

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

W.P. NO. 11750 OF 2016

- | | |
|---------------------------------|-----------------|
| 1) The State of Maharashtra |] |
| Through its Principal Secretary |] |
| (ADF) Agriculture, |] |
| Dairy Development and Fisheries |] |
| Department, Khan Abdul Gafar |] |
| Khan Road, Worli, Mumbai-400018 |] |
| |] |
| 2) The Commissioner, |] |
| Dairy Development, |] |
| Animal Husbandry and |] |
| Fisheries Deptt. |] |
| Khan Abdul Gafar Khan Road, |] |
| Worli, Mumbai-400 018 |].. Petitioners |

Vs.

- | | |
|--------------------------------|-----------------|
| 1) Dharampal Murlidhar Barmase |] |
| Age about 55 years, |] |
| Occ: Service, |] |
| As Technical Assistant in the |] |
| Office of Dairy Development |] |
| Commissioner, Khan Abdul Gafar |] |
| Khan Road, Worli-Seaface |] |
| Worli, Mumbai-18 |] |
| Residing at C-2, Dairy Staff |] |
| Quarters, Worli, Mumbai-18 |] |
| |] |
| 2) The Secretary, |] |
| Maharashtra Public Service |] |
| Commission, Address at |] |
| 5½, 7 and 8 floor |] |
| Cooperage Telephone Corpn. |] |
| Building, Maharshi Karve Road, |] |
| Cooperage, Mumbai |].. Respondents |

....
Mr. N.C. Walimbe AGP for Petitioners
Mr. Yashodeep Deshmukh Advocate i/b Sharayu Shinde for
Respondent No. 1
Mr. Shrikrishna Ganbavale Advocate for Respondent No.2
....

**CORAM : SMT.V.K.TAHILRAMANI AND
DR.SHALINI PHANSALKAR-JOSHI, JJ.**

DATED : SEPTEMBER 27, 2017

ORAL JUDGMENT [PER SMT. V.K.TAHILRAMANI, J.]:

1 Heard the learned AGP for the petitioners, the learned counsel for respondent no.1 and the learned counsel for respondent no.2 – M.P.S.C.. Rule. By consent, rule is made returnable forthwith and the matter is finally heard.

2 The petitioners have preferred this petition against the order dated 12.2.2015 passed by the Maharashtra Administrative Tribunal, Mumbai (hereinafter referred to as the “Tribunal”) in Original Application No. 697 of 2012 preferred by respondent no.1. The said Original Application had been preferred by respondent no.1 claiming that his candidature as General Manager from Scheduled Caste category in the Dairy

Development Department was wrongly rejected by respondent no.2- M.P.S.C. on the ground that he did not have sufficient experience.

3 The respondent no.2 - M.P.S.C. had issued an advertisement dated 28.12.2004 to fill up 15 posts of General Manager (Govt. Milk Scheme) in the Dairy Development Department. Four posts were reserved for Scheduled Caste candidates. The respondent no.1 had applied for the said post from the Scheduled Caste category and he was interviewed for the said post, however, as stated earlier, the respondent no.1's candidature came to be rejected on the ground that he did not have sufficient experience.

4 As per the advertisement, experience and qualification for the post was as follows:

“B] After acquiring the qualification specified in (A) above, not less than five years experience in a dairy having processing capacity of not less than 50000 litres per day out of which three years experience shall be in the post equivalent to Group - B technical post in the Dairy Development Department”.

5 The learned AGP as well as learned counsel for the respondent no.2 - M.P.S.C. submitted that as per the advertisement, the respondent no.1 had to have not less than five years experience in a Dairy having "processing" capacity of not less than 50000 litres per day. As the respondent no.1 had worked in Group-B post only in Nagpur District Nutan Milk Producers Union, the said Unit had processing capacity of only 20000 litres per day. They submitted that even if 40% relaxation is granted considering the fact that the respondent no.1 is a candidate from Scheduled Caste category, that would mean that the Unit where the respondent no.1 was working, had to have processing capacity of 30000 litres of milk per day and as the said Unit had the processing capacity of only 20000 litres of milk per day, the respondent no.1 would not be eligible and hence, his candidature was rightly rejected.

6 The learned AGP as well as learned counsel for Respondent no.2- M.P.S.C. submitted that the Tribunal was wrong in considering that as Nagpur District Nutan Milk Producers Union used to "collect" more than 50000 litres per

day, hence, respondent no.1 had experience of “handling” more than 50000 litres of milk per day which would be sufficient to hold that the respondent no.1 had the necessary experience. They submitted that the advertisement clearly states that the person should have experience in a Dairy having “processing capacity” of not less than 50000 litres of milk per day.

7 The learned counsel for respondent no.1 candidly admitted that as far as experience from Group-B is concerned, the respondent no.1 had gained the said experience as Dairy Manager in Nagpur District Nutan Milk Union and the earlier posts held by the respondent no.1 were not in Group-B posts. The learned counsel for the respondent no.1 pointed out that as the respondent no.1 was a Scheduled Caste candidate, M.P.S.C. could relax the requirement of the period of experience to the extent of 40%. He submitted that this 40% relaxation would also include the qualification of having experience in a Dairy having “processing” capacity of not less than 50000 litres of milk per day.

8 The issue is about the person working in such Union /

Unit which has sufficient “processing” capacity of 50000 litres of milk per day and not “handling” capacity of 50000 litres of milk per day. Mr. Walimbe the learned AGP submitted that a candidate was required to have experience of 5 years of working in a Unit having minimum processing capacity of 50000 litres of milk per day, out of which, a minimum of three years experience should have been in a post equivalent to Group-B post in Dairy Development Department. The respondent no.1 had experience as a Manager (Group-B post) only in Nagpur District Nutan Milk Producers Union, which had a plant having capacity of processing only 20000 litres of Milk per day. As the respondent no.1 did not have the requisite experience even after 40% relaxation in experience, his candidature was rightly rejected. Further it is seen that even after the relaxation of 40% which would mean that the Dairy Unit should have capacity of processing 30000 litres of milk per day which was not the case as the Dairy in which the respondent no.1 was working as Group-B officer had only processing capacity of 20000 litres of milk per day. The advertisement clearly mentioned that experience should be in a Unit having processing capacity of not less than 50000 litres of milk per

day. There is a vast distinction between “processing” and “handling”. “Processing” is entirely different from “handling” and even if such Dairy Unit is collecting milk which is more than 50000 litres of milk per day, the fact that it did not have the capacity to “process” the said milk in the Unit would not meet the requirements of the advertisement. The dairy where the Respondent no.1 was working did not have the capacity to “process” 50000 litres of milk per day, hence, it would not meet the requirements of advertisement and hence, candidature of the respondent no.1 has been rightly rejected.

9 Thereafter the learned counsel for respondent no.1 submitted that in fact, the petitioner had obtained 59 marks and three persons who had obtained less marks than him i.e. Shri. Gadwe who had obtained 58 marks and Shri. Lalsingh Rathod and Shri. Vitthal Rathod who had got 58 and 52 marks respectively, were selected, even though they did not have the necessary experience of working in a Unit which had processing capacity of more than 50000 litres of milk per day. He submitted that equal treatment should be given to all the candidates. As far as this aspect is concerned, a wrong

appointment of a candidate would not entitle the other candidate to get appointment. In any event, we would like to mention here that the matter of appointment of such candidates is being investigated by the A.C.B. hence, we need not make any further comments on the said issue. As stated earlier, wrong appointment of other candidates would not entitle the respondent no.1 to be appointed.

10 Looking to the fact that respondent no.1 did not have the requisite experience of working in a Dairy having processing capacity of not less than 50000 litres of milk per day as stated in the advertisement, the impugned order of the Tribunal is not sustainable and the same is set aside. Rule is made absolute in above terms.

[DR.SHALINI PHANSALKAR-JOSHI,J.] [SMT.V.K.TAHILRAMANI, J.]