

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

WRIT PETITION NO. 7690 OF 2013

Rajesh Punjaji Ghodake,
Age about 41 Years, Occ. Nil,
R/o 100/927, Ramabai Ambedkar Nagar,
Mumbai 400 075 .. Petitioner

V/s.

- 1) The State of Maharashtra,
(Copy to be served upon
Assistant Govt. Pleader)
- 2) The Registrar,
University of Mumbai, Fort, Mumbai
- 3) The Controller,
Printing and Stationary, Mumbai
University Press, M.J. Phule Bhavan,
Vidyanagari, Santacruz (E),
Mumbai 400 098
- 4) Rakesh Sudhakar Tambe
15, Sangam Appartment, 90 feet
Road, Mulund (E), Mumbai 400 081 .. Respondents

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Mr. S.G. Deshmukh a/w Mr. Ramdas A. Shelke for Petitioner.
Mr. B.V.Samant Asst. Government Pleader Writ Cell for
Respondent No.1.
Mr. Rui Adelino Rodrigues for Respondent No.3.
Ms. Deepa Kamath for Respondent No.4.

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**CORAM : S.C. DHARMADHIKARI AND
SMT. BHARATI H. DANGRE, JJ.**

**DATED : 31st JANUARY, 2018.
(Order Reserved on : 20.12.2017)
(Order Pronounced on : 31.01.2018)**

ORAL JUDGMENT (Per SMT.BHARATI H. DANGRE, J.):

1. The petitioner herein has approached this court seeking issuance of appropriate writ and direction for quashing and setting aside the selection of respondent no.4 to the post of Superintendent of Printing Technology from Schedule Caste category on the establishment of respondent no.2 University of Mumbai. It is alleged by the petitioner that the respondent no.4 is not qualified to be appointed since he does not possess the requisite qualification and action of the respondent no.2 in selecting and appointing him in the said post is an arbitrary exercise of power and he prays that since the name of petitioner was on the waiting list as prepared for the post of Superintendent of Printing Technology, this court may issue directions to the respondent to select and appoint him on the said post, since

he is qualified for the said post.

2. We have heard Mr. Deshmukh learned counsel appearing for the petitioner. According to the learned counsel for the petitioner, the respondent no.2 had issued an advertisement inviting an application for the post of Superintendent (Tech.) Printing Technology in the University of Mumbai. An advertisement was issued on 08.08.2009 pursuant to which the petitioner had applied. According to the learned counsel for petitioner the mode of selection to the said post is by conduct of interview, for selecting the candidates based on their eligibility. According to the petitioner, the advertisement was issued inviting applications for the one post for Schedule Caste category and one candidate from Open category. As per the petitioner, the interviews scheduled in pursuance of the said advertisement on 03.07.2010 came to be cancelled. Thereafter, again advertisement was published in the daily newspaper 'Lokmat' and 'Hindustan Times' in the month of March, 2011 but for some reason the interview process in pursuance of the said advertisement was also cancelled.

According to the learned counsel for the petitioner, advertisement was published once again in daily newspaper 'Maharashtra Times' on 16.02.2012 and according to him the said advertisement which was published prescribed the following criteria for selection namely (a) the candidate should have obtained a Degree from a statutory University (b) the candidate should have obtained Diploma in Printing Technology and c) the candidate should possess experience in printing of more than 10 to 15 years. According to the petitioner, he possessed the requisite qualifications and attended the interview on 28.01.2013. According to the petitioner, three other candidates faced the interview for one post from Schedule Caste category and seven candidates appeared before interview committee for one post of Open category. It is the case of the petitioner that he secured highest marks in the interview and he ought to have been selected and appointed to the said post, instead the respondent no.4 who does not possess the certificate of Diploma in "Printing Technology" from "recognized University" came to be selected. The petitioner has placed

on record the certificate of Diploma in Printing Technology on which the respondent no.4 had relied on to compete for the said post of Superintendent (Tech) Printing Technology in terms of the qualifications prescribed in the advertisement. According to the petitioner, said certificate does not reflect particulars of the institution and further, the name of the institution which issued the certificate of Diploma in favour of the respondent no.4 is not included in the list of A.I.C.T.E approved institution and according to the the petitioner the said document did not demonstrate that the respondent possessed the necessary qualification as prescribed in the advertisement. According to the petitioner, the respondent no.4 also did not satisfy the conditions of possessing experience in printing for period of 10 - 15 years. Thus, counsel for petitioner would argue that the selection of respondent no.4 is illegal, arbitrary and unjust and deserves to be set aside and petitioner being qualified and eligible, be appointed on the said post.

