

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1386 OF 2014

Khumchand Ganpat Divate

... Petitioner

Vs.

The State of Maharashtra & Ors.

... Respondents

Mr.Narendra Bandiwadekar for the Petitioner

Ms.I.K. Calcuttawala, Assistant Government Pleader, for Respondent Nos.1 to 4

Mr.A.G. Kothari for Resp. No.5

**CORAM: SMT. VASANTI A. NAIK &
SHRI C.V. BHADANG, JJ.**

DATE: 15th JANUARY, 2015

ORAL JUDGMENT (PER C.V. BHADANG, J.):

The petitioner challenges the order dated 17.12.2013 issued by respondent No.3 refusing to approve the appointment of the petitioner as a full time teacher in Mechanical Technology.

2. The brief facts of the case are that on 25.7.2010, Respondent No.3 permitted Respondent No.5 to fill up various posts of full time teachers. In pursuance thereof, Respondent No.5 published an advertisement on 13.4.2011. In response thereto, the petitioner had applied for the post of

full time teacher in Mechanical Technology. The petitioner is holding a Diploma in Mechanical Technology. The petitioner was selected and was issued an appointment order dated 14.5.2011. The petitioner joined the service on 15.6.2011. That appointment was on probation period of 2 years against a vacant post carrying a regular payscale. It appears that Respondent No.3 had approved the appointment of the petitioner. Further, according to the petitioner, on 20.10.2011, after scrutiny, Respondent No.3 had specifically found that due selection procedure was gone into and was followed by the management and the appointment of the petitioner was made as per Rules. Accordingly, regular salary of the petitioner was also released. The petitioner satisfactorily completed the period of probation on 14.6.2013 and thus, assumed the status of a permanent employee within the meaning of section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service Regulations) Act, 1977 (for short, 'Act of 1977'). However, on 24.10.2013, Respondent No.3 issued a show-cause notice to the management, the headmaster and the petitioner, asking them to show cause, as to why the initial appointment of the petitioner should not be cancelled. This was presumably on the ground that the advertisement was defective as it prescribed the age limit of 38 years for an aspirant to apply for the post. According to Respondent No.3, Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for

short, 'Rules of 1981') did not prescribe any such age limit for applying to the post. The petitioner remained present and showed cause which did not find favour with Respondent No.3. As such by an order dated 17.12.2013, Respondent No.3 refused to grant approval to the regular appointment of the petitioner. Feeling aggrieved, the petitioner has approached this Court.

3. Heard Mr.Bandiwadekar, the learned Counsel for the petitioner, Ms.Calcuttawala, the learned Assistant Government Pleader, for Respondent Nos.1 to 4 and Mr.Kothari, the learned Counsel for Respondent No.5.

4. It is submitted by Mr.Bandiwadekar, the learned Counsel for the petitioner, that the advertisement and the consequent appointment cannot be said to be bad for the reason that the advertisement prescribed an outer age limit. It is submitted that such a condition being insisted upon cannot be in derogation of the provisions as contained in the Rules of 1981. The learned Counsel would submit that admittedly, the petitioner was 29 years of age and was thus, satisfying the criteria of the age limit as insisted upon. He submitted that this is not a case wherein some of the similarly situated aspirants were precluded from applying on account of any such condition. He, therefore, submitted that the impugned order cannot be sustained.

5. Ms.Calcuttawala, the learned Assistant Government Pleader, has supported the impugned order. The learned Assistant Government Pleader has taken us through the Rules of 1981 in order to submit that in respect of a Secondary/Higher Secondary school, the Rules do not prescribe any outer age limit for appointment of the teaching staff. She, therefore, submitted that the advertisement could not have been in derogation of the said provisions. It is, therefore, submitted that the impugned order is legal and proper.

6. Mr.Kothari, the learned Counsel for Respondent No.5, has supported the petitioner. It is submitted that there was nothing wrong in prescribing the age limit and in the absence of a case that a candidate was selected, who did not satisfy the requirement of the age limit as insisted upon, the advertisement and the consequent appointment of the petitioner cannot be said to be illegal.

7. We have considered the rival circumstances and submissions made. Indeed, the Rules of 1981 do not prescribe for any outer limit. However, the question is whether the advertisement which prescribes such an age limit can be said to be against or in derogation of the provisions as contained in the Rules of 1981. In our considered opinion, the answer has to be in the negative. This is not a case wherein the Rules prescribe for a

particular maximum age and the advertisement is in derogation thereof. What the advertisement essentially does is, prescribe an outer age limit when the Rules do not prescribe any such limit. It is nobody's case that the petitioner was otherwise ineligible for being appointed to the post of a full time teacher in Mechanical Technology. Admittedly, the petitioner also satisfies the criteria as to the age as prescribed in the advertisement. Thus, this is a case where the petitioner is found to be complying with the requirements of the rules as to the eligibility and the requirement as to the outer age limit as prescribed in the advertisement. The advertisement which prescribes some additional conditions, which are not otherwise in derogation or in conflict with the rules, would not be bad for any such reason. Thus, we find that the impugned order which is solely based on the advertisement being defective, for the reasons as aforesaid, cannot be sustained.

8. Accordingly, the petition is allowed. The impugned order is hereby quashed and set aside. Respondent No.3 is directed to grant approval to the appointment of the petitioner. Rule is made absolute in the aforesaid terms with no order as to costs.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)