

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11726 OF 2018

Vishal Raman Gaikwad ... Petitioner.
Versus
State of Maharashtra and Others. ... Respondents.

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Mr. Ashutosh Kulkarni, with Mr. Sarthak Diwan, for the Petitioner.
Mr. M.M. Pabale, AGP for the Respondent Nos.1 and 2.
None for Respondent No.3.

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**CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.**

DATE : December 12, 2022.

P. C. (Per Sharmila U. Deshmukh, J):

1. The refusal of the approval by the Director, Directorate of Technical Education to the appointment of the Petitioner as Assistant Professor of Electronics Engineering in Respondent No.3-College is the subject matter of challenge in the present writ petition.

2. The Petitioner is a post-graduate in M. Tech in Electronics and was initially appointed on 17th July, 2006 on the post of Assistant Professor in the Electronics Engineering Department of Respondent No.3. This appointment which was on contractual basis was renewed from time to time till 4th July, 2013. On 10th September, 2013, the Respondent No.3-College published an advertisement inviting applications for the recruitment of the faculty, to which the Petitioner

applied. Admitted position is that on the date of application, the Petitioner was aged 35 years and 9 months. Interviews for the post was held by the Selection Committee on 29th January, 2014, one of the members of the Selection Committee being Respondent No.2-Director, Directorate of Technical Education. Upon recommendation of the Selection Committee, the approval of the Administrative Council was obtained and accordingly, the appointment letter was issued to the Petitioner on 12th February, 2014, which was subsequently approved by the Respondent No.4-University on 29th May, 2014. The appointment made by the College was subject to the approval of Respondent No.2 and upon a proposal being submitted to the Respondent No.2, by the impugned order dated 14th October, 2016, has been refused on the ground that the Petitioner did not satisfy the age criteria as per the applicable service rules.

3. Heard Shri Ashutosh Kulkarni, learned counsel appearing for the Petitioner and Shri M.M. Pabale, Assistant Government Pleader for Respondent Nos.1 and 2.

4. Learned counsel for the Petitioner submits as per the advertisement the age criteria of 35 years was subject to relaxation at the discretion of the Selection Committee on the basis of qualification and experience. He further submits that at the time of the submission of the application, admittedly the Petitioner was 35 years and 9 months of age and in spite of that the Petitioner came to be appointed on the said post by the Selection Committee. He would urge that by appointing the Petitioner the selection committee has exercised the discretion which is

vested in the Selection Committee and the Respondent No.2-Director being a part of the Selection Committee, now cannot refuse the approval to the appointment of the Petitioner.

5. An affidavit-in-reply has been filed by the Respondent Nos.1 and 2 stating that on the request of Respondent No.3-College, the Respondent No.2 has accorded sanction to the advertisement issued by the Respondent No.3 by communication dated 28th July, 2013, specifically stating therein that the Respondent No.3 – College should adhere to the norms prescribed by All India Council for Technical Education (AICTE) and the State Government relating to the qualification criteria, reservation policy and the age criteria and unless and until the approval is given by the Respondent No.2, no appointment letter to the concerned candidate be issued. The affidavit-in-reply further states that as on the date of application i.e. on 30th September, 2013, the Petitioner is more than 35 years and thus, was not eligible to apply.

6. By an order of 13th July, 2019, this Court directed the Respondent No.2 to file an additional affidavit, considering that the affidavit-in-reply dated 18th April, 2019, did not deal with the basic submission of the Petitioner that the selection committee had the power to grant relaxation from the criteria of age, which discretion was exercised by the Selection Committee and has relaxed the condition of age as far as the Petitioner is concerned. Subsequently, an additional affidavit came to be filed by the Respondent Nos.1 and 2 dated 23rd August, 2019 making a specific assertion that the Selection Committee

does not possess any special power to relax any of the criteria which is prescribed by AICTE and the State Government.

7. We have considered the rival submissions of the parties. The respondent no.3 is a Non-Government Aided Engineering Autonomous Educational Institution and is bound to follow the norms prescribed by AICTE and the State Government. By a notification of 10th September, 2012, which has been annexed to the additional affidavit-in-reply of the Respondent no.2, the Higher and Technical Education and Department has framed the “Principal or Director, Professor, Associate Professor, Assistant Professor and Workshop Superintendent in Government Engineering Colleges and Government Pharmacy Colleges (Recruitment) Rules, 2012”. The Rule 6 of the said Rules provides as under:

*“6. Appointment to the post of **Assistant Professor or Workshop Superintendent** in various Engineering, Pharmacy, Non-Engineering disciplines and Master of Computer Application education in Government Engineering Colleges or Government Pharmacy Colleges shall be made by nomination on the basis of strict selection on merit from amongst candidates who,*

a. are not more than 35 years of age;

b. possess the qualification and experience prescribed by the AICTE or relevant statutory body for this post from time to time.”

8. It is clear from the aforesaid service Rule of September, 2012, which govern the recruitment of the Petitioner, that the

maximum age limit is 35 years. The Petitioner has not been able to demonstrate before us any power which is vested in the Selection Committee to relax the age criteria. The Petitioner has based his claim on the condition in the advertisement regarding the age relaxation by the Selection Committee. Mere reliance on the condition of the advertisement does not take the case of the Petitioner any further. It is necessary to demonstrate that the power existed in the Selection Committee to relax the age criteria in accordance with the service rules. In our opinion, unless there is a specific power vested in the Selection Committee, the condition in the advertisement will not override the governing service rules. Moreover no material has been produced before us to demonstrate that the Selection Committee has taken a conscious decision to grant relaxation in the age criteria to the Petitioner. The submission of the Learned Counsel for the Petitioner that the fact of appointment of the Petitioner must be construed as exercise of the alleged power of relaxation is liable to be rejected. In view of the specific age embargo in the service rules of 2012 coupled with the absence of power in the Selection Committee to relax the age criteria, the claim founded on the advertisement is liable to be rejected.

9. A perusal of the appointment letter dated 12th February, 2014 issued to the Petitioner makes it clear that the appointment order is subject to the approval from the Respondent no.3 and Respondent no.2. Considering the mandatory condition of the approval of the Respondent no.2- Director of Technical Education, no rule of estoppel can be pressed into service by the Petitioner. By circular dated 15th January, 2018 issued by the Respondent no.2 to all the regions, it is

made clear that any candidate appointed by the Selection Committee has to confirm to the norms prescribed by the AICTE and the State Government.

10. Considering the governing service Rules of 2012 and the circular of 15th January, 2018, we find that the refusal of the Respondent no.2-Director to the appointment of the Petitioner on the ground that the Petitioner did not satisfy the age criteria of 35 years does not warrant any interference.

11. Writ Petition is accordingly dismissed.

[Sharmila U. Deshmukh, J.]

[Nitin W. Sambre, J.]