

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8772 OF 2015

Dr. Audumbar N. Mhaske .. Petitioner.

vs.

Maharashtra Public Service Commission
and ors.

.. Respondents.

Mr. Yashdeep Deshmukh i/b Mr. Pramil Sonawane, for the
petitioner.

Mr. C.P. Yadav, AGP for respondent Nos.1 and 2.

**CORAM: D.H. WAGHELA, C.J. AND
M.S.SONAK, J.**

DATE : 08 MARCH 2016.

P.C.:

1] The challenge in this petition is to the judgments and orders dated 23 April 2014 and 26 September 2014 made by the Maharashtra Administrative Tribunal (MAT) rejecting the petitioner's challenge to the selection of respondent No.3 to the post of Associate Professor (Surgery) from the open/unreserved category.

2] Mr. Yashdeep Deshmukh, learned counsel for the petitioner, has urged the following two grounds in support of the petition:

A] That the Interview/Selection Committee has unfairly assessed respondent No.3 as better suited for selection, even though, the petitioner, possess greater merit than respondent No.3. Mr. Deshmukh has contended that Interview/Selection Committee was biased in favour of respondent No.3 and against the petitioner;

B] That the respondent No.3 having secured age relaxation of five years on the basis that he belongs to the reserved category, was dis-entitled to even compete for selection to the post of Associate Professor (Surgery) meant for the open/unreserved category. In this regard, Mr. Deshmukh placed reliance upon the decision of the Division Bench of the Gujarat High Court in case of *Gujarat Public Service Commission Vs. Parmar N. Rajendrakumar*¹;

3] At the very outset, we find that there is absolutely no

¹ Letters Patent Appeal Nos. 1480 and 1298 of 2013 in Special Civil Application No. 11996 of 2012 decided on 11 September 2015.

merit in the first contention of Mr. Deshmukh. Both, in the original application before the MAT as well as in the petition before us, the allegations of bias are vague and sketchy. Neither have such allegations been made against any particular person nor have any particular persons been impleaded as the respondents, in order to examine such allegations. At the stage of arguments, Mr. Deshmukh faintly suggested bias, as respondent No.3 is purported to be a relative of the Dean. The allegations to this effect in paragraph 3.5 of the petition are quite sketchy. The petitioner has not chosen to implead the Dean of Solapur Government College as party respondent either in original application or in this petition. Even the name of Dean has not been disclosed. The role allegedly played by the Dean in the selection process is also not disclosed. The petitioner has taken his chance in the selection process without any demur. Upon cumulative consideration of all such circumstances, there is no scope to entertain the challenge on the ground of bias or favoritism. The MAT, has very rightly rejected such challenge in the facts and circumstances of the present case.

4] There is no dispute that both the petitioner as well as respondent No.3 possess the essential qualification for selection to the post of Associate Professor (Surgery). Merely because the petitioner may have possessed certain additional qualification or the desirable qualifications, that by itself, does not entitle the petitioner to be selected for the post. Absent the charge of bias or *mala-fides*, the scope of interference, both by the MAT as well as this Court, in the matter of determination of relative merits of the candidates, is very limited. Determination of relative merits, is a matter within domain of Interview/Selection Committee, and normally it is not for the MAT or this Court, exercising its writ jurisdiction, to itself assess candidates or determine their relative merits.

5] In this case, all that the petitioner has pleaded is that he had better qualifications or the desirable qualifications, which were not possessed by respondent No.3. Even assuming this is true, that by itself, does not entitle the petitioner to appointment. Even in the matter of desirable qualifications, it is settled position in law that all things being equal, person possessing desirable

qualifications may be accorded a preference. However, for determination of whether the petitioner and respondent No.3 possessed equal merit, the MAT has rightly deferred to the judgment of Interview/Selection Committee.

6] Mr. Deshmukh, learned counsel for the petitioner, has placed reliance upon the decision of the Division Bench of High Court of Tripura in case of *Tanmoy Nath Vs. State of Tripura*², to contend that there were insufficient guidelines to the process of the Interview/Selection Committee to make selection and on basis of the same, contended that the selection of respondent No.3 is vitiated. The observations in para 44 of the said judgment, upon which emphasis was laid by Mr. Deshmukh clearly do not apply to the facts and circumstances of the present case. The High Court of Tripura was mainly concerned with recruitment to over one thousand posts of Assistant Teacher in Primary Schools/Junior Basic Schools. In the context of nature of the posts, observations have been made in the matter of emphasis to be accorded to the interview marks. In the present case, we are concerned with posts of Associate Professor (Surgery) and therefore, the principles

² 2014(3)GLT 35

applicable for interview to the posts Assistant Teachers in Primary Schools, obviously, cannot be made applicable to such a selection process. In any case, the petitioner, having participated in the very same selection process, without any demur, cannot be now permitted to question the process, merely because respondent No.3 was found to be meritorious than the petitioner. There is accordingly, no merit in the first contention raised by the petitioner.

