

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9421 OF 2023

Mr. Somanath Bhagwan Gore

....Petitioner

V/S

The State of Maharashtra & Ors.

....Respondents

...

Mr. Rahul Khot a/w Mr. Sachin M. Bhavar for the Petitioner.

Mr. B.V. Samant, AGP for Respondent Nos.1 and 2-State.

...

**CORAM: NITIN JAMDAR &
SANDEEP V. MARNE, JJ.**

DATE : 04 AUGUST 2023.

P.C.:

. By this Petition, the Petitioner challenges the judgment and order dated 18 July 2023 passed by the Maharashtra Administrative Tribunal thereby dismissing his Original Application No.817 of 2023. In his Original Application, Petitioner had challenged the select list dated 23 June 2023 for appointment to the post of Assistant (Legal) prepared in pursuance of advertisement No.092 of 2022 dated 21 October 2022. Petitioner had also sought a declaration to the effect that inclusion of name of Respondent No.3 in the select list was invalid and contrary to the terms of the advertisement. Petitioner further sought direction to revise the select list by deletion of name of Respondent No.3 with further direction to appoint him on the post of Assistant (Legal).

2 The Maharashtra Public Service Commission (**MPSC**) issued advertisement No.092 of 2022 on 21 October 2022 for appointment on the post of Assistant (Legal), (Group B) (Non-gazetted) in Law and Judiciary Department of Government of Maharashtra. Total 12 posts were advertised out of which 2 posts were reserved for OBC category. The advertisement prescribed minimum age of 25 years in all categories with varying maximum age limits for various categories. Petitioner and Respondent No.3 applied in pursuance of advertisement in OBC category and participated in the selection process comprising online examination and interviews. A final merit list was published by the MPSC on 23 June 2023 which reflected that Petitioner secured 140.50 marks and Respondent No.3 secured 143 marks.

3 Petitioner approached the Tribunal by filing Original Application No.817 of 2023 alleging that Respondent No.3 did not fulfill the minimum age criteria of 25 years as on the cutoff date of 1 February 2023. It was contended that the date of birth of Respondent No.3 being 30 October 1999, he had completed only 23 years and 3 months as on 1 February 2023. Petitioner, therefore, sought deletion of name of Respondent No.3 from the select list and substitution thereof by his own name. By judgment and order dated 18 July 2023 impugned in the present Petition, the Tribunal has proceeded to dismiss the Original Application.

4 Appearing for Petitioner Mr. Rahul Khot, the learned Counsel would submit that Respondent No.3 was not eligible to participate in the selection process as he did not fulfill the minimum age criteria. That the terms and conditions of the advertisement are sacrosanct and that MPSC did not have any discretion to permit any candidate to participate in the selection without fulfilling the prescribed eligibility criteria. That the Tribunal erred in dismissing the Original Application by taking into consideration the provisions of Recruitment Rules. That the provisions of Recruitment Rules were not made known to the candidates and they participated in selection process based on the terms and conditions of the advertisement. That several other candidates, who were below age of 25 years, did not participate in the selection process only on account of specific bar of minimum age stipulated in the advertisement. That therefore Tribunal's order upholding eligibility of Respondent No.3 would violate the equality clause enshrined under Articles 14 and 16 of the Constitution of India as other similarly placed candidates were deprived of right to participate in the selection process. In support of his contentions, Mr. Khot would rely upon Division Bench judgment of this Court, Bench at Aurangabad in **Supriya Vinayak Gawande vs. State of Maharashtra**¹.

¹Writ Petition No.5294 of 2019 decided on 2 August 2022.

5 We have also heard Mr. Samant, the learned AGP appearing for the Respondent-State who would oppose the Petition and support the order passed by the Tribunal.

6 After considering the submissions canvassed by the learned counsels for the parties, it is seen that there is conflict in the provisions of the Recruitment Rules, which do not prescribe any minimum age limit and the stipulations of the advertisement which prescribed minimum age limit of 25 years. The short issue that arises in the present Petition is what would prevail?

7 Appointment to the post of Assistant (Legal) in the Law and Judiciary Department of Government of Maharashtra is governed by the provisions of the Assistant (Legal), in the Legal Side of the Law and Judiciary Department (Recruitment) Rules, 2002. Rule 3 provides thus:

“3. Appointment to the post of Assistant (Legal) shall be made by nomination from amongst candidates who,-

(1) are not more than 30 years of age;

(2) possess a degree in Law of a statutory University or any other qualification declared by Government to be equivalent thereto;

(3) possess a Certificate in Computer Operation prescribed by the Directorate of Information and Technology, Government of Maharashtra, from time to time. Provided that preference will be given to a Masters Degree in Law of a statutory University or any other qualification declared by Government to be equivalent thereto.”

8 Thus the Recruitment Rules merely prescribe the maximum age limit of 30 years. The Rules are silent about prescription of minimum age limit.

9 As against the Recruitment Rules, the advertisement issued by the MPSC prescribed minimum age limit of 25 years as on 1 February 2023. There thus appears to be conflict between the provisions of the Recruitment Rules and the terms and conditions of the advertisement with regard to prescription of minimum age limit.

10 The Tribunal has relied upon judgment of the Apex Court in *Ashish Kumar vs. State of Uttar Pradesh & Ors.*², wherein it is held that if there is variance in the advertisement and the statutory rules, the provisions of the statutory rules would take precedence. The learned Counsel for the Petitioner fairly concedes to this position. Thus, in view of conflict between the provisions of the Recruitment Rules and the terms and conditions of the advertisement, the eligibility criteria prescribed in the Recruitment Rules would prevail. Therefore, candidature of Respondent No.3 could not be ousted only on the ground of he being below the age of 25 years when he otherwise fulfills all other eligibility criteria prescribed in the Recruitment Rules.

2 (2018) 3 SCC 55

11 The learned Counsel for the Petitioner places strong reliance on the judgment of the Division Bench of this Court in ***Supriya Vinayak Gawande*** (supra). The issue in that case was about im-permissibility of consideration of any additional documents over and above the one mentioned in the application form. The Petitioner in that case was not in possession of Non-Creamy Layer Certificate as on date of filling of the application form but procured the same subsequently. She relied upon such subsequently procured non-creamy layer certificate in support of her eligibility claim. Additionally, the Petitioner therein was accused for indulging in making false statement in online application form. It is in the light of this factual background that this Court held that the terms and conditions of the advertisement were required to be strictly followed. In *Supriya Vinayak Gawande* this Court relied upon judgment of the Apex Court in ***Bedanga Talukdar vs. Saifudaullah Khan & Ors.***³ The Tribunal has considered the ratio of the judgment in *Bedanga Talukdar*, in which the issue was with regards relaxation of the terms and conditions of the advertisement, in absence of such power being specified in the advertisement. The Tribunal has held that the issue in *Bedanga Talukdar* related to relaxation of terms of advertisement, which was not the case before the Tribunal. We do not find that the Tribunal has committed any error in distinguishing the judgments of this Court in *Supriya Vinayak Gawande* and of the Apex Court in *Bedanga Talukdar*.

3 2012 AIR (SC) 1803

12 Now we turn to the submissions of Mr. Khot that the impugned action of the MPSC in considering Respondent No.3 eligible in selection process would cause injustice to several other candidates below the age of 25 years, who did not apply on account of specific minimum age bar prescribed in the advertisement. We would have appreciated this argument of Mr. Khot if the Petitioner was pressing for setting aside of the entire selection process. Upon being repeatedly questioned, Mr. Khot would clarify that Petitioner does not seek setting aside of the entire selection process and is interested in substitution of his name in place of Respondent No.3. Thus, on a specious ground of cause of alleged injustice to other candidates, Petitioner wants relief to be restricted only to himself by retaining the rest of the selection process. In the light of this position, we are not impressed by the submissions made on behalf of the Petitioner that the minimum age bar prescribed in the advertisement either caused injustice to other candidates or that Petitioner should therefore be included in the select list. Also of relevance is the fact that Petitioner had not impleaded other selected candidates to his Original Application in respect of his prayer clause (a) made in the Original Application, wherein he sought setting aside of the entire select list.

13 Resultantly, we do not find any reason to interfere in the impugned judgment and order of the Tribunal. The Writ Petition being devoid of merits, is dismissed without any orders as to costs.

SANDEEP V. MARNE, J.

NITIN JAMDAR, J.