

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 1147 OF 2018

Veerapandian Chinnaswamy .. Petitioner

Versus

Vice President &
Chief Executive Officer and Ors. .. Respondents

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- Mr. Shantanu Chandratre i/by Khandeparkar & Associates for the Petitioner
 - Ms. Aparna M. Kalathi i/by Mr. P.G. Lad for the Respondents
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**CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATE : JULY 16, 2019.

P.C.:

1. This petition is filed by an employee of Maharashtra Housing and Area Development Authority ("MHADA" for short). He has challenged the communication dated 29.1.2016 by which he was informed that he was ineligible for allotment of constructed residential premises on the ground that he had on the cut off date put less than five years of service in MHADA. The petitioner has also challenged an order dated 8.1.2018 by which the petitioner's request for review of the said order came to be rejected.

2. The respondent - MHADA Authorities had invited applications from eligible candidates for allotment on preferential / lot basis. The petitioner being an employee of MHADA had applied. During the lots, his application was selected for allotment of such residential unit. However, upon further scrutiny, the Authorities realized that he was ineligible for allotment on the ground that he had put less than 5 years of regular service. This was communicated to the petitioner. The petitioner has challenged this communication. He has also contended that the condition of eligibility itself was invalid and imposed without authority of law.

3. Learned counsel for the petitioner submitted that the Chief Officer had no authority to impose such a condition. In any case, such condition makes hostile discrimination creating two classes within the homogeneous group of the employees of MHADA.

4. On the other hand, learned counsel for the respondents opposed the petition. On the basis of the affidavit in reply

filed by the respondents, it was contended that in terms of Regulation 7 of The Maharashtra Housing and Area Development (Estate Management, Sale, Transfer and Exchange of Tenements) Regulations, 1981 (hereinafter referred to as the 'Regulations of 1981'), the Chief Officer had the authority to prescribe the terms and conditions by which such allotments shall be made.

5. Few undisputed facts are that the MHADA has a policy of setting apart a portion of the constructed units for allotment of its employees on preferential basis. The allotment is governed by Part III of the Regulations of 1981 which pertains to allotment of residential tenements. Sub-regulation (1) of Regulation 6 provides that the tenements may be allotted either on the basis of monthly tenancy, or on the basis of sale by deferred payment or on the basis of outright sale. Regulation 7 of such Regulations of 1981 pertains to the notice inviting applications for allotment of tenements and reads as under:-

"7. Notice inviting applications for allotment of tenements. -

(1) The Chief Officer shall display a notice on the Notice Board of his office, inviting applications for residential accommodation in a

building constructed or under construction or proposed to be constructed under any housing scheme before such date as may be specified in the notice.

(2) The notice shall specify such details of the building and tenements therein, the class of persons who may be eligible for allotment, the reservation for the different categories of persons, the preference, if any, to be given to any class of persons in the matter of allotment of tenements, the manner of allotment, the amount of deposit or earnest money or both to be paid, the circumstances in which the amount of deposit or earnest money or any portion thereof may be retained by the Board towards administrative expenses and such other terms and conditions of allotment as may be decided by the Chief Officer.

(3) The notice shall constitute an offer of the tenements to the applicants for acceptance of the conditions specified in the notice.

[(4) Where any Board displays a notice on its notice board under sub-clause (1) of this regulation, the Chief Officer shall forthwith publish a notice in at least two widely read news papers of which at least one shall be in Marathi giving full details relating to the housing scheme for inviting application.]

6. After the receipt of the application for allotment and verification thereof in terms of Regulations 8, 9 and 10, in terms of Regulation 11, the Authority would held a public draw of lots if the number of applications prima facie held eligible in each category exceeds the number of tenements being offered for allotment.

7. It was in terms of these regulations that the applications from intending employees of MHADA were invited. Though the notice inviting such application is not produced on record by either side, learned Advocates agreed that such notice contained stipulation that only an employee of MHADA with minimum five years of regular service would be eligible. Despite this, the petitioner applied. His application was not screened out at the first stage. However, as we have noticed regulation 11 which pertains to drawal of lots, also refers to the applicants who were prima facie found to be eligible. Therefore, by merely accepting application of the petitioner, the Authorities were not prevented from further scrutinizing the same for verification of his eligibility. Upon such further scrutiny, it was found that he had not put in minimum five years of regular service which was a precondition indicated in the notice itself. He was, therefore, suitably informed about his ineligibility and cancellation of allotment.

8. We do not find that in the process, the Authorities have

committed any error. The condition was contained in the notice itself which notice and the condition therein are not challenged by the petitioner. He nevertheless applied. It can easily be envisaged that the other employees who may be interested in allotment but had not completed five years of regular service, would have been dissuaded from applying since the condition prescribed would make them ineligible. The petitioner, at this stage, cannot be allowed to challenge the condition merely because despite such condition, he had applied.

9. Even otherwise, we do not find that the condition is either illegal or was imposed unauthorizedly. Sub-regulation (2) of Regulation 7 provides that the notice inviting applications for allotment shall specify such details of the building and tenements therein, the class of persons who may be eligible for allotment and similar other details. The notice, therefore, when it contained an eligibility criteria for application, did not transgress the powers conferred under sub-regulation (2) of Regulation 7.

10. This condition also does not, in our opinion, amount to hostile discrimination. When the employer provides for preferential allotment of residential accommodation to its employees, the fundamental basis for such allotment is the employment in the Corporation or the Authority. The longevity of service can well be one of the criteria for consideration. If the Authority was of the opinion that any employee who has not put a minimum length of regular service, would not be offered such allotment, we do not find the same to be arbitrary or unreasonable.

11. Under these circumstances, we do not find any merits in the petition. The petition is, therefore dismissed.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]