7] Insofar as the second ground is concerned, there is no dispute that both the petitioner as well as respondent No.3 belong to the reserved category. The petitioner, however, claims that he has neither claimed nor obtained any relaxation in the age limit. The respondent No.3 has however, availed the benefit of age relaxation applicable to members of reserved category. In these circumstances, Mr. Deshmukh has contended that respondent No.3, having obtained age relaxation on the basis of his status as a member of reserved category, respondent No.3 cannot, now be held as eligible to compete for the post of Associate Professor (Surgery) meant for the open/unreserved category.

8] In the aforesaid regard, Mr. Deshmukh, to begin with, submitted that respondent No.3, had in fact claimed for relaxation on the basis that he was a Government servant. This claim was squarely negated by the MAT. The MAT, however, sustained the relaxation in age on the ground that respondent No.3 belongs to the reserved category. Mr. Deshmukh submitted that the respondent Nos.1 and 2 can defend their action of relaxation only on the basis of the claim made by respondent No.3 and it is impermissible for the respondent Nos.1 and 2 to improve their stand or for the MAT to base its decision upon any other ground. In this regard, Mr. Deshmukh placed reliance upon the decision in case of *Dipak Babaria Vs. State of Gujarat and ors*³.

9] In the present case, there was no order as such made by any authority relaxing the age qualification for any particular reason. In case of *Dipak Babaria (supra)*, the Hon'ble Supreme Court was concerned with statutory orders made by the statutory authorities acting under the provisions of the Gujarat Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958. It is in this context that the Hon'ble Supreme Court, relying upon its

³ (2014)3 SCC 502

earlier decisions in case of *Commissioner of Police Vs. Gordhandas Bhanji*⁴ and *Mohinder Singh Gill Vs. Chief Election Commissioner*⁵, has held when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reason so mentioned and cannot be supplemented by fresh reason in the shape of affidavit or otherwise. This principle will not apply to the facts and circumstances of the present case, as, there is no statutory order made by any statutory functionary citing any particular reason in the matter of relaxation of age. In this case, respondent No.3 had claimed relaxation on the basis that he was in Government service and that he belongs to the reserved category. The MAT did not uphold the claim of respondent No.3 to age relaxation on the basis of his being in Government service, but upheld such claim on the basis that he was a member of reserved category. There is really no dispute that respondent No.3 indeed belongs to the reserved category and was therefore entitled to age relaxation. In fact, it is also the case of the petitioner that since the respondent No.3 has availed relaxation on basis of his reserved status, the respondent No.3 must be held ineligible to compete for

4 AIR 1952 SC 16

5 (1978) 1 SCC

the open or unreserved posts.

10] Mr. Deshmukh has, however, placed strong reliance upon the decision of the Division Bench of the Gujarat High Court in case of *Gujarat Public Service Commission (supra)*, to submit that a candidate, who has secured age relaxation on the basis that he belongs to a reserved category, cannot be permitted to compete for the post meant for open/reserved category. Mr. Deshmukh, also attempted to distinguish the decision of the Hon'ble Supreme Court in case of *Jitendra Kumar Singh and anr. Vs. State of Uttar Pradesh and ors.*⁶, upon which reliance has been placed by the MAT for negating the petitioner's contention.

11] The Division Bench of the Gujarat High Court, in case of *Gujarat Public Service Commission (supra)* has made it quite clear that the view taken by it is in the context of reservation policy applicable in State of Gujarat contained in Circulars dated 29 January 2000 and 23 July 2004 and the relevant statutory provisions, i.e., Recruitment Rules 1967, 2009 and 2010. The Division Bench of the Gujarat High Court has distinguished the

⁶ (2010) 3 SCC 119

decision in case of *Jitendra Kumar Singh (supra)*, by observing that there was no similarity between the relevant provisions contained in U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 and the Circulars and Rules as applicable in the State of Gujarat. Therefore, in the absence of the petitioner even making any attempt to demonstrate any similarity between the reservation policy applicable in the State of Gujarat as contained in the aforesaid Circulars and relevant statutory provisions and the reservation policy in the State of Maharashtra, the contention of the petitioner based upon the decision of the Division Bench of the Gujarat High Court cannot be entertained.

12] In the fact situation in the present case, advertisement had provided that the candidates must be not more than 35 years as on 1 July 2009 and that this age requirement can be relaxed as per Rules. Although, neither the petitioner nor the respondents produced any such Rules before us, there was common ground that relaxation of five years is provided to the candidates belonging to the reserved category. In this case, insofar as the

posts of Associate Professor (Surgery) are concerned, only open or unreserved category posts came to be advertised as per vacancy position. At least, the advertisement, does not state that reserved category candidates cannot compete for the open/unreserved candidate posts, in case, the reserved category candidates claim relaxation in the age requirement. No such provision was brought to our notice, either by reference to Recruitment Rules or any other documents.

13] Mr. Deshmukh, however, relied upon some notice dated 19 September 2014 issued by the Secretary, Maharashtra Public Service Commission in the context of Commission Meeting dated 1 April 2014. In the said meeting, a decision is taken to the effect that hereafter, the candidates, who may have obtained age relaxation, on the basis of their belonging to the reserved category, will not be recommended for appointment to open/unreserved category posts.

14] At this stage, there is no question of taking cognizance of notice dated 19 September 2014. There are no pleadings or

even an affidavit in support of such notice. That apart, the notice is dated 19 September 2014 and the same states that “*hereafter*” the candidates, who obtain age relaxations on the basis of their belonging to reserved category, will not be recommended for appointment to open or unreserved category posts. Obviously, therefore, the policy referred to in the notice will apply post 14 September 2014 or at least post 1 April 2014. This also means and implies that the policy at least before 1 April 2014 was otherwise. This is relevant because, in this case, we are concerned with advertisement, which was issued on 20 March 2009 and the appointment of respondent No.3 made in the year 2010. It is not even the case of Mr. Deshmukh that the policy indicated in the notice dated 14 September 2014 has any retrospective effect. In any case, on basis of such policy, obviously, the appointment of respondent No.3, validly made in the year 2010, cannot be upset.

15] The MAT, in this case has rightly relied upon the decision of the Hon'ble Supreme Court in case of *Jitendra Kumar Singh (supra)* . In this decision, the Supreme Court has held that age relaxation on the basis of reserved status does not in every

case, disentitle a reserved category candidate to compete for open or unreserved posts. Such concessions, do not in any manner upset the “*level playing field*”. Ultimately, all candidates competing for open or unreserved seats have to fulfill the eligibility conditions with regard to qualifications and further, have to answer the written examination where provided for, or face other selection procedures as may be prescribed. With the age relaxation or fees concession, reserved category candidates are merely brought within the zone of consideration, so that they can participate in open competition on merit. Therefore, the candidates who may have obtained age relaxation on the basis of their reserved status, cannot in every case, be denied the opportunity of competing on merits to open or unreserved posts.

16] The distinction made by Mr. Deshmukh that the decision in case of *Jitendra Kumar Singh (supra)*, applies only to the selection procedure where a written competitive exam is prescribed is not proper. In the case of *Jitendra Kumar Singh (supra)*, actually, the selection process may have involved written competitive examination. However, it cannot be said that this

circumstance by itself is a distinguishable feature of the decision. The observations of the Hon'ble Supreme Court are to the effect that with age relaxation or fees concession, reserved category candidates are merely brought within the zone of consideration, so that they can participate in open competition on merit. The emphasis is upon '*open competition on merit*'.

17] In the present case, respondent No.3 has been recommended for selection after his participation in the open competition on merit. The petitioner is also a reserved category candidate, but who claims not to have obtained age relaxation on the ground of his reserved category status. There is no clarity in the petition as to whether the petitioner has claimed age relaxation on the basis of his being in Government service, particularly since the petitioner has pleaded that he was appointed as Assistant Lecturer in General Surgery since 8 January 2002. Therefore, even on facts, the contentions of the petitioner that respondent No.3 has secured any undue or unfair advantage is not borne out.

18] For all the aforesaid reasons, we see no reason to interfere with the impugned judgments and orders made by the MAT and to disturb the appointment of respondent No.3, who has been serving as Associate Professor (Surgery) since the year 2010 .

19] This petition is therefore, dismissed. There shall however, be no order as to costs.

CHIEF JUSTICE

(M.S.SONAK, J.)