3. This matter was listed before the Court on several occasions and is pending on the file since 2013.

Respondent no.2, a contesting party did not file an affidavit and therefore this court on 9th March, 2017 was pleased to pass a specific order directing the University to file an affidavit clarifying the position as to whether the respondent no.4 possessed required experience and satisfied the criteria laid down in the advertisement in relation to educational qualification and also experience. Respondent no.4 was also directed to file affidavit in reply.

In response to the earlier order, respondent no.4 filed affidavit on 13.07.2013. In the affidavit it is stated by the respondent no.4 that the minimum qualification required for the post in question was graduation in any faculty or a Diploma in Printing. It is submitted that the respondent no.4 possessed a post graduation Degree i.e M.B.A (IT) which is support system for Printing Technology and hence criteria for selection was satisfied. Respondent no.4 has further stated that he received appointment letter on 29.04.2013 and he has joined the service of the University on the post of Superintendent (Tech.) and since four years he is regularly attending his work and his good work has

been appreciated by his employer. He denied the allegations made in the petition that he was not possessing the certificate of Diploma in Printing Technology from a statutory University and it is his contention that he possess two years Diploma Certificate issued by Rajendra Prasad Institute of Management which is affiliated to Bhartiya Vidya Bhavan (Autonomous Course) from Girgaon Chowpaty, Mumbai and further in the said advertisement it is not mentioned that Diploma should be from a Institution which is recognized by AICTE.

4. On 4th December, 2017 we directed the University to produce all the original records relating to the appointment of respondent no.4 and particularly the University was directed to place on record a certified true copy of the original advertisement inserted in English and Marathi newspaper. The University was so directed since the crucial issue involved in the matter was whether eligibility criteria required the candidate to possess a Degree from recognised University and a Diploma in

Printing Technology, or it was sufficient to have either of them, since according to the selected candidate respondent no.4 qualification to be possessed was in the alternative and the advertisement contained the word “or” and the University did not require the candidate to possess both a Degree/Bachelor's Degree and a Diploma in Printing Technology. Either of them would suffice.

5. The respondent nos. 2 & 3 filed its affidavit through Deputy Registrar of Establishment Section-II, University of Mumbai on 04.12.2017. In the said affidavit it is stated that the advertisement which was published by the Respondent-University on 10.03.2011 required the following qualifications

***“6. Post of Superintendent (Tech.)
(University Press) (University Fund)***

(Total posts 2) (SC - land Open -1)

Pay Band :Rs. 9300-34800 + GP 4400

*Qualification : Degree of any statutory
University or Diploma in Printing Technology.*

(Emphasis supplied)

*Out of which at least 5 years at a position not
below level of Superintendent*

*Experience : Minimum 10 to 15 years
experience as a work Supervisor or relevant
post in Printing Press, with the strength of 100
to 150 workers (emphasis laid)*

Age limit : Not less than 35 years (relaxable by 5 years for candidates belonging to reserved category) and unless already in the service of the university or affiliated colleges upper age limit will be relaxed.

Alongwith the affidavit an advertisement of 2011 was placed on record. According to the University, Selection Committee was constituted by the Hon'ble Vice Chancellor for the purpose of interviewing eligible candidates and the petitioner as well as respondent no.4 were interviewed on 12th January, 2012. The respondent University has given a clarification in regards to the document on which the petitioner has relied showing the marks obtained by him and has repelled his contention by stating that they are not the marks which were secured by the candidate. It was only the serial number in which the candidate appeared for the interview.

As per the University, the respondent no.4 was found to be eligible for the appointment and was accordingly appointed on the basis of unanimous recommendation given by the Selection Committee, as per the first preference for selection to the said post, failing which the opportunity was

to be given to the petitioner.

6. With the assistance of the learned counsel for the parties, we have perused the petition alongwith its annexures and also the affidavits filed by the respective parties. The controversy in present case revolves around the issue as to whether for the post of Superintendent (Tech) the requisite qualification was Bachelor Degree of recognised University coupled with a Diploma in Printing Technology or it was either of them. We have noted an advertisement which was published in the year 2009 and also in the year 2011. However, the selection process in pursuance to the said advertisement did not culminate in a appointment order and the process was stopped mid way. We are not concerned with the reason for the same. However, another advertisement was published on 16.02.2012. The said advertisement is placed on record by the petitioner at Annexure "E" Page No.26. As far as post of Superintendent (Tech.) (University Printing), we have noted that it contained the following stipulation:

Total Posts 2

Schedule Caste 1 and Open 1

Pay Band : Rs.9300-34800 + GP 4400

Educational Qualification and experience:- A Degree from any recognized University and a Diploma in Printing Technology, Experience of five years on the post of Supervisor or equivalent post. Similarly, experience of 10 to 15 years of working on a post in establishment of printing where the minimum number of employees are 100 to 150 either on the post of supervisor or equivalent post.

[underlining ours]

We have noted that the selection process pursuant to which the respondent no.4 is selected and appointed is an advertisement which was published on 16.02.2012. We have perused the advertisement dated 16.02.2012 which was produced by the University before us in pursuance of earlier direction. The advertisement which was published on 16.02.2012 is an advertisement which the petitioner has annexed at Exh.E to the petition and it prescribed the educational qualification for the post of Superintendent

(Tech.) and required a candidate to possess Degree from statutory University and a Diploma in "Printing Technology". Thus, the selection process initiated by an advertisement dated 16.02.2012 required incumbent applying for the post of Superintendent of Printing to possess a Degree of any statutory University and a Diploma in Printing Technology. Though, the counsel for respondent no.4 vehemently disputes the existence of such a word "and" in the advertisement since we have perused the advertisement produced by the University there is no doubt about the fact that advertisement issued in the year 2012 required incumbent to possess a Degree from statutory University and Diploma in Printing Technology.

7. In this background we examined the qualifications of the petitioner as well as respondent no.4. We have also heard respective counsel on the said aspect. Respondent no.4 had stated in the affidavit that he possesses a post graduate Degree i.e M.B.A (IT) with support system for Printing Technology and therefore the criteria for

selection was satisfied by him. The petitioner alongwith his petition has annexed the Diploma obtained by the respondent no.4 and the same is annexed "H" to the petition. The said certificate is issued by the President and Members of the Council of the Bharatiya Vidya Bhavan in favour of Shri Tambe Rakesh Sudhakar i.e respondent no.4 and it is certified that he was examined for Diploma in Printing and has passed the said examination held in the month of April, 2007. This Exh. H annexed by the petitioner to the petition is obtained under the Right to Information Act so as to assess the qualification of respondent no.4. Undisputedly, the said certificate certifies the respondent no.4 to hold "Diploma in Printing". But the requisite qualification as per the advertisement issued on 16.02.2012 is a Diploma in modern 'Printing Technology'. Perusal of the Diploma awarded in favour of the petitioner which the petitioner has placed on record as Annexure "A" to the petition reveals that the Diploma has been awarded to the petitioner by the Board of Technical Examination of the State of Maharashtra and certifies that candidate was

examined in Printing Technology and he was awarded the said Diploma on passing the examination for the said purpose on 13.07.1998. Thus, the petitioner possesses a Diploma in Printing Technology and respondent No.4 possessed a Diploma in Printing.

The post in question which is advertised is a post of "Superintendent (Tech) (University Press). The University is justified in prescribing qualification of possessing 'Diploma in Printing Technology' and to call eligible candidates to hold the said post since the work of Superintendent who deals with "University Press" would require a person who is equipped with knowledge and proficiency in Printing Technology and it is also not in dispute that such a Diploma is awarded by the Board of Technical Examinations State of Maharashtra. Respondent no.4 possess a Diploma in 'Printing' and that too which is not issued by a statutory authority but issued by an autonomous institution. This, in our opinion would not meet the essential criteria and the educational qualifications to be possessed by a candidate which the University wanted him/her to possess for the post

in question. Though the counsel for respondent no.4 attempted to argue that there is no requirement for possessing a Diploma in Printing Technology and according to the learned counsel it is not the requirement nor there is a mandate that the Diploma be issued by a statutory University, we find that a reading of the advertisement makes it amply clear that educational qualifications which mandates that a candidate should possess a Degree from a statutory University and a Diploma in Printing Technology. Reading of the requisite qualification prescribed would make it clear that the word statutory University is applicable both to the Degree and to the Diploma in Printing Technology. Thus, a candidate is required to possess a Degree from a statutory University and also a Diploma in Printing Technology from a statutory University.

8. We expected the University to throw some light on the said crucial issue, however, except for producing the advertisement in original dated 16.02.2012, the University in its affidavit has chosen to remain silent on the said issue

and has merely reiterated as to how the respondent no.4 is qualified to the said post in question. The University has also placed on record an advertisement which included the word “or” however, when we have perused the record it becomes clear that the said advertisement was the one which was earlier issued by the University and not the advertisement based on which the selection process resulted into appointment of respondent no.4. The said advertisement dated 16.02.2012 pursuant to which the respondent no.4 was appointed clearly mentions the qualifications and uses the terminology “and”, thereby requiring a candidate to possess a degree from a statutory University and also a Diploma in Printing Technology. The respondent No.4 did not possess the Diploma in Printing Technology and the Diploma of Printing on which he placed reliance is not the one which is desired by the advertisement.

In such circumstances, we are of the clear opinion that the respondent no.4 was clearly ineligible for being selected / appointed for the post of Superintendent (Tech)

(University press), and the respondent no.2 University has ignored most crucial aspect of the matter and has selected and appointed a person who did not possess the requisite qualifications as per the advertisement, as he did not possess a Degree in Printing Technology. Though counsel for the respondent no.4 vehemently argued before us that since initial advertisement mentioned the word “or” and the process was started from the year 2010, advertisement at the relevant time features word “or” and therefore the criteria should be considered “or”.

9. We are not ready to accept the said contention canvassed on behalf of the learned counsel since we are of the firm view that by virtue of an advertisement, the eligible candidates were called upon to participate in the selection process and when the advertisement issued on 16.02.2012 required a candidate to possess a Degree of statutory University and a Diploma in Printing Technology and since requirement was to possess both qualifications, we expect the University to follow the said criterion strictly and ensure

that only candidates who possess the qualifications mentioned in the advertisement are considered for selection. There might be a number of candidates who may have possessed either of the qualifications but since advertisement mandated possession of both qualifications such of the candidates might not have participated in the process of selection. For a statutory body like University it is incumbent upon them to follow the principle of fair play and adhere to the academic qualifications mentioned in the advertisement inviting applications from the general public and ensure that only candidates who possess the requisite qualifications are selected and appointed. The University being a public functionary ought to have given due importance to the educational qualifications and experience prescribed in the advertisement for the post of Superintendent (Tech.) (University Press).

At this stage, the counsel for the respondent no.4 would vehemently argue before us that the respondent no.4 was issued an appointment order on 29.04.2013 and since then he is occupying Superintendent (Tech). The

respondent no.4 also highlighted his achievements for holding the said post. We quite appreciate such performance, however, we are of the clear opinion that if the selection and appointment is itself unsustainable in view of the respondent no.4 not qualifying for the said post, the argument of respondent no.4 that he has been holding the post for considerable time and also brought certain laurels to the employer, fails to impress us.

10. The University has committed gross illegality in issuing an appointment order in favour of the respondent no.4. We have perused the selection procedure and the report of the selection committee which is annexed by the petitioner and obtained by him under the Right to Information which is annexed "G" to the petition, it is revealed that the selection committee after interviewing the candidates decided to recommend the names of two persons one from Open and one from Schedule Caste category for the post of Superintendent (Tech). From the Schedule Caste category the name of Respondent No.4 is recommended, failing which the name of the petitioner is recommended.

The said proceedings are signed by the Hon'ble Vice Chancellor and also other members of the selection committee which is appointed as per Rule 4(ii)(b) of the Maharashtra Non-Agricultural universities and affiliated college Standard Code (Terms and conditions of service of non-teaching employees) Rules, 1984. Since, we are of the clear opinion respondent no.4 was not eligible to be selected and appointed by the respondent no.2 and his selection in absence of requisite qualifications is liable to be set aside. Since the name of the petitioner on the wait list of the selection committee prepared on 28th January, 2013 we feel it appropriate to issue direction to respondent no.2 University to appoint the petitioner as the said case, in case if he is interested to occupy the said post. In absence of availability of the petitioner to occupy the said post, the respondent No.2 University to issue a fresh advertisement clearly depicting educational qualifications and initiate the process strictly in furtherance of the said advertisement.

In case, the respondent No. 2 is desirous of filling-up of the said post, it is at liberty to initiate a process

afresh by issuing an advertisement, clearly depicting educational qualifications and it is permissible for the respondents to proceed with the selection process. Till the time the selection process is initiated, the respondent No.4 may be continued on the said post, if he desires to do so, since we do not want the on-going work to be obstructed. However, on fresh process being initiated and a candidate being selected for appointment on the said post, the respondent No.4 to forthwith vacate the office and give way to the eligible candidate.

11. The Writ Petition is partly allowed. The selection of Respondent No.4 on the post of Superintendent of Printing Technology is quashed and set aside. The Respondent No.2 is at liberty to initiate afresh process for selection to the post of Superintendent of Printing Technology and if the petitioner is otherwise eligible, he may participate in the said process. No order as to costs.

(SMT. BHARATI H. DANGRE, J) (S.C. DHARMADHIKARI, J.)