

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

WRIT PETITION NO. 6994 OF 2014

Ravindra M. Shinde ...Petitioner
Versus
1] Rajendra B. Kshirsagar
(deleted)
2] The Chairman/Secretary
MPSC and ors. ...Respondents

Mr. Yogesh S. Sankpal for the Petitioner.
Mr. O.M. Kulkarni, AAGP for Respondent Nos.2 and 5.
Mrs. Vaishali Jagdale for Respondent No.6.

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

DATE : 8th MARCH 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 16th July 2014 made by the Maharashtra Administrative Tribunal (MAT) in Original Application No. 5 of 2012 instituted by Rajendra B. Kshirsagar, former

respondent No.1 in this petition.

4] In O.A.No. 5 of 2012, the applicant had prayed for the following reliefs:

“10. RELIEFS WITH PRAYERS:

The Applicant, therefore, pray that:

a) By a suitable order/direction, this Honorable Tribunal may be pleased to quash and set aside the impugned rejection communication dated 26.12.2011 qua the Applicant, forthwith.

b) By a suitable order/direction, this Honorable Tribunal may be pleased to quash and set aside the impugned selection list dated 26.12.2011, forthwith.

c) By a suitable order/direction, this Honorable Tribunal may be pleased to quash and set aside the impugned criteria dated 26.12.2011 passed by Respondent No.1, forthwith.

10(da) By suitable order or directions this Honorable Tribunal may be pleased to direct the Respondent No.1 to reschedule the interviews for the said post as per the recruitment rules dated 11.06.1985, 30.10.1987 and guideline booklet supplied with the application form on 02.06.2008 by the Respondent No.1, forthwith.

e) Any other and further order as this Honorable Maharashtra Administrative Tribunal, Mumbai may deem fit, proper and necessary in the circumstances of this case be passed.

f) Cost of the present O.A. be provided for.”

5] By the impugned judgment and order, the MAT, has declared that the selection process undertaken by the MPSC for appointment to the post of Dy. Director of Health

Services (Public Health Laboratories) illegal and the selection of the petitioner (respondent No.4 before the MAT) was set aside. Further, O.A. No. 5 of 2012 was made absolute in terms of prayer clause 10(da), which is referred to above.

6] This Court, by detailed order dated 28th July 2014 declined interim relief, but held that the issue raised in this petition as regards the order of the MAT directing MPSC to reschedule the further selection process by following the rules dated 11th June 1985, 30th October 1987 and guideline booklet at pages 15,16 and 19 could be looked into. To this limited extent, the MPSC was directed to file affidavit-in-reply.

7] The paragraphs 8,9 and 10 of the order dated 28th July 2014 are relevant, because they record statement on behalf of the petitioner that the petitioner is not placing reliance of Criteria - 2, Clause (1) in the MPSC guidelines in the matter of shortlisting of candidates. Paragraphs 8,9 and 10 read as follows.

8. Criteria-1 and 2 reflected in the order of the Tribunal read as under:

CRITERIA-1

(1) Possess Post Graduate degree in Biochemistry, Inorganic Chemistry, Organic Chemistry, Chemistry of foods, drugs and water or Food Technology or an equivalent qualification.

(2) Ph.D. in any of the Subject mentioned above.

(3) Possess experience for a period of not less than 15 years in analysis of food, knowledge of food standards and their composition, water and effluent analysis, knowledge of water and effluent standards and problems connected with environmental pollution after possession the Post Graduate Degree/Qualification”

CRITERIA-2

(1) Possess Bachelor degree in Science with 1st Class.

(2) Possess Post Graduate degree in Biochemistry, Inorganic Chemistry, Organic Chemistry, Chemistry of foods, drugs and water of Food Technology or an equivalent qualification with at least 50% AND THEREAFTER.

(3) Possess experience for a period of of not less than 15 years in analysis of food, knowledge of food standards and their composition, water and effluent analysis, knowledge of water and effluent standards and problems connected with environmental pollution.”

9. To the selection process, Criteria-1 or 2 was to be applied. Prima facie, it is noticed that the petitioner obtained Ph.D. degree after he was interviewed. The petitioner is not placing reliance on Criteria-2, Clause(1) as according to the petitioner, this could not have been applied to the case of the petitioner and even otherwise the Tribunal had observed that the Criteria-2 Clause (1) was unsustainable which requires a candidate to obtain B.Sc. degree in first class, whereas advertisement requires B.Sc.

degree with 50% marks. The petitioner was appointed vide Government Resolution dated 02/06/2012 issued by Public Health Department as Dy. Director, Health Services (State Health Laboratory) Pune subject to the further orders passed in the Original Application 5/2012.

10. The petitioner is praying for interim relief i.e. stay to effect and operation of the order passed in O.A.No.5 of 2012 dated 16/07/2014. Considering the record and the submissions advanced, we are not convinced to grant interim relief to protect the service of the petitioner and the said request stands rejected. However, the issue raised in this petition as regards the order by the Tribunal directing respondent No.1 to re-schedule the further selection process by following the rules dated 11/06/1985, 30/10/1987 and guideline booklet, page 15,16 and 19 could be looked into. To this limited extent, affidavit-in-reply shall be filed by M.P.S.C."

(emphasis supplied)

8] Mr. Yogesh Sankpal, learned counsel for the petitioner, was not quite clear as to whether the petitioner questions the impugned judgment and order of the MAT, to the extent the MAT has held that the shortlisting criteria adopted by the MPSC was arbitrary. Mr. Sankpal was also not quite clear as to whether the petitioner relies upon criteria - 1 or criteria-2 of the short-listing guidelines issued by the MPSC. At one stage, he submitted that it is criteria-1, which will apply to the petitioner and at another stage, he submitted that the statement made on behalf of the

petitioner that the petitioner is not placing reliance on criteria-2, was a mistake or in any case was mistakenly recorded. In any case, no submissions were made to attack the impugned judgment and order of the MAT on the aspect of its interference with the short-listing criteria adopted by the MPSC, except perhaps to submit that the petitioner was a victim of some mistake on the part of the MPSC.

9] Mr. Sankpal, however, vehemently submitted that the MAT, has committed an error apparent on the face of record in directing the MPSC to proceed with the further selection process by following the rules dated 11th June 1985 and 30th October 1987. Mr. Sankpal submits that it is only the Rules dated 11th June 1985, which are relevant for the appointment to the post of Dy. Director, Health Services and the Rules dated 30th October 1987 which concern a sub-ordinate post, are not at all relevant. Mr.Sankpal submits that the MAT was therefore, not at all right in directing that selection process proceeds by taking into consideration the 1987 Rules. He submits that since the selection of respondent No.6 in this petition is on the

basis of such an erroneous direction made by the MAT, such selection is required to be set aside and the direction is liable to be issued to proceed with the selection on the basis of 1985 Rules alone, in case, this Court is inclined not to accept the petitioner's first contention that the impugned judgment and order made by the MAT be set aside in its entirety.

10] Mr. Sankpal, further, without prejudice submits that respondent No.6 does not possess the educational qualification and experience for appointment to the post of Dy. Director which is prescribed in the Recruitment Rules 1985 for direct recruitment to the post of Dy. Director, Health Services. In the alternate, Mr. Sankpal submits that in terms of the affidavit filed by the MPSC, both, the petitioner as well as respondent No.6 fulfill the eligibility criteria and therefore, it is the petitioner who ought to have been appointed to the post of Dy. Director, Health Services. Mr. Sankpal clarifies that the alternate submission is clearly without prejudice to his first submission that respondent No.6 is not at all eligible in terms of 1985 Rules. Mr. Sankpal submits that on the aforesaid grounds, the impugned

judgment and order of the MAT is required to be set aside or in the alternate the selection of respondent No.6 to the post of Dy. Director, Health Services is required to be set aside with directions to the MPSC to proceed with the selection process by following only 1985 Rules. Mr. Sankpal points out that this Court by order dated 18th December 2015 had already made it clear that any appointment made during pendency of the present petition will be subject to the outcome of the present petition.

11] Mr. O.M. Kulkarni, learned AAGP for respondent Nos.2 and 5- State, after adverting to the affidavit filed on behalf of the MPSC has submitted that the recruitment to the post of Dy. Director, Health Services has to be made by reference to 1985 Rules and further, the appointment of respondent No.6 is also by reference to only 1985 Rules and not 1987 Rules. He submits that as per the affidavit of the MPSC, at least, *prima facie*, both the petitioner as well as respondent no.6 were found to be eligible as per 1985 Rules. He submits that the only issue is with regard to the application of short-listing criteria. Mr. Kulkarni has not made any submissions as to whether the MAT was right in

interfering with the short-listing criteria, particularly, since the MPSC has not instituted any petition to challenge the impugned judgment and order made by the MAT interfering with its short-listing criteria.

