

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7638 OF 2015

Kirankumar Dagadu Wanve
and another

.. Petitioners

Versus

1. Dr. Babasaheb Ambedkar Marathwada
University through its Registrar
and others

.. Respondents

Shri A. S. Deshpande, Advocate for Petitioners.

Shri S. S. Thombre, Advocate for the Respondent No. 1.

Shri R. B. Bagul, A.G.P. for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

Closed for Judgment on : 03.03.2017

Judgment Pronounced on : 05.05.2017

JUDGMENT (Per S. V. Gangapurwala, J.) :-

. The respondent No. 1/university invited applications for filling up the post of Assistant Registrar. Pursuant to the advertisement dated 06.03.2012, the petitioners applied for the post of Assistant Registrar reserved for V. J. N.T. category. The petitioners had appeared for written examination. According to the petitioners, they had passed the written examination and subsequently the interviews were to be held on 23.12.2013. The

petitioners were called for interviews, however, interviews were postponed due to pending petition in this Court. The said writ petition was disposed of in view of the resolution passed by the management council resolving to scrutinize the applications and to call only those candidates who were found to be eligible. The interviews were re-scheduled on 25.11.2014. The petitioners were called for interviews scheduled to be held on 25.11.2014. On the said date also the interviews were postponed. Thereafter it was declared that the interviews would be conducted on 27.07.2015 at 9.30 a. m. The petitioners were not given call letters for interviews purportedly as the petitioners were eliminated from the selection process holding that they are ineligible. The elimination of the petitioners from the selection process is assailed in the present petition.

3. Mr. Deshpande, the learned counsel for petitioners submits that, initially twice the petitioners were called for interviews. It shows that, the respondents considered the petitioners eligible for the post of Assistant Registrar. The said interviews were postponed and for the interviews which were scheduled to be held on 27.07.2015, the petitioners were not called for interview. The learned counsel submits that, the petitioner No. 1 is eliminated on the ground that he does not possess required experience. The petitioner No. 1 is working on non grant D. Ed. college and the said post is not approved as described U/Sec. 2(34) of the Universities Act and the petitioner No. 2 is not considered on the

ground that, he is over aged on the date of advertisement. The learned counsel submits that, the advertisement does not postulate experience on the post as contemplated U/Sec. 2(34) of the Maharashtra Universities Act. The learned counsel submits that, the respondent No. 1 has discriminated the petitioners. As per the record, out of three candidates short listed, one candidate Dr. Smt. Sunita Jogram Rathod does not qualify the so-called requirement U/Sec. 2(34) of the Maharashtra Universities Act, as she is working in DIET, which comes under NCTE, Bhopal and has absolutely no concern with the university. Similar is the case in respect of Shri Ramnath Gopinath Pawar who was working in Milind Arts College (Junior), Aurangabad and is working as assistant teacher in higher secondary section and has no concern with the university. One Shri Bharat Wagh and Smt. Anita Patil were working in the institutions which even remotely has no concern with the university are appointed as section officers under the respondent No. 1. The petitioner No. 1 had secured 53 marks out of 70 marks in the written examination and was topping the list of candidates who had applied for the post of Assistant Registrar pursuant to the advertisement in question. His claim can be considered in the order of merit irrespective of his social status. One Mr. G. D. Nage is appointed from the open category for the post of Assistant Registrar. The other candidates who were approved by the Deputy Director of Education and were working in non grant college are concerned as eligible by the respondent No. 1, however, on the said ground,

the petitioner No. 1 is eliminated. This shows the ulterior motive of the respondent No. 1. The service condition of aided and non aided colleges are identical and there is no distinction. Therefore, service in non aided college cannot be a ground to eliminate the candidature of the petitioner No. 1.

4. The learned counsel further submits that, elimination of the petitioner No. 2 is on two counts. One he is working in non granted college and secondly he is over age. Elimination of the petitioner No. 2 is unsustainable. So far as ineligibility of the petitioner No. 2 on the count of over age is concerned, the same is bad in law. One Mr. Nage who was considered, was above fifty years of age. The petitioner No. 2 is working in an affiliated college to the respondent No. 1. The petitioner No. 2 was of 38 years 01 month and 28 days old on the date of application. As per the provisions of the Standard Code Rule, appointment by nomination of a candidate can be made who is not more than 40 years of age, unless already in service of university or affiliated colleges. As the petitioner No. 2 is serving in an affiliated college to the respondent No. 1, the petitioner No. 2 has to be held to be within age. One Mr. Sanjay Kisan Pawar and Mr. Gulab Nage were considered eligible, though they have crossed 40 years of age. The petitioner No. 2 is also discriminated on the said count.

5. The learned counsel submits that, the entire selection process carried out by the respondent No. 1 is tainted with

ulterior motive to accommodate blue eyed persons who were pre-decided to be selected. The selection process as such be quashed and set aside. The petitioner be held eligible to be considered for appointment to the post of Assistant Registrar.

