

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 909 OF 2017

Yogesh H. Mhaskar	...Petitioner
Versus	
The State of Maharashtra and ors.	...Respondents

Mr. S.C. Prabhu for the Petitioner.
Mr. N.C. Walimbe, AGP for the State-Respondent Nos.1 to 3.

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

DATE : 3rd MAY 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 25th August 2016 made by the Maharashtra Administrative Tribunal (MAT), Mumbai in O.A. No. 573 of 2015 instituted by the petitioner. In pursuance of advertisement dated 14th August 2014, the petitioner

applied for the post of Peon in the office of Dy. Conservator of Forest, Thane. Since, the petitioner belongs to the reserved category and since, one post was reserved for members belonging to such category, the petitioner applied to the reserved post (OBC quota)

4] The petitioner appeared for the written test in which he secured 90 marks. Respondent No.4 also an applicant to the reserved post, also secured 90 marks in the written examination. Based upon the Government Resolution dated 27th June 2008, which provides that if two candidates have secured equal marks, then, person with the higher qualification is to be preferred, respondent No.4 came to be appointed as a Peon in preference to the petitioner. The petitioner, therefore, instituted O.A. No. 573 of 2015, which came to be dismissed by the impugned judgment and order dated 26th August 2016. Hence, the present petition.

5] Mr. Sanjay Prabhu, learned counsel for the petitioner, submits that in terms of the advertisement, it was made clear that if two candidates secure equal marks, then the candidate with earlier date of birth will be given a

preference. Mr. Prabhu submits that even if candidates with higher educational qualification is to be preferred, then, the petitioner, had qualifications like B.A., M.Com, M.A. & B.Ed. However, respondent No.4 had only qualification of M.Com. Mr. Prabhu submits that merely because the petitioner, in the online application form, had stated that he had a degree in Economics (B.A.), the appointment could not have been denied to the petitioner. Finally, Mr. Prabhu submits that respondent No.4 has ultimately, resigned from the position of Peon offered to him and therefore, the petitioner, who was placed on the wait list ought to be given appointment to the post of Peon. For all these reasons, Mr. Prabhu submits that the impugned judgment and order is liable to be set aside and the respondents-State be directed to appoint the petitioner as a Peon along with all consequential benefits.

6] Mr. Walimbe, learned AGP for the respondent – State, submits that the advertisement never stated that preference will be based upon the age of candidates. He submits that the issue is governed by the G.R. dated 27th June 2008, which clearly states that the candidates with

higher educational qualification will be preferred. Mr.Walimbe submits that in the on-line application form, the petitioner had only indicated that he possessed the degree of Economics (B.A.) whereas respondent No.4 had indicated that he possessed M.Com. Degree. On such basis, respondent No.4 was preferred for appointment. Mr.Walimbe points out that wait list was prepared on 21st May 2015 which was to remain valid for one year. Respondent No.4 resigned on 6th April 2017, i.e., much after one year and therefore, there is no question of the petitioner seeking operation of the wait -list, even though, the same has lapsed. For all these reasons, Mr. Walimbe submits that there is no case made out to warrant interference with the impugned judgment and order.

7] At the outset, it is quite clear that there is nothing in the advertisement to indicate that if two candidates secure equal marks, then the candidate with earlier date of birth should be given a preference. This contention on behalf of the petitioner is therefore, misconceived and was rightly rejected by the MAT.

8] In support of the aforesaid contention, however, reliance was sought to be placed on Maharashtra Civil Services (Regulation of Seniority) Rules 1982. Rule 4(3) of the said Rules provides that if two persons are appointed on the same date, person with the earlier date of birth is placed at a higher position in the seniority list. By the same logic, it was urged that since the petitioner was elder than respondent No.4, it is the petitioner who ought to have been granted preference in the matter of appointment. Again, we are unable to accept such contention.

9] The Rules of 1982 are not at all applicable to the present context. The Rules of 1982 relate to determination of seniority and it is in that context that the statutory rule provides that where two persons are appointed on the same date, person with earlier date of birth is to be accorded seniority over the later. There is no question of importing this principle in the present context, particularly when the G.R. dated 27th June 2008, in terms provides that if the candidates secure equal marks, then, candidate with higher educational qualification is to be preferred.

10] There is no dispute that the petitioner, in his application form, had indicated that the only qualification possessed by him is a degree in Economics (BA). In contrast, respondent No.4 had indicated that he possessed M.Com. degree. In these circumstances, applying the principle set out in the G.R. dated 27th June 2008, respondent No.4, was accorded preference. There is nothing illegal or arbitrary in the accord of such preference to respondent No.4. If the petitioner, indeed had better qualifications, then, the petitioner, ought to have been diligent to state such qualifications in his application form.

11] At one stage, we did require learned AGP to take instructions as to whether the petitioner could be accommodated in the post of Peon, since, respondent No.4, had already resigned from the same. However, Mr.Walimbe placed on record rules as well as instructions which indicate that the validity of wait list was only of one year. He pointed out that even the advertisement in the present case had stated that wait list would remain operative only for one year. In this case, the select list/ wait list was published on 21st May 2015. Respondent No.4 resigned

from the post of Peon on 6th April 2017, i.e., much after the wait list had lapsed. In these circumstances, Mr. Walimbe, learned AGP expressed the inability on the part of the respondents-state to accommodate the petitioner to the position of Peon. Since, in terms of rules as well as advertisement, the wait list stands lapsed and further, since, wait list by itself, is not a source for recruitment, we also do not deem it appropriate to issue any direction for appointment to the petitioner for the post of Peon.

12] The MAT, has considered all the aspects of the matter in the proper perspective. There is no jurisdictional error of perversity of approach, so as to warrant interference under Articles 226 and 227 of the Constitution of India.

13] 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)