12] Mrs. Vaishali Jagdale, learned counsel for respondent No.6, submits that it is also the case of respondent No.6 that it is the Recruitment Rules of 1985, which will apply for recruitment to the post of Dy. Director, Health Service. She submits that respondent No.6 fulfills both the educational as well as experienced qualifications prescribed in 1985 Rules and therefore, there is no infirmity whatsoever in selection of respondent No.6 and his consequent appointment to the post of Dy. Director, Health Services. She submits that the MAT was entirely justified in interfering with short-listing criteria adopted by the MPSC because such short-listing criteria insisted upon the candidates passing the Bachelor Degree in Science with 1st class, when in fact, the advertisement had stated that Bachelor Degree with 50% marks was sufficient. In any case, she submits that as per 1985 Rules what is relevant, is a Post-Graduate Degree and experience. She therefore,

submits that the MAT was not at all justified in prescribing some arbitrary short-listing criteria in a matter of this nature. She submits that even if it is assumed that the petitioner is also eligible as per 1985 Rules, the Selection Committee, which comprises of experts, upon relevant comparison of merits have selected respondent No.6. She submits that in the absence of any allegation of *mala fides*, this Court, may not interfere with such selection. She submits that the selection of respondent No.6 in fact afford a fresh cause of action, if at all, to the petitioner, and therefore, the challenge to the appointment of respondent No.6 may not at all be entertained in the present petition. She submits that if such challenge is entertained, without requiring the petitioner to exhaust the remedy available before the MAT, then, respondent No.6 will be deprived of the right to question the order of the MAT before this Court. For all these reasons, Ms Jagdale submits that this petition may be dismissed.

13] Upon due consideration of rival submissions, we are of the opinion that this petition will have to be partly allowed and thereafter remanded to the MAT for further

consideration. The reasons for adoption of such a course of action are discussed hereafter.

14] Insofar as short-listing criteria adopted by the MPSC is concerned, we do not deem it appropriate to interfere with the view taken by the MAT, taking into consideration the fact that practically no submissions were made on this aspect by the learned counsel for the petitioner and the learned AAGP who appears for the State and MPSC. Further, even though, the MAT, has set aside the short-listing criteria adopted and implemented by the MPSC, it is pertinent to note that the MPSC has not instituted any petition to question the impugned judgment and order dated 16th July 2014 made by the MAT. Rather, the MPSC, has proceeded to consider the the candidatures of the applicants without insisting upon the earlier short-listing criteria, which was, in any case, set aside by the MAT in the impugned judgment and order. This Court, in its order dated 28th July 2014 at the stage of consideration of the petitioner's claim for interim relief expressed a *prima facie* opinion that since the petitioner obtained his Ph.D. Degree after the interviews were over, the short-listing criteria-1

was really inapplicable to the case of the petitioner. This Court has also recorded that the petitioner has not placed reliance on criteria - 2, clause (1), as according to the petitioner, this criteria could not have been applied to the case of the petitioner. This Court has noted that even otherwise the MAT had observed that criteria-2, clause (1) was unsustainable, which requires a candidature to obtain B.Sc. degree in the 1st class, whereas the advertisement requires B.Sc. degree with 50% mark. The advertisement as well as the recruitment rules to the post of Dy. Director had indeed, made no reference to possession of Bachelor degree in Science in 1st class. Taking into consideration all these aspects, at this stage, we see no reason to interfere with the impugned judgment and order of the MAT to the extent, the MAT, has interfered with the shortlisting criteria. At the highest, we leave open this issue for decision in an appropriate case.

14] The MAT has, however, allowed O.A. No. 5 of 2012 in terms of prayer clause 10(da), which reads as follows:

“10(da) By suitable order or directions this Honorable Tribunal may be pleased to direct the Respondent No.1 to reschedule the interviews for the said post as per the recruitment rules dated

11.06.1985, 30.10.1987 and guideline booklet supplied with the application form on 02.06.2008 by the Respondent No.1, forthwith."

16] The learned counsel for the petitioner as well as the respondents agree that in the present case the recruitment to the post of Dy. Director, Health Services Government by Recruitment Rules dated 11th June 1985 and Recruitment Rules dated 30th October 1987 have no nexus with such recruitments. On perusal of Recruitment Rules dated 11th June 1985, it is seen that they are recruitment rules made in the exercise of powers conferred by proviso to Article 309 of Constitution of India and they deal with recruitment to the post of Dy. Director, Health Services (Public Health Laboratories). In contrast, Recruitment Rules dated 30th October 1987, which are again, the rules framed in exercise of powers conferred by proviso to Article 309 of Constitution of India deal with recruitment to the post of Chief Technical Officer, with which, the parties were not really concerned. Therefore, there was no justification for directing the MPSC to consider the candidatures of the applicants as per the Recruitment Rules dated 30th October 1987 along with the Recruitment Rules dated 11th June 1985. The directions should have been to only consider the

candidatures of the applicants as per the Recruitment Rules dated 11th June 1985. To this extent, this petition will have to be partly allowed.

