

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

UMESH
SHRINIWAS
MALANI

WRIT PETITION NO. 2512 OF 2017

Digitally signed by
UMESH SHRINIWAS
MALANI
Date: 2022.04.26
10:06:26 +0530

Smt. Pratibha Ramesh Gajbhiye
Plot. 18, Shanti Nagar,
Yashoda Nagar Bypass,
Amaravati

...Petitioner

Versus

1. Registrar General,
High Court,
Mumbai. 400 001.
2. Registrar Inspection I,
Appellate Side,
High Court,
Mumbai. 400 001.
3. State of Maharashtra
through Government Pleader
Original Side, Mumbai.
4. Smt. Deepali Suresh
Mankar,
Age: Adult, Occ: Service,
Office at: Marriage
Counsellor,
Family Court, Bandra,
E-Block, BKC, Bandra (E),
Mumbai. - 400 051
5. Kum. Jyoti Suresh Sapkal,
Age: Adult, Occ: Service,
Office at: Marriage
Counsellor,
Family Court, Bandra,
E-Block, BKC, Bandra (E),
Mumbai. - 400 051
6. Smt. Rani Santosh Date,
Age: Adult, Occ: Service,
Office at: 89, Tophakhana,
Shivajinagar, Pune.
411 005.

...Respondents

ALONG WITH
WRIT PETITION NO. 2505 OF 2017

Kavita Bhimrao Nikam,
Flat no. 11, Jal-Pari Housing
Society, Indira Nagar,
Nashik 9

...Petitioner

Versus

1. Registrar General,
High Court,
Mumbai. 400 001.
2. Registrar Inspection I,
Appellate Side,
High Court,
Mumbai. 400 001.
3. State of Maharashtra
through Government Pleader
Original Side, Mumbai.
4. Smt. Deepali Suresh
Mankar,
Age: Adult, Occ: Service,
Office at: Marriage
Counsellor,
Family Court, Bandra,
E-Block, BKC, Bandra (E),
Mumbai. - 400 051
5. Kum. Jyoti Suresh Sapkal,
Age: Adult, Occ: Service,
Office at: Marriage
Counsellor,
Family Court, Bandra,
E-Block, BKC, Bandra (E),
Mumbai. - 400 051
6. Smt. Rani Santosh Date,
Age: Adult, Occ: Service,
Office at: 89, Tophakhana,
Shivajinagar, Pune.
411 005.

...Respondents

Mr. Abhijeet A. Desai a/w Ms. Surabhi Agrawal and Mr. Amol Jagtap for Petitioners.

Mr. Rahul Nerlekar for Respondent Nos. 1 and 2.

Ms. Jyoti Chavan, AGP for Respondent – State.

**CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.**

DATE : NOVEMBER 18, 2021.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. By these Petitions, filed under Article 226 of the Constitution of India, both the Petitioners have essentially taken exception to the select list of candidates dated 28.09.2016 prepared by the Respondent No. 1, who are shortlisted to be called for the interview for the post of Marriage Counsellor pursuant to the Advertisement dated 16th March, 2016. By amendment, the Petitioners have also sought a direction to Respondent No. 1 to afresh consider their applications and include their names in the said list of shortlisted candidates who are called for interviews by Respondent No. 1. By amendment, the Petitioners have also sought a writ in the nature of seeking quashment of the final selection list/wait list dated 26.10.2016.

2. The facts of both these Writ Petitions are more or less identical. Therefore, for the sake of

brevity and convenience, the facts of Writ Petition No. 2512 of 2017 are being referred to and discussed.

3. The case of the Petitioner is that she is eligible on all counts to appear and to be called to participate in the selection process for the post of Marriage Counsellor in terms of the conditions laid down in the advertisement dated 16.03.2016 issued by Respondent No. 1. Accordingly, she submitted her application on 01.04.2016. It is case of the Petitioner that to her shock and surprise, when the list of candidates to be called for interview was published by Respondent No. 1 on 28.09.2016, her name did not find mention in the said list. Therefore, she immediately made a representation to the Respondent No. 1 for inclusion of her name in the list of candidates called for interview, however, without responding to her representation, Respondent No. 1 proceeded further with the interview and completed the selection process. Thus, it is the case of the Petitioner that the selection process carried by the Respondent No. 1 for the post of Marriage Counsellor is *ex facie* illegal.

