

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

WRIT PETITION NO.4624/2013

Mr. Krunal Dhanraj Lakade & Ors. ..vs.. The Chief General Manager (H.R.)
(MAHAGENCO) Bandra (E), Mumbai-51 and anr.

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

Court's or Judge's orders.

Shri S. A. Kalbande, Advocate for petitioners.
Shri A. D. Mohogaonkar, Advocate for respondents

CORAM : SMT. VASANTI A NAIK AND
V.M. DESHPANDE, JJ.

DATED : MARCH 20, 2017

By this writ petition, the petitioners seek a direction against the respondents not to recruit any candidates other than the petitioners in pursuance of the advertisement dated 01.11.2012 and direct the respondents to appoint the petitioners on the posts of Technician Grade-3 by creating special posts of Technician Grade-3 and pay them arrears of wages.

The respondent-company had published an advertisement on 01.12.2012 for filling 360 posts of Technician Grade III. As per the advertisement, a candidate was required to possess a certificate of a recognized Government Industrial Training Institute or a certificate of National Vocational Training Council or National Council for Training in Vocational Trades or a certificate of

the Maharashtra State Council for Vocational Training in the trades of Electrician, Wireman, Mechanical/ Mechanical Instruments/Machine Operator/Mechanical/Mechanical cum Operator, Fitter, Electronics/Electronic Mechanic/Information Technology and Electronic System Maintenance, Electronics Communication System, Welder, Instrument mechanic etc. The petitioners who had secured the certificates of Motor Vehicle Mechanic, Refrigerator and Air Conditioner Mechanic, Pump Mechanic, Diesel Mechanic, etc. had applied for the said posts. The respondents conducted the written examination online and the petitioners were declared successful in the said examination. The petitioners secured identity cards for appearing at the trade test. According to the petitioners, on 03.08.2013, the petitioners were not permitted to appear at the trade test on the ground that they did not possess the requisite qualification as mentioned in the advertisement, specially in the trade of Machinist. The action on the part of the respondent-Corporation refusing permission to the petitioners to appear at the trade test, is challenged by the petitioners in this petition and the petitioners have sought a direction against the respondent-Company to create the additional posts, conduct the trade test and appoint the petitioners in the said additional posts.

Shri Kalbande, the learned counsel for the petitioners submitted that in view of the provisions of the Right to Information Act, the petitioners have secured certain information that shows that on some of the posts that were advertised, the respondent-Company has appointed Motor Mechanic, Diesel Mechanic, Pump Operator-cum-Mechanic, Carpenter, Plumber, etc. It is stated that the petitioners have also secured the requisite certificates from the recognised institutions, as stated in the advertisement, in the said trades, but by ignoring the legitimate claim of the petitioners for appointment to the said posts, the petitioners were left out. It is submitted that in the circumstances, it would be necessary to direct the respondent-company to create additional posts in the trades in which the petitioners have acquired qualification and appoint the petitioners on the said additional posts.

Shri Mohogaonkar, the learned counsel for the respondent-company submitted that the petitioners did not possess the qualification in the trades that were actually mentioned in the advertisement. It is submitted that though the petitioners had passed the written examination that was conducted online, the petitioners had not appeared at the trade test conducted by the respondent-company on the objection that they should be permitted to appear at the trade test only in the trades in which they have secured the certificates. It is submitted that since the petitioners had

not secured the requisite certificate from the Industrial Training Institutes in the trades mentioned in the advertisement or in the trade of Machinist, the petitioners were asked to appear in the trade test that was conducted for those trades. It is stated that the petitioners had refused to appear at the trade test in the trades for which the posts were advertised and the petitioners insisted that they should be permitted to appear at the trade test only in the trades in which they had secured the certificates, which the company had not permitted. It is stated that in respect of the candidates of which a mention is made by the petitioners by referring to the information secured by them under the Right to Information Act, it is necessary to point out that as per the advertisement, 50% of the 360 posts that were advertised were earmarked for the candidates that had already secured a progressive training from the company, for a period of one year and that belong to the categories of the project affected persons, earthquake affected persons, etc. It is stated that the petitioners are comparing themselves with the candidates that belong to the other category for which 50% of the posts were reserved. The learned counsel sought for the dismissal of the writ petition.

We are inclined to dismiss the writ petition for more reasons than one. Firstly, though several candidates that allegedly possess the qualification like the petitioners are selected and

appointed by the respondent-company on the posts that are advertised, the petitioners have not joined those candidates as party respondents seeking the cancellation of their appointments and holding a fresh trade test. The petitioners have not joined the other candidates that are appointed on the posts that were advertised. The petitioners have also not challenged the entire process and have not sought for the cancellation of the process initiated by the advertisement as the petitioners were wrongly left out. In the absence of joinder of the persons who, according to the petitioners, could not have been appointed by ignoring the petitioners' rightful claim and in the absence of a challenge to the process of selection and the entire process, it would not be proper to consider granting the relief sought by the petitioners of creating additional posts for the trades in which the petitioners are qualified and consider issuing directions against the respondent-company to appoint the petitioners on the said posts. Also, it would not be appropriate to consider after a period of four years as to whether the petitioners were prevented from appearing at the trade test as per the submission of the petitioners or whether the petitioners had refused to appear at the trade test after insisting that they should be permitted to appear at the trade test only in the trades in which they are qualified. As submitted on behalf of the respondent-company, there is a serious dispute in regard to the aforesaid facts. The

petitioners have canvassed that they were prevented from appearing at the trade test whereas it is the case of the company that the petitioners refused to appear at the trade test. Admittedly, the petitioners have not appeared at the trade test. The trade test is conducted nearly four years back. The petitioners have not challenged the entire process. The petitioners had have also not joined the necessary parties to this petition. Admittedly, the petitioners had not possessed the qualifications that are mentioned in the advertisement. The petitioners have secured the certificates from the Industrial Training Institute in different trades like Motor Vehicle Mechanic, Refrigerator Mechanic, Air Conditioner Mechanic, Pump Mechanic, Diesel Mechanic, etc. that are not required by the respondent-company as per the advertisement.

In the circumstances, of the case, specially when all the 360 posts are filled before four years, it would not be proper to interfere with the selection process at this stage specially when the petitioners have not challenged the process and has only sought a direction against the respondents to create additional posts. Also, we find that 50% seats were, as per the advertisement, reserved for the candidates that had obtained the training from the respondent-company for a period of one year and that were project affected, etc. The petitioners, admittedly did not fall in that category of the candidates. If that be so, the petitioners cannot complain about the

appointment of those candidates that had secured the training for one year from the respondent-company even before they had applied in pursuance of the advertisement.

Since the relief sought by the petitioners cannot be granted. We dismiss the writ petition with no order as to costs.

JUDGE

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