

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1736 OF 2021

Pradeep Bapurao Mohite Patil,
Age : 32 years, Occu : Service as
Contractual Basis under MSEDCL,
R/o Kaivalya Nagar, Near Suyash
Lowns, Hirapur Road, Chalisgaon,
Dist. Jalgaon.

.. Petitioner

Versus

1. Maharashtra State Electricity
Distribution Company Limited,
Through its Managing Director,
6th Floor, Prakashgad,
Bandra (East), Mumbai 400 051.

2. Maharashtra State Electricity
Distribution Company Limited,
Through its General Manager,
(Human Resources), Prakashgad,
Bandra (East), Mumbai 400 051.

.. Respondents

Shri Ajay S. Deshpande, Advocate for the Petitioner.

Shri Anil S. Bajaj, Advocate for the Respondent Nos. 1 and 2.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

CLOSED FOR JUDGMENT/ORDER ON : 02.08.2023

JUDGMENT/ORDER PRONOUNCED ON : 18.08.2023

JUDGMENT (*Per Shailesh P. Brahme, J.*) :-

. Rule. Rule is made returnable forthwith. With the consent

of parties taken up for final hearing at the admission stage.

2. The petitioner was an aspirant in the selection process undertaken by the respondents for the post of Sub Station Assistant. His name was not included in the select list. That is the cause of action for approaching this Court by way of present petition. He has prayed for declaration that his exclusion from the selection process be held to be bad in law and the directions be issued to the respondents to include his name in the select list from Other Backward Class (OBC) – Project Affected Persons category.

3. The petitioner has contended that he belongs to O.B.C. category, which is vertical reservation. He also claims to be eligible for the horizontal reservation from the Project Affected Persons Category (hereafter referred as to the ‘PAP’ for the sake of brevity and convenience). He has produced on record the certificate of nomination for PAP. He applied in the recruitment process of Sub Station Assistant from reservation for OBC as well as PAP category.

4. The petitioner acquired Apprenticeship Certificate Training from 15.07.2009 to 14.07.2011 in the trade of Lineman at M.S.E.D.C.L. Kannad, Aurangabad. A certificate to that effect is produced on record. He also applied from the category of Apprenticeship Training (hereinafter referred to as the “APP” for the sake of brevity and convenience). The petitioner had rendered services as Junior Operator on outsourcing basis

through Shrikrushna Vijtantri Apprentice Sushikshit Berojgar Seva Sahkari Sanstha Ltd. Jalna from 12.12.2011 to 01.03.2014. At the time of appearing in the selection process, he was working as Junior Operator on outsourcing basis through contractor from 01.08.2015 to 30.06.2019.

5. The respondent No. 1 published an advertisement No. 05/2019 in June 2019 for 2000 posts of Sub Station Assistants. Out of which 355 posts were earmarked for OBC category. Out of those 355 posts, 18 posts were earmarked for horizontal reservation of PAP and 36 posts were earmarked for APP category. The petitioner applied for the said post on 22.07.2019 from OBC category. It was mentioned in the application form that he had Apprentice Training certificate and also stated to be PAP category candidate.

6. The petitioner claimed relaxation of age by five years being from OBC category and additional two years as a period undergone for Apprenticeship Training. According to him the maximum age was extended upto 34 years. He was within the upper age limit as prescribed by Clause 4 of the advertisement No. 05 of 2019. A written test was conducted on 25.08.2019. It's result was declared on 28.06.2020 and 22.08.2020. He was declared to have secured 32 marks out of 100 marks. The respondents declared category wise cut off applicable for the selection. In the horizontal reservation of PAP a cut off was 29.25 marks and for APP it was 56.50 marks.

7. It is the case of the petitioner that he scored above the cut off for horizontal PAP in OBC category as he was having 32 marks where the cut off was 29.25 marks. Despite that his name was neither included in the select list, nor in the wait list. His representation dated 17.12.2020 did not yield any result. That was cause for him to approach this Court.

8. Per contra, the respondents appeared and filed affidavit in reply. It was contended that the petitioner had applied simultaneously from two different horizontal reservations namely PAP and APP. The advertisement produced on record is candid in its description, terms and conditions. A cut off for horizontal APP category reservation was 56.50 marks, whereas the petitioner secured 32 marks which was much below in that category.

9. It is specific case of the respondents that on the prescribed date i. e. 26.07.2019, the petitioner crossed maximum age limit of 32 years considering his date of birth as 15.06.1987. He was ineligible for horizontal PAP category, being age barred. He was considered from OBC-APP category. Therefore, cut off of APP category was made applicable to him. He failed to qualify and was rightly not included in the select or wait list. The respondents have also placed on record category wise cut off marks published on the website of the company. The finally selected candidate from OBC-PAP category was having 29.65 marks and from OBC-APP category, it was 56.50 marks. The last wait listed candidate for OBC-PAP category was having

45.50 marks. The petitioner has failed to qualify in merits and there is no merit in the present petition.

