

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

WRIT PETITION NO. 6819 OF 2017

Gautam Jalaba Narwade

...Petitioner

Versus

The Maharashtra Public Service
Commission & Anr.

...Respondents

Mr. V. V. Salunke for Petitioner.

Mr. C. P. Yadav – AGP for Respondents.

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

DATE : 20 JUNE 2018

ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] Rule. With the consent 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 18th February 2016 made by the Maharashtra Administrative Tribunal (MAT) dismissing the petitioner's

Original Application No. 136 of 2015 questioning rejection of his candidature for appointment to the post of Head of Department in Metallurgy Engineering in Government Polytechnic from the schedule caste category.

4] Mr. Salunke, the learned counsel for the petitioner submits that there is no dispute that the post in question was reserved for the members of the scheduled caste and the petitioner belongs to the category of scheduled caste. He submits that there is also no dispute that the petitioner possesses the educational qualifications prescribed for appointment to such posts, both in the recruitment rules as well as in the advertisement issued by the MPSC. Mr. Salunke submits that the petitioner has more than 10 years experience of teaching and the MPSC was not at all justified in excluding a portion of this experience on the ground that the said experience did not have the approval of the University. He submits that such a requirement is not prescribed either in the recruitment rules or in the advertisement. He submits that on the basis of experience indicated by the petitioner in his on-line application form, the petitioner was not only called for selection process but

further, was also called for the interviews. He submits that this requirement of experience in approved post was communicated only at a much later stage when the selection process had already commenced. He submits that this is clearly impermissible and has been held as impermissible by the Division Bench of this Court in the case of ***The MPSC vs. Dr. Rita & Anr. [Writ Petition No. 4488 of 2016 decided on 10th August 2016]***. He submits that such circumstance is also contrary to the ruling of the Division Bench of this Court in ***Kirankumar Dagadu Wanve & Anr. vs. Dr. Babasaheb Ambedkar Marathwada University & Ors. [2017 (4) AIR BOM R 459]***. He submits that the view taken by the MAT is in direct conflict with the view earlier taken by the MAT in the Original Application instituted by Dr. Rita, which is the subject matter of the decision of the Division Bench in writ petition no. 4488 of 2016. For all these reasons, Mr. Salunke submits that the impugned judgment and order is liable to be set aside.

5] Mr. Yadav, the learned AGP for the respondents submits that in terms of section 2(34) of the Maharashtra

Universities Act 1994 (said Act), expression '*teacher*' has been defined to mean full time approved professor, associate professor etc. He submits that in terms of this definition unless experience is obtained in an approved post, the same cannot be counted as experience for the purposes of selection to the post of Head of the Department. Mr. Yadav further submits that the petitioner has experience of only about 3 years in teaching the subject of Metrology and the rest experience pertains to the Department of Mechanical Engineering. For this additional reason, Mr. Yadav submits that there is no warrant to interfere with the impugned judgment and order which has held that the petitioner did not possess the requisite experience for appointment to the post of Head of the Department.

6] Rival contentions now fall for our determination.

7] The MPSC advertisement inviting applications for filling up the post of Head of the Department in Metrology Department at clause 4.3, prescribes the following qualifications :

(A)	(i)	<i>Bachelor's and Master's degree of appropriate branch in Engineering / Technology with First Class or equivalent either at Bachelor's or Master's level.</i>
	(ii)	<i>Minimum of 10 years relevant experience in teaching / research /industry.</i> OR
(B)	(i)	<i>Bachelor's degree and Master's degree of appropriate branch in Engineering / Technology with First Class or equivalent either at Bachelor's or Master's level And Ph.D. or equivalent in appropriate discipline in Engineering / Technology.</i>
	(ii)	<i>Minimum of 5 years relevant experience in teaching / research / industry.</i>
	a.	<i>Equivalence for Ph.D. is based on publication of 5 international journal papers, each journal having a cumulative impact index of not less than 2.0, with incumbent as the main Author and all 5 publications being in the authors area of specialization.</i>
	b.	<i>In case of research experience, good academic record and books / research paper publications / IPR / patents record shall be required as deemed fit by the expert members of the Selection Committee.</i>

	c.	<i>If the experience in industry is concerned, the same shall be at managerial level equivalent to head of the department with active participation record in designing, planning, executing, analyzing, quality control, innovating, training, technical books / research paper publications / IPR / patents / etc. as deemed fit by the expert members of the Selection Committee.</i>
	d.	<i>For the post of Head of Department flair for management and leadership is essential as deemed fit by the expert members of the Selection Committee.</i>

8] In the present case, there is no dispute whatsoever that the petitioner belongs to a scheduled caste category for which the post has been reserved. There is also no dispute whatsoever that the petitioner fulfills educational qualifications as prescribed. The only question is whether the petitioner fulfills the requirement of experience which, as noted above, is '*minimum 10 years relevant experience in teaching / research / industry*'.

