

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2588 OF 2021

Shraddha d/o Anil Khandekar
Aged about 23 years, Occ. Education,
R/o C/o Rajkumar Gajbhiye,
Plot No.4, Road No.5,
Chandramani Nagar, Nagpur 440027.

... Petitioner

-vs-

1. Bank of India
Thr. Its Zonal Manager,
Nagpur Zonal Office,
Bank of India Building,
3rd Floor, S. V. Patel Marg,
Nagpur 440001
2. Institute of Banking Personnel,
IBPS House, 90 feet, D. P. Road,
Near Thakur Polytechnic, Off. Western
Express Highway, P. B. No.8587,
Kandivali, Mumbai 400 0101
3. Rashtrashant Tukadoji Maharaj
Nagpur University, through its
Registrar, Chhatrapati Shivaji Maharaj
Administrative Premises, Ravindranath
Tagore Marg, Nagpur 440001

... Respondents

Shri R. M. Bhangde, Advocate for petitioner.
Shri A. J. Purohit, Advocate for respondent No.1.
Shri C. S. Samudra, Advocate for respondent No.2.

CORAM : A. S. CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.
Arguments were heard on : January 06, 2022
Judgment is pronounced on : January 14, 2022

Judgment : (Per : A. S. Chandurkar, J.)

In view of notice for final disposal issued earlier, we have heard the learned counsel for the parties at length.

The Institute of Banking Personnel Selection-respondent No.2 issued an advertisement for recruitment of Clerks from eligible candidates with regard to vacancies that were to be filled in during the financial year 2021-2022. In the said advertisement it was stipulated that the educational qualifications as prescribed should be obtained from an University-Institution/Board duly recognised by the Government of India or approved by the regulatory body. The final result of the concerned examination ought to have been declared on or before 23/09/2020. By a supplementary advertisement dated 19/10/2020 the last date of eligibility in terms of educational qualifications was extended to 06/11/2020.

2. The petitioner who was pursuing the course of B.Tech (Chemical Engineering) from the Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur appeared for the final semester examination in Summer 2020. On 02/09/2020 the petitioner applied for recruitment pursuant to the advertisement referred to herein above for the post of 'Clerk'. In the column requiring mention of educational qualifications it was stated that the petitioner had obtained degree in Bachelor of Technology (Engineering) having passed the said examination on 02/09/2020 in First Class with 65% marks. The preliminary examination was accordingly conducted by the respondent No.2 which the petitioner cleared successfully. She also cleared the main examination thereafter and hence on 19/06/2021 the Bank of

India-respondent No.1 issued a communication to the petitioner informing her that she has been selected for the post in Clerical cadre subject to satisfactory eligibility proof. She was directed to report at the Zonal office on 30/06/2021 for completing necessary formalities. The petitioner accordingly appeared before the Competent Authority. It was found by the respondent No.1 that the petitioner had passed her graduation examination on 18/11/2020 while the requirement was that graduation should have been completed on or before 06/11/2020. Hence on 13/07/2021 the respondent No.1 issued a communication to the petitioner to submit documentary proof that she had obtained her graduation degree on or before the cut-off date which was 06/11/2020. It was stated that failure to do so would result in cancellation of her candidature.

3. It is the case of the petitioner that the University conducts Summer examinations usually in the month of April-May in every academic year. In Summer-2020 such examinations could not be held on account of the Covid-19 pandemic. The examination in question was held in October 2020 and the results thereof were declared on 18/11/2020. The delay therefore in conducting the examination and declaring the results thereof could not be attributed to the petitioner but was on account of onset of the Covid-19 pandemic. The petitioner thus contends that the period resulting in the delay that occasioned from 06/11/2020 to 18/11/2020 when the

petitioner's result was declared be excluded and it be declared that the petitioner had graduated on 31/07/2020 so as to treat her educationally qualified for being considered eligible for appointment on the post of Clerk. In these facts therefore the petitioner has challenged the communication dated 13/07/2021 issued by the respondent No.1 calling upon the petitioner to furnish documentary proof of having graduated on or before 06/11/2020.

4. Shri R. M. Bhangde, learned counsel for the petitioner submits that for reasons beyond the control of the petitioner the final examination that is usually conducted in April-May of the relevant academic year could not be conducted in Summer 2020 and that examination was held in October 2020. The petitioner being desirous of securing employment had submitted her application form on 04/09/2020 by stating therein that she had passed her final examination leading to grant of the degree on 02/09/2020. This was under genuine conception that such examination was always conducted in April-May of the relevant academic year and results were declared shortly thereafter. The petitioner having passed her graduation examination on 18/11/2020 which was shortly after the extended cut-off date of 06/11/2020 it could not be said that on 04/09/2020 when the petitioner submitted her application form she had furnished incorrect information. Though the date "02/09/2020" was stated by her as the date when she passed her final examination, her application form ought to be considered in the aforesaid

backdrop as being a valid application form, she having passed the final examination on 18/11/2020. He urged that this Court under Article 226 of the Constitution of India ought to grant such relief that would redress the hardship faced by the petitioner especially when the conduct of examination and declaration of result was beyond her control. The petitioner having been found eligible for selection in the Clerical cadre ought not be deprived of her employment only because the results of her final examination were declared on 18/11/2020 which was about twelve days after the cut-off date. He seeks to support the aforesaid prayer by relying upon the decision in *Deepak Yadav and ors. vs. Union Public Service Commission and anr.* AIR 2021 SC 3775 but by fairly stating that the aforesaid decision was rendered in exercise of jurisdiction under Article 142 of the Constitution of India by the Honourable Supreme Court of India.

5. Shri A. Purohit, learned counsel for the respondent No.1 opposes the aforesaid submission. According to him the case of the petitioner does not deserve consideration for the simple reason that the petitioner in the application form gave incorrect/false information as regards the date of passing of the final examination. He invited attention to the disclaimer clause in the advertisement dated 01/09/2020 in which it was stated that furnishing of incorrect information would result in disqualifying the concerned candidate. As the petitioner was seeking public employment, she

ought to have furnished correct information on 04/09/2020. He then referred to the communication dated 19/06/2021 issued by the respondent No.1 informing the petitioner about her selection and also the consequence of it being subsequently revealed that the petitioner had furnished incorrect or false information. He referred to the communication dated 08/07/2021 issued by the petitioner to the respondent No.1 and submitted that it was likely that there were number of candidates similarly situated as the petitioner but were not eligible to apply only for the reason that till 06/11/2020 their final results were not declared. The advertisement in question as well as the subsequent extension granted to the cut-off date on 19/10/2020 to 06/11/2020 was not challenged by the petitioner and hence it was futile to contend that having obtained a degree on 18/11/2020, the petitioner was still qualified to seek appointment pursuant to the advertisement dated 01/09/2020. There was no equity in favour of the petitioner in these facts. He further submitted that the cut-off date was voluntarily extended from 23/09/2020 to 06/11/2020 by the respondent No.2 which indicated that the said respondent was alive to the fact that there was some delay in conducting examinations by various Universities/Education Institutions. The learned counsel placed reliance on the decision in *Mohd. Rashid vs. Director, Local Bodies, New Secretariate and ors.* **2020 (4) Mh.L.J. 351** to contend that there was no vested right in the petitioner to seek appointment only on the ground she had been successful in

the qualifying examination.

Shri C. S. Samudra, learned counsel for the respondent No.2 submitted that the respondent No.2 merely conducted the qualifying examination and was not directly involved with the aspect of selection of the petitioner. He invited attention to the decision of Honourable Supreme Court in *Civil Appeal No.4455 of 2019 dated 29/04/2019 (Rajbir Surajbhan Singh vs. The Chairman, Institute of Banking Personnel Selection, Mumbai)* to urge that the writ petition against the respondent No.2 itself was not tenable. According to him the petitioner was permitted to participate in the selection process only because she had mentioned the date “02/09/2020” as the date on which she had passed her degree examination. If this was factually incorrect it was clear that the petitioner would not have been invited to participate in the selection process as she was not qualified to apply for selection in terms of the advertisement dated 01/09/2020. It was thus submitted that no relief could be granted to the petitioner.

