

Urmila Ingale

URMILA
PRAMOD
INGALE

Digitally signed
by URMILA
PRAMOD
INGALE
Date:
2022.06.28
13:53:53 +0530

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

WRIT PETITION NO. 1184 OF 2021

Suhas Sudamrao Chaure

..Petitioner

vs.

Managing Director,
Maharashtra State Road Transport
Corporation and anr.

..Respondents

Mr. Sandip V. Marne a/w Mr. Rupesh Dubey, for petitioner.
Mr. Nitesh Bhutekar, for Respondents.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: JUNE 7, 2022

P.C. (M.S.KARNIK, J.) :

1. Approaching this Court under Article 226 of the Constitution of India, the petitioner has prayed for the following substantive reliefs:

a. This Hon'ble Court may graciously be pleased to call for the records of the case from Respondents and after examining the same, issue a writ of certiorari or a writ in nature of certiorari or any other appropriate writ, order or direction and quash and set aside the decision of the Respondents holding the Petitioner as ineligible for appointment on the post of Divisional Controller in pursuance of the 2018 advertisement as well as the decision to cancel the process of selection.

b. This Hon'ble Court may further be pleased to issue a writ of mandamus, or a writ in nature of

mandamus or any other appropriate writ, order or direction, directing the Respondents to forthwith appoint the Petitioner on the post of Divisional Controller in pursuance of the 2018 advertisement."

2. The aforesaid reliefs are prayed for on the following set of facts, briefly stated as under:

3. The petitioner holds a bachelors degree in Homeopathic Medicine and Surgery in second class issued in the year 1999. The petitioner came to be appointed as a Research Scientist-Clinical Research in Glenmark Pharmaceuticals on July 18, 2006. While so working, the petitioner acquired higher qualification (MBA) in December 2014. The petitioner belongs to Vanjari community which is recognized as Nomadic Tribe.

4. An advertisement no. 1/2018 (hereafter 'advertisement', for short) came to be issued in the year 2018 by the respondent-Maharashtra State Road Transport Corporation (hereafter 'MSRTC', for short) for filling up 8 posts of Divisional Controller. These posts were to be filled up by 4 candidates belonging to open category, 1 from Scheduled Caste (hereafter 'SC', for short), 1 from Scheduled Tribe (hereafter 'ST', for short), 1 from Vimukta Jati and Nomadic Tribes (hereafter, 'VJNT', for short), and 1 from Other Backward Class (hereafter 'OBC', for short). According to the petitioner, he fulfilled the eligibility criteria prescribed in the advertisement; hence, he applied in response to the advertisement.

5. After verifying the eligibility criteria, the petitioner was

allowed to appear for the online written examination held on January 4, 2019. The petitioner was informed that he cleared the online written examination by a communication dated January 4, 2019. The petitioner was asked to proceed for interview. He was interviewed by a committee of 8 officers including the respondents. The petitioner having secured 52.1 marks was selected in the NT-D category. The relevant documents pertaining to the experience and educational qualifications of the petitioner were duly examined pursuant to which only the formality of issuance of a letter of appointment remained. As nothing further was heard for quite some time, the petitioner made a formal representation on March 23, 2021 to the respondents. Denied relief, the petitioner finally approached the Court for the reliefs prayed.

6. Learned advocate for the petitioner submitted that the petitioner fulfilled the eligibility criteria prescribed in the advertisement. The petitioner was selected in the selection process he was required to undergo. Our attention is invited to the eligibility prescribed by the advertisement. It is submitted that the reason for not processing the selection further in favour of the petitioner was apparently indicated in the file notings of the respondents. The reason is that though the petitioner has the requisite experience of 10 years in a commercial organization with more than 1000 employees, but the said experience is not after obtaining post graduate degree in 2014. The experience gained after

2014 is not adequate to fulfill the 10 years experience criteria. Learned advocate submits that this stand of the respondents is unjustified. According to him, nowhere the advertisement prescribes that 10 years experience after obtaining the post graduate degree will be the relevant criteria for the purpose of eligibility. It is submitted that an arbitrary decision was taken to cancel the entire selection process, which is not even communicated to the petitioner.

7. Learned advocate for the respondents, on the other hand, invited our attention to the stand taken in the affidavit-in-reply affirmed on behalf of the respondents by the General Manager (P&M). Learned advocate submits that an informed decision was taken to completely cancel the selection process initiated pursuant to the advertisement. It is submitted that the petitioner is not having required experience to make him eligible for the said post. The petitioner's experience prior to obtaining the requisite qualification of post graduate degree in 2014 cannot be considered, as the eligibility is 10 years experience after obtaining the post graduate degree, which the petitioner does not possess.