10. The learned counsel for the petitioner submits that the petitioner had applied from vertical reservation of OBC category. According to him APP was not having characteristic of reservation. However, APP was meant for relaxation in upper age limit. He should have been treated from OBC-PAP category. He would submit that he secured 32 marks and was qualifying in category of OBC-PAP as the cut off was declared to be 29.25. He would further submit that apprenticeship training should not have been treated as horizontal reservation, but it was an enabling provision for relaxing upper age limit. He was and is working as an employee of the respondents and eligible for the exemption from upper age limit. He would further submit that there is arbitrariness and high handedness in excluding the petitioner on merits in the selection process.

11. The learned counsel for the petitioner has placed on record the Circular dated 03.07.2004 issued by the General Administration Department, Government of Maharashtra for reckoning the services rendered on contractual basis towards experience of an incumbent. He has placed reliance on the judgment of the Supreme Court in the matter of **Union Public Service Commission Vs. Dr. Jamuna Kurup and others** reported in ***(2008) 11 SCC 10***.

12. The learned counsel for the respondents has contested the submissions. According to him, the petitioner was eligible to be considered from OBC-APP category only. The cut off for that category was 56.50 marks, whereas the petitioner secured 32 marks. There is specific horizontal reservation provided for APP category by clause No. 8.13 of the advertisement. The petitioner has crossed maximum age limit for the category of OBC-PAP. It was not permissible for the petitioner to claim simultaneously and conveniently both the horizontal categories. The learned counsel would further submit that the circular dated 03.07.2004 is not applicable to the respondent company. He would further rely upon Regulation No. 9(11) of the MSEDCL Employees Service Regulations, 2005 to buttress the submissions that the petitioner could not have been treated as an employee of the respondents.

13. We have considered rival submissions advanced by the learned counsel for respective parties. To crystallize the controversy following issues need to be adjudicated.

- (i) Whether there is any horizontal reservation provided for APP category or APP category is only meant for relaxation of upper age limit ?
- (ii) Whether the candidature of the petitioner is covered by horizontal PAP category or APP category ?
- (iii) Whether the petitioner can claim benefit of both the categories i. e. PAP and APP simultaneously ?
- (iv) Whether the petitioner was qualified and eligible to be

appointed ?

Issue No. 1 :

14. The petitioner belongs to OBC category. The application form, result sheet and the affidavit in reply do not controvert this position. It is also uncontroverted by the respondents that the petitioner was having nomination certificate of APP category. The application form which is produced at Exhibit – E discloses that he had applied from OBC category. He also filled in column of Apprentice Training and simultaneously column of PAP. The date of birth of the petitioner transpired from the record is 15.06.1987. As per Clause No. 4 of the advertisement, age of the petitioner as on 26.07.2019 was above 32 years. Clause No. 4 of the advertisement provided for minimum/maximum age limit, power to relax the age limit for various categories. Clause 8.10 of the advertisement provided for horizontal reservations.

15. The learned counsel for the petitioner has submitted that Clause No. 4.2 of the advertisement contemplates relaxation of 5 years in maximum age limit for the backward class category candidates. For petitioner upper age limit was 32 years. As per clause 4.6 of the advertisement the age limit was extendable by a period for which an incumbent has undergone APP training. The petitioner consumed 2 years for training. Therefore, it is contended that the maximum age limit was 34 years. According to the learned counsel, there is no horizontal reservation provided for APP category. The APP category is only meant for relaxation of upper age limit, without having any characteristic

of reservation.

16. Out attention is drawn to Clause Nos. 8.10 (a), (b) and (c) of the advertisement. The horizontal reservation is provided for woman, sport persons, Ex-serviceman, APP, PAP, Earthquake affected persons and orphans in compartmentalized manner. The reservation is to be regulated by circulars issued from time to time.

17. We have noticed the break up given in the advertisement at Exhibit – D page No. 17 into horizontal reservation. It reveals that 18 posts are earmarked for PAP category and 36 posts are earmarked for APP category out of total 355 posts reserved for OBC category. The advertisement has not been challenged by the petitioner before or after participation in the selection process. A separate break up of cut off marks is also provided by the respondents through a table showing category wise cut off produced at Exhibit – G. The same has also not been challenged by the petitioner. Under these circumstances, the petitioner is estopped from saying that there is no horizontal reservation separately for APP category.

