

Anand Bhaskar Kankal	}	Petitioner
versus		
Maharashtra Public Service	}	
Commission and Anr.	}	Respondents

Rajesh Pahuba Borse	}	Petitioner
versus		
Maharashtra Public Service	}	
Commission and Anr.	}	Respondents

Ms. Sushma Bhende - AGP for respondent
no. 1 in both petitions.

DATED :- NOVEMBER 23, 2016

2. In the first writ petition, the petitioner complains that he was wrongly excluded from the process of interview though fully qualified and eligible to be appointed.

3. The petitioner raises a grievance after the Maharashtra Public Service Commission (hereinafter referred to as "the MPSC") issued an advertisement on 16th November, 2011 bearing no. 163 of 2011 regarding appointment of eligible candidates to the post of Assistant Commissioner.

4. The petitioner Anand Bhaskar Kankal applied for this post by his application dated 13th December, 2011. He claims that he had fulfilled the criteria of experience. He stated that the MPSC accepted his application on 4th February, 2012. He appeared for the written test on 22nd February, 2012. He cleared the written test. The petitioner was categorised as an open category candidate (male). The cutoff marks were stipulated as 130. The petitioner obtained 130 marks, however, his name does not appear in the select list.

5. He sought an explanation from the MPSC for such exclusion and he was told to submit a written representation against such exclusion.

6. In the written representation, copy of which is at page 30 of the paper book in the first petition, the petitioner stated that he worked as Head of the Computer Department of one Kedarnath Urban Co-operative Bank Limited, Latur. He worked from 29th

June, 2003 to 29th July, 2006. Thereafter, he was appointed, on 12th March, 2007, as Sub-Engineer in the Municipal Corporation of Greater Mumbai. In the representation itself, this petitioner stated that the combined work experience is 7 years and 10 months. Therefore, He was eligible for being appointed. He should have, therefore, been called for interview.

7. Since everything turns upon the condition inserted in the advertisement with regard to experience and in both matters, we reproduce it for ready reference:-

“4.6.1 Have administrative, executive or supervisory experience in a responsible capacity for not less than Five years in Government, Semi-Government or any big industrial or commercial concern.

4.6.2 Candidate should give details & submit evidence regarding administrative experience, supervisory experience or executive experience.

4.6.3 The experience of ex-armed force officers will be considered as supervisory experience for the duration they served in armed forces as commissioned officer.”

8. The only contention raised before us is that this combined experience ought to have been held as sufficient for the purpose of this clause and reproduced as above. The MPSC says otherwise.

9. We have carefully perused the representation of the petitioner. We have also perused the memo of this writ petition

and other annexures. We find that the requirement of experience in administrative, executive or supervisory capacity for not less than five years in Government, Semi-Government or any big industrial or commercial concern, coupled with the candidate furnishing details and submitting evidence regarding administrative experience, supervisory experience or executive experience has been interpreted to mean that the petitioner may have been appointed as a Sub-Engineer on 12th March, 2007, but the advertisement issued on 16th November, 2011 ought to be taken as the relevant date. On that date and even on the date the petitioner applied he did not possess the five years experience, which is either administrative, executive or supervisory. The petitioner, therefore, relied upon the work that was performed or the services rendered to one Kedarnath Urban Co-operative Bank Limited, Latur. The petitioner says that he worked there as Head of the Computer Department. He also annexed the letter of appointment. He says that the work rendered from 29th June, 2003 to 29th July, 2006 in this bank should have been taken into consideration.

10. The MPSC's interpretation of this provision and the related two clauses cannot be said to be perverse or vitiated by any error of law apparent on the face of the record. The MPSC has

construed these clauses to mean that there should have been administrative, executive or supervisory experience in a responsible capacity for not less than five years in Government, Semi-Government or any big industrial or commercial concern. The petitioner worked, admittedly, in co-operative bank for a duration of less than five years. The petitioner did not work for five years as a Sub Engineer in the Municipal Corporation either. There is nothing in the clause to enable the MPSC to combine any experience and gained from working in two distinct organisations. According to the counsel appearing for the petitioner, even the understanding of the MPSC is that it can combine these services so as to compute the total minimal period of five years. However, in the affidavit that is filed by the MPSC, it is stated that till the last date of filing of the application, the petitioner's work experience as Sub-Engineer is 4 years, 9 months and 10 days. The petitioner worked as Junior Banking Officer in Kedarnath Urban Co-operative Bank Limited, Latur in a pay scale of Rs.5,000/- from 21st June, 2003 to 29th July, 2006. This pay scale of Rs.5,000/- is less than that of a Class II post officer in the Government service in the pay scale of Rs.6,500/- 10,500/-. The Junior Banking Officer work experience is not in a responsible post. Therefore, even if combining of these two jobs for computing the minimal experience was possible, the MPSC

says on affidavit that it was not possible to accommodate the petitioner. Given the clear wording of the above clauses, we do not think that the MPSC's interpretation can be faulted or held to be suffering from such serious legal infirmities so as to enable this court to interfere in writ jurisdiction.

11. The writ petition, therefore, has no merit and is rejected.

12. As far as the second writ petition is concerned, the controversy is somewhat identical. There, the petitioner claimed that the educational qualification prescribed was a degree in Arts, Science, Law, Commerce, Medicine or Engineer of recognised university or an equivalent qualification and thereafter, the experience.

13. The petitioner relies upon this very clause in the advertisement. He states that he filled his application and appeared at the written test. He cleared it. The petitioner was expecting his name to be included in the select list after securing 147 marks. However, what the petitioner found and to his surprise is that he is held to be not qualified. The petitioner also raises somewhat similar issues.

14. He says that the annexures to his petition would reveal that

he has worked in requisite capacities and in terms of the column specifying the work experience. He invites our attention to the application form, in which, the details have been filled in. The petitioner says that he worked as a Team Leader in Fortpoint Automotive Mumbai Private Limited. He worked from 12th July, 2006 to 25th November, 2006. It is conceded that this is not five years work experience. Then, he was appointed temporarily as Sub-Engineer on 12th March, 2007 and worked till the date of the application/the last date of filing it. That is also not five years. The date of the application is 30th November, 2011. The contention is that the combined experience should have been taken into consideration and the petitioner ought to have been declared and held as eligible.

15. For the reasons that we have assigned above, we do not think that we can agree with this assertion. The petitioner then relies upon some instances of candidates having been called for interview by combining their work experience. It is not possible to agree with the petitioner's counsel for equality is a positive concept. There is no right or equality in illegality. Merely because in one case the interpretation placed by the MPSC and in relation to work experience deviates or departs from the version that is now placed before us and particularly in a court of law, we

cannot on that basis direct the petitioner's candidature to be considered. That would be perpetuating an error or an illegality. No right can be claimed on this basis. Merely because one erroneous recruitment has been made, the petitioner cannot be held to be eligible.

16. We are of the opinion that the interpretation placed even in this candidate's case on the requirement of work experience and in terms of the stipulation in the advertisement cannot be termed as perverse or arbitrary. It cannot be termed as vitiated by malafides either. We do not think that the petitioners can succeed on the basis of the above contentions.

17. As a result of the above discussion, both the petitions fail. They are accordingly dismissed.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)