4. Respondent No. 1 has filed affidavit-in-reply

in opposition to both the Petitions. It is the case of the Respondent No. 1 that a committee of two Hon'ble Judges of this Court was constituted to overlook the selection process and as per the directions of the said committee, an expert team consisting of persons nominated by the TISS, has undertaken the exercise of shortlisting the candidates to be called for interview. It is the case of Respondent No. 1 that based on the shortlisting criteria fixed by the said committee, applications submitted by Petitioners were found to be invalid. As such, names of both the Petitioners did not appear in the list dated 28.09.2016 i.e., the list of shortlisted candidates to be called for interviews.

5. Mr. Abhijit Desai, learned Counsel for the Petitioner vehemently argued that the Petitioner has been unjustly discriminated for no fault of her. It was the submission of learned Counsel for Petitioner that though Petitioners fulfills all the requisite conditions, and has better educational qualification and experience than those who have been called for the interviews, she has not been called for the interview on some untenable and unsustainable grounds. It is also

submitted by the learned Counsel for Petitioner that, at any rate if there was any defect in the application form submitted by the Petitioner, the Respondent No. 1 ought to have called the Petitioner to rectify those defects. It is also submitted by learned Counsel for Petitioner that no fair opportunity was given to the Petitioner and principles of natural justice are also not followed in the instant case. In support of his submissions, learned Counsel for Petitioner relied on following judgments: ABC Beverages Pvt Ltd Vs. Indian Railway Catering & Tourism Corporation (IRCTC) Ltd & Anr¹, Indian Oil Corporation Ltd vs. Sh. Kapil Bagri², Ms. Pooja R. Vs. the State of Karnataka and Ors³, Dr. (Major) Meeta Sahai vs. State of Bihar and Ors⁴ & Sushant Suresh Salvi vs. The State of Maharashtra and Ors⁵. Hence, learned Counsel for Petitioner prays for allowing the Petition.

6. Mr. Rahul Nerlekar, learned Counsel appearing for Respondent Nos. 1 and 2 opposed the Petition on various grounds. Learned Counsel submitted that no

1 2017 SCC OnLine Del 9426
 2 2015 SCC OnLine Del 10954
 3 WP NO. 9928 of 2019 (High Court of Karnataka)
 4 (2019) 20 SCC 17
 5 2017 SCC OnLine BOM 8571

discrimination has been made against any candidate leave aside the Petitioners herein. He further submitted that the whole selection process was carried out under the directions of two Hon'ble Judges of this Court. The said committee took the assistance of experts from TISS to scrutinize the applications received from 3,480 candidates and to shortlist the candidates from valid applications; during such scrutiny, simplicitor qualification and length of experience was not considered but along with educational qualification, experience in the relevant field of expertise, like family and child welfare, was given prominence by the experts. He further submitted that the Petitioners' applications were incomplete in various aspects, therefore, it was held invalid in the first round of scrutiny itself. He further submitted that the submission made by the Petitioners when their names did not appear in the list of shortlisted candidates for interview, they had submitted representations, which ought to have been taken into consideration by the Respondent No. 1 and Petitioners ought to have been given opportunity to rectify the defects in their applications, is wholly unsustainable

and untenable submission. In support of his submissions, learned Counsel for Respondent Nos. 1 and 2 placed reliance on following judgments: Karnataka State Seeds Development Corporation Ltd & Anr vs. H.L. Kaveri and Others⁶ & Ashok Kumar & Anr Vs. State of Bihar and Ors⁷. Hence, learned Counsel for Respondent Nos. 1 and 2 prayed for dismissal of Petitions.

7. After having gone through record and having considered the submissions advanced by the learned Counsel appearing on behalf of respective parties, we are of the view that the Petitions are devoid of any merit and deserve to be dismissed.

8. If we peruse the advertisement minutely, it is essential that application to be submitted in response to the subject advertisement, has to be in prescribed format. It is further provided that application containing incomplete information or not fulfilling the eligibility criteria will not be considered.

9. It is an admitted fact by the Petitioner that her moral/character certificate as well as experience

6 (2020) 3 SCC 108

7 AIR 2016 SC 5069

certificate were undated. The stand of the Respondents is that since these documents were undated, the Petitioner was not held eligible to be called for interview.

10. The submission of Respondent No. 1 is that in response to the subject advertisement, it had received in all 3,480 applications, and considering the huge number of applications, the said Committee gave directions to shortlist the candidates to be called for interview and after scrutiny it was found that only 1,184 applications were valid and remaining 2,296 applications were invalid.

