

Shiv

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

**WRIT PETITION NO.1453 OF 2021
WITH
INTERIM APPLICATION NO.1811 OF 2021
IN
WRIT PETITION NO.1453 OF 2021**

Dr. Sucheta Harish Jawan ... Petitioner
Versus
State of Maharashtra & Ors. ... Respondents

Mr. N. V. Bandiwadkar i/b Mr. Sujeet Bugade for the Petitioner.
Mrs. S.S. Bhende AGP for the Respondent-State.
Mr. Abhijit Kandarkar for Respondent Nos.5 and 6.

**CORAM : S. V. GANGAPURWALA &
S. M. MODAK, JJ.**

DATED : 29TH JUNE 2022

P.C. :

1. The Petitioner challenges the order refusing approval to her services.
The Appeal filed by the Petitioner is dismissed.

2. The Respondent issued the advertisement on or about 4th July 2012 for filling in posts of full time teacher for Medical Lab technician and x-ray technicians. The Petitioner was selected and was appointed on 24/11/2012 on probation. It appears that the Petitioner joined on 24/11/2012. The proposal was submitted seeking approval for the appointment of the Petitioners. The correspondence went on, eventually

the Respondent No.5 did not accept the proposal and in a way rejected it. The Petitioner filed an Appeal before Respondent No.2. Respondent No.2 dismissed the Appeal under the impugned order.

3. The ground on which proposal for approval to the appointment of the Petitioner is rejected is that the Petitioner did not possess three years experience prior to appointment either in pathological laboratory or at the teaching post. The Petitioner possessed two years of experience, however, as per Rules three years experience is necessary.

4. It is contention of the Petitioner and also the management that the Petitioner has worked on clock hour basis for one year and that experience also needs to be counted. The Petitioner possess three years experience. The learned counsel further submits that similarly situated candidate, namely, Shilpa Praful Pawar, the Respondents is granted approval.

5. The learned AGP submits that no error has been committed by rejecting proposal seeking approval to the appointment of the Petitioner. The Petitioner did not possess experience of three years as is required under the Rules. The experience allegedly possessed as teacher on clock hour basis is not to be counted as valid experience. The learned AGP submits that as the Petitioner did not possess necessary experience as per Rules, the Petitioner is not entitled for approval of his service. No error has been committed by the Authority while passing the order. This Court may not entertain the Petition.

6. The learned AGP relied on the following judgment of the Supreme Court :

- (i) Chandigarh Administration & Anr. vs. Jagjit Singh & Anr. (1995) 1 SCC 745;
- (ii) Raminder Singh vs. State of Punjab & Anr. (2016) 16 SCC 95;
- (iii) Ashish Kumar vs. State of Uttar Pradesh & Ors. (2018) 3 SCC 55;
- (iv) Gursharan Singh & Ors. vs. New Delhi Municipal Committee & Ors. (1996) 2 SCC 459.

7. The learned AGP further submits that if there is any variance in advertisement, the Rules will prevail. Reliance is placed on the judgment of the Ashish Kumar (supra). The learned AGP further submits that only because of mistake, one candidate namely Shilpa Pawar has been granted approval that would not enure to benefit of the Petitioner. If by mistake approval is granted the same cannot be demanded by other candidate. There cannot be negative equality. Reliance is placed on the judgment of the Apex Court in Gursharan Singh and Others (supra).

8. We have considered the submissions. The Division Bench of this Court on 7th April 2022 had heard the matter and recorded the finding. The relevant particular is reproduced as under :

“5. But, we must say that the case of the Petitioner stands somewhat on a different footing in the sense that it is not considered by the Respondent Nos. 2 & 3 from right perspective. In the case of Mrs. Shilpa Pawar, the reasons

that weighed with the Department were as follows :-

- (i) There was a mistake in the advertisement inviting Applications for appointment of the Full Time Instructor and for this mistake, Mrs. Shilpa Pawar is not responsible;
- (ii) Mrs. Shilpa Pawar was in service since last six years and therefore, it may not be appropriate to punish her by refusing approval;
- (iii) There is possibility of Mrs. Shilpa Pawar having lost other employment opportunities during the interregnum;
- (iv) There is absolutely no fault attributable and no mistake committed by Mrs. Shilpa Pawar.”

9. The Respondent-Junior College published advertisement on 4th July 2012. In the advertisement the experience required was shown as one year. The Petitioner possessed two years experience. The same is not disputed fact. The bone of contention is that the experience required as per Rules is three years and as the Petitioner possess only two years experience, the Petitioner was not qualified to be appointed. It is also not disputed that the Petitioner possessed necessary qualification i.e. degree of B.A.M.S. and D.M.L.T. with experience of two years. The qualification is possessed by the Petitioner. According to the Respondent, the qualification of the Petitioner is short by one year. It also needs to be considered that the Petitioner has earlier worked on clock hour basis in the same college. The said experience also the Petitioner possess. Be that as it may, five years have lapsed after appointment of the Petitioner and rejecting the proposal

for approval. The Petitioner is continuing in service for all six years. The Petitioner had also acquired necessary experience while performing the duties.

10. There cannot be any quarrel with the proposition that the Rules would prevail over the advertisement. However, one also needs to consider long time gap. The Petitioner has now acquired experience. After working for one year the Petitioner would have experience i.e. without considering experience of working clock hour basis earlier.

11. The Petitioner is appointed on 24th November 2012. The Petitioner would complete remaining experience of one year on 24th November 2013.

12. It is not disputed that the post on which the Petitioner is appointed is sanctioned and admissible post. The same is meant for reserved category and the Petitioner belongs to reserved category.

13. The Petitioner now has acquired necessary experience. It would be now inequitable to ask the Petitioner to demit as the Petitioner would have crossed upper age limit for employment.

14. We may balance the equities.

15. In the result, we pass the following order :

- (i) The impugned order is quashed and set aside.
- (ii) The Respondent shall grant approval to the appointment of the Petitioner with effect from 24/11/2013, however, the Petitioner will not be entitled for salary from the Government from 24/11/2013 till this date.
- (iii) The Petitioner shall be paid regular salary as per pay scale from this date regularly. However, the services from 24/11/2013 shall be counted for all other purposes.
- (iv) The order shall be passed accepting the proposal of the Petitioner preferably within one month.

17. With these observation the Writ Petition is disposed of. No costs.

(S. M. MODAK, J.)

(S. V. GANGAPURWALA, J.)