8. We have heard learned advocates and perused the copy of the writ petition, the relevant annexures pointed out and the affidavit-in-reply.

9. In the advertisement, one post of Divisional Controller was reserved for NT candidate. There is no dispute that the petitioner belongs to 'NT'. In order to appreciate the rival

contentions in the proper perspective, it is necessary to set out the eligibility criteria prescribed in the advertisement for selection as a Divisional Controller. The eligibility criteria is in vernacular language. The translated version which finds place in the affidavit-in-reply of the respondents reads thus :

“1. First Class degree from any recognized Institute

OR

Second Class Degree from recognized Institute and Post Graduate Degree or Diploma business management, transport management, labour/employees management from recognized Institute.

ii. Experience

10 years experience of management in Railway/Road/Water Transportation.

OR

10 years experience in commercial organization with more than the 1000 employees.

OR

3 years experience of post not less than the rank of captain in Indian Army or equivalent post in Indian Air force/Navy.”

10. Before advertizing to the case of MSRTC, let us first test whether the petitioner fulfills the eligibility prescribed by the advertisement. It is not disputed that the petitioner fulfills the educational qualifications prescribed as he is having a second class degree in Homeopathic Medicine and Surgery issued in the year 1999 and a post graduate degree of MBA issued in the year 2014. So far as experience is concerned, the advertisement prescribes 10 years experience in commercial organization with more than 1000 employees,

which the petitioner has. A look at the eligibility criteria prescribed by the advertisement shows that the petitioner fulfills the same.

11. Now coming to the stand of MSRTC as to why according to them, the petitioner does not fulfill the eligibility, the file notings at exhibit 'L', so far item no. 6 which pertains to the petitioner reads thus :

६.	श्री. सुहास सुदामराव चौरे	मुंबई	१२७	जाहिरातीत नमूद केल्याप्रमाणे सदर उमेदवाराकडे १००० पेक्षा ज़स्त कामगार असलेल्या व्यापारी संस्थेमध्ये काम केल्याचा १० वर्षांचा अनुभव आहे. परंतु श्री. चौरे यांचा सदर अनुभव, पदवीचे शिक्षण प्रथम श्रेणीत पूर्ण न करता उत्तीर्ण श्रेणीत पूर्ण केल्यानंतरचा आहे. तसेच सदर उमेदवाराने पदव्युत्तर पदवीचे शिक्षण २०१४ साली पूर्ण केले असल्याने त्यानंतरचा अनुभव हा १० वर्षांचा होत नाही हे उपलब्ध कागदपत्रांवुन दिसुन येत आहे.	नाही.
----	---------------------------	-------	-----	--	-------

12. This ineligibility of the petitioner is set out by MSRTC with further details in paragraphs 6 to 9 of the affidavit-in-reply which reads thus :

"6. I say that the Petitioner is having Second Class degree in Homeopathic Medicine & Surgery issued in the year 1999 and the Degree of MBA issued in the year 2014. The petitioner had produced experience certificate as (a.) Research officer from July 2006 to June 2010 (b.) Senior Research officer from July 2010 to June 2017 and (c.) Research Scientist from July 2017 till the date of submission of documents for the said employment. From this it is clear that the Petitioner is having experience before obtaining the requisite qualification of Post Graduate Degree or Diploma business management, transport management, labour/employees management from recognized Institute as the Petitioner is having Second

Class Degree in Homeopathic Medicine & Surgery and hence Petitioner is not eligible candidate for the said post of Divisional Controller.

(emphasis supplied by us)

7. I further say that the it is clearly mentioned in the said advertisement in clause no. 10(3) that the said examination is conducted without verifying the documents and physical eligibility of the candidates and hence candidate is not entitle to claim the employment on the basis of the marks obtained in the said examination.

8. I say that on 20/11/2018, the issue with respect to the candidates who were held ineligible for the reason of not having the required experience was placed before the then Hon'ble Chairman of the present Respondent. The Hon'ble Chairman gave specific directions to consider the experience post educational qualification only. Thus, for all appointments, experience post educational qualification is only taken into consideration.

9. I further state that the as per clause nos. 6(b), 9(18) and 10(18) of the advertisement the M.S.R.T.C. is having all rights to cancel or change the said advertisement bearing no. 1/2018 and or to change or partial changes with respect to the no. of posts. And accordingly as only one eligible candidate was available the management of MSRTC had cancelled the said advertisement vide Resolution dated 29/06/2019. Thus, now it is not possible to entertain the claim of the Petitioner or any other similarly situated candidate under the advertisement No. 1 of 2018. Hereto annexed and marked as Exhibit R-1 is the copy of said Resolution dated 19/06/2019."

