

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 2541 OF 2023

Rekha Uttamrao Tapse)
Age : 32 years, Residing at : Vishvkamal Nivas,)
Flat No. 4, Omkar Colony No. 1,)
Kaleborate nagar, kalepadal,)
Hadapsar, Pune – 411 028.) ...Petitioner

VERSUS

1. Pune Municipal Corporation)
Shivaji Nagar,)
Pune – 411 005)
2. Municipal Commissioner,)
Pune Municipal Corporation)
Shivaji Nagar,)
Pune – 411 005) ... Respondents

...

Mr. Anil Anturkar, Sr. Advocate i/b. Mr. Shubham H. Misar, for Petitioner.
Mr. Abhijit Kulkarni, a/w. Aditya Mahadik, Ms. Sweta Shah & Krushna, for Respondent (PMC).

...

WITH

WRIT PETITION NO. 898 OF 2023

- 1) Atul Mukinda Bhalerao)
Age : 32 years,)
Residing at : At post Inamgaon,)
Tal. - Shirur, Dist. - Pune)
- 2) Nikheel Suryakant Sarpate)
Age : 29 years,)
Residing at : At post Bhosi,)
Tal. - Bhokar, Dist. - Nanded.)

- 3) Chetan Suresh Berad)
Age : 25)
Residing at : 50, Shuleshwar Colony,)
Bhingar, Ahmednagar – 414001)
- 4) Vishal Nandkumar More)
Age : 27 years,)
At Post : Impalgaon (SM))
Parbhani – 431537)
- 5) Pradip Santosh Ghodke)
Age : 25 years,)
Residing at : At Post Tembhurni,)
Tal. Jafrabad, Dist. - Jalna – 431208.)
- 6) Mangesh Mahesh Mutatkar)
Age : 32 years,)
Residing at : Lokmitra Nagar,)
Purna Road, Nanded – 431 605.)
- 7) Pallavi Dilip Meshram)
Age : 30 years,)
Residing at – Gayatri Colony,)
Hazaripahad, Nagpur-440007.)
- 8) Priti Dhanraj Yadav)
Age : 25 years,)
Residing at : Shukrawar Peth,)
Mahur Vesh, Wahim-444505)
- 9) Jyotsna Gautam Wankhade)
Age : 29 years,)
Residing at : Manglasa Post Potita)
Mangruipir, Washim-444403.)
- 10) Ashwin Ramesh Nagulkar)
Age : 28 years,)
Residing at : Savargaon Jire,)
Washim-444510.)
- 11) Rajesh Vitthal Bhure)
Age : 33 years,)
Residing at : At post Gojore)
Bhusaval, Jalgaon-425311)
- 12) Manisha Jaywant Maluadkar)
Age : 36 years,)
Residing at : C-502, Akshay Tower,)
Pink City Road, Wakad,)
Pune-411 057.)

- 13) Akash Gulabrao Chavan)
 Age : 29 years,)
 Residing at : Nalwandi Chowk Peth,)
 Beed-431 122.)
 All through Power of Attorney holder)
 namely Petitioner No. 1 above) ...Petitioners

VERSUS

1. Pune Municipal Corporation)
 Shivaji Nagar,)
 Pune – 411 005)
 2. Municipal Commissioner,)
 Pune Municipal Corporation)
 Shivaji Nagar,)
 Pune – 411 005) ... Respondents

...

Mr. Anil Anturkar, Sr. Advocate i/b. Mr. Shubham H. Misar, a/w. Mr. Harshavardhan Suryawanshi, for Petitioner.

Mr. Abhijit Kulkarni, a/w. Aditya Mahadik, Ms. Sweta Shah & Krushna, for Respondent (PMC)

...

CORAM : S. V. GANGAPURWALA, ACJ & SANDEEP V. MARNE, J.

RESERVED ON : 27rd FEBRUARY, 2023.
PRONOUNCED ON : 2nd MARCH, 2023.

JUDGMENT : (PER - SANDEEP V. MARNE, J.)

1. Petitioners challenge rejection of their candidature in selection process convened by Pune Municipal Corporation for appointment to the post of Assistant Encroachment Inspector.

2. Pune Municipal Corporation has issued advertisement dated 20th July, 2022 inviting applications for filling up various posts. One of the posts advertised is Assistant Encroachment Inspector. The essential qualification for the post *inter alia* included passing of Surveyor Course or Sub-Overseer Course or similar course. Petitioners, who have undergone Construction Supervisor course, claimed eligibility for the post of Assistant Encroachment Inspector stating that their qualification is covered by the expression 'similar course'. The Municipal Corporation however held the petitioners ineligible. In the list of ineligible candidates, the reason mentioned against the names of petitioners is non possession of qualification of Surveyor course and qualification possessed by them not being equivalent.

3. Appearing for petitioners, Mr. Anturkar the learned senior advocate would submit that the word used in the recruitment rules is not 'equivalent' but 'similar'. He would rely upon government resolution dated 31st January, 1989 under which the post of Civil Engineering Assistant (**CEA**) came to be created in the Irrigation Department. Upon creation of the new post of CEA, the posts of Sub-Overseer and Surveyor came to be abolished. He would further rely upon government resolution dated 11th March, 2008 by which Public Works Department has accorded equivalence to the course of Construction Supervisor for the post of CEA. He would therefore submit that

since candidates undergoing Construction Supervisor course are eligible to be appointed as CEA, which post is created by abolition of post of Sub-Overseer, such candidates are required to be treated eligible for the appointment on the post of Sub-Overseer. He would therefore submit that the course of Construction Supervisor is required to be treated as the 'similar course' within the meaning of the recruitment rules / eligibility criteria of the advertisement.