17] The next contention of Mr.Sankpal that the selection and appointment of respondent No.6 be set aside because the MAT was not justified in directing the MPSC to consider the candidatures of the applicants, in accordance with the Recruitment Rules dated 30th October 1987 along with the Recruitment Rules dated 11th June 1985, however, cannot be accepted. This is because the record indicates that the MPSC, quite correctly, has not at all referred to the Recruitment Rules dated 30th October 1987 or considered the candidatures of any of the applicants on the basis of Recruitment Rules dated 30th October 1987. It is the case of the MPSC that the candidatures of the applicants, including, the petitioner and respondent No.6 have been considered only on the basis of Recruitment Rules dated 11th June 1985. Therefore, although, the direction of the MAT in the impugned judgment and order is required to be slightly modified, taking into consideration the fact that the candidatures of the applicants have been considered only

with reference to the Recruitment Rules dated 11th June 1985, there is no case made out to grant any further relief at least at this stage with regard to setting aside the appointment of respondent No.6.

18] Mr. Sankpal has however, contended that the appointment of respondent No.6 was made subject to the final result in the present petition. He therefore, submits that he is entitled to contend that respondent No.6 does not fulfill the eligibility criteria prescribed in the Recruitment Rules dated 11th June 1985. He in fact contends that respondent No.6 neither possess the educational qualifications nor experience as is prescribed in the Recruitment Rule 11th June 1985 and therefore, the selection and appointment of respondent No.6 is required to be interfered with.

19] The MPSC has filed an affidavit, in which, it is stated that both the petitioner as well as respondent No.6 fulfill the eligibility requirement as prescribed in the Recruitment Rules dated 11th June 1985. Respondent No.6 also asserts that he fulfills the eligibility criteria as prescribed in the

Recruitment Rules dated 11th June 1985. However, we find that it would be better if the issue as to whether respondent No.6 indeed fulfills the eligibility criteria as per Recruitment Rules dated 11th June 1985 is first decided by the MAT after afford of opportunity to all parties. Admittedly, this was not the issue before the MAT in the first round of litigation between the parties. Therefore, there are no proper pleadings to adjudicate on this issue. The affidavit filed on behalf of the MPSC is also not very helpful for the purposes of deciding this issue, at this stage.

20] Accordingly, after partly allowing this petition, we are of the opinion that the interest of justice will be met if the issue of respondent No.6 fulfilling the eligibility criteria as prescribed in Recruitment Rules dated 11th June 1985 is remanded to the MAT for its consideration after afford of opportunity of hearing to all the parties concerned. We also propose to grant the petitioner leave to transpose himself as original applicant before the MAT, if he so desires. We also proposed to grant the petitioner leave to amend the O.A. post transposition or in the alternate, to file an

additional affidavit-in-reply to raise the issue of eligibility of respondent No.6 as per 1985 Rules. No doubt, respondent No.6 as well as MPSC are granted liberty to file appropriate response in the matter. The MAT shall then decide the issue as to whether respondent No.6 fulfills the eligibility criteria as prescribed under 1985 Rules and on the said basis to make appropriate orders in relation to selection and appointment of respondent No.6

21] Accordingly, this petition is disposed of with the following order:

(a) This petition is partly allowed and the direction in the impugned judgment and order making the original application absolute in terms of prayer clause 10(da) is partly modified and it is made clear that the consideration for the post of Dy. Director, Health Services is to be made only in accordance with the Recruitment Rules dated 11th June 1985;

(b) Since, it is the common ground that the MPSC has made reference only to Recruitment Rules dated 11th

June 1985, there is no case made out at least at present, to set aside the appointment of respondent No.6;

(c) However, the matter is remanded to the MAT for deciding the issue as to whether respondent No.6 fulfills eligibility criteria as prescribed in the Recruitment Rules dated 11th June 1985. If not, the MAT, is directed to make appropriate consequential order with regard to selection and appointment of respondent No.6.

(d) The petitioner, if he so desires, is granted liberty to transpose himself as O.A. No. 5 of 2012 or in the alternate to file a detailed affidavit in the matter of his challenge to the appointment of respondent No.6 and his contention that respondent No.6 does not fulfill the eligibility criteria as per the Recruitment Rules dated 11th June 1985;

(e) Respondent No.6, the MPSC or other parties to O.A. No. 5 of 2012 are given liberty to file adequate

response in the matter defending their respective positions;

(f) The MAT is requested to dispose of the matter expeditiously and preferably within three months from the date of production of authenticated copy of this order;

(g) It is made clear that we have not examined the issue as to whether respondent No.6 indeed fulfills the eligibility criteria as prescribed in the Recruitment Rules dated 11th June 1985 and therefore all contentions of all parties are left open for determination by the MAT in pursuance of the remand;

(h) The impugned judgment and order to the extent it has interfered with the criteria of short-listing earlier adopting by the MPSC is not interfered with. However, the issue is left open for a decision in an appropriate case.

(i) Rule is made partly absolute in the aforesaid terms. There shall however, be no order as to costs.

(j) The parties to appear before the MAT on 9th April 2018 at 11.00 a.m. and to produce an authenticated copy of this order;

(k) All concerned to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)