for the posts of Junior Engineer (Civil) and Junior Engineer (Mechanical and Electrical). The Rules of 2023 are annexed by the Petitioner at Exhibit 'F'. The same reads as under:

(official translation)

“Exhibit-F
BRIHANMUMBAI MUNICIPAL CORPORATION
Revised Qualifications for the post of Junior Engineer (Civil) approved by the
Additional Municipal Commissioner (City) vide No.
Addl.MC/City/4392/D dated 18.04.2023.

(One) By Direct Recruitment (80% posts by Direct Recruitment)

1) The Candidates not already in the service of the Brihanmumbai Municipal Corporation (BMC) must not be over 38 years of age for the Open Category and not over 43 years of age for Backwards Class categories. There shall be no upper age limit for candidates already serving in the Brihanmumbai Municipal Corporation. Additionally, circulars regarding age relaxation issued from time to time by the Brihanmumbai Municipal Corporation / Government shall be applicable.

2) The candidates, after passing the S.S.C. examination or the examination equivalent thereto, must have acquired Diploma of 3 years in Civil or Construction Technology or Public Health Engineering.

(I) For appointment to the post of 'Junior Engineer' through direct recruitment, Candidates or Employees holding an Engineering Diploma must have obtained the diploma from only those Educational Institutions or Universities recognised for the Engineering Diploma course by the 'All India Council for Technical Education' (AICTE) or the 'Directorate of Technical Education' (DTE).

(II) In the case of qualifications equivalent to those mentioned at Serial No. 2 above, candidates holding diplomas from private autonomous colleges must submit an Equivalence Certificate certifying that the said Diploma is equivalent to the diploma recognised by the Directorate of Technical Education, prior to the issuance of the appointment order.

3) Candidates must have passed the Secondary School Certificate (Std. X) examination with

Marathi language subject or an equivalent examination (Higher/ Lower Level) having Marathi subject as per the criteria prescribed by the Maharashtra State Board of Secondary and Higher Secondary Education.

However, if the candidate does not fulfil the aforesaid requirement and is not eligible for exemption on any other ground, the candidate must have passed the Marathi Language Examination conducted by the Municipal Corporation Administration.

4) Candidates possessing the qualifications specified below shall be deemed to have passed the Computer Knowledge Qualification Examination:

A) Candidates who have passed Class 10th (SSC) or Class 12th (HSC) examinations with Computer and Information Technology-related subjects included in the curriculum recognised by the Maharashtra State Board of Secondary and Higher Secondary Education.

B) All Candidates holding any Degree or Diploma (all Engineering streams) recognised by the All-India Council for Technical Education, New Delhi (AICTE).

C) Candidates who have passed Class 10th or Class 12th examinations with Computer and Information Technology-related subjects included in the curriculum recognised by the Indian Certificate of School Education (ICSE).”

9. Ms Karnik primarily relied on Rule 4 (B) of the Rules. A straightforward reading of Rule 4 suggests that it presumes that any candidate who passes the 10th (SSC) or 12th (HSC) Examination with subjects related to Computer and Information Technology has computer knowledge. Similarly, candidates holding a degree or Diploma in engineering streams recognised by AICTE are deemed to possess computer knowledge. Since computer knowledge is an essential qualification for the position, Sub-rule 4 clarifies the basis for presuming this knowledge. Therefore, this sub-rule cannot be interpreted as extending eligibility to include degree holders. Hence, we cannot accept this proposition as formulated and canvassed by Ms Karnik.

10. Another limb of Ms Karnik’s argument is that the Model Recruitment Rules provide that the Recruitment Rules must prescribe minimum educational qualifications so that candidates with higher qualifications are not rendered ineligible. She has relied on paragraph 3(b)(II) of the Model Rules. The same reads as follows:

“3.b) By Nomination: -

(I)

(II) Educational Qualification: - The Educational Qualification required for the concerned post shall be specified.”

Note: - The minimum educational qualification required according to the duties and responsibilities of the concerned post shall be mentioned. Thus, the question of disqualification of candidates who have higher educational qualification than the minimum educational qualification prescribed shall not arise.”

