

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

WRIT PETITION NO. 11804 OF 2015

Lalasaheb s/o Raghuraj Deshmukh,
age 43 years, occ. Pensioner,
R/o Jawalgao, Tq. Ambejogai,
District Beed

...Petitioner

VERSUS

- 1) The State of Maharashtra,
through its Secretary,
Maharashtra State Electrical
Distribution Company, Power
Ministry, Mantralaya,
Mumbai-32,
- 2) The State of Maharashtra,
through its Secretary,
General Administration
Department, Mantralaya,
Mumbai
- 3) The Government of India,
through its Secretary,
Ministry of Labour
and Employment, Directorate
General of Employment and
Training, New Delhi,
- 4) The Director of Sainik Welfare,
Maharashtra State, Pune,
- 5) The Assistant Manager,
Chief Engineers Office,
Viduate Bhavan,
Tarabai Park, Kolapure-3 ...Respondents

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Shri S.G.Munde, advocate for petitioner
Mrs. A.V.Gondhalekar, A.G.P. for Resp. nos. 1, 2 and 4
Shri S.B.Deshpande, A.S.G. For respondent no.3
Shri A.S.Bajaj, advocate for respondent no. 5

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

DATE OF RESERVING
THE JUDGMENT : **14.12.2016**
DATE OF PRONOUNCEMENT
OF THE JUDGMENT : **12.01.2017**

ORAL JUDGMENT (Per K.L.Wadane, J.)

Rule. Rule made returnable forthwith. With the consent of learned counsel for respective parties, taken up for final hearing.

2. The petitioner has assailed the order dated 21.10.2015 issued by the respondent no.5 and has claimed following reliefs :

(C) By writ of Mandamus or any other appropriate writ, order or directions in the like nature, the present respondents, may please be directed to issue necessary appointment order to the petitioner within time period. (Exhibit "H, G, I").

(D) By writ of Mandamus or any other appropriate writ, order or directions in the like nature, the present respondents, may please be directed to declare petitioner to be fully eligible and entitled for appointment as power assistant (Vidyut Sahayak), under the Seva Yojan Recruitment No.5/2014, Maharashtra State Power Distribution Company Ltd. (Exhibit "H, G, I").

3. It is contended by the petitioner that he belongs to Ex-serviceman category and he holds a certificate issued by the National Council Training for vocation trades/National Apprentice Certificate issued by the Lt. Col. Bombay Engineer Group and Centre Kirkee. The petitioner has completed the course and has taken training. The petitioner is holding certificate known as, trade proficiency certificate of Ex-serviceman and has obtained Grade 'B' with 61 per cent in upgrading course Class I, for the trade of Elect which is equivalent to the Civil Trade Electrician. The petitioner retired in the year 2008 from the office of Army.

4. On 30.9.2014 the respondent no.1 issued advertisement for recruitment of the post of Power Assistant (Vidyut Sahayak) vide No. Seva Yojan No. 5/2014 to fill up the vacant posts of 6542. The applications for such post were invited online.

5. On 23.11.1993 the petitioner submitted online application/form to the web site of the aforesaid Company/respondent no.1. The petitioner is eligible and qualified for the post of power assistant as per the Government Resolution dated

23.11.1993. The Government Resolution stated that the service trades in the Military occupations trade is equivalent to the civil trade in civil vocation trade. The State of Maharashtra, after consultation with the concerned Department, has considered military service and civil trade services as equal in the qualification. The trade elect in the Arm Forces is equivalent to the trade electrician in the State of Maharashtra.

6. The respondent no.3 issued Memorandum dated 26.9.2012, in which it is mentioned that the respondent no.3 has identified number of technical trades of the Defence Forces and have equated them with the civilian occupations classified in the National classification of the occupations.

7. The petitioner is eligible and qualified for the post of power assistant. On 11.5.2015, the respondent no.5 has published final select list, in which the name of the petitioner is appearing.

8. The Chief Engineer of Zonal office of the respondent no.5 issued impugned communication and returned the original

documents to the petitioner, thereby rejected the selection of the petitioner, consequently, denied the appointment order to the petitioner without assigning any reason.

9. It is further contended by the petitioner that the similarly situated persons have been given appointment for the said post. The educational qualification/experience possessed by the petitioner is equivalent with the civil trade Elect. However, the respondent no.5 refused to issue appointment order on the ground that the petitioner does not possess the certificate issued by the I.T.I. in the State of Maharashtra. According to the petitioner, the respondent/authority, by issuing various Government Resolutions/Memorandums has equated the educational qualification of the petitioner with the civil trade of Electrician. Therefore, rejection of the claim of the petitioner on such ground is illegal. As such, the petitioner has claimed the reliefs as mentioned above.

10. The affidavit-in-reply is filed on behalf of the respondent nos. 2 and 4, by which the claim of the petitioner as to his educational/experience certificate has been accepted. It is

contended that the petitioner possess certificate of technical proficiency in the Elect Class I which is equated to the civil trade electrician. In view of the above circumstances, it is contended that the petitioner is fully eligible and entitled for the appointment as a power assistant.

