

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

WRIT PETITION (ST) NO. 12956 OF 2018

Ganesh S. Kharade and ors. ...Petitioners
Versus
The State of Maharashtra and ors. ...Respondents

Mr. Sandeep Dere for the Petitioner.
Mr. C.P. Yadav, AGP for the Respondents / State.

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

DATE : 04.06.2018.

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 judgment and order dated 06.04.2018 made by the Maharashtra Administrative Tribunal (MAT), Mumbai dismissing the petitioners' O.A. Nos. 321 of 2016 and 323 of 2016 in the matter of their non selection to the post of Assistant Inspector of Motor Vehicles.

4] Mr. Sandeep Dere, learned counsel for the petitioners, submits that the appointment to the post of Assistant Inspector of Motor Vehicles is governed by the Assistant Inspector of Motor Vehicles, Group 'C' in the Motor Vehicles Department (Recruitment) Rules, 1997 (said Rules). He submits that in terms of Rule 3(e)(i) of the said Rules, the possession of a licence to drive either heavy goods vehicles or heavy passenger vehicles is essential. However, Mr. Dere submits that the proviso to Rule 3(e)(i) of the said Rules clearly states that a person not possessing either of such licences on the last date for submission of application for admission to the competitive examination, can, nevertheless be selected and appointed. Such person, will then, have to acquire and produce such licences before completion of period of probation, failing which, he shall be liable to be discharged from the service. Mr. Dere concedes that none of the petitioners possess the licences to drive heavy goods vehicles or heavy passenger vehicles on the last date as prescribed. However, Mr. Dere submits that the petitioners were entitled to benefit of proviso and appointments could not have been denied to the

petitioners by ignoring proviso to Rule 3(e)(i) of the said Rules.

5] Mr. Dere further submits that the MAT has erred in denying reliefs to the petitioners on the grounds that they participated in the selection process without any protest and therefore, the petitioners ought not to be permitted to challenge the selection process. Mr. Dere submits that the petitioners had no grievances with the selection process, since, they were in fact initially declared as successful in such selection process. Only thereafter, by misinterpreting the said Rules and in particular, by completely ignoring proviso to Rule 3(e)(i) of the said Rules, since, the petitioners were denied appointment, even though, the petitioners were adjudged as meritorious, the petitioners had no option but to challenge their non selection. Mr. Dere submits that in such a situation, the ratio in case of ***Manish Kumar Shahi vs. State of Bihar and ors. - CDJ 2011 SC 492 (Appeal (C) No (s). 26223/2008 dated 19.05.2010)*** does not apply.

6] Mr. Dere submits that in terms of Motor Vehicles Act, 1988 (M.V. Act), the possession of licences for light motor vehicles and heavy motor vehicles has been consolidated. Therefore, the prescription of any requirement of possessing the licence to drive heavy vehicles is in fact illegal or in any case, incapable of strict compliance. Mr. Dere submits that the said Rules as well as the advertisement has to be interpreted in light of the consolidating provisions of M.V. Act.

7] Mr. Dere submits that both the respondents as well as the MAT have failed to interpret the said Rules as well as the provisions of M.V. Act in their proper perspective. For all these reasons, Mr. Dere submits that the impugned judgment and order is liable to be set aside and the petitioners are liable to be granted all the reliefs claimed for, in their respective O.As.

8] Mr. Yadav, learned AGP for the respondents, submits that the petitioners having participated in the selection process, cannot be permitted to challenge the advertisement or for that matter the selection process. He

submits that the advertisement makes it clear that in case the candidates do not possess one of the two licences in respect of heavy vehicles, then, leave can be granted to produce such licence before completion of period of probation. He submits that in the present case, the petitioners did not possess any licences in respect of heavy vehicles and therefore, the proviso would not apply to the case of the petitioners. Mr. Yadav, further submits that the proviso, in any case, is only an enabling provision. Since in the present case, there were sufficient candidates who possessed licences in respect of heavy goods vehicles and heavy passenger vehicles, there is neither any illegality nor any arbitrariness in non selection of the petitioners, who, admittedly possess no licences in respect of heavy vehicles on or before last date as prescribed. Mr. Yadav submits that the MAT has considered the issues in their proper perspective and there is no case made out to interfere.

