

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

WRIT PETITION NO. 5362 OF 2015

Shri. Ajaykumar S. Khandekar	...Petitioner
Versus	
The Dy. Director of Health Services and anr.	...Respondents

Mr. N.V. Bandiwadekar i/b Mr. S.A. Mane for the Petitioner.
Mr. O.M. Kulkarni, AAGP for the Respondents – State.

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

DATE : 3rd APRIL 2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the impugned judgment and order dated 13th January 2015 made by the Maharashtra Administrative Tribunal (MAT), Bombay in O.A. No. 699 of 2011.

4] The petitioner in O.A. No. 699 of 2011 had applied for the following reliefs:

“(a) For a declaration that the petitioner is entitled to be appointed to the post of ECG Technician reserved for Scheduled Caste category of which the petitioner belongs and for a declaration to appoint the petitioner to the said post alongwith consequential benefits including deemed date of seniority;

(b) For a declaration that the bench mark/criteria of 70 marks out of 200 marks to be obtained by the candidates seeking appointment to the post of ECG Technician, was beyond the competence of the respondents, more particularly since this bench mark/criteria was not the condition incorporated in the advertisement inviting applications for the said post;

(c) For suitable order/direction to declare that there ought to have been relaxation to the extent of 5% in the total marks obtained by the reserved category candidates like the petitioner, similar to relaxation of 10% granted to backward candidates in the matter of admission to the post graduate studies and for grant of consequential benefits of such basis.”

5] The petitioner in pursuance of the advertisement dated 7th October 2008 issued by the Public Health Department, the Government of Maharashtra applied for appointment to the post of ECG Technician (reserved category). There is no dispute that the petitioner is a member of reserved category. Mr. Bandiwadekar, learned counsel for the petitioner, points out that in the advertisement, the only condition prescribed was that the

selections will be on the basis of merit to be determined on the basis of aggregate of the marks obtained in the written examination and oral interview. Mr.Bandiwadekar submits that the petitioner obtained 45 marks in the written examination and 16 marks in the interview, thereby aggregating to 61 marks. In the reserved category, these were highest or in any case the second highest marks and therefore, there was no reason to deny the petitioner's appointment to one of the two reserved posts of ECG Technician, on basis of criteria disclosed in the advertisement.

6] Mr. Bandiwadekar points out that the respondents relying upon the G.R. dated 27th June 2008 have denied the petitioner's appointment on the basis that the petitioner has failed to clear the bench mark of 45 percent. Mr.Bandiwadekar submits that such bench mark criteria was never disclosed in the advertisement. Mr.Bandiwadekar submits that the application of such criteria amounts to change of the rules of selection, after the selection process has commenced and has substantially advanced. He submits that since this is

impermissible, the petitioner ought to have been granted the reliefs as prayed for by him.

7] In the alternate, Mr. Bandiwadekar submits that since the petitioner belongs to the reserved category, the respondents were duty bound to grant relaxation and appoint the petitioner as ECG Technician, notwithstanding the fact that the petitioner may not have cleared the benchmark criteria prescribed in G.R. dated 27th June 2008. Mr. Bandiwadekar submits that such relaxation is invariably granted to the candidates belonging to the reserved category and there was absolutely no valid reason as to why such relaxation was not granted in the present case.

8] Mr. Kulkarni, learned AAGP for the respondents - State, submits that there is nothing illegal or arbitrary in providing for a benchmark. He submits that the petitioner has secured only 61 marks out of 200, which comes to hardly 30.5%. Mr. Kulkarni submits that there is no provision for relaxation and even if the relief as claimed for by the petitioner of relaxation of 5% were to be granted, still the petitioner would not qualify for selection. For these

reasons, Mr. Kulkarni submits that the present petition is liable to be dismissed.

9] The rival contentions now fall for our determination.

10] The advertisement dated 7th October 2008, in pursuance to which the petitioner applied for selection to the post of ECG Technician, had stated that merit of the candidates will be determined on the basis of aggregate marks obtained in the written examination and the interview. This criteria has not been abandoned by the respondents in the matter of selection to the post of ECG Technician. In fact, this is the criteria which has been adopted by the respondents for the purposes of evaluation of comparative merit. However, the respondents have relied upon the G.R. dated 27th June 2008, which applies generally to selection of class-III posts and which prescribes that minimum 45% marks are required to be obtained by a candidate to be eligible for appointment to a class -III post. Once this bench mark is achieved, the selection in terms of the advertisement is on basis of

aggregate marks obtained in written examination and interview.

11] The application of such minimum bench mark in terms of G.R. dated 27th June 2008 does not amount to change of rules of the game, after the game has already commenced. There was nothing in the advertisement to indicate either the applicability or inapplicability of the G.R. dated 27th June 2008. The G.R. dated 27th June 2008 applies generally to all selection of class- III posts. The respondents having issued the G.R. dated 27th June 2008 were duty bound to comply with the criteria prescribed therein. It would have been better if such criteria were to have been disclosed in the advertisement dated 7th October 2008. However, merely because such criteria may have not been disclosed in the advertisement dated 7th October 2008, does not mean that any candidate like the petitioner can insist that such criteria should not be made applicable. The petitioner, cannot say that were he to know of such criteria, he would have performed better and secured at least 90 marks out of 200 corresponding to 45 percent.

12] There is nothing unreasonable in the application of such a minimum criteria. There is also no allegation that such criteria was applied with any unequal yardstick. In fact, prescription of such criteria is in public interest as otherwise, candidates, who have secured even less than 15 to 20 marks out of 200, might insist upon appointment on the ground notwithstanding their poor performance, there are several others who have secured even lesser marks in the aggregate. This would result in diluting standards. Therefore, there is nothing unreasonable in the criteria prescribed in the G.R. dated 27th June 2008.

13] It is true, as urged by Mr. Bandiwadekar that normally, some relaxation is granted in standards to the reserved category candidates as a measure of protective discrimination. The petitioner, has claimed for relaxation to the extent of 5%. There is no question of courts or tribunals directing the State Government to grant relaxation in the absence of any policy or statutory power in that regard. However, if relaxation of 5% as prayed for by the petitioner were to be granted, even then, the bench mark would be 40%. The petitioner has secured only 30.5% mark, i.e., 61

marks out of 200. This means that even if relaxation of up to 10% were to be granted, still, the petitioner would not qualify.

14] In the aforesaid circumstances, we see no error of jurisdiction in the impugned judgment and order. This petition is therefore, liable to be dismissed and is hereby dismissed. There shall however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)