6. We have heard the learned counsel for the parties at length and we have given due consideration to their respective submissions. The undisputed facts indicate that in the advertisement that was issued by the respondent No.2 dated 01/09/2020 the educational qualifications prescribed ought to have been obtained on or before 23/09/2020. This date was subsequently extended to 06/11/2020 by the respondent No.2 from

19/10/2020. It is further not in dispute that on 04/09/2020 when the petitioner submitted her application form she had mentioned the date of her passing the final examination as 02/09/2020. The final examination for which the petitioner appeared for obtaining the degree was held in October 2020 and the results thereof were declared on 18/11/2020.

The aforesaid thus makes it clear and which fact is undisputed that till the extended date of obtaining necessary eligibility which was 06/11/2020, the petitioner was not so eligible as she obtained her educational qualifications as prescribed only on 18/11/2020. The question to be considered therefore is whether any alteration in the last date of eligibility from the one prescribed by the advertisement/recruiting body would be permissible ?

7. According to the petitioner as per normal practice the final examination leading to her degree ought to have been held in April-May 2020. On account of the pandemic situation the examinations were delayed and were held in October 2020. The results being declared on 18/11/2020 the petitioner could not be blamed for the same and hence a declaration be granted that the petitioner be treated as eligible in terms of the advertisement dated 01/09/2020. We are afraid that the petitioner cannot be granted such relief since this could result in altering the eligibility criteria pursuant to which the recruitment was made. Such alteration in eligibility

criteria is the domain of the recruiting authority. The reason for the same is obvious that there would be number of candidates similarly situated as the petitioner who could have otherwise participated in the recruitment process but for the reason that their final results were not declared till 06/11/2020 but shortly thereafter. The petitioner cannot be singled out for grant of the relief sought by her in the light of the undisputed fact that till 06/11/2020 the petitioner was not educationally qualified. The legal position in this regard is well settled and reference in this regard can be made to the observations in paragraph 7 of the decision in *Rekha Chaturvedi (Smt) vs University of Rajasthan and ors.1993 Supp (3) SCC 168* which decision was relied upon by the learned counsel for respondent No.2. In *Ashok Kumar Sharma and others vs. Chander Shekhar and another (1997) 4 SCC 18* it has been held in clear terms that a person who acquires the prescribed qualification subsequent to the prescribed date cannot be considered at all. An advertisement issued calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation.

There is yet another aspect of the matter that cannot be ignored. The petitioner while submitting her application form on 04/09/2020 made a declaration that she had passed her final examination on 02/09/2020 by obtaining 65% marks and passing in the first class. This information was incorrect to the knowledge of the petitioner. There can be no legal justification for furnishing such incorrect information. Though it is true that

the candidature of the petitioner has not been cancelled for furnishing wrong information as can be seen from the impugned communication, the fact remains that the petitioner was permitted to participate in the selection process only for the reason that she had stated that she had obtained her final degree by passing the examination on 02/09/2020. In other words, if the petitioner would have stated that she was yet to obtain the required educational qualification it was obvious that she would not have been permitted to participate in the selection process for want of necessary qualification. A candidate who was not duly qualified even till the last date of obtaining necessary qualification, cannot be granted a declaration in the nature as sought by the petitioner.

8. Though it is true that the conduct of examination by the University was delayed on account of the pandemic, it is not the petitioner alone who was affected by the same. All students who had appeared for the said examination were required to take the same in October 2020 and their results were declared on 18/11/2020. Sympathy or sentiment in the absence of any legal right cannot be a ground to grant relief as held in *Teri Oat Estates (P) Ltd. vs. U. T. Chandigarh and others. (2004) 2 SCC 130*. On the ground that the petitioner was not duly qualified on the last date of the advertisement as stipulated, it is held that the petitioner is not entitled for any relief whatsoever. The decision in *Deepak Yadav and ors. (supra)* clearly

states that the relief therein was granted in exercise of plenary power under Article 142 of the Constitution of India and that order was directed not to be treated as a precedent.

For aforesaid reasons the prayers made in the writ petition cannot be granted. The Writ Petition is thus dismissed with no order as to costs.

(Pushpa V. Ganediwala, J.) (A. S. Chandurkar, J.)