

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

WRIT PETITION NO. 1294 OF 2016

Nilesh Vilas Sondkar

...Petitioner

Versus

Union of India & Ors.

...Respondents

Mr. Anand R. Pai i/b. Mr. Hemant Telkar h/f. SRH Legal for
Petitioner.

Mrs. S. V. Bharucha with Mr. A. R. Verma and Mr. A. A.
Ansari for Respondents.

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

DATE : 25 APRIL 2018

ORAL JUDGMENT :

1] Heard learned counsel for the parties.

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

3] The challenge in this petition is to the judgment and
order dated 9th April 2015 made by the Central
Administrative Tribunal in Original Application No. 105 of
2013 instituted by the petitioner to question the order dated
12th January 2013 by which the services of the petitioner

came to be terminated by resort to the Central Civil Services (Temporary Service) Rules, 1965.

4] Mr. Anand Pai, the learned counsel for the petitioner submits that in terms of the recruitment rules as also the advertisement issued, the essential qualification for appointment as Civilian Trade Instructor (Book Binder), were matriculation or a certificate from National Council for Training in the Vocational Trades (NCTVT). He submits that in the present case, since the petitioner admittedly was a matriculate, National Trade Certificate so produced by the petitioner was quite redundant and irrelevant. In any case, Mr. Pai submits that neither the recruitment rules nor the advertisement states that the certificate to be so produced must be from some institute recognized by the NCTVT, New Delhi. He submits that the petitioner submitted a certificate from a private institution and since there was no bar to such production, the services of the petitioner could not have been terminated on the ground that such certificate was not genuine or not recognized.

5] Mr. Pai states that the petitioner, on the basis of the

certificate produced, was permitted to take part in the selection process, including the interview. He submits that after being validly selected, the respondents were not at all entitled or justified in terminating the petitioner's services for want of certificate issued by some institute recognized by NCTVT. Mr. Pai submits that the principle of estoppel will apply in such a situation.

6] Finally, Mr. Pai refers to the appointment order dated 13th July 2011. He submits that clause 2(m) which required the petitioner to produce original documents listed at sub clauses (i) to (iv) are as follows :

(i) Medical Certificate of your fitness for Government service and Field Service issued by a Civil Surgeon in the enclosed forms;

(ii) Character certificate in the attached form issued by two Gazetted Officers who are not related to you;

(iii) If you are already employed in or if you have resigned within a period of six months from a Central provincial / Semi-Government undertaking or any other Public Autonomous Institution, you will submit the details of your previous employment and a clearance certificate from that employer to this office. If you are/ were not employed, declaration to the effect that you are not under obligation to serve any other Institution / Department;

(iv) Three sets of Attestation Form (for detail

Police Verification) are enclosed. These forms may please be returned to this office duly completed in all respects, on reporting for duty;

(v) Submit your original valid 'Employment Exchange Registration Card.'

Mr. Pai then refers to clause 2 (o) of the appointment order to submit that services of the petitioner could have been terminated only in the event the documents at sub clauses (i) to (v) as aforesaid, were found to be false, but not otherwise. Mr. Pai submits that the petitioner submitted the documents at sub clauses (i) to (v) and there is not even an allegation that any of the said documents were false or incorrect. Mr. Pai therefore submits that the termination of the petitioner's services is clearly *ultra vires*, null and void.

7] Ms S. V. Bharucha, the learned counsel for the respondents submits that in terms of the recruitment rules as well as the advertisement issued, the essential qualifications were matriculation or some educational qualification equivalent to matriculation. She submits that apart from such educational qualification, the candidate was required to have IT / NCTVT certificate in the concerned trade. In addition to both these requirements,

the candidate was required to have adequate skill and knowledge of imparting training to recruits. Ms Bharcuha submits that the certificate produced by the petitioner was found to be a fabricated certificate. She states that the certificate was issued by some institution which was never recognized by NCTVT and in any case, there was material on record to suggest that the petitioner did not even attend any course at such private institute. For all these reasons, consistent with the terms of appointment as also the rules as applicable, the services of the petitioner were terminated within hardly 14 months from the date of his appointment. She points out that principles of natural justice and fair play were complied with before such action was taken against the petitioner. She submits that the CAT has considered the matter in considerable detail and there is no jurisdictional error in the impugned judgment and order. Therefore she submits that this petition may be dismissed.

