

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Lapita Banerji

W.P.A. 21977 of 2022

Anup Kumar Das

Vs.

**The Secretary, The West Bengal Municipal Service
Commission & Ors.**

For the Petitioner	:Mr. D.N. Ray, Adv. Mr. S.G. Bhattacharyya, Adv.
For the Respondent Nos. 3 to 5	:Mr. Susanta Dutta, Adv. Mr. Sanjay Saha, Adv.
For the State	:Mr. Biswabrata Basu Mallick, Adv. Mr. Sayan Ganguly, Adv.
For the Municipal Service Commission	:Ms. Koyeli Bhattacharya, Adv.
Hearing concluded on	:19.12.2022.
Judgment on	:31.01.2023.

Lapita Banerji, J.:- The writ petitioner applied for the post of Deputy General Manager (Finance), [DGM(F)] pursuant to Advertisement No.16 of 2020 issued by West Bengal Municipal Service Commission (WBMSC). The initial Order of Rejection was dated June 22, 2022. The recruitment process was held at the instance of West Bengal Essential Commodities Supply Corporation Limited (for short, **WBECSCCL**). The petitioner's candidature was considered in

the Scheduled Caste category. The petitioner's name was recommended for appointment.

2. In the experience column of the Advertisement for the post of DGM(F), it was stipulated "*3 years post qualification working experience.*" was a part of the eligibility criteria.

3. The principal ground for rejection of petitioner's candidature vide Memo dated June 22, 2022 was as follows:

"...your post qualification experience being submitted in a piece-meal manner is contrary to just and fair selection."

4. The Hon'ble Coordinate Bench was pleased to set aside and/or quash the Impugned Memo dated June 22, 2022 in W.P.A. 15687 of 2022 since the Advertisement did not speak about any comprehensive continuous experience in one organization for 3 years. It held that in case the petitioner had 3 years of experience in 3 different companies, the said experience has to be construed as 3 years' experience in terms of the 2020 Advertisement as the said Advertisement did not provide for disqualification on account of piece-meal experience.

5. The Hon'ble Coordinate Bench unambiguously held that the reply to demand for justice could not supplement the findings in the main rejection order. **WBECSCCL** was directed to consider the petitioner's case by taking into account the experience certificate provided by him in support of *3 years post qualification working experience.*

6. Pursuant to the directions passed by the Coordinate Bench, the petitioner was given a personal hearing and the Impugned Order dated August 18, 2022 was passed. The new reason for rejection was that the petitioner after completion of Masters in Commerce/M.Com had 1 year 1 month and 23 days of working experience and after completion of MBA, had 2 years 3 months and 28 days of working experience.

7. Mr. D.N. Ray, Ld. Counsel appearing for the petitioner submitted that a new issue has sought to be raised in the Impugned Order. Instead of restricting its finding to the question of “piece meal” experience the authorities now decided to reject the Candidature of the Petitioner on the ground that since 3 years working experience has not been acquired after completion of MBA degree it did not qualify as “3 years (**post**) *qualification Working Experience*”.

8. Mr. Susanta Dutta, Ld. Counsel appearing on behalf of **WBECSC**L submits that the word **post** *qualification working experience* referred to experience after completion of MBA degree (Finance) and not to any work experience that may be acquired after completion of B.Com (Hons)/M.Com degree. The word **post** refers to a post graduation degree. The 3 years work experience must be interpreted to mean experience after obtaining a post graduate degree.

9. The terms of the Advertisement are as set out below:

- (i) Hons. Graduate/B.E./B.Tech. with minimum 55% marks;
- (ii) Chartered/Cost Accountant or MBA (Finance)/PGDBM (Finance);

- (iii) 03 (three) years **Post** Qualification work experience;
- (iv) Age limit as on 01.01.2022 – 21 years to 40 years.

10. The Advertisement did not describe what is meant to be **post** qualification experience. Why the work experience of the petitioner after completion of M.Com. will not be considered to be **post** qualification work experience, has not been spelt out in the Impugned Order. The Masters degree has been obtained by the Petitioner after obtaining Bachelors Degree/B.Com (Hons).

11. No reason at all has been given as to why the **post** qualification working experience only included working experience after completion of MBA (Finance). No reason at all has been provided as to why the working experience of 1 year 1 month and 23 days after completion of M.Com. was not taken into account for consideration of **post** qualification experience. The Hon'ble Coordinate Bench had already directed the respondent authorities to consider the experience of the writ petitioner in a comprehensive manner since the Advertisement did not debar the petitioner from applying in case the petitioner had 3 years of post-qualification experience in different companies.

12. In the light of the discussions above, this Court holds that the impugned Order has not considered the observations made/directions passed by the Hon'ble Coordinate Bench on July 25, 2022 in WPA 15687 of 2022.

13. The Impugned Order failed to provide any cogent/valid reason as to why the **post** qualification criteria would only include experience after completion of MBA degree and not after completion of M.Com./B.Com degree.

14. The reason for not accepting as Hons. Graduate/B.T/B.Tech Candidate as Candidates with qualifications is spectacularly missing in the arguments advanced on behalf of the Respondents. In the event there is an ambiguity in the said advertisement the same has to be interpreted in favour of the petitioner/candidate. The said advertisement is silent on the issue that the **post** qualification **work experience** has to be gained after completion of MBA degree.

15. In the light of the discussions above, the Impugned Order dated August 18, 2022 is set aside and/or quashed. The respondent authorities are directed to give a personal hearing to the petitioner within 2 weeks from this date and pass a reasoned order within 1 week thereof in the light of the observations made hereinabove. This Court is of the view that no distinction can be made for acquiring **post** qualification work experience after completion of M.Com./B.Com (Hons) degree with the **post** qualification work experience acquired after completion of MBA degree.

16. The reasoned order should be communicated to the petitioner within 1 week of passing thereof. The respondent authorities are to take necessary steps for appointment of the petitioner as a Deputy General Manager (Finance) of **WBECSCCL** in the event the petitioner is found to have 3 years of post-qualification work experience within 1 month of the passing of the reasoned order.

17. With the directions aforesaid, the **WPA 21977 of 2022** is **disposed** of.

18. All parties to act on the downloaded server copy of this order from the website.

19. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Lapita Banerji, J.)