11. A plain reading of the Note to the referenced Model Rules merely states that the Recruitment authority must specify the minimum educational qualifications in its Rules to avoid ambiguity about whether candidates with qualifications higher than the minimum prescribed qualifications are disqualified. This Rule therefore clarifies that the minimum qualifications must be directly related to the nature of the duties and responsibilities the candidate is expected to discharge. The mandate to specify such a minimum qualification is to rule out ambiguities and confusion among candidates with qualifications higher than required, so that the advertised post invites applications only from candidates with the specified qualification and a direct nexus to the job involved. Hence, this proposition is also untenable. In any case, Mr Apte submitted that the Model Rules have not yet been adopted by the Corporation and will apply only once a Recruitment authority adopts them with changes relevant to its requirements. On this basis, this proposition also does not aid Ms Karnik’s case.

12. Another proposition raised by Ms Karnik pertains to the contents of the Advertisement dated 25th November 2024 purporting to make degree holders eligible to apply for the post concerned. Ms Karnik relied on Clause 3.1.3 (B) of the Advertisement. The same reads as follows:

“3.1.3 Candidates possessing the qualifications specified below shall be deemed to have passed the Computer Knowledge Qualification Examination:

A)

B) All Candidates holding any Degree or Diploma (all Engineering streams) recognised by the All-India Council for Technical Education, New Delhi (AICTE)."

13. We have reviewed the import of Clause 3.1.3 (B), which also pertains to identifying candidates with computer knowledge. The interpretation of this clause has already been discussed in paragraph 9 above. We emphasize that these criteria are only for the deemed recognition of such candidates. We do not agree with Ms. Karnik's interpretation of this clause in the Advertisement.

14. Further, Ms Karnik relied on Clause 7 of the Advertisement, which provides that various concessions, terms and conditions issued by the Government from time to time through Government Resolutions are applicable to the Recruitment process and must be adhered to. Ms Karnik, drawing strength from this Clause, attempted to invoke the GR dated 9th September 2021 as applicable to the Recruitment process pursuant to the Advertisement dated 25th November 2024. This argument is also untenable, as the Government has framed the Recruitment Rules of 2023, which supersede the earlier Rules and now apply to the Recruitment process.

15. Ms Karnik relied on various decisions of the Supreme Court, including that in *Jyoti* (supra) and *Puneet Sharma* (supra), and a decision of this Court in *Shekhar More* (supra). Notwithstanding the arguments raised by Ms Karnik and dealt with hereinabove, the issue involved in the present matter is no longer *res integra*. The Supreme Court in *Firoz Mansuri* (supra) has comprehensively dealt with this issue and laid down the law in that regard. The Supreme Court while deciding *Firoz Mansuri* (supra) has dealt with the prior decisions in *Jyoti* (supra), *Puneet Sharma*

(supra), *State of Punjab Vs. Anita*⁷ and *Zahoor* (supra). The Petitioners' submissions in *Firoz Mansuri* were identical to Ms Karnik's submissions in the present petition. It was contended by the Petitioners therein that Rule 6(1) of the Cadre Rules prescribed *minimum* educational qualification as diploma in Pharmacy and that such prescription cannot be construed as an essential qualification so as to exclude candidates possessing higher qualifications in the same discipline. The Petitioners therein had also submitted that the expression 'minimum' must be understood contextually as a threshold or cut-off requirement and ordinarily cannot be used to debar recruitment of candidates with higher qualifications, particularly in the absence of an express exclusion. Therefore, the question arose whether candidates holding Bachelor or Master of Pharmacy degrees, without a Diploma in Pharmacy, satisfy the minimum eligibility criteria prescribed for appointment to the post of Pharmacist under the relevant Rules.

