

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

WRIT PETITION NO.3456/2016

Pankaj s/o Chaitanya Golchha

...Versus...

Maharashtra State Electricity Distribution Company Ltd., through its Managing
Director, Mumbai – 400051

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.D. Khati, Advocate for petitioner
Shri A.D. Mohgaonkar, Advocate for respondent

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : 15.12.2016

By this writ petition, the petitioner seeks a direction against the respondent to appoint the petitioner on the post of Assistant Engineer (Civil) in pursuance of the selection process initiated by advertisement No.4/2014.

In pursuance of an advertisement issued by the respondent on 24.7.2014 inviting applications for appointment on several posts, the petitioner applied for the post of Assistant Engineer (Civil). The petitioner appeared at the examination and was interviewed. The candidature of the petitioner was however rejected on the ground that the petitioner did not possess a certificate of a College/Institute affiliated to the recognized University that the petitioner had the knowledge of Marathi language. According to the petitioner, the candidature of the petitioner was wrongly rejected as, in view of Clause 9.3 of the

advertisement, though the knowledge of Marathi was held to be desirable, a selected candidate was permitted to pass the departmental Marathi language examination within three years from the date of joining the service with the Company. It is the case of the petitioner that on a combined reading of Clause 9.3 and Clause 9.5 of the advertisement, it is clear that the petitioner could have passed the departmental Marathi language examination within three years from the date of joining and the respondent- Company could not have resorted to Condition No.9.5 to reject the candidature of the petitioner on the ground that the petitioner did not possess the certificate in respect of knowledge of Marathi language.

The respondent has filed the affidavit-in-reply on 30.11.2016 and 14.12.2016. It is stated that in view of the amended regulations, Clause 9.5 was inserted in the advertisement as the Company thought it fit to appoint the candidates possessing the knowledge of Marathi. It is stated that Clause 9.5 of the advertisement is in consonance with the amended regulations and due to the mistake in publishing the advertisement, Clause 9.3 remained in the same. It is stated that in the subsequent advertisement, Clause 9.3 that permits a selected candidate to pass the departmental Marathi language examination within three years from the date of joining is deleted, in view of the amended regulations. It is submitted that in any case, the select list that was published on 7.5.2015 got exhausted on the expiry of one year from the publication thereof, on 7.5.2016 and hence, the relief may not be granted in favour of the petitioner.

In the circumstances of the case, we are not inclined to grant the relief sought by the petitioner. It is clear from the amended regulations that a selected candidate is required to possess a certificate in respect of the knowledge of Marathi language before his appointment. Clause 9.3 that permitted a selected candidate to pass the departmental Marathi language examination within a period of three years appears to have wrongly remained in the advertisement. In any case, Clause 9.3 and Claus 9.5 do not go hand in hand and are contrary to each other. Clause 9.5 is in consonance with the amended regulations, whereas Clause 9.3 runs contrary to the same. It further appears that in the subsequent advertisement, the respondent did not commit the mistake of incorporating Clause 9.3. Therefore, the case of the respondent that Clause 9.3 remained in the advertisement by mistake, is believable. Also, though the regulations provide that a select list would remain in force only for a period of one year from the date of its publication and would get exhausted on the expiry of one year, the petition is not filed on or before 7.5.2016. There is, therefore, some force in the submission made on behalf of the respondent that the petitioner cannot seek his appointment on the post of Assistant Engineer (Civil) on the basis of the select list that was published on 7.5.2015.

Since the relief sought by the petitioner cannot be granted, in the circumstance of the case, we dismiss the writ petition with no order as to costs.

JUDGE

Wadkar

JUDGE