6. Mr. Thombre, the learned counsel for the respondent No. 1/university submits that, the eligibility criteria for the post of Assistant Registrar as mentioned in the advertisement is as under :

- (1) Post Graduate degree of a statutory University with 50% marks.
- (2) Five years experience in administrative cadre not below the rank of Superintendent in education institution or its equivalent post or equivalent scale or lecturer with three years teaching experience.
- (3) Proficiency in Marathi and English language.
- (4) Proficiency in computer as prescribed by State Government from time to time.
- (5) Desirable knowledge and experience in Account/Finance / Audit / Administration / Office automation / purchase and imports.

7. The learned counsel submits that, the petitioner No. 1 does not have required experience as a lecturer. He is working on a non granted D. Ed. college for which permission is granted by the

N.C.T.E. The services of the lecturer must be on a sanctioned post on the pay scale prescribed by the U.G.C. and should be approved as described U/Sec. 2(34) of the Maharashtra Universities Act. The petitioner No. 2 was over aged on the date of publication of advertisement. The maximum age prescribed for V.J.N.T. category candidates is 38 years and the petitioner No. 2 was of 38 years 01 month 25 days on the date of advertisement.

8. The learned counsel submits that, the scrutiny committee appointed has verified the documents of the candidates who have appeared at the time document verification. The scrutiny committee has considered that, the petitioner No. 1 is working in non grant in aid college, so also the service of the petitioner No. 1 is not approved. Mr. Ramnath G. Pawar, Smt. Sunita Rathod and Sanjay Pawar are fulfilling the required eligibility, as such they were issued with call letters.

9. The learned counsel further submits that, post of Assistant Registrar is Class - I post and the petitioners do not possess experience as required. The scrutiny committee has considered the application along with documents which are filed by petitioners. At the time of scrutiny, the committee had held that, the petitioner No. 1 does not possess the requisite experience as per the advertisement. The copies of experience certificates produced by the petitioner No. 1 i. e. experience certificate dated

28.02.2008, the same is as a principal of having worked for four years. The second certificate is of the petitioner No. 1 having worked as an Assistant Teacher for only eight months and third certificate is showing the experience of the petitioner No. 1 of having worked as Assistant Teacher from 04.12.1998 to 30.10.2003. The qualification prescribed by N.C.T.E. for the post of Principal on the D. Ed./B. Ed. college is different and as far as qualification prescribed for the post of Assistant Registrar in the university is concerned, it is prescribed as per the statutes made by the university. As far as the cases of Mr. Bharat Wagh and Smt. Anita Patil are concerned those relate to appointment of Section Officers, for which different eligibility is prescribed. As far as case of Ramnath Pawar is concerned, his application was accepted and was held to be eligible as he is working as Junior lecturer with Milind College of Arts, Aurangabad and therefore, as per the advertisement, he was held to be eligible. Smt. Dr. Sunita Jogram Rathod was held to be eligible as she was working as lecturer in District Education and Training Institute, Jalna. She was selected by the M. P. S. C. and before that she was also having experience of working in B. Ed. college as lecturer and Principal. Mr. Sanjay Pawar is working as Office Superintendent in Vivekanand College, Aurangabad and said college is affiliated with the university and he was held to be eligible. Mr. Gulam Nage is also held to be eligible as he possess necessary experience when he submitted application, he was in service of the university on the post of stenographer senior scale, and

therefore, Standard Code Rules, 1984 are applicable and as per clause 3(3)(iii)(a), he was held to be eligible. There is no upper age limit prescribed for the employees of university and affiliated colleges. There is no upper age limit prescribed for the employees working in the State Government also, but inadvertently, the said condition was not incorporated in the advertisement issued by the university while filling up these posts, but subsequently the condition was mentioned in the advertisement that, there is no upper age limit prescribed for the employees working with the university as well as affiliated colleges. As far as Mr. Gulab Nage is concerned, he is possessing LL. B. degree so also B. A. degree. In his application he has specifically stated that, LL.B. is post graduate degree for the purpose of advertisement and the LL.B. degree is to be clubbed with other post graduate courses.

10. The learned counsel further submits that, the petitioners are not employees of the university, as such they cannot get the benefit of age relaxation. The learned counsel relies on the judgment of the Apex Court in a case of Dr. Basavaiah V/s Dr. H.L. Ramesh and others reported in 2010 AIR SCW 5907 to submit that in academic matters interference of court is very limited. This court would not sit in appeal over decision of experts. There are no allegation of malafides. Interference with the decision of experts is not permissible. The writ petition deserves to be dismissed.

11. We have considered the submissions canvassed by the learned counsel for the respective parties.

12. The qualification and experience necessary for the candidate to be eligible to be considered for the post of Assistant Registrar as per the advertisement is as under.