Answering this question, the Supreme Court held as follows:

"61. Therefore, it has been consistently recognised that it is for the employer to determine and decide the relevancy and suitability of qualifications. The power of judicial review in matters of recruitment is limited to examining legislative competence, arbitrariness or violation of fundamental rights, if any. Courts cannot rewrite service rules, determine equivalence of qualifications, or substitute their own assessment for that of the employer. The scope of judicial review in matters of public employment does not extend to questioning the State's wisdom or policy in prescribing the minimum eligibility requirements for a public post.

62. Qualifications are prescribed keeping in view the needs and interests of an institution, an industry or an establishment, as the case may be. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The assessment of the expediency, advisability or utility of such prescription of qualifications do not warrant intervention of the Courts unless the same are shown to be perverse. However, at the same time, the employer cannot act arbitrarily in prescribing qualifications for posts.

64. Tested on the aforesaid principles, the prescription of eligibility criteria of

⁷ (2015) 2 SCC 170.

10+2 with Diploma in Pharmacy by the State cannot be said to be arbitrary or irrational. The State has articulated its rationale with reference to differences in course structure and the comparatively limited avenues of employment available to diploma-holders.

66. Merely because there is a provision for lateral entry of diplomates in the second year of B. Pharma course, it does not render the degree an in-line higher qualification. A qualification in one stream does not presuppose a qualification in another. Furthermore, the diplomates have limited employment avenues as compared to degree-holders. Thus, the decision of the State in making possession of a Diploma an essential qualification for appointment cannot be said to be arbitrary. The State has merely identified a narrower catchment of candidates it considers most suitable for a particular purpose, from within the larger pool registered pharmacists.

67. This policy rationale finds reinforcement in a decision by the Patna High Court in Bihar State Power (Holding) Co. Ltd. v. Md. Asif Hussain, wherein it was held that: (SCC OnLine Pat para 33)

“33..... it was a matter of policy to offer the employment only to diploma-holders who have no avenues that are available to Degree-holders. The Degree-holders have job opportunities on the post of Assistant Engineers, Executive Engineers and other posts which are not available to diploma-holders and they are confined only to offer themselves for the post of Junior Engineers under the scheme of the conditions of service of the appellant company. Thus, the decision to offer the post of Junior Electrical Engineer to only diploma-holders does not amount to such prohibition against Degree-holders that may allow us to invoke Articles 14 and 16 of the Constitution of India in favour of the Degree-holders who still have other job opportunities.” (emphasis supplied)

68. Additionally, there is no absolute exclusion of graduate or postgraduate degree-holders. They remain eligible, provided they possess the essential qualification of Diploma in Pharmacy. No disproportionate harm is caused to them so as to attract Articles 14 or 16 of the Constitution.”

16. Following the decision in *Firoz Mansuri* (supra), this Court in the matter of *Vivek Onkar Chavan* (supra) was not persuaded to accept the contention that minimum specified qualification impliedly includes a higher qualification. This Court, in *Vivek* (supra), recorded its clear opinion that no illegality can be attributed to a recruitment process merely by excluding degree-holder candidates where the specified minimum qualification was declared to be a Diploma certification.

17. Thus, considering the facts and the settled legal position, we have no hesitation in holding that the State, as an employer, is well-equipped to determine

the desirable qualification for a particular post. The Court cannot go into the question of whether the desirable qualification is at par with the prescribed minimum and essential qualification. The Court cannot lay down conditions of eligibility, let alone.

18. In view of the foregoing discussions, we are of the clear opinion that there is no illegality or infirmity in the selection process. Accordingly, the proceedings do not call for any interference. The petition stands rejected.

19. We are informed that, despite the Supreme Court having stayed the interim order dated 11th December 2024, passed by this Court, which permitted graduates to apply for the said posts subject to the outcome of the present petition, Respondent No.1 – the Corporation has refrained from proceeding with the recruitment process as a precautionary measure. Since we have dismissed the present petition, the Corporation is now at liberty to complete the recruitment process forthwith.

20. In view of the dismissal of the present petition, all interim applications are disposed of. No costs.

21. At this stage, a request for stay of the order is made. However, having regard to the facts and circumstances of the case, the request for stay is rejected.

(DR. NEELA GOKHALE, J)

(G. S. KULKARNI, J.)

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