

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 11136 OF 2014

SHRIKANT SAINATH PATAWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Talekar S.B.

AGP for Respondents: Mr.K.G.Patil.

Advocate for Respondent No.3 : Mr. Gaddime Arvind N.

Advocate for Respondent No.4 : Mr.M.B. Bharaswadkar.

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CORAM : **S. V. GANGAPURWALA and
V. L. ACHLIYA, JJ.**

DATE : 02nd March, 2015.

PER COURT:

1 Mr.Talekar, learned counsel for the Petitioner submits that the Petitioner had submitted the experience certificate and licence when the Petitioner had applied for the post of driver pursuant to the advertisement issued by Respondents dated 15th March, 2014. The Petitioner after undergoing the rigorous selection process, was selected. The Petitioner had not suppressed any fact. The Petitioner was appointed by the Respondents. Pursuant to the appointment order, the Petitioner joined the service. Worked for 1 year and 8 months. After working for 1 year and 8 months, present Respondent No.4 challenged the appointment of the Petitioner. The Tribunal did not consider the experience certificate filed on record and only on the ground that the said experience certificate

is in respect of a period prior to the licence, has discarded the same. At the time when the original application was filed, the Petitioner had acquired the necessary experience, even after the date of licence. The learned counsel further submits that there is no complaint as against the Petitioner about his skill of driving nor the Petitioner can be faulted for his selection. According to the learned counsel, even the wait list would be in progress for 1 year. The terms of the advertisement are clear. The Tribunal directed the authority to appoint Respondent No.4 though the petition was filed after 1 year and 8 months when the wait list already stood lapsed.

2 Mr. Bharaswadkar, learned counsel for Respondent No.4 submits that as the Petitioner was ineligible to be appointed and Respondent No.4 was first in the wait list, Respondent No.4 would naturally be entitled to the appointment. The Tribunal has rightly considered the said aspect. According to the learned counsel, no illegality has been committed by the Tribunal in passing the impugned order.

3 We have heard the learned Additional Government Pleader also.

4 As per the terms of advertisement, the person applying for the post of driver, should have 3 years driving experience. Admittedly, the licence of light motor vehicle has been issued to the Petitioner on 5th January, 2010 and that of heavy motor vehicle issued on 5th April, 2011. Naturally,

the Petitioner was entitled to drive the vehicle only after the licence was issued to the Petitioner. Before the licence is issued to the Petitioner, the Petitioner was ineligible to drive the vehicle on road. The experience certificate of a period prior to issuance of licence, certainly cannot be considered. The Tribunal has rightly observed the said fact. From the date of licence till the date of advertisement, the Petitioner cannot be heard to say that he has got experience of 3 years of driving. In that regard, the order of the Tribunal cannot be faulted.

5 We have perused the advertisement. As per clause 9.2 of the advertisement, the select list was to operate only for 1 year or till the next selection list is prepared, whichever is earlier. The petition itself is filed after 1 year and 8 months of the issuance of appointment order in favour of the Petitioner. Naturally, the wait list came to an end on lapse of 1 year itself. The same is lapsed. As such, the order could not have been directly issued to appoint Respondent No.4. In that case, the Tribunal ought to have directed fresh selection process.

6 In the result, we pass the following order:

- I. The writ petition is partly allowed to the extent of directions given in favour of Respondent No.4.
- II. As we are not upsetting the order of the Tribunal to the extent of clause (B) of the operative part of the

impugned order of the Tribunal, it is for the authorities to consider whether now they would continue the Petitioner in service till the fresh selection process is initiated.

III. Clauses (C) and (D) of the operative part of the impugned order of the Tribunal, are quashed and set aside.

IV. We hope and trust that the Respondents shall conduct selection process, expeditiously.

V. Accordingly, the writ petition is disposed of. No costs.

[V. L. ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]

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