

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1596 OF 2021

VIKARAM BAWAJYA VALVI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND ANOTHER

...
Advocate for Petitioners : Mr. Sandip R. Sapkal
Addl. G.P. for Respondents : Mr. P. S. Patil

...
CORAM : RAVINDRA V. GHUGE &
S.G.DIGE, JJ.

DATE : 29.04.2022

P.C. :

1. By this petition, the petitioners have put forth prayer clauses "B", "C" and "D" as under :-

"B] To quash and set aside the final selection list prepared by the respondents (Exhibit-F) by issuing appropriate writ, order, direction as the case may be.

C] To hold and declare that the selection process carried out by the respondents is contrary to Government Resolution dated 1.12.2018 and advertisement dated 31.10.2018 and is illegal by issuing appropriate writ, order, direction as the case may be.

C] To direct the respondents to prepare the proper fresh selection list by allotting proper marks as per the Government Resolution dated 1.12.2018 and advertisement dated 31.10.2018 and issue appointment orders of respective post in favour of petitioners holding that the petitioners are the qualified candidate. By issuing appropriate writ, order or direction as the case may be.”

2. This Court (Coram : S.V. Gangapurwala and Shrikant D. Kulkarni, JJ.) had issued notice after considering the submissions of the learned Advocate for the petitioners, vide order dated 28-01-2021, which reads thus :-

“1. The allotment of marks for the work experience based on duration of service rendered is assailed on the ground that marks cannot be allotted as 09-13. If the experience is of 10 years or more than 10 years, 15 marks are to be allotted. For experience of 8 to 9 years 12 marks, for experience of 6 to 7 years, 8 marks and for experience of 5 years, 5 marks are to be allotted. The marks allotted are not in tune with the same.

2. Notice to respondents. The learned AGP waives the notice for respondents and seeks time.

3. Stand over to 18/02/2021.”

3. We have considered the strenuous submissions of the learned advocate for the petitioners and the learned AGP on behalf of the respondents.

4. The issue before us, is as to whether, for any reasons whatsoever and in the absence of any ambiguity, an authority conducting recruitment exams, can alter the marking scheme under the head “Experience”, after the exams are over and the fate of the examinees is closed for preparation and announcement of the results of the exams.

5. There is no dispute as regards the qualifications of these petitioners and the fact that they belonging to 'Bhill Tribe', which is recognized as Scheduled Tribe in the State of Maharashtra. Petitioner No. 1 is M.A. B.Ed with SET. Petitioner No. 2 is M.Sc. B.Ed. Petitioner No. 3 is D.Ed. M.A. M. Ed. And TET.

6. The Tribal Development Department, Government of

Maharashtra issued a Government Resolution dated 01-12-2018 for implementing a special recruitment process/ drive for appointing teaching and non-teaching staff in Tribal Ashram Schools and hostels. There are about 502 Government Ashram Schools with 491 Hostels. About two lakhs students take education in the Tribal Ashram Schools. This was a special drive.

7. Vide the Government Resolution dated 01-12-2018, approval was granted to implement a special recruitment process for appointment of Primary Teachers, Secondary Teachers, Higher Secondary Teachers, Superintendents, Librarians and Lab Assistants. The said Government Resolution specifically provides for granting marks to those candidates who are already in employment on the basis of their experience in service. For ready reference, we are reproducing the marks Scheme hereunder, as this is the only grievance raised in this petition :-

- | | | | |
|-----|------------------------------|---|-----------|
| (a) | 10 years and more experience | - | 15 marks. |
| (b) | 8 to 9 years of experience | - | 12 marks. |
| (c) | 6 to 7 years of experience | - | 08 marks. |
| (d) | 5 marks of experience | - | 05 marks. |

8. The undisputed factors are as under :-

- a) The special recruitment drive Government Resolution is dated 01/12/2018.
- b) The advertisement is dated 08/12/2018.
- c) The written exams were held on 17/02/2019.
- d) The change in marks scheme was introduced after the exams, vide Government Resolution dated 08/03/2019.
- e) The results were declared on 18/03/2019.

9. The fate of the examinees was closed for preparation and declaration of their results. The marks to be allotted for their experience, was based on the scheme dated 01/12/2018. The mandate to follow the above marks allotment scheme for 'experience' is found in clause 2(c) of the said Government Resolution which reads as under :-

“ क. संबंधीत पदावरील अनुभव – शिक्षक व शिक्षकेतर पदासाठी अर्ज करणा-या उमेदवारांनी शासकीय आदिवासी आश्रमशाळेतील संबंधित पदावर 5 वर्षे किंवा त्यापेक्षा जास्त अनुभव असल्यास त्यांनी केलेल्या सेवा वर्षांच्या प्रमाणात खालीलप्रमाणे 15 गुण देण्यात यावेत. 5 वर्षापेक्षा कमी अनुभवासाठी गुणदान करण्यात येऊ नये. तसेच अनुभवाची गणना करताना 6 किंवा त्यापेक्षा अधिक महिन्यासाठी पूर्णाकात गणना करण्यात यावी. त्यासाठी दि. 31 ऑक्टोबर, 2018

पर्यंत कोणत्या शाळेत व सलग किती काळ सेवा केली हे विचारात घेण्यात यावे.

- | | | | |
|----|--------------------------------------|---|--------|
| 1. | 10 किंवा त्यापेक्षा अधिक वर्षे अनुभव | — | 15 गुण |
| 2. | 8 ते 9 वर्षे अनुभव | — | 12 गुण |
| 3. | 6 ते 7 वर्षे अनुभव | — | 8 गुण |
| 4. | 5 वर्षे अनुभव | — | 5 गुण |

शासकीय आदिवासी आश्रमशाळेतील सेवेच्या अनुभवासाठी प्रकल्प अधिका-याचे प्रमाणपत्र आवश्यक राहील.”

10. As such, all the candidates were informed vide the advertisement dated 08-12-2018, that the cut-off date for calculating tenure of experience would be 31-10-2018. The advertisement clearly mandated to the candidates that no candidate who has less than ‘5’ years experience, would be entitled for any addition of marks under ‘experience’ head. However, ‘6’ months or more in a year would be rounded up to the next digit. As such, a candidate who had ‘4’ years and ‘6’ months experience, would be considered as having completed ‘5’ years thereby being eligible for ‘5’ marks. It is also prescribed in the advertisement that the Project Officer would issue an experience certificate which would be mandatory. Therefore, such experience certificate was to be issued taking into account the cut-off date 31-10-2018. It is also mentioned that after the results of the exams, the

candidates would be called upon for verification of their documents so as to confirm their score. It is also prescribed that a candidate would be qualified for appointment.

11. On 26-02-2019 i.e. nine days after examinations were concluded, the Tribal Development Department prepared the minutes of a meeting, which was presided over by the Honourable Chief Minister, Honourable Minister for Tribal Department and four Officers of the department. They resolved to change the 'experience' marking pattern as follows :-

- | | | | |
|-----|------------------------------|---|-----------|
| (a) | 10 years and more experience | - | 15 marks. |
| (b) | 8 to 10 years experience | - | 13 marks. |
| (c) | 6 to 8 years experience | - | 11 marks |
| (d) | 4 to 6 years experience | - | 09 marks. |

12. It is an admitted position that the Government Resolution dated 08-03-2019 was issued by the Tribal Development Department for altering marks to be allotted for the experience holders, which is '19' days after the exams were concluded. It is equally admitted that this change in the marking pattern was implemented and results were declared on 18-03-2019 for the region of Ahmednagar, Nashik, Dhule,

Jalgaon and Nandurbar (areas covered under PESA).

13. The learned AGP has relied upon the affidavit-in-reply dated 19th February, 2022, filed by the Assistant Project Officer from the office of Additional Tribal Commissioner, Nashik Division, Nashik. He contends that after the Government Resolution dated 08-03-2019 was issued, wide publicity was given and thereafter the results were declared. He further submits that there is no pleading by the petitioners in their petition as to whether they are aware of any candidates who have been unduly benefited due to change in the allotment of marks for 'experience' and consequentially have been selected causing deprivation to the petitioners. He further submits that there was some agitation, that was undertaken by certain tribals and as they met the Honourable Chief Minister on 17-02-2019, that is the date on which the written exams were held, a meeting was convened on 26-02-2019 in which the decision to change the marks pattern was taken and the Government Resolution dated 08-03-2019 was issued.

14. The following judgments are relied upon by the parties :-

(I) *Hemani Malhotra Versus High Court of Delhi*
(2008) 7 SCC 11,

(II) *D. Sarojakumari Versus R Helen Thilakom and others*, (2017) 9 SCC 478,

(III) *Ramesh Chandra Shah and others Versus Anil Joshi and others* (2013)11 SCC 309,

(IV) *Tej Prakash Pathak and others Versus Rajasthan High Court and others* (2013)4 SCC 540,

(V) *Zahoor Ahmad Rather and others Versus Sheikh Imtiyaz Ahmad and others* (2019) 2 SCC 404,

(VI) *V. Lavanya and others Versus State of Tamil Nadu represented by it's Principal Secretary and others* (2017)1 SCC 322.

