

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
WRIT PETITION NO.11280 of 2016

Nandkishor Babanrao Shahagadkar Petitioner

vs

The Dy.Commissioner, MCGM .. Respondent

Mr.S.B.Deshmukh a/w Mr.A.J.Kandarkar for Petitioner
Mr.Vinod Mahadik for Respondent-BMC

...
CORAM: ANOOP V.MOHTA &
G.S.KULKARNI,JJ
DATE: 29 SEPTEMBER, 2016

ORDER:

1. Heard learned counsel for the petitioner. The petitioner initially filed a writ petition at the Bench at Aurangabad.

2. The petitioner has challenged the action/inaction of the Respondent-BMC as his name was not included in the list of eligible candidates for the post of ECG Technician pursuant to the recruitment Advertisement issued by the respondent dated 1 January 2016. However, as the respondents are the Mumbai Municipal Corporation the petitioner was directed to approach the Principal Bench at Mumbai. The contesting respondent nos.2 and 3 have filed a reply dated 1 July 2016 and have opposed the writ petition on all issues. The relevant paras 3,4 and 5 are as under:

“3. The deponent says and submits that as per the advertisement 32 applications were received on due dates out of which 15 applications were found complying the requirement as per advertisement and as per the Trade Test Examination was conducted on 5 February 2016.

4. The deponent says and submits that the final list was published. The procedure for filing in the post of ECG Technician is in progress.

5. The deponent says and submits that the applications of the present petitioner was considered on the ground that the petitioner is neither holding the requisite qualification i.e. Bachelor of Paramedical Technology in Cardio Technology with three and half years full time degree courses nor the candidate possess degree of B.Sc in physics.”

3. The basic contention of the petitioner is that the qualification eligibility criteria debars a person like the petitioner who possess a degree of B.Sc having subjects of Physics, Chemistry and Computer Science, as the Advertisement states the requisite qualification as “ B.Sc in Physics”. This according to the petitioner is discrimination as it takes away the petitioner's right to take part on the basis of his B.Sc qualification. It is submitted that the respondent cannot restrict the qualification to “B.Sc in Physics.” as it would be available only to a limited number of candidates who have done B.Sc in Physics. In his submission, candidates like the petitioner who has passed B.Sc having Physics as one of the subjects would be deprived of being considered as also deprived to

take part in the selection for the post in question. We cannot accept the contention as urged on behalf of the petitioner, in view of the clear advertisement in question which provides for the qualifications as “B.Sc in Physics which is the requirement of the post in question as decided by the respondents. It is not the case that candidates possessing B.Sc (Physics) qualification are not available as this course is specifically conducted by the Universities. This fact is further endorsed in view of the statement of the respondents in the reply-affidavit that there are 15 applications which were found complying the requirements as per Advertisement.

4. After considering the submissions as made by the learned counsel for the parties as also considering the advertisement in question, we are of the view that there is nothing wrong or illegal in the respondents prescribing the qualification of “B.Sc in Physics” if the post so requires. It is settled that parties are bound by the Advertisement as also the employer has a power and/or empowerment to deal with the requisite qualifications for the post in question. In our opinion, no case is made out to accept the petitioner's contention of any discrimination as the qualification so prescribed is acceptable and candidates thereunder are

available. We also cannot accept the contention of the petitioner that this qualification or such course is not conducted by some Universities. This cannot be a ground to strike down the said qualification as contained in the advertisement as arbitrary or interpret the same to include B.Sc with Physics as one of the subjects to mean B.Sc Physics. The said qualification is appropriately understood by all the stake holders and accordingly applications are received by the respondents..

5. Therefore, taking an over view of the matter, no case is made out. Writ Petition is dismissed. No order as to costs.

G.S.KULKARNI, J

ANOOP V.MOHTA, J

