

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12809 OF 2015**

Anupama B. Patil and ors. .. Petitioners.
vs.
Ajit S. Bhujbal and ors. .. Respondents.

Mr. Shekhar Jagtap a/w. Mr. Askhay Kapadia and Mr. Narendra Sharma i/b J. Shekhar & Co. for the petitioners.
Mr. N.V. Walawalkar i/b M.A. Patil for respondent No.1.
Mr. C.P. Yadav, AGP for respondent No.3-State.

**CORAM: D.H. WAGHELA, C.J. AND
M.S.SONAK, J.
DATE : 14 MARCH 2016**

P.C.:

1] The petitioners, who were not party respondents in Original Application No. 1014 of 2014 challenge the judgment and order dated 30 November 2015 made therein by the Maharashtra Administrative Tribunal (MAT) *inter alia*, on the grounds that they are affected by the same.

2] The Maharashtra Public Service Commission (MPSC) had issued advertisement no. 80/2014, which was duly published in leading newspapers inviting applications for filling-up of posts of Assistant Commissioner (Food)-cum-Designated Officer (Grade-A) said posts on 15 March 2014.

3] One Shri. Balaji Shinde and seven others, including some of the petitioners herein, instituted Original Application No.

514 of 2014 before the MAT questioning the advertisement no. 80/2014, *inter alia*, on the ground that the same had unreasonably excluded invitation of applications from candidates fulfilling qualification laid down in rule 1(iii)(a) of rule 2.1.2 of Food Safety and Standard Rules, 2011 for the food safety officers.

4] The MAT, by its judgment and order dated 12 August 2014, partly allowed Original Application No. 514 of 2014, by observing thus:

7. *On carefully going through the provisions of FSS Act, FSS Rules of 2013 framed by the State Government, it emerges that the persons who were appointed as Food Inspectors under PFA Act 1954 and who have educational qualification prescribed under PFA Rules, 1955 can compete for the post of Designated Officer which are to be filled by nomination provided they are below 50 years of age. The educational qualifications for the post of Designated Officers will be as per PFA Rules, 1955 for only those persons who were appointed as Food Inspector under PFA Act, 1954. All other candidates have to fulfill educational qualification as per para 4.5 of the advertisement no. 80/2014 issued by the Respondent no.3. The other condition referred to in Sub-Rule 1(iii)(a) of Rule 2.1.2 of FSS Rules 2011 is regarding age limit, which is 50 years for appointment by nomination while there is no age limit for appointment by promotion in Rule 4 of 2013 Rules. We are unable to comprehend the stand of the Respondent no.3 when the appointing authority viz. the Respondent no.1 has clarified the issue as above.*

8. *Having regard to the aforesaid facts and circumstances of the case, the Respondent no. 3 is directed to suitably modify the advertisement no.80/2014 and include qualification laid down under Sub Rule 1(iii)(a) of Rule 2.1.2 of Food Safety and Standard Rules, 2011 for the Food Safety Officers working under the Government of*

Maharashtra. This may be done by issuing a fresh advertisement or issuing a corrigendum giving adequate time only to the eligible Food Safety Officers to compete for the post of Designated Officer. The Original Application is disposed of accordingly with no order as to costs.

5] The MPSC in purported compliance with the directions contained in the order dated 12 August 2014 made in Original Application No. 514 of 2014, issued a corrigendum dated 1 October 2014, but published it only upon its website. Neither was any fresh advertisement issued by the MPSC, by incorporating the change directed by the MAT in its order dated 12 August 2014 nor was the actual corrigendum published in any newspaper by way of an advertisement.

6] At the stage when, the selection process was completed, but before any appointments could be made, respondent no.1, instituted Original Application No. 1014 of 2014 before the MAT, questioning the selection process, *inter alia*, on the ground that the selection was proceeded, without advertising the modified or added qualification, thereby denying opportunity to the respondent no.1 as also similarly placed candidates from even applying to be considered for the posts.

7] The MAT, by the impugned judgment and order dated 30 November 2015, by observing that failure to issue advertisement, in the matter of changed qualifications, was fatal to the selection process, has quashed the selection process and issued directions

for fresh advertisement in order to fill-up the posts.

8] The State of Maharashtra and MPSC, who were respondents in the Original Application No. 1014 of 2014 have not challenged the judgment and order dated 30 November 2015 made by the MAT. The petitioners, who claim that their names find place in selection list, which has now been set aside by the MAT, have preferred this petition.

9] Mr. Shekhar Jagtap, the learned counsel for the petitioners, has submitted that the MAT in its judgment and order dated 12 August 2014 made in *Balaji Shinde's* case had granted MPSC an option to either issue a fresh advertisement or issue a corrigendum. The MPSC, having opted for the issue of corrigendum, cannot be said to have committed any illegality, vitiating the selection process. Mr. Jagtap submitted that a mammoth exercise of selection having been completed by the MPSC and the petitioners having been selected therein, there was no reason for cancellation of selection process, on the mere ground that there was no fresh advertisement issued in the matter. Mr. Jagtap submitted that the persons, placed in similar position, as the petitioners, have nevertheless applied for selection and some of them, have also been selected. Mr. Jagtap placed reliance upon the decision of the Hon'ble Supreme Court in case of *Bhupinderpal Singh and ors. Vs. State of Punjab and ors.*¹, in support of the petition. For all these reasons, Mr. Jagtap submitted

1 (2000) 5 Supreme Court Cases 262

that the impugned judgment and order made by the MAT warrants interference.

10] Mr. Walawalkar, learned senior advocate for the respondent no.1, defended the impugned judgment and order by submitting that in the absence of any advertisement, the respondent no.1, as also similarly placed persons were deprived of opportunity of even being considered for the public posts. This, Mr. Walawalkar submitted, was direct infringement of the right guaranteed by Article 16 of the Constitution of India. Mr. Walawalkar placed reliance upon the decision of the Hon'ble Supreme Court in case of ***State of Bihar and ors. Vs. Chandreshwar Pathak***², to submit that any appointments made in absence of any advertisement violate Articles 14 and 16 of the Constitution of India.

11] Mr. C.P. Yadav, learned AGP for the respondent no.3-State, submitted that it is for the MPSC to defend its selection and therefore, he has no submissions to make with regard to impugned judgment and order made by the MAT.

12] The petitioners, have filed affidavit of service indicating that service has been effected upon respondent nos.1 to 3, which includes the MPSC by hand delivery. However, MPSC is not represented by any advocate in the present proceedings. There is also no record of MPSC, independently, challenging the impugned judgment and order made by the MAT.

2 (2014) 13 Supreme Court Cases 232

13] Rival contentions, therefore, now fall for determination.

14] The petitioners contention that the MAT, whilst deciding the *Balaji Shinde's* case, had granted an option to the MPSC to either issue a fresh advertisement or issue a corrigendum is not accurate. This submission is based upon misinterpretation of the order of MAT in *Balaji Shinde's* case. In the judgment and order dated 12 August 2014 made by the MAT in *Balaji Shinde's* case, the MAT accepted the contention of the petitioners therein, which includes at least some of the petitioners in this petition, that the advertisement no.80/2014 issued by the MPSC was defective, to the extent, it did not include the qualification laid down under sub-rule 1(iii)(a) of rule 2.1.2 of Food Safety and Standard Rules, 2011. Thereafter, the MAT directed the MPSC to either issue a fresh advertisement, meaning a consolidated advertisement by inclusion of the additional qualification or to issue a corrigendum giving adequate time only to eligible food safety officer to compete for the posts earlier advertised. This clearly means and implies that the MPSC was at liberty to issue corrigendum, but further, this does not mean or imply that such corrigendum was not required to be advertised, in the same manner in which the original advertisement no.80/2014 had been published/advertised by the MPSC.

15] The entire purpose for allowing the original application instituted by *Balaji Shinde* and some of the petitioners was to provide opportunity to candidates fulfilling the additional

qualification, directed to be, introduced in advertisement no. 80/2014, to apply for and consequently be considered for appointment to the said posts. Obviously therefore, corrigendum containing the additional qualification had to be advertised, so that all candidates fulfilling the same would have an equal opportunity of applying to be considered for appointment to the posts so advertised. Mere post of the corrigendum on the website of the MPSC was not what was contemplated in the decision in *Balaji Shinde's* case. In any case, mere publication upon the website of MPSC, will, in the facts and circumstances of the present case, not constitute compliance with the mandate contained in Articles 14 and 16 of the Constitution of India. The decision taken by the MAT in this regard is neither vitiated by any jurisdictional error nor can it be said to be legally infirm.

