

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

WRIT PETITION NO.3977 OF 2014

Sidharth s/o. Maroti Gaikwad,
Age 41 years, Occ. Teacher,
r/o. Varma Nager, Policy Colony,
Parbhani,

..Petitioner

Vs.

1. The State of Maharashtra,
The Secretary, Director of Education,
Mantralaya, Mumbai – 32

2. Dr.Babasaheb Ambedkar Marathwada
University, Aurangabad,
through its Vice Chancellor,

3. Dr.Babasaheb Ambedkar Marathwada
University, Aurangabad,
Through its Chairman of Committee

4. Yogesh Prakash Surwade,
Quarter No.C-2, K.N.P. College
of Veterinary Science,
Shirwal, Dist. Satara
Junior Library Assistant,
Library Department,
Dr.Babasaheb Ambedkar Marathwada
University, Aurangabad

..Respondents

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Mr.R.O.Awsarmol, Advocate for petitioner

Mr.S.D.Kaldate, AGP for respondent no.1

Mr.S.G.Chapalgaonkar, Advocate for respondent nos.2
and 3

Mr.B.S.Shinde, Advocate i/b. Mr.V.P.Latange, Advocate
for respondent no.4

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**CORAM : S.S. SHINDE AND
SANGITRAO S.PATIL, JJ.**

RESERVED ON : AUGUST 08, 2016

PRONOUNCED ON: AUGUST 22, 2016

JUDGMENT (PER SANGITRAO S. PATIL, J) :

Heard.

2. Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

3. The petitioner has challenged selection of respondent no.4 to the post of Junior Library Assistant and further sought for a direction for his getting appointed to the said post.

4. In response to the advertisement issued by respondent no.2 on 06.03.2012, the petitioner and respondent no.4 applied for the post of Junior Library Assistant reserved for the Scheduled Caste category. According to the petitioner, he was qualified for the said post since he was possessing educational eligibility as well as experience of five years in the library serving more than thousand members. The petitioner passed written test and appeared for the interview. However, he was not selected for the post of Junior Library Assistant and on the contrary, respondent no.4 came to be selected for the said post. According to the petitioner, respondent no.4 is not possessing the requisite experience of five years after obtaining the

decree in Library Science. Therefore, respondent no.4 was not eligible for being selected for the said post. The petitioner, therefore, prayed that the selection of respondent no.4 for the said post may be set aside and he (the petitioner) may be ordered to be appointed to the said post.

5. The learned Counsel for the petitioner, relying on the averments in the petition and the rejoinder filed by him, submits that the requisite experience of five years in any library serving more than thousand members, is required to be possessed by a candidate after obtaining the basic qualification of Graduation in Library Science. He submits that respondent no.4 passed H.S.C. in the year 2003, completed graduation in Arts in 2008 and obtained the Degree in Library Science in 2009. Respondent no.4 is shown to have served as Library Assistant from 01.04.2004 to 31.10.2006 and from 14.11.2006 to 10.04.2012. According to him, respondent no.4 should have gained the requisite experience of five years after obtaining the Bachelor's Degree in Library Science in the year 2009. On the other hand, the petitioner obtained the Degree in Library Science in the year 1997. He worked as a Librarian from 29.12.2003 to

04.08.2006 and then, as a Junior Lecturer in Library Science from 22.06.2007 to 15.09.2009. The petitioner was given additional charge of working in the College Library. Thus, according to him, the petitioner was possessing the requisite experience of five years after obtaining the Degree in Library Science. According to him, the candidature of the petitioner has been wrongly rejected by respondent no.2 and respondent no.4 has been wrongly selected and appointed to the post of Junior Library Assistant. He, therefore, prays that the appointment of respondent no.4 as Junior Library Assistant may be cancelled and the petitioner may be ordered to be appointed to the said post.