15. In *D Sarojakumar* (Supra), the appellant challenged the selection process after being unsuccessful. In *Rameshchandra Shah* (Supra), the appellant had challenged the entire selection process after having participated in the selection and having not been selected. In *Zahoor Ahmad Rather* (Supra), it was held that having higher qualifications than

stipulated for post can be taken into account by the State for granting employment. In ***V.Lavanya*** (Supra), the issue was as regards relaxation of 5% marks for the reserved candidates in the State Teacher Eligibility Test. In the case in hands, the petitioners have made it clear that they are not challenging the selection process.

16. In ***Tej Prakash Pathak*** (Supra), the Honourable Supreme Court (Three Judges Bench), concluded that the State or its instrumentalities cannot be permitted to tinker with the 'rules of the game' insofar as the prescription of the eligibility / selection criteria is concerned. Whether this principle should be rigorously applied, was referred to the Larger Bench of the Honourable Supreme Court.

17. The contention of the petitioners is that thousands of employees appeared for the written examination on the basis of the prescription vide the Government Resolution dated 01-12-2018, in which the marking pattern or allotment of the marks for the 'experience' head was specified. This was reiterated in the advertisement. Once this was specified and on the basis of which the candidates appeared for the

examination, the State or its instrumentalities could not have altered the marks to be allotted for the number of the years of experience. They also allege ambiguity in the change pattern which has promoted nepotism.

18. For ready reference, we deem it appropriate to prepare a chart to compare the marks, that were permissible as per the Government Resolution dated 01-12-2018, vide which the recruitment process was undertaken and those which were altered after the exams, vide the Government Resolution dated 08-03-2019, is as under :-

As per G.R. dated 01-10-2018		Proposed change in marks	
Years and experience	Marks	Years and experience	Marks
10 years and more experience	15 Marks	10 years and more experience	15 Marks
8 to 9 years experience	12 Marks	8 to 10 years experience	13 Marks
6 to 7 years experience	8 Marks	6 to 8 years experience	11 Marks
5 years experience	5 Marks	4 to 6 years experience	9 Marks

19. The discrepancy and confusion created by the State by introducing the new scheme of marks for experience, is obvious, a glance at the chart reproduced would indicate

overlapping of '10' years in the highest slab as well as the second slab, '8' years in the second slab and the third slab and '6' years in the third slab and the forth slab. As such, candidate who has exactly '10' years experience can be granted either '15' marks or even '13 marks. The candidate having exactly '8' years experience can be allotted '13' marks or even '11 marks' and the candidate who has exactly '6' years experience, can be granted '11' marks or even '9' marks. The scheme of marks as per Government Resolution and the advertisement is perfect and there is no ambiguity. The modified scheme leaves every role for manipulation and nepotism.

20. Notwithstanding, the fallacy and confusion that has been created by the new scheme introduced after the examination, what is to be considered is as to whether the State or it's Tribal Development Department could have altered the rules of the marking scheme after the examinations were over. In ***Tej Prakash Pathak's case*** (Supra), the Honourable Apex Court has held that "*Changing the rules of the game either in the midst or after the game is played, is an aspect of retrospective law making.*" In paragraph 15, it has been observed as under :-

“15. No doubt it is a salutary principle not to permit the State or its instrumentalities to tinker with the “rules of the game” insofar as the prescription of eligibility criteria is concerned as was done in C. Channabasavaih V. State of Mysore, etc in order to avoid manipulation of the recruitment process and its results. Whether such a principle should be applied in the context of the “rules of the game” stipulating the procedure for selection more particularly when the change sought is to impose a more rigorous scrutiny or selection requires an authoritative pronouncement of larger Bench of this court. We therefore, order that the matter be placed before the Hon’ble Chief Justice of India for appropriate orders in this regard.”

21. In ***Hemangi Malhotra***’ case (*Supra*), the Honourable Apex Court concluded that changing the rules of the game during the selection process or when it is over, is not permissible. In this case, initially, there was a prescription of minimum marks for the written test only. No cut – off percentage was prescribed for viva-voce. However, minimum marks for viva-voce were prescribed after the written test was over. This was held impermissible. Such course of action for

the purpose of appointment to the Delhi Higher Judicial Service, was contrary to the recommendations in the Justice Shetty Commission Report.

22. In *K. Manjusree versus State of A.P., AIR (2010) SCC 1470*, it was concluded that though the petitioner was not a selected candidate for the post of District and Sessions Judge, either in the first list or the second list and had not challenged the process of selection by filing a writ petition, she would in no way be aggrieved as she will not be selected, by adopting either method. However, it was concluded that introduction of requirement of minimum marks for interviews, after the selection process had begun, was impermissible.