2	सहायक कुलसचिव (Assistant Registrar) 9300-34800 रु. 5400/-	खुला	3	1	(1) Post-Graduate degree of a Statutory University with <u>50% marks.</u>
		इ.मा.व.	1	--	
		विज्ञा (अ) (अंतर्गत परिवर्तनीय अ,ब,क,ड)	1	--	(2) <u>Five years</u> experience in administrative cadre not below the rank of Superintendent in education institution or its equivalent post or equivalent scale or Lecturer with three years teaching experience. (3) Proficiency in Marathi and English languages. (4) Proficiency in Computer as prescribed by State Government from time to time. (5) Desirable knowledge & Experience in Account/Finance/Audit/Administrati on/Office automation/ purchase and imports.

13. The candidature of the petitioners are negatived on following grounds.

Petitioner No. 1) Mr. Kirankumar Dagadu Wanave. His service is approved by Deputy Director (Education). He is working in non granted college.

Petitioner No. 2) Mr. Dadarao Ramji Chavan. His service is approved by the University. He is working in non granted college. He is over aged.

14. There is no doubt that the service of the petitioner No. 1 is approved by the Deputy Director (Education) and he is serving as a Lecturer in D.Ed. college, the said college is non grant in aid college and is not affiliated to the university. The respondents have relied on section 2 (34) of the Universities Act to contend that as the services of the petitioners are not approved by the university as such the experience of the petitioner cannot be considered. It is further case of respondent that the service as a lecturer must be on a sanctioned post on the pay scale prescribed by the UGC and should be approved as described under section 2 (34) of the Maharashtra Universities Act and therefore, petitioner No. 1 is not fulfilling the criteria of being a lecturer on sanction posts of the senior college affiliated to the university.

15. The said argument does not stand to reason. If we peruse the advertisement, the eligibility prescribed for the post of Assistant Registrar nowhere lays down that the person should be working in a affiliated college to the university. It only states that the candidate should be lecturer with 3 years teaching experience. The advertisement did not prescribe that he should be working as a lecturer on a college affiliated to the university or that his services has to be approved by the university. The

petitioner No. 1 has worked as a Principle for 4 years of the Sufa Educational and welfare Society. So also has worked for almost 1 year as an Assistant Teacher on the D.Ed. college and as an Assistant Teacher for almost 5 years in Premchand Mugdiya, D.Ed. college. His services were approved by the Deputy Director of Education. He also worked as an Principle of D.R.P. D.Ed. college.

16. No doubt selection committee consists of experts and they are the better judge of the qualification and the eligibility. But if we consider the arguments of the respondents vis-a- vis the eligibility of the other candidates accepted by the respondent then there appears to be contradiction. One Dr. Smt. Sunita Jogram Rathod is held to be eligible. Though it is shown that she is not working with the college affiliated to the university and she is working in District Education and Training Institute, Jalna. The same comes under N.C.T.E. , Bhopal. One Mr. Ramnath G. Pawar was also working in a Junior Arts college, as an Assistant Teacher in Higher Secondary section and it is stated that said Junior Collage is not concerned with the university. If the said college where Mr. Ramnath G. Pawar was working is not affiliated with the university and he is working in a Junior college in Higher Secondary Section still he is considered eligible. The yardstick applied to Mr. Ramnath Pawar would also apply to the petitioner. If the petitioner No. 1 is held ineligible on the ground that he is working in Junior College and the said college

is not affiliated to the University, then Mr. Ramnath G. Pawar who was also working as an Assistant Teacher in Higher Secondary Section in Junior College also should meet the same fate. However, the said Mr. Ramnath G. Pawar is held to be eligible. In light of the above the case of the petitioner No. 1 requires to be reconsidered.

17. As far as the petitioner No. 2 is concerned, it is not disputed that the college where he is working is affiliated to the university and his appointment is also approved by the university. The objection is he has worked in non grant college. There is no distinction made between grant and non grant collage. The college where the petitioner 2 is working is very much affiliated to the university and the appointment of petitioner No. 2 is also approved by the university. The another objection to the eligibility of petitioner No. 2 is that he is over aged. He is 38 years 1 month and some odd days and the upper age limit is 38 years. The respondent in its written arguments has contented that there is no upper age limit prescribed for the employees of universities and affiliated colleges. Inadvertently said condition is not incorporated in the advertisement, the same is incorporated in subsequent advertisement. The said submission is made by the respondent to substantiate the appointment of Mr. Nage who was above 50 years of age and Mr. Sanjay Pawar who had also crossed 40 years of age. Reliance is also placed on standard code rules. In that case as the petitioner

No. 2 is working in the affiliated college, the same criteria should apply to the petitioner No. 2 also and ought to have been considered eligible and not over age.

18. In view of the above we pass the following order.

19. The respondent shall re-consider the eligibility of the petitioner No. 1 on the same lines as is considered of Dr. Sunita J. Rathod and Shri. Ramnath G. Pawar who were working with the colleges not affiliated to the university. The petitioner No. 2 is admittedly working in affiliated college to the university and as such the ground of over age should have been considered on the same lines as that of Mr. G.D. Nage and Sanjay K. Pawar. The respondent shall re-consider the eligibility of these petitioner for the post of Assistant Registrar in view of the observations made above. With these observation and direction the writ petition stand disposed of. No costs.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]

bsb/May 17