

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1490 OF 2021

RAJENDRA RAMCHANDRA PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. Shaikh Mazhar A. Jahagirdar, Advocate for the petitioner.
Mr. P.G. Borade, A.G.P. for respondent No. 1.
Mr. S.V. Adwant, Advocate for respondent Nos. 2 and 3.

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CORAM : **C.V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.**

DATE : **24 JUNE 2022**

ORDER :

By this petition under Article 226 of the Constitution of India, the petitioner is seeking direction to respondent Nos.2 and 3 to consider the candidature of the petitioner for appointment to the post of Surveyor (Grade-II) as per the selection list dated 18 September 2017 and / or to direct respondent Nos.2 and 3 to consider his representation dated 4 September 2018 and to grant appointment to the petitioner on the post of Surveyor (Grade-II).

2. The petitioner belongs to the Other Backward Classes (OBC Category) and completed his course with Industrial Training Institute (ITI) and NCVT. The petitioner claims to have 16 years experience in the field of land survey.

3. Respondent Maharashtra State Electricity Transmission Company ("the respondent company", for short) had advertised six posts of Surveyor (Grade-II) by an advertisement dated 16 June 2017, out of which one post was reserved for OBC Category. The applications were required to be made on-line. Indisputably, the petitioner applied for the said post. It may be mentioned that in terms of the requirements of the said, the incumbents were required to have two years experience in land survey. It appears that the petitioner, in his application, claimed that he had worked with a company by name Sanborn Technology Resources Pvt. Ltd. (Sanborn, for short) from March 2000 to February 2009 and from March 2009 to June 2017 with a company by name Rolta India Ltd. (Rolta, for short). It was specifically claimed that the petitioner had so worked as a Land Surveyor and had more than 16 years of experience as a Land Surveyor.

4. The record discloses that the select list was published by the respondent Company on 18 September 2017 in which name of the petitioner figured at Sr. No. 3. The said selection was subject to the verification of documents as to qualification and experience. The petitioner was accordingly required to submit his credentials for verification of the experience, etc. and according to the respondent Company, the petitioner only submitted experience certificate from Sanborn Technology Resources Pvt. Ltd. The respondent Company made repeated attempts to get the said certificate verified from, Sanborn and eventually by an e-mail dated 4 May 2018, Sanborn confirmed that the petitioner, was working with them, during the said period. Incidentally, the capacity in which the petitioner was working, was conspicuously absent in the said communication.

5. The respondent Company thereafter by the impugned communication dated 3 July 2018, informed the petitioner that his candidature for the post of Surveyor (Grade-II) has been cancelled as the experience certificate produced by the petitioner did not show that the petitioner was having the required experience for the post of Surveyor (Grade-II).

6. The petitioner sent representation dated 4 September 2018 *inter alia* claiming that it was for the respondent Company to have verified experience with Rolta as that employment was immediately preceding, the application for recruitment in comparison with Sanborn where the petitioner worked till February 2009. As the said representation did not evoke required response, the petitioner sent notice on 7 September 2020, after which the present petition came to be filed on 27 October 2020.

7. Respondent Nos. 4 to 6 are the candidates whose names featured in the select list and who are belonging to OBC category. It is necessary to note that all these respondents had filed Writ Petition No.6368 of 2019 before this Court seeking direction to the respondent Company to issue appointment orders. This Court, while disposing of the said petition by order dated 13 February 2020, had directed the respondent Company to consider the candidature of those respondents (petitioners in Writ Petition No.6368 of 2019) in view of Rule 29 (a) of the Maharashtra State Electricity Board Classification and Recruitment Regulations, 1961, if they are otherwise found eligible for the said post. The learned Counsel for the respondent Company states that subsequent to this,

even the candidature of respondent Nos.4 to 6 has been cancelled which is subject-matter of a separate petition, which is pending before this Court.

8. We have heard learned Counsel for the parties and perused the record.

9. It is submitted by the learned Counsel for the petitioner that the petitioner was holding the required qualification in the field of land survey and had more than 16 years of experience, initially with 'Sanborn' and subsequently with 'Rolta'. The learned Counsel for the petitioner, strenuously urged that the experience certificates from both these companies were submitted to the respondent Company, however, the respondent Company only preferred to verify the experience certificate from Sanborn. It is submitted by the learned Counsel for the petitioner that as the requirement of the work experience was only for two years, the respondent Company ought to have verified the experience certificate from 'Rolta'. Secondly, it is submitted that the post occupied by the petitioner and nature of the work with these Companies was of a superior nature in the field of land survey, and

therefore, even assuming that there is any discrepancy regarding the designation of the post occupied by the petitioner, it would not be sufficient to claim that the petitioner was not having the required experience. It is submitted that the petitioner had secured more marks than respondent Nos.4 to 6, and thus, his candidature could not have been cancelled in preference to the claim of respondent Nos.4 to 6. On behalf of the petitioner, reliance is placed on the decision of the Supreme Court in *S.L. Kapoor vs Jagmohan and others, (1980) 4 SCC 379* in order to submit that the respondents were also required to grant reasonable opportunity to the petitioner to produce the relevant documents, if at all according to the respondent the documents already submitted were not sufficient.