8] The rival contentions now fall for our determination.

9] The advertisement inviting applications for filling up the post Civilian Trade Instructor (Book Binder) prescribes

the essential qualifications in the following manner:

“Essential

(i) Matriculation or equivalent with IT/NCTVT in the concerned trade.

(ii) Should have adequate skill and knowledge of imparting training to recruits.”

10] Mr. Pai reads the aforesaid essential qualifications to mean that the candidate, must either possess 'matriculation' or have IT/ NCTVT certificate in the concerned trade. In fact, he submits that reference to 'IT' is incorrect because the same will not apply, at least to the position of a book binder.

11] Now from a plain reading of the essential qualifications as prescribed in the advertisement, it is quite clear that a candidate must, have 'matriculation' or 'equivalent' as one of the essential qualifications. In addition and not in the alternate, such candidate, must have IT/ NCTVT certificate in the concerned trade. The preposition 'or' links only the expressions 'matriculation' and 'equivalent'. The preposition 'with' is what connects the combined phrase 'matriculation' or 'equivalent'. From this, it is quite clear that a candidate to be eligible for appointment as a Civilian

Trade Instructor (Book Binder) must possess not only *matriculation* or *equivalent* but must further possess IT/ NCTVT certificate in the concerned trade. Even if reference to *IT* may not be appropriate, the candidate must possess NCTVT certificate in the concerned trade. This is the manner in which the respondents as well as the CAT have understood the term as regards essential qualifications. We see no error in such understanding.

12] If the petitioner's understanding was indeed that the requirement of producing NCTVT certificate was redundant, then, there was no reason for the petitioner to produce such certificate in purported compliance with the later requirement. Admittedly, the certificate produced by the petitioner was open to several doubts. The respondents have made inquiries into such certificate and the findings of such inquiries has been accepted by the CAT. Even if we are to assume that the certificate was actually genuine, even the petitioner admits that such certificate was issued by some private institution not recognized by the NCTVT. Since, the advertisement very clearly made reference to NCTVT we are unable to accept Mr. Pai's contention that

even a certificate from a private institute would suffice.

13] Mr. Pai's contentions based upon so-called estoppel do not appeal to us. The qualifications reflected in the advertisement are the qualifications which find place in the recruitment rules which are statutory in character. It is settled position that there cannot be any estoppel against the law.

14] Besides, merely because the certificate submitted by the petitioner was not scanned with a fine comb at the stage of permitting the petitioner to appear for interview, does not mean that at a later stage the respondents were estopped from taking action if it was discovered that such a certificate was not genuine or that such a certificate was not issued by institution recognized by NCTVT. Same is the fate of the contention based upon the terms of the appointment letter. If appointment is secured on the basis of some certificates which *prima facie* indicate that the candidate was eligible for selection, then, if such certificates are found not to be genuine or as prescribed upon further scrutiny, the appointee cannot claim any

immunity from termination.

15] Besides, in the present case, it is not as if the petitioner continued in service for several years and only thereafter, his services came to be terminated. Here, the petitioner's services came to be terminated within a period of hardly 12 to 14 months from the date of his appointment on purely temporary basis. The respondents complied with principles of natural justice and fair play before taking the impugned action.

16] For all the aforesaid reasons, we see no good ground to interfere with the impugned judgment and order made by the CAT. The petition is therefore dismissed. Rule is discharged. There shall be no order as to costs.

17] In the peculiar facts and circumstances of the case however, we direct that the termination of the petitioner may not be taken as stigmatic so as to bar the petitioner for any appointment in government service in future.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA