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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.2054 OF 2016**

Maharashtra Public Service Commission ..Petitioner
Versus
Dr. Chandrashekhar Mahadeo Khadtare ..Respondent

.....
Mr. Nitin P. Dalvi for the Petitioner.
Mr. Sagar Mane for the Respondent.
.....

**CORAM: SMT. V. K. TAHILRAMANI &
A. K. MENON, JJ.**

DATE : 3RD MARCH, 2016

ORDER(PER A.K.MENON,J.):

1. Rule. Rule made returnable forthwith. By consent, taken up for final disposal.
2. The petitioner is the Maharashtra Public Service Commission. It is aggrieved by the order and judgment dated 11th March, 2015 passed by the Maharashtra Administrative Tribunal in Original Application No.493 of 2012 which was filed by the respondent challenging the order dated 8th May, 2012 whereby the applicant i.e. respondent herein was held to be ineligible to be called for an interview for the post of Assistant Commissioner of Animal Husbandry.

3. The brief facts leading up to the impugned order can be set out as follows:-

In February 2011 the State Government was desirous of filling up 153 vacancies in the Animal Husbandry Department. The petitioner was to act as recruitment agency. An advertisement was issued calling for applications from interested persons for The respondent applied claiming to be a candidate belonging to a Scheduled Caste and therefore eligible to take advantage of the reservation prescribed.

4. It is the petitioner's case that 17 posts were earmarked for the Schedule Caste category. Since a large number of applications were received, the petitioner decided to apply short listing criteria prescribed by the petitioner in the advertisement itself. The relevant portion of the short listing criteria are to be found in Exhibit 'B' to the Petition. These criteria are reproduced below for ease of reference:-

“(1) Master's degree in Veterinary Science AND THEREAFTER

Practical experience in Animal Husbandry for a period of not less than 11 years in a Govt. Dept. or in an Industrial Undertaking or Commercial Concern or Local Authority or Corporation or Board established by Govt.

(2) Master degree in Veterinary Science AND THEREAFTER

Practical experience in Animal Husbandry for a period

of not less than 10 years in a Govt. Dept. or in an Industrial Undertaking or Commercial Concern or Local Authority of Corporation or Board established by Govt.

(3) Master's degree in Veterinary Science AND THREATER

Practical experience in Animal Husbandry for a period of not less than 11 years in a Govt. Dept. or in an Industrial Undertaking or Commercial Concern or Local Authority or Corporation or Board established by Govt.”

5. Initially, practical experience of 11 years was required but in the event of unavailability of qualifying candidates, persons with 10 years practical experience in the specified department could have been considered. Thus, if there were not to be sufficient number of candidates, the number of years of experience could be scaled down. Some persons aggrieved by the short listing criteria filed Original Application No.200 of 2011 and obtained a stay from the Tribunal on 15th March, 2011. The Original Application came to be disposed of on 2nd September, 2011 directing the MPSC to adopt suitable and fair short listing criteria.

6. The petitioner thereafter revised the short listing criteria for open O.B.C and S.C categories and published a list of eligible

candidates. Meanwhile, the petitioner fixed the experience criteria at 9 years in view of the large number of candidates. The petitioner has relied upon the revised categorisation in Exhibit 'D' to the Petition. It is the petitioner's case that the respondent did not comply with the criteria. As a consequence, his candidature was rejected. He was held to be ineligible. Aggrieved by that decision, the respondent filed Original Application No.493 of 2012 before the Maharashtra Administrative Tribunal contending that the requirement of having practical experience of 9 years as on the cut off date of the 15th May, 2009 was arbitrary.

7. The petitioner opposed the Original Application, inter alia, contending that the petitioner had to deal with a large number of candidates and therefore it required persons with not less than 9 years experience in a Government Department. The respondent held a M.V.Sc. degree with experience of 8 years 11 months and 12 days. As a result the petitioner was eliminated. The respondent's experience fell short of 9 years by 18 days. He therefore sought relaxation by 40%. The Administrative Tribunal after hearing the parties allowed the Original Application holding that the listing criteria was reasonable but the petitioner shall reduce the experience criteria of S.C. candidates. Accordingly the Tribunal held that the

respondent should have been called for the interview and directed that the petitioner may be called for the interview for the post of Assistant Commissioner in Animal Husbandry and if found meritorious, he may be recommended for appointment to the post. Furthermore, the Tribunal directed that this process should be completed within a period of six weeks and if the petitioner declared results before the expiry of six weeks, one seat for Scheduled Caste should not be filled till the applicant is considered for selection. The Commission being the Petitioner before us is aggrieved by the said impugned order.