10. The learned Counsel for the respondent Company submitted that there was no experience certificate from Rolta India Limited furnished by the petitioner. It is submitted that only the experience certificate from Sanborn was submitted by the petitioner and after repeated attempts, the respondent Company could get response from Sanborn stating that the petitioner was working for the relevant period in the said Company without setting out the details of the work, etc. It is, thus, submitted that there was a clear

lapse on the part of the petitioner in furnishing the required documents. The learned Counsel for the respondent Company has pointed out that the appointment was subject to the verification of the relevant documents and in the absence of the petitioner being found to have the relevant experience in the field of land survey, the cancellation of the candidature is legal and proper. The learned Counsel has invited our attention to the copy of on-line form submitted by the petitioner (at page 38 of the compilation) in which the petitioner had claimed that he had worked as a Land Surveyor with the two Companies. The learned Counsel with reference to the appointment letters produced, showed that the appointment of the petitioner was not as a Land Surveyor. On behalf of the respondent Company, reliance is placed on (1) *Shankarshan Dash vs Union of India*, (1001) 3 SCC 47; (2) *Vice-Chancellor, University of Allahabad vs. Anand Prakash Mishra (Dr.)*, (1997) 10 SCC 264; (3) *State of Orissa vs. Rajkishore*, (2010) 6 SCC 777; (4) *Pant Nagar Mahatma Phule Co-op, Hsg. Society Ltd. and others vs. State of Maharashtra and others*, 2016 SCC Online Bom 1784 and (5) *Dinesh Kumar Kashyap and others vs. South East Central Railway and others*, (2019) 12 SCC 798, in

order to submit that there is no vested right in an incumbent who applies in pursuance of a public employment notice or even to a candidate whose name figures in the select list and the ultimate appointment is always subject to the conditions of the employment as set out in the advertisement as well as in the relevant Recruitment Rules. He, therefore, submitted that the petition be dismissed.

11. We have carefully considered the rival circumstances and submissions made and we do not find that a case for interference is made out. It is a matter of record that the advertisement was for recruitment to the post of Surveyor (Grade-II) requiring two years' experience in the relevant field. Although the petitioner in the on-line application claimed that he had such experience with the two Companies for a period in excess of 16 years, the appointment letter of Rolta India Limited dated 28 September 2017 shows that the petitioner was appointed as a 'Project Leader' in Enterprise Geospatial Information Solutions. In so far as the experience certificate dated 28 February 2009 from Sanborn Technology Resources Pvt. Ltd. is concerned, it shows that the petitioner was working as a 'Manager Associate'. We have

also serious doubt whether the experience certificate of 'Rolta' was ever submitted by the petitioner. We made a specific query to the learned Counsel for the petitioner to point out an averment in the petition claiming that the petitioner had submitted an experience certificate from 'Rolta', to which the only portion pointed out is, with reference to the submission of EPF documents of the said Company as contained in para-6. Quite to the contrary, in para-9, the petitioner has stated that the respondents were requested to check his work experience in the Company in which he was working for last more than eight years i.e. 'Rolta', by providing their e-mail. There is a specific contention raised in the affidavit-in-reply by the respondent Company that the experience certificate from 'Rolta' was never submitted and there is no rejoinder forthcoming. We, thus, find that although a claim is made that the respondents ought to have verified the work experience of the petitioner from 'Rolta', there is nothing on record to show that the work experience from 'Rolta' was furnished to the respondent Company. That apart, the appointment orders as noticed earlier, would go to show that appointment of the petitioner was not as a Surveyor in either of the two Companies. Even so far as the ground that the petitioner was

working on a superior post in an allied field, there is no such averment made and looking for the designation of the post to which the petitioner was appointed by the two Companies, it is not possible to conclude that the said work was in a higher or superior post in the allied field of land surveys. The aspect of work experience is related to the duties of the post to which recruitment is sought, and thus, is of paramount significance when making such recruitment. We find that in terms of the advertisement, the selection and the ultimate appointment was subject to the verification of the work experience. In the absence of the successful verification of the work experience, we do not find any reason to take exception to the cancellation of the candidature of the petitioner.

12. In *S.L. Kapoor* (supra), the Supreme Court has held that where the admitted or undisputed facts do not lead to a different conclusion, then the compliance with the principles of natural justice is not insisted upon, not because the Courts approve the non-observance of the natural justice but because the Courts do not issue futile writs. We are unable to see as to how the decision can come to the aid of the petitioner. We have also

noticed that inspite of the opportunity given, the work experience certificate from 'Rolta' was not produced. In such circumstances, the petition is rejected with no order as to costs.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.