13. Thus, the petitioner is held ineligible only on the ground that he acquired the working experience of 10 years

prior to acquisition of the basic qualifications which in this case is post graduate degree or diploma in business management. For this purpose, MSRTC relied upon the directions given by the then Chairman of MSRTC to consider experience, post educational qualification only.

14. The question is whether it is open for the MSRTC to consider the petitioner's eligibility as per the directions of the Chairman after completion of the selection process and that too when the 10 years experience, post acquisition of the basic qualification is not in the contemplation of the advertisement. It is material to note that there is no rule or circular placed for our consideration indicating that experience post acquisition of the basic educational qualification is the prerequisite for appointment as a Divisional Controller. No doubt, in a given case, the MSRTC is empowered to cancel or change the said advertisement. The said power is not open for an arbitrary exercise. At this juncture, we may refer to the decision of the Supreme Court relied by learned advocate for the petitioner reported in 1995 SUPP (3) Supreme Court Cases 332 [**Subhash, S/o Shriram Dhonde Vs. State of Maharashtra and anr.**], which in our view supports the petitioner's case. We reproduce the entire decision which reads thus :

"1. Leave granted. Heard parties.

2. The Tribunal has dismissed the appellant's application only on the ground that the appellant had acquired the working experience of one year prior to acquisition of the basic qualifications which in this case is diploma in Automobile Engineering. For this

purpose, the Tribunal relied upon the circular issued by the Government. The rules, namely, the Motor Vehicles Department (Recruitment) Rules, 1991 framed under Article 309 of the Constitution show that a mere possession of the working experience of at least one year in a reputed Automobile Workshop as mentioned under Rule 3(e) is enough. The rule does not make any difference between acquisition of such experience prior to or after the acquisition of the basic qualification. What is further, the record shows that even after the acquisition of the basic qualification as mentioned in Rule 3(c), the appellant has acquired the additional experience of one year in a reputed Automobile Workshop as required even by the said circular. The Tribunal has committed an error in relying upon the circular which cannot replace the rules framed under Article 309 of the Constitution. We are, therefore, of the view that the Tribunal's decision is incorrect. Since the appellant satisfies the qualifications required by the rules, the decision of the Tribunal has to be set aside. We accordingly set aside the impugned decision of the Tribunal and direct the respondent to consider the appellant for appointment, if otherwise he satisfies the requisite qualifications including the marks obtained in the written test and the interview already held. The appeal is allowed with no order as to costs."

15. We also are in agreement with the learned advocate for the petitioner, when he submits that the decision of the co-ordinate Bench of this Court at Aurangabad dated February 27, 2020 in Writ Petition No. 5127 of 2019 **[Sonali Sahadeo Avhad Vs. The State of Maharashtra and anr.]** supports his case. The relevant portion being paragraph nos. 5 and 6 are reproduced which reads thus :

"5. Reading the said qualification and the experience clauses of the advertisement, the advertisement does

not specify that the experience possessed by the candidate has to be acquired after getting the educational qualification. The same is silent.

6. In case, the advertisement prescribed that the experience should be after the period the candidate acquires the qualification, then the contentions of the respondents certainly would be entertained. However, the advertisement is silent in respect of the same. The petitioner has produced on record the certificate issued by the transport company to justify that the petitioner has the necessary experience in the traffic department from 11.02.2015 to 16.06.2016. How far the certificate would be relevant is for the respondent to consider. Further, the respondent could not have rejected the claim of the petitioner only on the ground that the experience of the petitioner is prior to qualification, more particularly, in absence of said condition in the advertisement."

16. Drawing support from the decisions relied above and after giving our anxious consideration to the relevant facts and rival contentions, we are of the considered opinion that the petitioner having satisfied the requisite qualifications prescribed in the advertisement, reliance on the directions of the Chairman of MSRTC after the selection process had reached such an advanced stage, while holding the petitioner ineligible, is unjustified and arbitrary. The advertisement never postulated the requirement of acquisition of 10 years experience post acquisition of basic educational qualification. Despite the prescription in the advertisement authorising the competent authority to cancel the advertisement, the exercise of such power cannot be countenanced in a situation where the basic

premise of MSRTC declaring the petitioner ineligible itself is unjustified and erroneous. We have no hesitation in observing that once the very reason on which the action of MSRTC to cancel the advertisement is founded on an irrational exercise of power, the petitioner ought not to be deprived of the reliefs claimed in this petition.

17. The writ petition is allowed with no order as to costs. If the petitioner is otherwise eligible, he shall be appointed within three months.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)