

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1510 OF 2014

Ashok S/o Laxman Nikale
Age- 37 Years, Occu: Service,
R/o. Mategaon, Post. Kasabkheda,
Tq. Kannad, Dist. Aurangabad.

..PETITIONER

VERSUS

1. Dr. Babasaheb Ambedkar Marathwada University, Aurangabad
Through its Registrar
2. His Excellency The Hon'ble Chancellor,
Dr. Babasaheb Ambedkar Marathwada University,
Aurangabad, Rajbhavan, Malbar Hill,
Mumbai.
(Respondent No.2 deleted as per
Courts order dated 20.02.2014)
3. The Secretary,
General Administration Department,
Mantralaya, Mumbai.
4. Shri. Narayan Dadasaheb Pawar
Age : Major, Occ : Service,
R/o C/o R-1.
5. Shri. Pandit Khanduji Salunke
Age : Major, Occ : Service,
R/o C/o R-1.
6. Shri. Satish Baburao Jagdale
Age : Major, Occ : Service,
R/o C/o R-1.

7. Shri. Vinod Jagannath Sonawane
Age : Major, Occ : Service,
R/o C/o R-1.

R-4 to \$-7 to be served
through R-1.

RESPONDENTS

...
Mr. Ajay S. Deshpande, Advocate for the Petitioner
Mr. M.M. Nerlikar, AGP for the Respondent – State
Mr. S.S. Thombre, Advocate for Respondent No.1
Mr. P.S. Chavan, Advocate for Respondent Nos. 4 to 7.
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**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

Reserved on : 29th April, 2015
Pronounced on: 08th May, 2015

JUDGMENT: [Per S.S.Shinde, J.]:

This Petition takes exception to the selection process adopted by Respondent No.1 for filling up the posts of Store Keeper, advertised vide Exh.A to the Petition. According to the learned counsel appearing for the petitioner, the selection process conducted by Respondent No.1 is contrary to the mandate of the Hon'ble Apex Court and by giving go by to the merit

criteria. It is submitted that, the petitioner, who participated in selection process for the appointment on the post of Store Keeper, secured 45 marks out of 70 marks. It is submitted that, the petitioner stood first in merit list in written examination. It is submitted that, though it was not provided in the Government Resolution to have the oral interview, contrary to Government Resolution dated 19th October, 2007 issued by the General Administration Department, Government of Maharashtra, oral interviews were conducted and marks were assigned to such oral interview. Since petitioner has secured highest marks and there was no question of conducting interviews in view of the Government Resolution dated 19th October, 2007, referred hereinabove, the petitioner ought to have been appointed on the post of Store Keeper.

2. It is submitted that, during oral interview the petitioner has given satisfactory answers. The learned counsel appearing for the petitioner invited our

attention to the questions asked to him and answers given by him in oral interview and submits that, Respondent No.1 so as to accommodate Respondent Nos. 5 and 7 and not to appoint the petitioner on the post of Store Keeper, had given three and half marks out of 20, though the petitioner satisfactorily replied the questions asked to him. It is submitted that, under Right to Information Act, he sought information about the questions asked to him and answers given by him and accordingly, the same information is placed on record. It is submitted that, the petitioner was over age on the date of application is devoid of any substance and good for being rejected. It is submitted that, the post of Store Keeper is ministerial cadre post and therefore, is liable to be filled in on the basis of the marks secured by the candidates in the written examination and no interviews are to be conducted. Merely because the petitioner participated in interview, Respondent No.1 cannot justify its action of holding interviews, although such interviews have specifically

been prohibited under Government Resolution dated 19th October, 2007. It is submitted that, the powers given to the Respondents are not absolute and unfettered but are channelized by the policy decision of the Government, especially when such policy decisions are subsequent in point of time.

3. It is submitted that, as a matter of fact, His Excellency the Chancellor under Government Resolution dated 31st January, 2009 has specifically directed to ensure that, the provisions of the Maharashtra Universities Act, 1994 and various Government Resolutions promulgated by the Government from time to time, and observed and implemented by the Universities, and therefore, Respondent No.1 was obliged to follow the relevant provisions of the Act and also the Government Resolutions issued from time to time by the Government of Maharashtra. At the cost of repetition, the learned counsel appearing for the petitioner

submits that, holding of interviews itself was not contemplated in the selection process for the posts falling in ministerial cadre, the entire exercise becomes misplaced and irrelevant and is liable to be quashed. Merely because high placed officials were members of the interview committee, the selection cannot be saved as conducting of interviews itself is prohibited specifically under the Government Resolution dated 19.10.2007. It is further submitted that, other candidates have secured more marks than the petitioner because excessive marks were given to them in the interview and excessively less marks given to the petitioner in interview. The petitioner was given less than 20% marks, whereas the selected candidates have given more than 60% marks. Precisely to avoid such allocation of disproportionate and unreasonable marks, the Government took a policy decision not to provide any marks for oral interview under its policy decision dated 19th October, 2007.

4. It is submitted that, there are interpolations in the forms of Respondent Nos. 4 and 5 which were made manually. Thus the petitioner was at loss to know as to how Respondent Nos. 4 and 5 could manually make insertions in the application forms, which they had filled in/submitted 'on-line'. Those who are blue-eyed, had a free hand in inserting and withdrawing documents on record, which they had submitted, and this is how, the entire selection process is tainted with extraneous considerations and malafide motives, warranting intervention of this Court to subserve the ends of justice. It is submitted that, Respondent No.6 is claimed to have experience as Store Keeper in Mandar Industries, M.I.D.C., Waluj, Aurangabad, however, he was prosecuting Post Graduation i.e. M.Com as also M.B.A. at the relevant time. The ESIC contribution of the said unit for the years 2009-2010 and 2010-2011 would reveal that, there was none working by name Shri Satish Baburao Jagdale in the said Industrial Unit. Therefore, relying

upon the pleadings/grounds taken in the Petition and also in Rejoinder Affidavit and annexures to the Petition, the learned counsel appearing for the petitioner submits that, the Petition may be allowed.

5. On the other hand, the learned counsel appearing for Respondent No.1, relying upon the affidavit in reply filed on behalf of Respondent No.1 submits that, the petitioner did participate in the selection process, and therefore, it is not open for the petitioner to challenge the same. It is submitted that, in the advertisement, age criteria is also prescribed as per the general conditions 2.1 for open category. The age limit for open category is 33 years and for reserved category, it is relaxed for 5 years and it was specifically stated that, the minimum age limit of 18 years and maximum age limit 30 years as on 14.06.2010 to be considered, and though the petitioner belongs to the S.C. category but, as there is no post reserved for the S.C. category, he had applied from the open category as

4 posts are advertised for open category. Therefore, on the date of application, the petitioner's age was 33 years 11 months and 11 days, and therefore, he was over age to be applied from the open category. It is submitted that, the University has power to prescribe qualifications and eligibility criteria for the appointment of candidates and in pursuant thereto, the management council has prescribed the examinations of 100 marks and out of that, 70 marks are for written examinations, 5 marks for educational qualifications, 5 marks for experience and 20 marks for the interview and this procedure was already published on the website of the university.

6. It is submitted that, Management Council has exercised its powers under Section 28(t) of the said Act, and therefore, no infirmity can be attributed to the procedure followed by the University. It is submitted that, the Committee has recommended the candidates, who have secured more marks in selection, and

therefore, there is no substance in the contention of the petitioner that, less meritorious candidates have been appointed on the post of Store Keeper.

7. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioner and the learned counsel appearing for respondent no.1. With their able assistance, we have perused the pleadings/grounds taken in the Petition, annexures thereto, affidavit in reply filed on behalf of Respondent No.1 and Respondent Nos. 4 to 7.

8. It is true that, the petitioner has secured 45 marks out of 70 in the written examination and Respondent Nos. 4 to 7 have secured less marks compared to the petitioner. The crucial question is whether, Respondent No.1 was justified in conducting the oral interview though there was no provision according to the petitioner to conduct such oral

interview in view of the Government Resolution dated 19th October, 2007. Upon careful perusal of the reply filed by Respondent No.1 and also Respondent Nos. 4 to 7 and in particular, para 8 of the said reply, it is abundantly clear that, the candidates, who participated in the selection process were made aware about the oral interview and such information was published on the website of the University, and that, the Management council has prescribed the examinations of 100 marks and out of that 70 marks are for written examination, 5 marks for educational qualification, 5 marks for experience and 20 marks for the interview. The petitioner did participate in the selection process, and therefore, now it is not open for the petitioner to contend that, oral interviews were not contemplated.

9. It is well established by this time that, once the candidate participates in the selection process, it is not open for him to question the same. In case of the petitioner, it is true that, the marks assigned in the oral

interview to the petitioner are very less compared to other candidates and there is room for doubt about assessment of the petitioner in the oral interview. However, once selection process is over, which was undertaken in the year 2012 and selection process has been carried out by the Committee consisting more than one member, such creation of doubt itself would not nullify the entire selection process by dislodging the candidates selected pursuant to such selection process. So far the experience of Respondent Nos. 4 and 5 working in particular establishment and allegations that, Respondent Nos. 4 and 5 were allowed to manually add the documents or correct the documents is concerned, it would lead to disputed questions of facts and it is not possible for this Court to adjudicate the said contention raised by the petitioner.

10. So far, dispute about the age is concerned, we leave it open to the parties to agitate the same in the appropriate proceedings and we do not approve the

contention of the Respondents that, since the petitioner participated in the selection process for the post of Store Keeper, which is meant for open category, and therefore, his age on the date of application should not have been more than 33 years. We have our own reservations about such contentions of the Respondents. However taking overall view of the matter, in our considered view, the selection process, which was initiated in the year 2012 and culminated and resulted into appointment of various candidates, after their selection by duly constituted/appointed Selection Committee, we are not inclined to accede to the prayer of the petitioner to cancel the selection process. The petitioner did participate in the selection process and had knowledge that, the petitioner has to appear for written examination and also to the oral interview, and therefore, at belatedly it is not open for him to contend that, the said process of oral interview adopted by Respondent No.1 was contrary to spirit of Government Resolution dated 19th October, 2007. It was possible for

the petitioner to take exception to such conducting of oral interview at the stage of issuance of advertisement. We find considerable force in the arguments of the learned counsel appearing for Respondent No.1 that, section 28(t) of the said Act enables the answering respondent to lay down by the statutes the procedures for appointment of officers and other employees of the university, qualifications, mode of recruitment, pay scales, terms and conditions of service including conduct, discipline and their duties.

11. In that view of the matter, in our considered view, no case is made out to entertain the Petition. Therefore, the Petition stands rejected.

Sd/-

(**P.R. BORA, J.**)

Sd/-

(**S.S. SHINDE, J.**)

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SGA/-