9] In the affidavit filed by the MPSC, there is an admission that the petitioner has experience as a Lecturer

at D. Y. Patil College of Engineering of precisely 4 years and 6 months. Further, there is an admission that the petitioner has experience as a Lecturer of 2 years and 4 months at MIT College. Finally, there is an admission that the petitioner has experience of 3 years and 9 months as Lecturer / Assistant Professor again at MIT College. This experience totally adds to 10 years 2 months and 8 days. However, the respondents seek to exclude the experience of 4 years and 6 months at D. Y. Patil College of Engineering on the ground that for such appointment, there was no approval letter issued by the concerned Governmental Authorities. There is no dispute raised that the petitioner has indeed worked and therefore has the teaching experience of 4 years and 6 months at D. Y. Patil College of Engineering but the only contention is that for such appointment, there was no approval from the concerned Governmental Authorities and therefore, such experience, cannot be counted as teaching experience.

10] As noted earlier, neither the advertisement nor the recruitment rules prescribe that experience has to be counted only where such experience is gained against

approved post or approved appointment. The advertisement and recruitment rules, in addition to experience in teaching, contemplate experience in research as well as industry. In so far as experience in research or industry is concerned, the respondents do not insist upon any approval or recognition. However, the respondents rely upon section 2(34) of the Maharashtra Universities Act to contend that teaching experience means and implies teaching experience acquired in an approved post only.

11] According to us, the definition of the expression '*teacher*' in section 2(34) of the said Act can be of no assistance to the respondents. It is settled position that statutory definitions apply in the context of the provisions of the statute where they are found. Such definitions therefore, cannot be read out of the context. In the absence of any such requirement in the recruitment rules or the advertisement itself, the MPSC cannot be said to be justified in construing the requirement of teaching experience in this manner.

12] Then again so-called requirement about teaching

experience in an approved post was sought to be introduced at a stage when the selection process had already commenced. Such a requirement was not stated in the advertisement, possibly because such statement might have been in variance with the requirements in the recruitment rules.

13] In somewhat similar circumstances, when a similar requirement was sought to be introduced at the stage of interviews, the Division Bench of this Court in the case of *Dr. Rita (supra)* ruled that the MPSC, cannot be permitted to change rules of the game after the game commenced. In fact, in this case, the MAT had rejected the identical contentions of MPSC, which contention, the respondents, seek to now press in this petition.

14] So also, again in somewhat similar circumstances, the Division Bench of this Court in ***Kirankumar Dagadu Wanve & Anr. vs. Dr. Babasaheb Ambedkar Marathwada University & Ors. 2017 (4) AIR BOM R 459*** has held that where the advertisement had only stated that the candidate should be a lecturer with 3 years

teaching experience, the candidature could not have been rejected on the ground that the lecturer was not appointed on a sanctioned post or that such appointment had not been approved in terms of section 2(34) of the Maharashtra Universities Act.

15] The impugned judgment and order runs contrary to the law laid down in the case of *Dr. Rita* (supra) and *Kirankumar* (supra).

16] The reasons for rejecting the candidature of the petitioner were informed to the petitioner by communication dated 11th January 2015. In the said communication, the only ground urged was that the experience against unapproved post cannot be taken into consideration. Ordinarily, therefore, it may not be open for the respondents to now urge that the petitioner's teaching experience in mechanical engineering is required to be excluded since, the post, for which he had applied was the post of the Head of Department in Metrology Department.

17] That apart, the petitioner has filed a detailed affidavit

in rejoinder in which the petitioner has clearly stated that Metrology is one of the subjects in the Department of Mechanical Engineering and the petitioner has proficiency in teaching subject of Metrology. The petitioner in terms of the advertisement by the MPSC itself in his on-line application form had clearly disclosed his experience as Liquidator in the Mechanical Engineering Department in D. Y. Patil College of Engineering and as Assistant Professor in the Department of Mechanical Engineering in MIT College. On the basis of such disclosure, the respondents not only invited the petitioner to participate in the selection procedures but further, permitted him to participate in the selection procedures. No doubt, if at a later stage, if the respondents were to find that the experience claimed is not backed by records or that it is otherwise insufficient, the respondents, were always at liberty to deny the petitioner appointment. However, in the present case, the respondents do not dispute the factum of experience gained by the petitioner. The only contention is that a portion of such experience was not against an approved post or that the portion of such experience was not the subject matter of Mechanical Engineering and not specifically Metallurgy

Engineering. The later was clearly not the reason stated for rejection of the candidature of the petitioner. The clarification submitted by the petitioner in the affidavit in rejoinder has not even been countered by the respondents. The learned counsel for the respondents admits that the post of Head of the Department till date, remains unfilled. This means that if pursuant to any direction to the MPSC to consider the candidature of the petitioner, if the petitioner, is indeed selected and recommended for appointment, there will be no question of disturbing the appointment of any incumbent in such post. Mr. Salunke, the learned counsel for the petitioner points out that as it is, it is quite difficult for the respondents to obtain qualified candidates for the post of the Head of the Department, more particularly, for appointment against post reserved for members of the scheduled caste.

18] For all the aforesaid reasons, we allow this petition, set aside the impugned judgment and order dated 18th February 2016 made by the MAT and direct the MPSC to consider the candidature of the petitioner for the post of Head of the Department, which post is reserved for scheduled caste

category in terms of advertisement dated 27th September 2013. This direction should be complied within two months from today.

19] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA