

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

**52 WRIT PETITION NO. 7903 OF 2016
WITH CA/9609/2017 IN WP/7903/2016**

RAJENDRA KISANRAO DIGRASKAR ..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Ajay S. Deshpande, Advocate for the Petitioner.
Mr. K. N. Lokhande, AGP for Respondent-State.
Mr. V. D. Patnurkar, Advocate for the Respondent
Nos.2 and 3.

...

**CORAM : S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.**

DATED : 18th SEPTEMBER, 2018.

PER COURT:-

1. Pursuant to the advertisement for the post of Programme Co-ordinator issued by the respondent-University, the petitioner applied from open competition category. One post was meant for Open category. The person who was at serial no.1 was issued appointment order from S.C. category. The petitioner was not issued the appointment order. In view of that, the petitioner filed present writ petition.

2. Mr. Deshpande, learned counsel for the petitioner submits that the petitioner at the relevant time was serving with a Government granted college affiliated to the University. For in

service candidates there is no upper age limit provided. The petitioner was 48 years of age on the date of application. Initially, the candidature of the petitioner was rejected on the ground that petitioner does not possess the necessary experience. The authorities thereafter were convinced that the petitioner possesses the necessary experience, as such the name of the petitioner is included in the select list. Other candidates are given appointment order on 11.7.2016. The petitioner was not issued with the appointment order. The petitioner on 12.07.2016 made a representation with respondent-Authority. The complaint was filed on 14.07.2016 with regard to the age and experience of the petitioner. The learned counsel submits that the name of the petitioner was in select list, the petitioner resigned from his earlier service. According to the learned counsel, even, the respondent-University in his affidavit has admitted that inadvertently in the advertisement the condition with regard to the age relaxation to the in service candidates was not notified. The respondents also accept that the age relaxation is provided to the in service candidates. The learned counsel submits that the equity also needs to be considered. The respondents also admit about the age relaxation to the in service candidates, however, they have come out with the case that the said clause in the advertisement was not notified. The petitioner

cannot be made to suffer for the fault of University.

3. Mr. Patnurkar, learned counsel for the University submits that the clause about the age relaxation to the in service candidates was not provided in the advertisement, as such decision is taken by the University to re-advertise one post of Open category. Because of the pendency of this writ petition, the post is not re-advertised. The learned counsel relies on the judgment of the Apex Court in the case of Bedanga Talukdar V/s. Saifudaullah Khan and Others reported in (2011) 12 Supreme Court Cases 85.

4. Mr. Deshmukh, learned counsel for the intervenor submits that the intervenor is at serial no.1 on the wait list, as the petitioner is ineligible he is entitled to be appointed on the said post.

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

6. In the advertisement age relaxation was provided for reserved category, however no condition was notified providing age relaxation to the in service candidates. The respondents have admitted that the said condition was left to be provided in the advertisement inadvertently.

7. The selection process has to be conducted in terms of the advertisement. There would be other candidates who would be in service, however may not have applied finding that age relaxation is not provided to the in service candidates.

8. The Apex Court in the case of Bedanga Talukdar (supra) had observed that the selection process has to be conducted strictly in accordance with the stipulated selection procedure. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Even if the power of relaxation is provided in the Rules, it must still be mentioned in the advertisement. The power of relaxation, if, exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.

9. Considering the above, the case of the petitioner cannot be considered, more particularly, when the respondent-University has decided to publish fresh advertisement and conduct fresh selection process for one post (Open category) of Programme Co-ordinator.

10. In light of the above, writ petition is disposed of. No costs.

11. In view of the disposal of the Writ Petition no.7903 of 2016, nothing survives in the present Civil Application. Civil Application as such disposed of.

(S. M. GAVHANE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/September-18

Devendra
Nandkumar
Kale

Digitally signed
by Devendra
Nandkumar Kale
Date:
2018.09.24
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