8. We have heard Mr. Dalvi, the learned Advocate for the petitioner in support of the Petition and Mr. Mane, the learned Advocate for the respondent. The limited issue which arises for the consideration is whether the impugned order could have been passed in the light of recruitment rules. A copy of the recruitment rules applicable to the facts of the present case is annexed at Exhibit 'A'. These are issued on 6th November, 1997 and were admittedly in force at the material time. At the time the respondent had applied Rule no.6(b)(3)(k) which provides that if there were not to be sufficient number of candidates with requisite experience, then in such event, the criteria for experience can be reduced by 40% in order to

facilitate selection.

9. Mr. Dalvi pointed out that in the present case it is not as if the respondent could take advantage of the aforesaid Rules inasmuch as there were a large number of candidates available and in view of abundance of candidates, it would not possible to reduce the experience criteria and therefore the order of the Tribunal was clearly bad in law. He therefore urged that the impugned order be set aside.

10. Mr. Mane, the learned Advocate appearing for the respondent supported the impugned order and contended that no interference is called for. According to him, the recruitment rules clearly provide for reduction of the experience criteria. In other words, the rules provided for a reduction in the experience criteria in cases of Scheduled Caste candidates. He submitted that a similar situation had arisen in the case of Original Application Nos.200, 201 and 202 of 2011 before the Administrative Tribunal, Mumbai Bench and vide order dated 2nd September, 2011 passed by the Chairman it was held that in the larger interest of justice that the M.P.S.C shall adopt suitable and fair short listing criteria so as to enable some of the non-Government candidates also to take part in the interview

process.

11. M. Mane submitted that the requirement being insisted upon by the petitioner in the present case is not justified. Making reference to the impugned order Mr. Mane submitted that the respondent had in his Original Application contended that he had more than 9 years experience after obtaining the M.V.Sc. degree and his claim had not been denied by the M.P.S.C. He also pointed that the short listing criteria suffers from other defects inasmuch as the M.P.S.C has specified the some criteria for S.C candidates in open categories, although there was a general explanation that the S.C category would enjoy relaxation in criteria. Furthermore, the recruitment rules provided for experience criteria to be reduced by 40% for the S.C candidates which was not done by the petitioner in the present case.

12. Mr. Mane submitted that relaxation of criteria would be justified in the facts of the present case. The respondent claimed to have completed M.V.Sc. Programme during the session 1996-97 to 1998-99 as mentioned in the degree certificate. The date of degree being generally later than the declaration of result by the University and since the last date of 1999 would be considered i.e. 31st

December, 1999, he had more than 9 years experience and should have been called for the interview as per revised short listing criteria. Mr. Mane therefore contended that the facts of the case clearly justify grant of relief as contemplated by the Tribunal and that the Petition must fail.

13. Mr. Dalvi was quick to point out that it is an admitted position that the petitioner fell short of experience criteria by at least 18 days. He relied upon the respondent's admission in ground no.8 in the Original Application No.493 of 2012 filed by the present respondent in which the respondent had clearly pleaded as follows:-

“That in the alternative and without prejudice to above, according to the petitioner he completes the practical experience of 9 years on 02.06.2009 which is short by 18 days as on the cut off date namely 15.05.2009, if one considers the date of successful completion of M.V.Sc. by the petitioner which is as per the certificate dated 2.6.2000.”

As seen from the above quoted paragraph, it is the petitioner's own case that the respondent would complete practical experience of 9 years on 2nd June, 2009 and that is the short by about 18 days as on the cut off date i.e. 15th May, 2009. Having considered these facts we are of the view that given the short fall in practical experience, the petitioner could have relaxed the experience criteria

by upto 40% while applying Rule 6(b)(k) only if the petitioner did not receive sufficient number of applicants. In the present case however we find that the petitioner had more than sufficient numbers. As evident from the impugned order, pursuant to the order passed by the Tribunal in Original Application No.200, 201 and 202 of 2011, the experience requirement was reduced to 9 years. The criteria could have been reduced further any if sufficient numbers of backward class candidates were not available. However in the present case it is the specific case of the petitioner that sufficient number of S.C. Candidates were available and there was no question of relaxing experience criteria.

14. In our view, the Tribunal appears to have proceeded on the erroneous view and that even if the cut off date i.e. 31st December, 1999 considered he had completed more than 9 years experience and should have been called for an interview. In the face of the specific admission that he completes the practical experience of 9 years on 2nd June 2009 as admitted in ground no.8 of the Original Application No.493 of 2012, he was still short of experience as on the cut off date of 15th May, 2009 by 18 days. Moreover the fact situation would not enable the Petitioner to reduce the criteria by 40 % or at all.

15. We are of the view that in the facts of the present case, it would not be in the interests of justice to permit the respondent to be preferred over several other candidates who are compliant with the experience criteria. In the circumstances, there is merit in the Petition. The impugned order in our view is not sustainable and accordingly we pass the following order:-

- (i) Rule is made absolute in terms of prayer clause (b) with the clarification that the respondent shall not be liable to pay any costs in respect of the Original Application No.493 of 2012.
- (ii) There will be no order as to costs.

(A. K. MENON, J.)

(SMT. V. K. TAHILRAMANI, J.)