Given the number of valid applications, and limited number of posts to be filled in, the Committee thought it fit to depute a Committee of experts from TISS to further shortlist the candidates in the ratio of 1:3 i.e., total 123 candidates. It seems that the approach adopted by the Committee for shortlisting at this initial stage is just and proper. We feel that in the given scenario, the approach adopted by the Committee to shortlist the candidates on one or the other criteria is appropriate.

11. At any rate, it is the stand of the Respondent No. 1 that the Petitioners were ineligible in the first round itself i.e., when out of 3,480 applications were scrutinized to ascertain the compliance with the conditions laid down in advertisement, 2,296 applications were found invalid. The Petitioner's name did not find place in the first scrutinized list of valid application's list itself. This shortlisting so as to find out whether the application is valid and fulfills the minimum basic requirements given in the advertisement and is complete in all respects, is essentially an act of ministerial type just to find out the compliance with the basic requirements as laid down in the advertisement. At this stage, apparently the expert team of the TISS had no role to play.

12. As contended by the Petitioners themselves, and also admitted by the Respondent No. 1 that the few documents/certificates annexed by the Petitioners to their respective applications/forms, were lacking in certain details. It has been the stand of the Petitioners that though their certificates, namely, the moral/character certificate as well as experience

certificate were undated, Respondent No. 1 ought to have called upon the Petitioners to verify those documents afresh and these defects could have been cured by the Petitioners either by giving fresh certificates or correcting those certificates with specific dates.

We find that this stand of the Petitioners is unsustainable. If this procedure, as suggested by the Petitioners is to be accepted, every selection process would prolong indefinitely by allowing the candidates to cure defects in their applications. If the large number of applications were to be scrutinized to find out whether valid or not, invariably certain parameters will have to be followed. Precisely, this has been done in the present case by Respondent No.1 to shortlist the applications by examining the documents/certificates are in conformity with the prescribed criteria of the advertisement.

13. One more contention raised by the Petitioner is that Respondent No. 1 have arbitrarily rejected the application of the Petitioner, without following the principles of natural justice. At any rate, it is the

stand of the Petitioner that Respondent No. 1 ought to have given a fair opportunity to her and thereafter rejected their application.

This argument looks very attractive at the first blush. Nonetheless, the Petitioner has not pointed out any violation of any of the prescribed rules committed by Respondent No. 1. Nowhere in the advertisement it is laid down that each and every candidate would be given an opportunity for rectifying the defects in their applications. On the contrary, it has been specifically provided under condition no. 5 in the advertisement under the caption 'instructions to the candidates' that applications which are not in the prescribed format or containing incomplete information or not fulfilling the eligibility criteria will not be considered. It means at the threshold itself an opportunity was given to each and every candidate to submit detailed information with regard to his/her fulfilling the eligibility criteria. If the Petitioner herself has not availed of the said opportunity, the Respondent No. 1 cannot be faulted on that ground.

14. In so far as the other contention raised by

the Petitioner that some other candidates have not submitted the requisite certificates with their forms or the documents submitted by some other candidates were lacking in essential details, and yet they were called for the interview is concerned, this argument need not be entertained by us for the simple reason that those persons/candidates are not impleaded as party Respondent in this Petition.

Similarly, whether other candidates were eligible or not is not the issue before us. The issue before us is essentially as to whether the Petitioner is eligible to be called for the interview. Therefore, we have to confine ourselves to the facts which are concerning to the Petitioner's eligibility only.

15. An omnibus argument is advanced at the instance of the Petitioners that she has been discriminated. However, how the Petitioner has been discriminated by the Respondent No. 1, is nowhere spelt out by the Petitioner either in Petition or during the course of argument.

Firstly, even if we take into consideration the number of applications held invalid in the first

round itself, the number is 2,296. So it is not the Petitioner alone who has been held ineligible for non compliance with or non fulfillment of the basic requirements laid down in the advertisement. Secondly, from 1,184 candidates shortlisted for the next round, the Committee again evaluated their applications and benchmarked them on the basis of various criterion, such as educational qualification, academic footing, relevant work experience, aptitude and interest. Assuming for the sake of moment, the Petitioner's application was held valid in the first round, it would have been impossible for the Committee to categorize her in any of the categories carved out by the Committee on the basis of above mentioned criteria on account of submission of documents containing incomplete information by the Petitioners.

16. In the backdrop of the above discussion, we are of the opinion, that both the Petitions are devoid of merit as such, deserve to be dismissed. Accordingly, Petitions are dismissed. Rule is discharged.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)