6. Respondent nos.2 and 3 as well as respondent no.4 file affidavits-in-reply and strongly opposed the petition. The sum and substance of the contentions raised in their replies is that considering the educational qualification, experience and the marks obtained by the petitioner and respondent no.4 in the written test as well as in the interview, respondent no.4, having scored more marks than that of the petitioner, came to be selected and appointed to the post of the Junior Library Assistant.

7. The learned Counsel for respondent no.4 submits that neither in the recruitment rules nor in the advertisement, there was mention that the experience of working in any library serving more than thousand members, was required to be gained by the candidate after possessing the requisite educational qualification. Therefore, the contention of the petitioner, that the experience gained by respondent no.4 prior to obtaining the basic educational qualification was not liable to be considered, cannot be accepted.

8. The learned Counsel for respondent nos.2 and 3 also supports the above-stated contention of respondent no.4. Furthermore, relying on the ratio laid down in the case of **Madras Institute of Development Studies and anr. Vs. K.Sivasubramaniyan and ors., (2016)1 SCC 454**, he submits that since the petitioner participated in the selection process without any demur as to the conditions mentioned in the advertisement about having experience of five years either prior to or after obtaining the basic educational qualification, the petitioner cannot challenge the selection of respondent no.4 on the ground which is not mentioned in the said advertisement. The

learned Counsel for respondent nos.2 and 3 as well as respondent no.4, therefore, submit that the Writ Petition may be dismissed.

9. As seen from the documents produced on record, respondent no.4 completed graduation in Arts with English Subject in 2008, obtained the Degree of Bachelor of Library Science in April, 2009, Master's degree in Library Science in the year 2011 and also B.Ed. in 2011. He worked as a Library Assistant in Dnyanvardhini Sarvajanic Vachanalay, Deopur, Dhule from 01.04.2004 to 31.10.2006, i.e. for 31 months, and in K.N.P. College of Veterinary Science, Shirval, Dist. Satara from 14.11.2006 to 10.04.2012, i.e. for 65 months. As against this, the record shows that the petitioner obtained the Degree of Bachelor in Science in 1995, Bachelor in Library Science in 1997, Master's Degree in Arts in Hindi in 1999 and the Degree of Master in Library Science in 2002 and that of B.Ed. in 2010. He served as a Librarian in Navgan Shikshan Sanstha Rajuri's Arts and Commerce College from 29.12.2003 to 04.08.2006, i.e. for 41 months, and as a Lecturer in Bharat-Bharati High School, Karegaon, Dist. Parbhani, from 22.06.2007 to 15.09.2009. The total marks obtained by the petitioner

in the written as well as oral tests out of 100 are 53.20, while that of respondent no.4 are 58.90. Considering the experience at the credit of respondent no.4 and the marks obtained by him, he being more meritorious than the petitioner, came to be selected for the above-mentioned post.

10. The advertisement produced on record shows that besides the requisite educational qualification (i.e. B.Lib.), the candidate must have five years experience in any Library serving more than thousand members. There is no mention that such experience has to be obtained by a candidate after possessing the basic educational qualification i.e. Graduation in Library Science. The recruitment rules also do not contain the said condition. In the absence of such condition, either in the recruitment rules or in the advertisement, the petitioner would not be justified in attaching such condition at his own in respect of the requisite experience and contend that the experience gained by respondent no.4 prior to obtaining the requisite educational qualification is liable to be ignored. Moreover, he did not challenge the above-mentioned condition of experience and participated the selection

process without demur. If he wanted that the experience to be counted for the above-mentioned post ought to have been gained after possessing the requisite educational qualification, he should have challenged the advertisement on that count. Since he did not challenge the same, in view of the judgment in the case of **Madras Institute of Development Studies and anr.** (supra), he cannot challenge the said term of the advertisement after finding himself unsuccessful in the selection process.

11. In the above circumstances, we do not find any force in the Writ Petition. It is liable to be dismissed. In the result, we pass the following order:-

O R D E R

- (i) The Writ Petition is dismissed.
- (ii) Rule is discharged.
- (iii) No costs.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]

kbp/