

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.252/2023

PRACHI RAMA VARAK, 25 years
of age, daughter of Rama Varak,
resident of House No.1075, near
Police Qrts., Muslimwada, Bicholim,
Goa.

... PETITIONER

Versus

1. DIRECTOR GENERAL OF
POLICE, Police Head Quarters,
Panjim - Goa.

2. THE SUPERINTENDENT OF
POLICE, Police Headquarters, Goa
Police Department, Panaji - Goa.

3. STATE OF GOA, through its
Chief Secretary, Secretariat, Alto
Porvorim, Goa.

... RESPONDENTS

Mr A. D. Bhobe with Ms A. Fernandes, Advocates *for the
Petitioner.*

Mr Shubham Priolkar, Additional Government Advocate *for the
State.*

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED: 26th JUNE 2023

ORAL JUDGMENT: (Per M. S. Sonak, J.)

1. Heard Mr A. D. Bhobe for the petitioner and Mr Shubham
Priolkar, learned Additional Government Advocate for the State.

2. Rule. The rule is made returnable immediately considering the short controversy involved and the decision of the Hon'ble Supreme Court in *Alka Ojha v/s. Rajasthan Public Service Commission & Anr. - (2011) 9 SCC 438*, which, according to us, covers the issue against the petitioner.

3. By advertisement dated 28.03.2021, applications were invited from the eligible candidates for filling up the posts of Police Sub Inspector (PSI) (Female) through direct recruitment. The petitioner applied on 10.04.2021. As of the last date for receipt of the applications (the cut-off date prescribed in the advertisement), the petitioner was holding a learner's license to drive a light motor vehicle. The petitioner obtained a driving license only on 03.06.2021.

4. The petitioner participated in the selection process and, on 24.06.2022, was called upon to produce all the original documents for verification. The date fixed for verification was 04.07.2022. On 02.12.2022, the select list was published in the Other Backward Classes (OBC) category. The petitioner was shown at serial no.2 against the eight posts reserved for the OBCs. On 16.12.2022, the petitioner was again called upon to produce documents/certificates specified in the advertisement in the context of the cut-off date of 30.04.2021. In particular, the petitioner was called upon to submit the driving license she possessed as of the cut-off date.

5. On 03.01.2023, the petitioner furnished a copy of her learner's license and the permanent driving license to respondent no.2. On 22.02.2023, the petitioner was informed that the competent authority, upon consideration of the documents, held that the petitioner did not have the essential qualification of possessing a driving license as on the cut-off date and therefore, the petitioner could not be appointed as PSI. On 03.04.2023, several PSIs were appointed, but not the petitioner. Therefore, the petitioner instituted this petition on 10.04.2023.

6. Mr Bhobe, learned counsel for the petitioner, has contended that the learner's license possessed by the petitioner on the cut-off date amounted to sufficient compliance with the requirement of a driving license. Mr Bhobe submitted that, in any case, the petitioner did obtain a permanent driving license on 03.06.2021, much before the date of scrutiny or the conclusion of the selection process. Mr Bhobe relied upon *National Insurance Co. Ltd. v/s. Swaran Singh & Ors. -(2004) 3 SCC 297* to submit that even a learner's license is a valid driving license; therefore, the same was required to be considered. Based upon these submissions, Mr Bhobe urged that this petition be allowed, and the petitioner be directed to be appointed as PSI.

7. Mr Shubham Priolkar learned Additional Government Advocate countered the above contentions by submitting that the cut-off date set out in the advertisement is sacrosanct and any qualification obtained after the cut-off date cannot be considered. He relied on *Alka Ojha (supra)* to point out the difference

between a “learner’s license” and a ”driving license” to submit that the holder of a learner’s license cannot be considered eligible for recruitment when the requirement in the recruitment rules calls for possessing a driving license. Mr Priolkar submitted that in facts almost identical to the present petition, the Hon’ble Supreme Court declined relief to the petitioner. Therefore, Mr Priolkar submitted that this petition may be dismissed.

8. The rival contentions now fall for our determination.

9. In such matters, the cut-off date prescribed in the advertisement is quite sacrosanct. The qualifications possessed by the candidate as on this cut-off date have to be considered. The qualifications obtained after this date cannot be considered.