9] The rival contentions now fall for our consideration.

10] From the perusal of the reliefs in O.As. instituted by the petitioners, it appears that the petitioners have

challenged Clause 4.6.2 of the advertisement dated 11.10.2013, to the extent, this clause requires the candidates to possess at least one of the two licences to drive heavy vehicles, i.e., licence to drive heavy goods vehicles or the licence to drive heavy passenger vehicles as on the cut off date, i.e., 1.11.2013. This challenge was raised by the petitioners after submitting their applications in pursuance of this very advertisement and after submitting themselves to the selection process. Ultimately, it is only after the petitioners were not selected to the post of Assistant Inspector of Motor Vehicles for want of any licences to drive heavy motor vehicles, that the petitioners, have chosen to challenge the advertisement and the selection process. In these circumstances, we see no reason to fault the view taken by the MAT by relying upon the decision of the Hon'ble Supreme Court in case of *Manish Shahi (supra)*.

11] In *Manish Shahi (supra)*, the Recruitment Rules for the post of Civil Judge, Junior Division had prescribed the marks for *viva-voce* test. The advertisement, however, prescribed higher marks than what were prescribed in the

Recruitment Rules. The applicants in the said case, took part in the selection process despite being aware of this position and it is only after the applicants were unsuccessful in the selection process, that the applicants challenged the advertisement and the selection process in pursuance of such advertisement. In such circumstances, the Hon'ble Supreme Court upheld the view taken by the High Court that such a petition ought not to have been entertained and that the conduct of such petitioner disentitles him from questioning the selection process. In fact, the Hon'ble Supreme Court, made reference to several decisions, which take this line of reasoning. (See: ***Madan Lal vs. State of J. & K. - (1995) 3 SCC 486, Marripati Nagaraja vs. Government of Andhra Pradesh and others v. State of Uttaranchal and others - (2008) 4 SCC 171, Amlan Jyoti Borooah vs. State of Assam - (2009) 3 SCC 227***).

12] Since, in the present case, the MAT has also taken similar view, we see no good ground to interfere with the impugned judgment and order.

13] That apart, at this stage, all that we can say is that there is some element of ambiguity insofar as Rule 3(e)(i) of the said Rules are concerned. The advertisement issued in the present case, interprets the rule to mean that the candidates should possess at least one licence in relation to heavy vehicles. The affidavit filed on behalf of the respondents also states that the said Rules requires a candidate to possess at least one licence in relation to heavy vehicles considering that the post involved is that of Assistant Inspector of Motor Vehicles.

14] If there is any ambiguity in the interpretation of the Rules and if the interpretation adopted by the State as is reflected in the advertisement itself is not found to be absurd or unreasonable, then, ordinarily, there is no warrant to interfere.

15] In this case, admittedly, the selected candidates possess licences in relation to heavy vehicles. The petitioners, admittedly, do not possess even a single licence in relation to heavy vehicles. Therefore, the petitioners cannot seriously complain about their non-

selection to the post of Assistant Inspector of Motor Vehicles. Ultimately, the petitioners only have a right to be considered for appointment. The petitioners do not have any fundamental right to appointment as such. In this case, the candidatures of the petitioners have been considered. They have been denied appointments because they do not possess even a single licence in relation to heavy motor vehicles. In contrast, the selected candidates possess licences in relation to heavy vehicles. This is an additional ground which dissuades us from interfering with the impugned judgment and order.

16] The contention based upon the provisions of M.V Act, is also quite misconceived. In the first place, the challenge to either the Recruitment Rules or the advertisement was never raised at the earliest instance. The petitioner took their chances in the selection process and only after they failed to be selected that such contentions are being belatedly raised. Secondly, the contention raised finds no support even in the provisions of MV Act. All that, the petitioners have relied upon the Statements of Objects and Reasons to the MV Act. From the perusal of the same, it

cannot be said that the contentions now raised, are well taken.

17] For all the aforesaid reasons, we dismiss this petition. The interim order, if any, stands vacated. There shall, however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)