

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3574 OF 2015

Dr. Vipul Namdeorao Ambade

-vs-

Maharashtra Public Service Commission, Mumbai, through its Secretary and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S.A.Marathe, counsel for the petitioner.
Mr. Abhay Sambre, counsel for the respondent No.1.
Mr. A.M.Kadukar, AGP for the respondent No.2.
Ms Kukday, counsel for the respondent No.5.

CORAM : SMT. VASANTI A NAIK &
KUM. INDIRA JAIN, JJ.

DATE : 01.09.2016.

By this petition, the petitioner seeks a declaration that Clause 9.2 of advertisement No.188-200 of 2014 issued by the Maharashtra Public Service Commission is violative of the provisions of Articles 14 and 16 of the Constitution of India. The petitioner has challenged the selection of the respondent No.5 on the post of Professor in Forensic Medicine.

The respondent-Maharashtra Public Service Commission had published an advertisement on 17.10.2014, inviting applications for the appointment on various posts in the Medical College of the Bruhanmumbai Municipal Corporation. In this case, we are concerned with the post of Professor in Forensic Medicine. The post was a solitary post and was earmarked for the Open Category. As per the advertisement, the upper age limit for the Open Category-unreserved candidates was 40 years whereas the upper age limit for the Backward Class candidates was 45 years. Clause 9 of the advertisement provided that the fees payable by the Reserved Category candidates were Rs.315/-, whereas the fees payable by an Open Category candidate was Rs.515/-. Clause 9.2 of the advertisement further provided that the

candidature of a Backward Class candidate could not be recommended for a post meant for the Open Category, if the said candidate has secured the benefits of age relaxation or the payment of examination fees. The petitioner was 42 years of age at the time of issuance of the advertisement. The petitioner, therefore, had sought the relaxation of his age being a Reserved Category candidate. The petitioner applied for a post that was meant for the Open Category. The petitioner did not challenge Clause 9.2 of the advertisement before applying for the post of Professor in Forensic Medicine that was earmarked for the Open Category. After the candidature of the petitioner was rejected in view of the condition in Clause 9.2 of the advertisement, the petitioner has challenged Clause 9.2 of the advertisement by filing the instant petition. According to the petitioner, the petitioner's candidature could not have been rejected on the ground that the petitioner was barred by age by resorting to Clause 9.2 of the advertisement. According to the petitioner, Clause 9.2 of the advertisement is bad in law, as it withdraws the benefits that are granted to the persons belonging to the reserved categories. In the aforesaid set of facts, the petitioner has challenged Clause 9.2 of the advertisement as also the selection of the respondent No.5 on the post of Professor in Forensic Medicine.

The learned counsel for the respondents have vehemently opposed the prayers made in the petition. It is stated on behalf of the respondents that the writ petition is not maintainable. It is stated that it is a well settled position of law that a candidate participating in the selection process cannot question the process at a later stage. It is stated that by the principle of 'estoppel', a candidate is prevented from challenging the selection process after participating in the same. The learned counsel for the respondents relied on the decisions of the Hon'ble Supreme Court, reported in (2009) 3 SCC 227 (Amlan Jyoti Borroah v. State of Assam and others), (1997) 4 SCC 426 (University of Cochin v. N. S. Kanjoonjamma), (2008) 4 SCC 171 (Dhananjay Malik v. State of Uttaranchal), (2010) 12 SCC 576 (Manish Kumar Shahi v. State of Bihar) and (2011) 1 SCC 150

(Vijendra Kumar Verma v. Public Service Commission). It is stated that even otherwise the respondent No.5 is more meritorious and better qualified than the petitioner.

On a perusal of the law laid down by the Hon'ble Supreme Court, we uphold the preliminary objection raised on behalf of the respondents to the maintainability of the writ petition. It is well settled that a challenge to the selection criteria, after participating in the selection process, is not permissible. If a candidate is aggrieved by any clause or condition in the advertisement, it would be necessary for the candidate to challenge that clause or condition before applying for the post in pursuance of the advertisement. The petitioner applied for the post and participated in the selection process. The respondent-Maharashtra Public Service Commission relied on Clause 9.2 of the advertisement to hold that the petitioner was not eligible for appointment and the name of the petitioner could not have been recommended by the respondent-Maharashtra Public Service Commission to the Bruhanmumbai Municipal Corporation in view of Clause 9.2 of the advertisement. After participating in the selection process, the petitioner has challenged a condition in the advertisement, which is not permissible in view of the aforesaid decisions of the Hon'ble Supreme Court. Since the petition is not maintainable, it would not be necessary to consider the correctness or otherwise of Clause 9.2 of the advertisement.

Hence, by upholding the preliminary objection raised on behalf of the respondents, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by:G.S.Khunte,
P.A.to Hon'ble Judge

Uploaded on : 02/09/2016