10. In *Himachal Pradesh State Electricity Board Ltd. & Anr. v/s. Dharminder Singh – 2021 SCC OnLine SC 1262* (Civil Appeal No.7677 of 2021) the Hon’ble Supreme Court considered such a contention and after observing that the issue is no longer *res integra* held as follows at paragraphs 8 to 12:-

“8. The issue is no more res integra.

9. This Court in the Ashok Kumar Sonkar Vs. Union of India reported in (2067) 4 SCC 54 and in the case of Rakesh Kumar Sharma vs. State (NCT of Delhi) and Ors. reported in (2013) 11 SCC 58 has held that the cut-off date for acquiring the qualification advertised is the last date of application.

10. It is sought to be urged on behalf of the respondent No.1 that since he has appeared in the examination in July,

2018, though the result has been declared on 19.12.2018, he should be deemed to have acquired the qualification in July, 2018, i.e. prior to the date of advertisement.

11. The said contention is also without merit. The said issue is also considered in the case of Ashok Kumar Sonkar (Supra) and rejected.

12. In that view of the matter, the impugned judgment and order is not sustainable. The impugned judgment and order of the High Court dated 01.01.2021 is quashed and set aside. The writ petition filed by the respondent No.1 stands dismissed.”

11. The above issue was also considered by the Hon’ble Supreme Court in *Alka Ojha (supra)* and has been answered against the petitioner in paragraphs 15 and 16, which read as follows:-

“15. The question whether the candidate must have the prescribed educational and other qualifications as on the particular date specified in the Rule or the advertisement is no longer res integra. In Bhupinderpal Singh v. State of Punjab this Court referred to the earlier judgments in A.P. Public Service Commission v. B. Sarat Chandra, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi, M.V. Nair v. Union of India, Rekha Chaturvedi v. University of Rajasthan, U.P. Public Service Commission v. Alpana and Ashok Kumar Sharma v. Chander Shekhar and approved the following proposition laid down by the Punjab and Haryana High Court: (Bhupinderpal Singh Case, SCC p. 268, para 13)

“13. (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if

there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority.”

16. The same view was reiterated in M.A. Murthy v. State of Karnataka and Ashok Kumar Sonkar v. Union of India. Therefore, the Full Bench of the High Court rightly held that a candidate who does not possess a driving licence on the last date fixed for submission of the application is not eligible to be considered for selection.”

12. The next issue as to whether a “learner’s license” can be equated to a “driving license” mainly when the recruitment rules spoke about “driving license”, was also considered and decided against the petitioner by the Hon’ble Supreme Court in paragraphs 18 to 21 which are transcribed below for the convenience of reference:

“18. We may now deal with the argument of Shri S.P. Sharma and Shri Rakesh K. Khanna that the learner’s licence possessed by the petitioners was sufficient to make them eligible for appointment as Motor Vehicle Sub-Inspector. The definitions of ‘driving licence’ and ‘learner’s licence’, as contained in Section 2(10) and 2(19) of the Act, read as under:

"2(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description;

2(19) "learner's licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive as a learner, a motor vehicle or a motor vehicle of any specified class or description;"

19. Sections 3, 8(1), (5) and (6), 9(1), (4), (5), (6) and (7) and 10 of the Act, which too have bearing on the decision of the question whether learner's licence is at par with driving licence and a person having learner's licence is eligible for appointment as Motor Vehicle Sub-Inspector under the Rules read as under:

"3. Necessity for driving licence. - (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor cab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of section 75 unless his driving licence specifically entitles him so to do.

(2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

8. Grant of learner's licence. - (1) Any person who is not disqualified under section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a driving licence may, subject to the provisions of section 7, apply to the licensing authority having jurisdiction in the area -

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in section 12 from where he intends to receive

instruction in driving a motor vehicle is situate, for the issue to him of a learner's licence.

(5) No learner's licence shall be issued to any applicant unless he passes to the satisfaction of the licensing authority such test as may be prescribed by the Central Government.

(6) When an application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his physical fitness under sub-section (3) and has passed to the satisfaction of the licensing authority the test referred to in sub-section (5), the licensing authority shall, subject to the provisions of section 7, issue the applicant a learner's licence unless the applicant is disqualified under section 4 for driving a motor vehicle or is for the time being disqualified for holding or obtaining a licence to drive a motor vehicle:

Provided that a licensing authority may issue a learner's licence to drive a motor cycle or a light motor vehicle notwithstanding that it is not the appropriate licensing authority, if such authority is satisfied that there is good reason for the applicant's inability to apply to the appropriate licensing authority.

9. Grant of driving licence. - *(1) Any person who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authority having jurisdiction in the area -*

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated, for the issue to him of a driving licence.

(4) Where the application is for a licence to drive a transport vehicle, no such authorisation shall be granted to any applicant unless he possesses such minimum educational qualification as may be prescribed by the Central Government and a driving certificate issued by a school or establishment referred to in section 12.

(5) Where the applicant does not pass the test, he may be permitted to reappear for the test after a period of seven days:

Provided that where the applicant does not pass the test even after three appearances, he shall not be qualified to reappear for such test before the expiry of a period of sixty days from the date of last such test.

(6) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers:

Provided that a person who passed a test in driving a motor cycle with gear shall be deemed also to have passed a test in driving a motor cycle without gear.

(7) When any application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his competence to drive, the licensing authority shall issue the applicant a driving licence unless the applicant is for the time being disqualified for holding or obtaining a driving licence:

Provided that a licensing authority may issue a driving licence to drive a motor cycle or a light motor vehicle notwithstanding that it is not the appropriate licensing authority, if the licensing authority is satisfied that there is good and sufficient reason for the applicant's inability to apply to the appropriate licensing authority:

Provided further that the licensing authority shall not issue a new driving licence to the applicant, if he had previously

held a driving licence, unless it is satisfied that there is good and sufficient reason for his inability to obtain a duplicate copy of his former licence.

10. Form and contents of licences to drive. - (1) *Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.*

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-

- (a) motor cycle without gear;*
- (b) motor cycle with gear;*
- (c) invalid carriage;*
- (d) light motor vehicle;*
- (e) transport vehicle;*
- (i) road-roller;*
- (j) motor vehicle of a specified description.*

20. *A reading of the two definitions brings out stark difference between the two types of licences. 'Driving licence' issued by the competent authority under Chapter II authorises a person to drive a motor vehicle or a motor vehicle of any specified class or description otherwise than as a learner and 'learner's licence' authorises a person specified therein to drive as a learner a motor vehicle or a motor vehicle of any specified class or description. It is thus evident that a person who is granted 'learner's licence' is entitled to drive a motor vehicle or a motor vehicle of any specified class or description only as a learner and he cannot be treated as a person to whom 'driving licence' defined under Section 2(10) has been issued. Though, there is some similarity in the language of Section 8 which regulates the*

grant of 'learner's licence' and Section 9 which regulates the grant of 'driving licence', the very fact that the legislature has thought it proper to make separate provisions for grant of two types of licences leads to an irresistible conclusion that a person holding 'learner's licence' cannot be treated at par with a person having 'driving licence' authorised to drive motor cycle, heavy goods vehicles and heavy passengers vehicles. Section 3 of the Act, which is mandatory in character also lays down that a person shall not drive a motor vehicle in any public place unless he holds an effective driving licence. Surely, learner's licence cannot entitle a person to claim that he holds an effective driving licence. Therefore, the mere fact that the petitioners possessed learner's licence on the date of application was not sufficient to make them eligible to compete for selection.

21. The judgment in National Insurance Co. Ltd. v. Swaran Singh (2004) 3 SCC 297 (paras 93 and 94) on which reliance was placed by Shri Rakesh K. Khanna has no bearing on the interpretation of Rule 11 read with the entries contained in the Schedule and it is not possible for this Court to rewrite the rule so as to enable the persons holding learner's licence to compete for appointment as Motor Vehicle Sub-Inspector."

13. Even the decision in *National Insurance Co. Ltd. v/s. Swaran Singh & Ors. (supra)* was considered and distinguished by the Hon'ble Supreme Court in *Alka Ojha (supra)*. The decision in *National Insurance Co. Ltd. v/s. Swaran Singh & Ors. (supra)* in an entirely different context was interpreting the beneficial provisions of the Motor Vehicles Act 1988. Such interpretation cannot be imported while interpreting service rules for appointment to the post of PSI. The Hon'ble Supreme Court declined to import such an interpretation in the context of the

recruitment rules to the post of Assistant Motor Vehicle Inspector.
The same principle will apply in the present case.

14. For the above reasons, we dismiss this petition. The rule is discharged. There shall be no order for costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

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