23. An affidavit-in-reply has been filed on behalf of the State. It has been admitted in paragraph no. 9 as under :-

“9. I say and submit that since some organization of tribal community have raised the issue before the Government requesting that the experience criteria should be relaxed in the recruitment process so that more candidate will be accommodated in the recruitment process. Considering the said demand from the Tribal Organizations the Government has decided to

change the criteria regarding the educational qualifications and the experience for the appointment of above posts of Primary Teachers, Secondary Teachers, Higher Secondary Teachers, Warden, Superintendent and Lab Assistant etc. in the Government Ashram School and Hostel respectively. The Government has issued GR dated 08.03.2019 thereby change in selection process made by the Government in respect of education qualification and experience for the respective posts.”

24. It has further been stated in paragraph no. 10 as under -

“10. I say and submit that, the said GR is issued in the interest of employee working under the Tribal Development Department. Accordingly the Government has wide publicity to the GR by publishing it on the Maha Online Website and also through respective Project Officers whose they were working. All the candidates appeared for the examination were directed to update their profile as per the changed norms issued by the GR dated 08.03.2019. The camps were also arranged to collect the said updated information from each project office level. The copy of communication regarding camps conduct at the project office level annexed herewith and marked

as EXHIBIT R-1.”

25. It is, thus, obvious that the State admits that Government Resolution dated 08-03-2019 has introduced a change in the selection process marks allotment scheme in respect of ‘experience’ head for the respective posts. An explanation is put forth by the learned A.G.P. on specific instructions that, this was done because there were certain organizations of the Tribal Community which were objecting to the recruitment process and wanted more preference to the Tribals who are already in employment on the basis of criteria of experience.

26. We are of the view that, if the Tribal Development Department desired to introduce a new marking scheme by which different scales of marks were allotted to different slabs of experience holders, they should have cancelled the selection process and by revising their rules, should have re-conducted the selection process. Introducing a change in the marks scheme to favour those candidates who were earlier held ineligible for the minimum '5' marks due to less than five years of experience, by changing the slab, amounts to

declaring a person eligible for scoring such marks on the ground of experience by changing the rules after the examinations were over and the issue was closed for preparation of results.

27. In view of the above, we are of the view that the case put forth by these petitioners, is squarely covered by the decisions in the cases of ***Tej Prakash Pathak, Himani Malhotra and K. Manjusree*** (supra).

28. The learned Advocate for the petitioners submits that, they are totally handicapped from getting the details of each and every candidate. However, from the website of the Tribal Welfare Department, they have noticed new marks allotted to hundreds of candidates as per the change in the final marks based on experience of the candidates. Since there are discrepancies on account of overlapping of years of experience, for example, 10 years, 8 years and 6 years as per the new scheme, further confusion is created. The earlier pattern which was declared as a basis for allotment of marks by the Government Resolution dated 01-12-2018 on the basis of which the recruitment process was conducted, was given a

go-bye.

29. We find, from the view taken by the Honourable Apex Court in *Tej Prakash Pathak* and others (*supra*) and the law laid down in *C. Channabasavaih versus State of Mysore, AIR 1965 SC 1293*, that the reason for preventing a change in the rules of granting marks in the midst of the selection process or after it is concluded, is in order to avoid manipulation of the recruitment process. Since these petitioners were unable to collect enough information so as to make out specific cases of manipulation and specific cases of who have been favoured, they have not arrayed the entire list of hundreds of selected candidates, in the cause title of the petition.

30. In the peculiar facts as noted above, we conclude that the selection process conducted by the Tribal Development Department by allotment of marks under the head of 'experience', is defective and needs to be rectified. However, we cannot ignore the fact that during the pendency of these proceedings, most of the selected candidates have completed more than 3 years in employment and must have been confirmed in service.

31. This petition is, therefore, partly allowed with the following directions :-

(a) It is expected that, the competent authority would take remedial measures for re-calculating the marks only to the extent of the experience criteria by following the Government Resolution dated 01-12-2018.

(b) They shall follow the due process of law in doing so, by issuing individual notices to those candidates who are likely to be affected by the change in marks by abiding by the marking scheme prescribed in the Government Resolution dated 01-12-2018.

(c) Accordingly, the respondent authorities would formalise the exam results of all the candidates, whether or not selected earlier, since there is a likelihood that those candidates who have not been selected, may stand a chance of selection, on or before 31st December, 2022.

(d) Since the original results were declared on 18-03-2019 and the appointments were made more than three years ago, we leave it to the competent department to continue such appointees. However, if any candidate, as like these petitioners, stands selected by the revised results, the competent authority would absorb such candidate(s) on available vacancies, considering that there was no recruitment drive after 2018.

(S.G.DIGE, J.)

(RAVINDRA V. GHUGE, J.)

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