11. The respondent no.5 has disputed about equivalence between the educational qualification of the petitioner and the required qualification for the appointment of power assistant and it is contended that the advertisement issued by the respondent specifically mentions about the eligible criteria for the post of power assistant. The advertisement specifies that the candidate shall possess the National certificate in Electrician/Workman Trade on completion of the I.T.I. trade course or Center of Excellence (Electrical Sector) awarded by the NCVT, New Delhi. Such qualification is specified and prescribed under Correction Slip No. 55 dated 21.1.2014. It is further contended that the respondent no.1 is a Company incorporated under the provisions of Section 617 of the Companies Act, 1956. The Company is competent to frame its own Criteria, Rules and Regulations. The Government Resolutions and

Circulars are not binding on the Company unless and until same are adopted by the Board of Directors of the Company in its Board Meeting.

12. We have heard the arguments of the learned counsel for the parties. We have also gone through the relevant documents placed on record.

13. The plain reading of the Government Resolution and the Circulars/Office Memorandums clearly shows that the trades of Indian Arm Forces have been equated with the civil occupations to facilitate the registration of Ex-servicemen for employment assistance through the Employment Exchange. The petitioner possesses certificate of technical proficiency in Elect. Such decision is taken by the State Government as well as Central Government from time to time by issuing relevant Resolutions/Memorandums and respondent no.5 cannot defer and give go-bye to the decision taken by the Government of India and the Government of Maharashtra.

14. It is useful to refer relevant documents to resolve whether

the educational qualification acquired by the petitioner is equivalent with the required qualification for the appointment to the post of power assistant. Certificate, dated 27.3.2008 (Exh. 'D') is placed on record issued by the Bombay Engineering Group and Centre, in which it is specifically mentioned that the petitioner is Elect Class I by trade which is equivalent to civil trade electrician, and thereby it is certified that the petitioner has completed his upgrading course Class I on 4.11.2006 with Chief Instructor Workshops, Bombay Engineering Group and Centre with grade 'B' with 61 per cent.

15. Further it is material to note that the State Government has issued a Government Resolution, dated 23.9.1993, by which the Ex-servicemen who have obtained training in service trade are equated with the civil trades.

16. So from the above two documents, it is crystal clear that the educational qualifications/experience certificate obtained by the petitioner is equivalent with the educational qualifications/experience required for the appointment of power assistant.

17. The Government of Maharashtra had introduced various measures for proper rehabilitation and resettlement of Ex-servicemen after their retirement/discharge from the Arm Forces, keeping in mind services rendered by them to the Nation. 15 per cent posts were kept reserved by the State Government as well as the Government of India in its Ministry of Labour and Employment and had issued the Office Memorandum providing for equation of trades of Indian Arm Force with the civil occupations to facilitate registration of Ex-servicemen for the employment assistance through Employment Exchange. Copy of such resolution is placed on record (Exh.'I'). On perusal of the Office Memorandum, the Director General of Employment and Training in the Ministry of Labour has identified number of technical trades of the Defence Forces and have equated them with the civilian occupations classified in the National classification of the occupations. The purpose was to provide a comparative information about the job performance of the service personnel during their engagement in the Army vis-a-vis the civilian jobs. These informations have been further updated and the Director General of Settlement has published a consolidated version of Army, Navy and Air Force technical trades and comparable civilian jobs.

So, looking to various Government Resolutions, Office Memorandums issued by the competent authorities from time to time, it reveals that the educational qualification acquired by the petitioner is equivalent with the qualification prescribed for the appointment of the post of power assistant. This fact has been specifically admitted by respondent nos. 2 and 4.

18. Further it reveals from the affidavit on behalf of respondent no.5 that before rejecting his candidature the respondent no. 5 has not given opportunity to establish the educational qualifications of the petitioner supported by various Government Resolutions and Office Memorandums.

19. The respondent no.1 has not filed its reply and the respondent no.3, though filed his reply, has not denied the averments in the petition as to the qualification of the petitioner.

20. On behalf of the respondents reliance is placed upon the observations in a case **Jagannath Khakare and others vs The State of Maharashtra and others** reported in (2013(2) ALL MR

841), in which there is reference of Division Bench placing reliance on the judgment in the matter of **Mukund Uttamrao Somde vs State of Maharashtra and others**. It has been observed in the judgment that the Government Resolution is only recommendatory and cannot be treated to be binding on the respondent-Company. Same has been observed by the Division Bench of this Court in unreported case in **Writ Petition No. 6102 of 2015 (Pramod Dongre vs The State of Maharashtra and others)**.

As against this, the petitioner has placed reliance upon the observations in the case **Ajay Hasia and others vs Khalid Mujib Sehravardi and others** reported in **(1981) 1 SCC 722**, in which it is observed that ordinarily where a Corporation is established by statute, it is autonomous in its working, subject only to a provision, often times made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters.

Looking to the observations of the above cases, we are of the opinion that the case of the petitioner is on

better footing, because all the respondents except respondent no.5, have accepted the qualification of the petitioner to be the required qualification for being appointed on the post of power assistant.

21. In view of above, we are of the opinion that the petitioner possesses the requisite qualifications for appointment to the post of power assistant, and therefore, he is eligible for being considered for appointment on the said post. Therefore, we find that the petitioner is entitled for being considered for appointment on the post of power assistant, if he fulfills other required conditions for the said post, as per the relevant Rules and Regulations.

22. Accordingly, the Writ Petition is partly allowed, holding that the petitioner is eligible for being considered for the appointment on the post of power assistant. We direct the respondent no.5 to take further decision as per the relevant Rules and Regulations for the appointment of the petitioner on the post of power assistant, if the petitioner fulfills all other criteria and is eligible to be appointed on merits.

23. Rule is partly made absolute in the above terms. No costs.

(K.L.WADANE, J.)

(S.V.GANGAPURWALA, J.)

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