



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.15454 OF 2023

SAMEER MADHAVRAO MOREY  
VERSUS  
THE MAHARASHTRA STATE ROAD TRANSPORT  
CORPORATION.

...  
Shri Ajay S. Deshpande, Advocate for the Petitioner.  
Shri D.S. Bagul, Advocate for the Respondent.  
...

CORAM : RAVINDRA V. GHUGE  
&  
Y. G. KHOBRADE, JJ.

DATE :- 21<sup>st</sup> December, 2023

Per Court :-

1. The Petitioner has put forth prayer clauses B and C  
as under:-

- “B) *The respondent may kindly be directed to take into consideration the confidential reports of the incumbents to be considered for appointment by promotion in the selection process taken up vide notification at Exh. ‘A’ dated 16.06.2023, to be in conformity with the said advertisement notification, commencing with the year 2018-19 and onwards.*
- C) *Pending hearing and final disposal of this writ petition, the respondent may kindly be directed to allow the petitioner for the Written Examination scheduled on 24.12.2023.”*

2. The Petitioner contends that he is a Graduate in Mechanical Engineering having acquired Bachelor of Engineer in 2007. He joined services with the Respondent/MSRTC as a Workshop Superintendent and he is presently posted at Depot No.1, Chhatrapati Sambhajanagar.

3. The Respondent/ MSRTC has published a notification by issuing a circular for filling in the posts of the Depot Manager (Mechanical) on it's establishment. There are 18 posts available and the selected candidates can be posted anywhere throughout the State.

4. The Petitioner further submits that after the notification dated 16.06.2023 was issued, the Petitioner, who belongs to the Scheduled Caste category, expected that he would be shortlisted for being considered for promotion on one of these posts. However, the list of candidates published by the Respondent does not indicate that the Petitioner has been shortlisted for consideration.

5. Our attention is drawn to the advertisement, in which, the confidential reports of the last five years have to be considered for shortlisting the candidates. The said advertisement indicates that the Respondent/ MSRTC is considering five years

as 2021-2022, 2020-2021, 2019-2020, 2018-2019 and 2017-2018. In short, the period for such consideration is from 2017-2018 till 2021-2022. According to the Petitioner, the period, for which the confidential reports of the candidates, who are in the zone of consideration, has been wrongly calculated. The Respondent should have calculated the preceding five years immediately prior to the date of the publication of the advertisement since the advertisement was published on 16.06.2023 and no cut off date has been mentioned. According to the Petitioner, when the cut off date is not prescribed, five years immediately preceding the advertisement should be taken into account.

6. The learned Advocate representing the Respondent/MSRTC submits that firstly, this Court cannot interfere with an advertisement only because a different view or second opinion is possible. This Court can exercise jurisdiction only if any clause in the advertisement can be said to be arbitrary or illegal.

7. He further submits that the Petitioner was continuously unauthorisedly absent without sanctioned leave for the entire year from March, 2017 to 2018 and 2018 to 2019. For his first absence for the whole year 2017-2018, he was charge-

sheeted, the departmental enquiry was conducted and the punishment of dismissal from service was proposed. He approached the learned Second Labour Court at Chhatrapati Sambhajinagar in Complaint (ULP) No.60/2018. He points out from paragraphs 5 and 6 of the judgment of the Labour Court dated 19.06.2023 that the Labour Court concluded that the enquiry conducted against the Petitioner was fair, proper and legal and the findings of the Enquiry Officer are supported by evidence and cannot be termed as being perverse. Yet, the Labour Court concluded that the proposed punishment is unsustainable and itself suggested the punishment that as the charges are proved against the Petitioner, the punishment of stoppage of three increments would meet the ends of justice. He further submits that for the next spell of continued unauthorized absenteeism between 2018-2019, the Respondent/ MSRTC has initiated steps for departmental proceeding.

8. He, therefore, submits that the Petitioner desires a modification of the impugned advertisement so that his four years of the service record could be reckoned for the purposes of considering him for promotion, keeping in view that in the last five years, at least four years assessment must be available before

the authorities.

9. The learned Advocate for the Petitioner relies upon clause 2.6 of the circular issued by the MSRTC dated 01.07.2017 by which, the review of service of every year has to be completed by 31<sup>st</sup> May. The Reviewing Authority has to tender an annual report (confidential report) by 07<sup>th</sup> June to the Central Office of the MSRTC, more specifically, to the concerned Department Head. He then refers to clause 2.7 to contend that if there are adverse views expressed in the confidential report, such remarks have to be conveyed to the candidate on or before 30<sup>th</sup> June of that year. The confidential report for the year 2022-2023 is expected to be ready prior to 31.05.2023 and as the advertisement was published on 16.06.2023, the said report of the Petitioner has to be considered. If this is done, he would be within the zone of consideration.

10. The learned Advocate for the MSRTC submits, on the basis of clauses 2.7, 2.8 and 2.9 of the circular dated 01.07.2017, that if there is any adverse remark as against any candidate, he has to tender an appeal within 30 days and thereafter, the appellate authority would consider the same. He, therefore, submits that though the Petitioner has not been served

with any adverse remark by 30<sup>th</sup> June, there may be other candidates who may have received such remarks and after following the appeal procedure, they might succeed in getting the stigma wiped out in the appellate proceedings. Hence, this procedure would take time and in the light of these circumstances, the confidential report of 2022-2023 can be considered for selection/ promotion process which may take place any time in 2024 considering the vacancies.

11. We are in agreement with the submissions of the learned Advocate for the Respondent/ MSRTC that this Court cannot interfere with an advertisement merely because a different view is possible. Unless any act is arbitrary, which is likely to affect not only the Petitioner, but a class of employees, that this Court can interfere to undo the injustice that is likely to be caused.

12. We further see from the records before us that though the confidential report has to be written by 31<sup>st</sup> May, 2023 and no cut off date has been prescribed in the advertisement, it was made known to all through the advertisement that the period from 2017-2018 till 2021-2022 would be considered. Now that the examination has been scheduled on 24.12.2023, that the

Petitioner has rushed to this Court. This petition has been filed only to seek a direction to the MSRTC for considering the confidential report of the Petitioner for the year 2022-2023 so that there would be four reports on record. The requirement for considering a candidate for promotion is that a minimum of four annual confidential reports have to be available on record.

13. The Respondent has already shortlisted the candidates for examination to be held on 24.12.2023, which is less than 48 hours from today. Several candidates as per the list placed before us have been declared ineligible since many do not have the records for two years 2017-2018 and 2018-2019. So also, if we direct that the confidential report for the year 2022-2023 should be considered, the entire shortlisting will have to be set aside and the exam will have to be cancelled.

14. Be that as it may, we are not convinced that because the Rules prescribe that the confidential reports should be kept ready by 31<sup>st</sup> May, that the confidential reports of the Petitioner for the year 2022-2023 should be accepted. The fact remains that the entire exercise for the particular year 2022-2023 would be completed after those candidates, who have suffered adverse remarks, approach the appellate authority and the said remarks

are expunged. They would also be entitled to participate. This exercise would begin only after 01<sup>st</sup> of July, 2023.

15. In the above backdrop, we do not find that the advertisement could be termed as being arbitrary or bad in law. Only because a second view is possible, we would not indulge in interfering with the promotion process. **This Writ Petition is, therefore, dismissed.**

*kps*

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)