

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

WRIT PETITION NO. 5919 OF 2017

Maharashtra Public Service Commission ...Petitioner
Versus
Dr. Prashant Babarao Shamkuwar & Anr. ...Respondents

Mr. Nitin Dalvi for Petitioner.
Mr. Ajay Shinde for Respondent No. 1.
Mr. N. C. Walimbe – AGP for State – Respondent No. 2.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 18 JUNE 2018

ORAL JUDGMENT :

- 1] Heard the learned counsel for the parties.
- 2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the judgment and order dated 27th January 2017 made by the Maharashtra Administrative Tribunal (MAT) allowing Original Application

No. 1077 of 2015 instituted by the respondent no. 1 in the matter of non consideration of his candidature for the post of the Principal, Government Pharmacy College by the petitioner – MPSC.

4] Mr. Dalvi, the learned counsel for the petitioner submits that the respondent no. 1, as against prescribed minimum experience of 10 years in teaching, had experience of only 9 years 11 months and 24 days. He submits that the experience as Lecturer and Principal and Principal at VJSM Institute of Pharmacy was rightly excluded by the MPSC, since, this institution was not approved by the concerned University in terms of the Maharashtra Universities Act, 1994 (said Act). Mr. Dalvi relies upon the provisions in Section 2(34) of the said Act, which define 'teacher' to mean a full-time approved professor, associate professor etc. He submits that the advertisement dated 4th January 2014 was in fact clarified to require the candidates to produce necessary approval certificate from the University or the technical institution. Mr. Dalvi submits that in as much as these aspects have not been considered by the MAT, the impugned judgment and order warrants

interference.

5] Mr. Dalvi further submits that in the selection process Wadher Sailesh Jayantilal came to be selected and was recommended for appointment to the post of Principal. Since, the respondent no. 1, chose not to implead the selected candidate as a respondent, the Original Application No. 1077 of 2015 was not maintainable and ought to have been rejected by the MAT on the said ground itself. Mr. Dalvi submits that the subsequent circumstance that the selected candidate did not join at the advertised post is quite irrelevant and the MAT, was not justified in rejecting the contention on such basis.

6] Mr. Shinde, the learned counsel for the respondent no. 1 submits that neither the recruitment rules nor the advertisement prescribed for teaching experience only in an approved institution or university. He submits that similar instances by the MPSC itself in matter of selection to the post of Assistant Professor for Pharmacology, this Court, has held that the MPSC was not entitled to change the rules of the game after commencement of the game. He points

out that the MAT has relied upon the ruling of the Division Bench of this Court in ***Writ Petition No. 4488 of 2016 decided on 10th August 2016 (The MPSC vs. Dr. Rita & Anr.)*** and there is absolutely no jurisdictional error in the view taken by the MAT. He points out since selected candidate never joined, there was no question of impleading him as a respondent to the proceedings. For these reasons, Mr. Shinde submits that this petition may be dismissed.

7] Mr. Walimbe, the learned AGP was not quite clear as to whether he supports the contentions of the MPSC. However, finally, Mr. Walimbe submitted that in case the impugned judgment and order is to be upheld, then, same, may be directed not to be treated as a precedent because otherwise some other candidates may also seek relief on such basis for selection to the post of Principal in pursuance of advertisement dated 4th January 2014.

8] Rival contentions now fall for our determination.

9] The MPSC's advertisement dated 4th January 2014

which is consistent with the recruitment rules for the post of Principal in Government Pharmacy College at clause 4.4. provides for minimum of 10 years experience *in teaching / research / industry out of which at least 3 years shall be at the level of Professor* **OR** minimum of 13 years experience in teaching and/or research and /or industry. In case of research experience, good academic record and books / research paper publications / IPR / patents record shall be required as deemed fit by the expert members of the selection committee. If the experience in industry is considered, the same shall be at managerial level equivalent to Professor level with active participation record in devising / designing, developing, planning, executing, analyzing, quality control, innovating training technical books / research paper publications / IPR / patents etc. as deemed fit by the expert members of the selection committee. Experience at Diploma Institutions is also considered equivalent to experience in degree level institutions at appropriate level and as applicable.

10] There is no dispute that the respondent no. 1 fulfills educational qualifications prescribed i.e. Bachelors and

Masters Degree in Pharmacy with first class or equivalent either in Bachelors or Masters Degree and Ph.D. or equivalent, in appropriate discipline. The MPSC, has chosen to take into consideration the experience as Principal at the Government College of Pharmacy at Aurangabad and Assistant Professor at Government College of Pharmacy at Ratnagiri, which works out to 9 years 11 months and 24 days i.e. about 6 days short of the prescribed 10 years experience. The MPSC, has however, excluded the experience of about 4 years and 11 months which the respondent no. 1 acquired as Lecturer at VJSM Institute of Pharmacy Junner, at Pune. The MPSC has also excluded experience of almost 3 years and 6 months acquired by the respondent no. 1 in the same institute as a Principal. The MPSC contends that this experience is excluded because the institute in question was not an approved institute under the Maharashtra Universities Act, 1994.

11] As noted earlier, neither the advertisement nor the recruitment rules make any reference to experience gained in an institute approved by the University. As noted earlier, experience in research as well as industry is also

admissible. The MPSC does not insist upon any requirement of experience in any approved research institute or in an approved nature. In so far as experience in industry is concerned, Mr. Dalvi, the learned counsel for the MPSC conceded that such experience can be in a private industry.

12] There is no clarity as to whether the advertisement dated 4th January 2014 was indeed amended for insistence upon experience in an approved institution. The declaration / announcement (Ghoshana) handed over to us by Mr. Dalvi bears no precise date and in any case, is far from clear.

13] In somewhat similar circumstances, when a similar requirement was sought to be introduced at the stage of interviews, the Division Bench of this Court in the case of *Dr. Rita (supra)* ruled that the MPSC, cannot be permitted to change rules of the game after the game commenced. The MAT has relied upon the ruling of the Division Bench which holds the field and which was delivered in almost similar circumstances.

14] So also, again in somewhat similar circumstances, the Division Bench of this Court in ***Kirankumar Dagadu Wanve & Anr. vs. Dr. Babasaheb Ambedkar Marathwada University & Ors.*** 2017 (4) AIR BOM R 459 has held that where the advertisement had only stated that the candidate should be a lecturer with 3 years teaching experience, the candidature could not have been rejected on the ground that the lecturer was not appointed on a sanctioned post or that such appointment had not been approved in terms of section 2(34) of the Maharashtra Universities Act.

15] Reference to the definition of the expression 'teacher' in section 2(34) of the said Act can be of no assistance to the MPSC. It is settled position that the statutory definitions apply in the context of the provisions of the Act where they are found and such definitions, can therefore be not read out of context. In the absence of any such requirement in the recruitment rules or for that matter in the advertisement itself, the MPSC was not justified in introducing such requirement after the selection process commenced. Thus construed, we see no good ground to

interfere with the view taken by the MAT in the impugned judgment and order.

16] This is not a case of any non joinder of necessary parties because admittedly, the selected candidate never joined in pursuance of his selection. The post which was advertised continues to remain unfilled. The applicants, may not have a right to be selected to a particular post but in terms of Articles 14 and 16 of the Constitution of India they certainly have a right to have their candidatures considered in accordance with law. Since in the present case, the candidature of the petitioner was not even considered by the MPSC, we cannot fault the direction issued by the MAT to consider the candidature of the respondent no. 1. The MAT has rightly not issued any direction for appointment of the respondent no. 1 because such appointment will depend upon the outcome of the selection process.

17] The apprehension expressed by Mr. Walimbe that other candidates may seek to take benefit of the order of the MAT is quite unjustified. Admittedly, it is only the

respondent no. 1 who questioned the non consideration of his candidature and the relief granted by the MAT is also specific to the respondent no. 1 alone.

18] For all the aforesaid reasons, we dismiss this petition. Rule is discharged. There shall be no order as to costs.

(M. S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA