

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 5410 OF 2015
WITH
CIVIL APPLICATION NO. 3261 OF 2015**

Shri Sunil Vitthal Rathod .. Petitioner
versus
The Chairman / Secretary,
Maharashtra Public Service
Commission & Ors. .. Respondents

Mr. M. S. Topkar for petitioner.
Mr. D. B. Khaire – Addl. G.P. for respondent nos. 1 and 2.
Ms Vaishali Jagdale for respondent no. 3.

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

DATE : 06 APRIL 2016

P.C.:

1] The challenge in this petition is to the order dated 24 November 2014 made by the Maharashtra Administrative Tribunal (MAT) dismissing petitioner's original application no. 990 of 2012 questioning the selection of respondent no. 3 to the post of Assistant Commissioner of Labour (ALC).

2] We have heard learned counsel for the parties, perused the record, including in particular, the notings made available to us by respondent no. 1 - Maharashtra Public Service Commission (MPSC) and we are satisfied that this is not a fit case to interfere with the impugned order in exercise of our jurisdiction under Articles 226 and 227 of the Constitution of India. The record indicates that both petitioner as well as respondent no. 3 applied for selection to the post of ALC, in pursuance of the advertisement dated 23 April 2010 issued

by MPSC for the said purpose. The respondent no. 3, along with his application, annexed certificate of experience as field officer in BEST services at Pune. MPSC upon initial scrutiny, felt that experience as field officer may not constitute experience as labour officer or welfare officer in a responsible position in an industrial undertaking or commercial concern. Therefore, respondent no. 3 was not short listed and his name did not appear in the list of candidates invited for interviews scheduled on 1st, 3rd and 4th September 2012. The petitioner was thus the only candidate from the VJ(A) category, to which, incidentally, respondent no. 3 also belongs.

3] The respondent no. 3, upon realising that the certificate of experience submitted by him has not been appreciated in the proper perspective, made representation to MPSC, along with certificate / clarification from his employer, with regard to the nature of duties performed by him as field officer. MPSC upon consideration of the representation / clarification, permitted respondent no. 3 to attend the interview and take part in the selection process. As a result, petitioner and respondent no. 3 took part in the selection process but it is the respondent no. 3 who came to be selected on merits for the reserved post of ALC – VJ(A) category. There is no merit in the contention of the petitioner that BEST services is a private agency. The recruitment rules / advertisement do not bar consideration of experience from a private agency. In any case, the certificate produced by the petitioner was also from a private agency.

4] In peculiar facts and circumstances of the present case, we agree with the MAT that the action of the MPSC was not contrary to its own rules and regulations. Rule 16 of the Maharashtra Public Service Commission Rules of Procedure, 2014 (said Rules) provides that

MPSC may correct any clerical, typographic, arithmetical or other mistake in the rank list, advice list or short list etc. or errors arising therein from any accidental slip or omission at any time, either on its own or on the application of any of the concerned. The Secretary, is however required to keep detailed record of such deliberation leading to correcting the mistake by the Commission. This record is to be maintained permanently.

5] At our instance, MPSC has produced the files relating to selection of respondent no. 3. Upon perusal of the same, we find that there is substantial compliance with the provisions prescribed under Rule 16 of the said Rules. Detailed record of deliberations have been maintained and further even conditions have been imposed in the matter of verification of experience certificate produced by respondent no. 3. In matters of such nature, whilst possession of requisite experience on or before the last date stated in the advertisement may be mandatory, the manner of proof, in a given case, may be regarded as directory. In this case, there is substantial compliance. This is not a case where the experience certificate had not at all been annexed by respondent no. 3 along with his initial application. It is only a case where respondent no. 3 in the context of the experience certificate already produced, placed on record some clarification, so that the ambiguity does not persist. MPSC, upon compliance with the procedures prescribed in Rule 16 of the said Rules, thereupon, rectified the omission in the list of candidates short listed for the purposes of interview. In these circumstances, we see no reason to interfere with the impugned order made by MAT, more particularly since the petitioner is not on the select list and at this point of time the petitioner cannot be appointed to the post of ALC in pursuance of the selection which has taken place in the year 2012.

6] This petition is therefore dismissed. Interim order, if any, stands vacated. There shall be no order as to costs.

7] In view of the disposal of the writ petition, civil application no. 3261 of 2015 does not survive and the same is also disposed of accordingly.

CHIEF JUSTICE

(M. S. SONAK, J.)

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