18. As stated earlier, the terms/conditions of advertisement and break up of cut off marks of the categories unequivocally show a distinct horizontal category for APP. The maximum age limit was 27 years. The petitioner was from OBC category. Therefore, he was entitled to relaxation by five years as per Clause 4.2 of the advertisement. It is pertinent to note that for

horizontal reservation of PAP, there is no provision for relaxation of age. For an incumbent claiming through APP category, there is relaxation of age as per Clause 4.6 of the advertisement to the extent of the period of training undergone. Considering Clause No. 4.6 of the advertisement, it cannot be inferred that the APP category is only for the purpose of relaxation of age. Horizontal reservations are parallel reservation in the recruitment process and not meant for subsidiary or inconsequential purposes like age, qualification, etc. If the submissions of the petitioner are accepted, then that offends the policy of horizontal reservation and its inter-play with vertical reservation. We find that there is no merit in the contention of the petitioner that there is no horizontal category for APP and it is meant for relaxation of age only

Issue No. 2 :

19. It is seen from the application submitted by the petitioner that he has applied from OBC category in vertical reservation. Simultaneously he has filled in both the columns of horizontal reservation namely PAP and APP. Considering the nomination certificate which is at Exhibit A and Apprenticeship Training Certificate at page No. 13, he could have claimed horizontal reservation either of PAP or APP. However, eligibility criteria of age limit is distinct for OBC-PAP and OBC-APP categories. For OBC-PAP category it was 27 + 5 years as per clause 4.2 of the advertisement. For OBC-APP category it was 27 + 5 + 2 years as per clause 4.6 of the advertisement. The petitioner's date of birth is 15.06.1987. On 26.07.2019 (the prescribed date in the

advertisement) he was more than 32 years of age. Obviously he was not eligible for OBC-PAP category. He was allowed to participate in the online written test. This leads to the conclusion that he could have been and was considered from OBC-APP category only, wherein he could fit in the maximum age limit. He was above 32 years and the maximum age limit was 34 years for the OBC-APP category. We are of the considered view that the candidature of the petitioner was rightly taken up, considered and assessed from OBC-APP category.

Issue No. 3 :

20. During the course of submissions, it is contended by the learned counsel for the petitioner that the petitioner can claim from both the categories i. e. OBC-PAP and OBC-APP simultaneously or alternatively. An incumbent can be said to have an option to claim either OBC-PAP or OBC-APP category. The eligibility parameters for these horizontal categories of reservations are different. There are distinct posts earmarked for PAP and APP categories. The cut off was different. It is not permissible for the petitioner to claim both the categories simultaneously. The petitioner was not specific in his application. As stated above, both the columns of horizontal reservation were responded to by him. Considering his eligibility as per age, the respondents treated him from OBC-APP category. There is no fault which can be attributable to the respondents. When it is found that cut off for OBC-PAP was 29.25 marks as compared to cut off 56.50 marks of OBC-APP, the petitioner is shifting his claim to OBC-PAP category to contend that he scored

more than the cut off marks. This changing of categories or the inter changeability amongst the categories is not permissible. We do not accept the submissions of the petitioner in this regard. The relaxation of age has a distinct role than marks secured.

21. An incumbent is required to be very specific in applying in recruitment process. He is not permitted to change his stand to suit his convenience. In the present case, the petitioner is considered from horizontal category of APP because he was age barred for PAP category. After the declaration of results, sensing that the cut off for horizontal PAP was low, he is shifting his claim to horizontal PAP category. He went to the extent in contending that there is no horizontal category as APP and APP was meant for extension of age limit only. This type of conduct of the petitioner is objectionable. The petitioner is articulative in changing his stand.

Issue No. 4 :

22. The petitioner was considered from OBC-APP category. It is admitted position that he secured 32 marks out of 100. The cut off declared for the OBC-APP category was 56.50 marks. Obviously the petitioner was much below the cut off marks and unable to qualify the select list. It reveals that even the last wait listed candidate has secured 45.50 marks. The petitioner was neither qualified for the select list, nor even for the wait list. We find that the petitioner was not qualified in selection process rightly.

23. The reliance of the petitioner on the Circular dated 03.07.2004 is misplaced. There is no material placed on record to show that the circular issued by the General Administration Department of the State of Maharashtra is applicable to the respondent company. Besides that it is not the case of either of the parties that the previous services rendered with the respondents would inure to the benefit of the petitioner. There was no separate category for in service candidates in the selection process.

24. The judgment cited by the petitioner in the matter of **Union Public Service Commission Vs. Dr. Jamuna Kurup and others** (supra) cannot be made applicable. The facts therein were in respect of the selection process governed by the different set of Rules and Regulations unconnected with the present set of rules. It is pertaining to the definition of employee in Delhi Municipal Corporation Act, 1957. The same is not useful to adjudicate the present matter.

25. The respondents have placed reliance upon the definition of employee as provided in Regulations of 2005. In the present case, the petitioner is not claiming his candidature from Clause 4.5 of the advertisement. There is no need for us to dilate on the issue whether the petitioner can be said to be an employee or not. But for the satisfaction of the subject under consideration, we find that the petitioner is not covered by the term employee as defined in Clause 9.11 of the Regulation of 2005. The petitioner was engaged on contractual basis. He was not or is not

rendering the services as regular employee born out of any recruitment process. His engagement was through a contractor and not as a direct employee of the respondents.

26. Considering overall conspectus of the matter and for the reasons stated above, we find that the petition sans merit. The same is dismissed. Rule is discharged. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

bsb/Aug. 23