16] The decision of the Hon'ble Supreme Court in case of *Bhupinderpal Singh (supra)*, turns on its own facts. In the said decision, although, it was held that the acquisition of eligibility qualifications after the last date for the receipt of applications could not have been considered for making a valid selection, the Hon'ble Supreme Court, in the peculiar facts and circumstances, chose, not to disturb the appointments already made, by taking note of the circumstance that there were no *malafides* involved on the part of selected candidates, there was a loose practice prevalent in the selection process to take cognizance of such belated qualification and finally, most of the applicants, if not all, must have crossed the upper age limit for seeking public

employment and the ghost of unemployment was likely to chase them for the rest of their lives. The Hon'ble Supreme Court made it clear in paragraph 18 of the decision that it was exercising powers under Article 142 of the Constitution of India to do complete justice in the facts and circumstances of the case.

17] In the present case, the petitioners merely claimed to be on the selected list. That by itself, does not confer any indefeasible right on the petitioners to secure appointment. The MAT, has found fault with the selection process because the added/amended qualifications were never advertised, thereby, denying opportunity not only to respondent no.1, but also similarly placed candidates from even applying to be considered for appointment to the said posts. The decision in case of ***Bhupinderpal Singh (supra)***, which in any case, came to be made under Article 142 of the Constitution, can therefore, not support to the case of the petitioners.

18] In case of ***Chandreshwar Pathak (supra)***, the Hon'ble Supreme Court has held that no person can be appointed even on temporary or ad-hoc basis without inviting applications from all eligible candidates and any appointment in absence of advertisement cannot be said to be protected, considering the scheme of provisions contained in Articles 14 and 16 of the Constitution. In paragraphs 11,12 and 13, the Hon'ble Supreme Court, following its earlier view in case of ***State of Orissa Vs.***

Mamata Mohany³, has observed thus:

11. ...

“Appointment/employment without advertisement

35. At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution. (Vide: *Delhi Development Horticulture Employees' Union v. Delhi Admn.* - (1992) 4 SCC 99, *State of Haryana v. Piara Singh* – (1992) 4 SCC 118, *Excise Supdt. v. K.B.N. Visweshwara Rao* – (1996) 6 SCC 216, *Arun Tewari v. Zila Mansavi Shikshak Sangh*- (1998) 2 SCC 332, *Binod Kumar Gupta v. Ram Ashray Mahoto* – (2005) 4 SCC 209, *National Fertilizers Ltd. v. Somvir Singh* – (2006) 5 SCC 493, *Deptt. of Telecommunications v. Keshab Deb* – (2008) 8 SCC 402, *State of Bihar v. Upendra Narayan Singh*- (2009) 5 SCC 65 and *State of M.P. v. Mohd. Ibrahim*- (2009) 15 SCC 214).

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all

³ (2011) 3 SCC 436

eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the notice board, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.”

12. No contrary view of this Court has been cited on behalf of the respondent. Moreover, another Division Bench of the same High Court has upheld termination in similar matter as noted earlier against which SLP has been dismissed by this Court as mentioned earlier.

13. Accordingly, it has to be held that in the absence of any advertisement or selection process, the appointment of the respondent is not protected and could be validly terminated. The learned Single Judge was justified in dismissing the writ petition while the Division Bench erred in interfering with the same.”

19] Upon cumulative consideration of the facts and circumstances, as well as the legal position, we are satisfied that there is no case made out to interfere with the impugned judgment and order dated 30 November 2015 made by the MAT. In the facts and circumstances of the present case, neither have any rights of the petitioners been infringed nor does the impugned order deny the petitioners any opportunity to compete in the fresh

selection process. The petitioners cannot, on the basis of a faulty selection process, seek immunity from competition or deprive other eligible candidates from even being considered for appointment to the said posts. This petition is therefore, dismissed. There shall, however, be no order as to costs.

20] In terms of the impugned judgment and order, the MPSC had been directed to issue fresh advertisement within a period of four months. As there was an ad-interim relief granted by this Court, it is possible that no such advertisement came to be issued. Now that we are dismissing this petition and vacating ad-interim relief, the MPSC is directed to issue necessary advertisement as directed in the impugned judgment and order within a period of two months from today.

21] The request of Mr. Jagtap for extension of ad-interim relief by a period of eight weeks is rejected, particularly since the MPSC has been granted two months' time to comply with the directions issued by the MAT and this by itself would constitute sufficient relief to the petitioners, in case they propose to challenge this judgment and order.

CHIEF JUSTICE

(M.S.SONAK, J.)