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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.5824/2015

1] State of Maharashtra,
Through its Secretary,
Water Resources Department,
M.S.Mantralaya, Mumbai-32.

2] The Chief Engineer,
(Water Resources),
North Maharashtra Region, Nasik.

3] The Superintending Engineer,
(GATE), Central Design
Organization and Zonal Officer,
Nasik Zone, Dindori Raod, Nasik.

..Petitioners..

Versus

Vishal S/o Apasing Pawara,
Age:30 years, Occu.Nil,
R/o: 52, Tirupati Nagar,
Near GTP Stop, Deopur
Dhule, Dist.Dhule.

...Respondent..

.....

Smt.M.A. Deshpande, AGP for petitioners.
Shri Avinash S. Deshmukh, Advocate for respondent.

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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 19.10.2016

ORAL JUDGMENT (Per S.V. Gangapurwala, J.) :

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1] Heard learned counsel for the parties. Rule. Rule made returnable forthwith and with the consent of learned counsel for the parties, the petition is taken up for final disposal at this stage.

2] The present petitioners issued an advertisement bearing No.1/2013 for filling in posts from various cadres. Fifteen posts were meant for ST category. The respondent had applied for the post of Civil Engineering Assistant from ST category. The respondent was selected securing 100 out of 200 marks. After the present respondent was selected, the petitioners issued a communication directing the present respondent to produce either degree or diploma certificate as prescribed in the advertisement, failing which, he would be declared ineligible for the post of Civil Engineering Assistant. The petitioners did not issue appointment order on the ground that the present respondent did not possess the necessary qualification as laid down in the advertisement. Aggrieved thereby, the present respondent filed Original Application No.282/2014 before the Maharashtra Administrative Tribunal, Aurangabad. The Maharashtra Administrative Tribunal allowed the said

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application directing the present petitioners to hold the present respondent eligible for the post of Civil Engineering Assistant. The petitioners have assailed the said judgment in the present writ petition.

3] The learned AGP submits that the Tribunal misdirected itself while considering the eligibility of the present respondent *de hors* the eligibility mentioned in the advertisement. The advertisement specifically required that a person applying for the post of Civil Engineering Assistant should possess either diploma from State Technical Institute or B.E. It was necessary for the person applying to possess either degree or diploma certificate. The respondent was possessing a certificate of construction technology and not a diploma or degree as was required. The said advertisement was in consonance with the Government resolution issued by the State on 12.8.2013. The learned AGP further states that when the Government resolution was holding the field and the terms of the advertisement also were abundantly clear, the respondent having participated in the selection process pursuant to the advertisement could not thereafter turn around and contend that the qualification required as per

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the advertisement is improper and not as per Rules. A person who has participated in the selection process cannot subsequently challenge the said advertisement. The learned AGP relies on the judgment of the Apex Court in the case of *Ramana Dayaram Shetty v. International Airport Authority of India* reported in (1979) 3 SCC 489. The learned AGP further submits that even the application submitted by the respondent pursuant to the advertisement was misleading. The respondent in the application represented that he possesses the diploma when in fact he does not possess. If he would have stated his real qualification, the respondent would not have even been held eligible to participate in the selection process.

4] Learned counsel for the respondent - original applicant submits that the advertisement issued laying down qualification as degree or diploma was not in consonance with the Rules prevailing. As per Rules, the certificate, which the respondent was possessing, was the required qualification and if the advertisement prescribed some other qualification than the one required as per the Rules, then the qualification required as per the Rules will have to be read into the said

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advertisement. The learned counsel relies on the judgment of the Apex Court in the case of *Indian Institute of Technology & another v. Paras Nath Tiwari & others* reported in **(2006) 9 SCC 670**. The learned counsel further submits that the State cannot issue resolution contrary to the rules. For the said purpose, he relies on the judgment of the Apex Court in the case of *Punjab Water Supply and Sewerage Board v. Ranjodh Singh & others* reported in **AIR 2007 Supreme Court 1082**. The learned counsel further submits that after having participated in the selection process, the respondent was selected.

5] Once having found that the respondent was possessing necessary qualification as required by the Rules, then there was no impediment to issue appointment order to the present respondent. The Tribunal has not committed any error in passing the impugned order.

6] With the assistance of the learned counsel for the respective parties, we have gone through the judgment delivered by the Tribunal so also have considered various Government resolutions and the Rules.

7] There cannot be any dispute with the proposition that the executive instructions issued in the shape of

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Government resolutions cannot override the Rules framed, which have a statutory flavour. The Rules as existing on the date when the advertisement was issued did not mandate a candidate applying for the post of Civil Engineering Assistant to possess a degree or diploma. Even a person possessing a certificate of Construction Supervisor was qualified on the said date to apply. However, the advertisement prescribed a higher qualification than that of diploma or degree. No doubt, the respondent had participated in the selection process pursuant to the advertisement and did not challenge the terms of the advertisement prior to participating in the selection process. We have also gone through the judgment of the Apex Court in the case of Indian Institute of Technology, referred to supra, which states that if the advertisement had prescribed for some different criteria than the one laid down in the Rules, the criteria laid down in the Rules will have to be read down in the advertisement.

8] We would have considered the case of the respondent in this regard, however, the learned AGP has placed on record the application filed by the present

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respondent pursuant to the advertisement. In the said application, the respondent had represented that he possesses the diploma certificate and as per the advertisement, he is qualified. It is fairly stated by the learned counsel for the respondent that the respondent does not possess the said qualification. In case, the respondent had submitted the genuine qualification, which he possessed in the application, he would not have been called for participating in the selection process. In the light of this fact, it would not be possible to uphold the judgment of the Tribunal. Naturally the other persons who were not possessing the diploma or degree were precluded from participating in the selection process for the post of Civil Engineering Assistant in view of the terms laid down in the advertisement and the respondent cannot take the advantage of his own wrong i.e. of a wrong statement of fact mentioned in the application suggesting that he is possessing the diploma certificate.

9] In view of above, it would be appropriate to adjust the equities as subsequently some changes must have been undergone by executive instructions or the

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Rules. It would not now be proper to direct re-advertisement of all the posts as other persons are appointed pursuant to the said advertisement and only two posts from ST category are vacant as per the instructions of the learned AGP. To adjust the equities, it would be appropriate to direct re-advertisement of these two posts reserved for ST category.

10] In the result, we pass the following order.

O R D E R

a] The impugned judgment and order dated 3.12.2014 passed by the Maharashtra Administrative Tribunal in Original Application No.282/2014 is quashed and set aside to the extent of directions contained in Clauses (iii) and (iv) and also quashing the communication dated 13.3.2014.

b] The petitioners shall re-advertise the two posts from ST category of Civil Engineering Assistant and shall call for the applications from the persons possessing the qualification as was required as per the Rules when the earlier advertisement was issued. The said

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process be done expeditiously.

c] Rule is made absolute in above terms. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)