4. *Per contra* Mr. Kulkarni the learned counsel appearing for respondent Municipal Corporation would oppose the petition. He would rely upon clarifications issued by Maharashtra State Board of Technical Education, College of Engineering, Pune and Savitribai Phule Pune University in support of his contention that the qualification possessed by petitioners cannot be considered similar or equivalent to the one prescribed in recruitment rules/advertisement. Mr. Kulkarni would then rely upon government resolution dated 28th September, 2012 by which equivalence is granted to various courses. In the list appended to the said government resolution, the post of Sub-Overseer does not find place whereas the post of Surveyor is granted equivalence to that of Certificate Course in Construction Surveyor.

5. He would further submit that merely because persons undergoing course of construction supervisor are eligible to be appointed as CEA, same would not mean that they would automatically acquire eligibility for appointment as Assistant Encroachment Inspector. Lastly Mr. Kulkarni would submit that the question has become academic in the light of completion of entire selection process with issuance of appointment orders to 97 candidates against the advertised 97 vacancies. That 88 candidates have already joined service and 07 candidates sought extension of time for personal reasons. Only 02 candidates are yet to give any intimation about joining. He would therefore submit that since the entire selection process is virtually completed, petition of the petitioners need not be entertained at such a belated stage.

6. Rival contentions of the parties now fall for our consideration.

7. The short issue that arises for consideration is whether the course of Construction Supervisor can be held similar to that of Sub-Overseer within the meaning of eligibility criteria for the post of Assistant Encroachment Inspector. It would be necessary to reproduce the eligibility criteria prescribed in the advertisement;

Eligibility :

(a) Secondary School Certificate (SCC) passed or equivalent;

(b) Passing of Surveyor Course or Sub-Overseer Course or similar course of Government.

Experience : Preference to candidates having 05 years experience as Surveyor.

8. So far as qualification prescribed in clause (a) is concerned, there is no dispute in the present case. The entire controversy revolves around the qualification prescribed in clause (b). Again Mr. Anturkar has clarified that similarity is not claimed by petitioners with regard to the course of Surveyor. Similarity is restricted only to the course of Sub-Overseer. The moot question that therefore arises in the present petition is whether the course of Construction Supervisor would be covered by the expression 'similar course' to Sub-Overseer course.

9. Similarity in the two courses is claimed by the petitioner essentially by relying upon the government resolutions dated 31st January, 1989 and 19th March, 2008. The case of the petitioner is that since candidates possessing qualification of course in Construction Supervisor is eligible to appointed as Civil Engineering Assistant, which post is created by abolition of post of Sub-Overseer, that candidates is required to be considered eligible for appointment on the post of Assistant Encroachment Inspector. This is how

similarity in the courses of Construction Supervisor and Sub-Overseer is claimed by the petitioner. It would therefore be necessary to examine the effect of the government resolutions dated 31st January, 1989 and 11th March, 2008.

10. The government resolution dated 31st January, 1989 is issued by the Irrigation Department, by which the new post of CEA came to be created. The existing incumbents occupying the posts of Surveyor, Sub-Overseer, Technical Assistant, Muster Karkoon, Labrotary Assistant, Road Karkoon, Mistry, etc. were directed to be absorbed on newly created 2800 posts of CEA. On account of absorption of existing incumbents working on above posts, it was directed that the posts of Sub-Overseer and Surveyor shall stand abolished upon creation of cadre CEA. Thus, government resolution dated 31st January, 1989 was essentially applicable to Irrigation Department. Secondly, incumbents occupying several posts were directed to be absorbed on newly created post of CEA. It is not that only two posts of Sub-Overseer and Surveyor were merged in the post of CEA. Persons holding other posts such as Technical Assistant, Muster Karkoon, Labrotary Assistant, Road Karkoon, Mistry, etc. were also directed to be absorbed on the post of CEA. Therefore, it is difficult to accept that there is any equivalence of posts between post of Sub-Overseer and CEA. If the

contention of the petitioner is to be accepted, equivalence will have to be assumed even for other posts like Technical Assistant, Muster Karkoon, Labrotary Assistant, Road Karkoon, Mistry, etc. with that of CEA. Even otherwise creation of a new cadre and abolition of few posts on account of absorption in the new cadre cannot and does not mean that the qualification prescribed new post of CEA would become applicable/acceptable for old post of sub-overseer.

11. Now coming to the government resolution dated 11th March, 2008, the same is issued by altogether different i.e. Public Works Department. In that department, it has been decided that candidates holding qualification of course in Architectural Draughtsman and Construction Supervisor would be treated as equivalent to the course of CEA. Merely because in P. W. D. candidates holding qualification of course in Construction Supervisor has been made eligible to be appointed as CEA, the same cannot and does not mean that such a candidate can be treated as possessing qualification similar to the course of Sub-Overseer. Otherwise by that logic, the course in Architectural Draughtsman will be required to be treated as equivalent qualification to Sub-Overseer and candidate possessing the same would stake claim for appointment on the post of Assistant Encroachment Inspector.

12. Therefore, even on combined reading of the government resolutions dated 31st January, 1989 and 11th March, 2008 it is difficult to hold that the candidates possessing qualification of course in Construction Supervisor hold qualification similar to that of course of Sub-Overseer so as to acquire eligibility for appointment on the post of Assistant Encroachment Inspector.

13. Though the Municipal Corporation has relied upon clarifications issued by several entities such as Maharashtra State Board of Technical Education, College of Engineering, Pune and Savitribai Phule Pune University, none of those clarifications deal with the issue of similarity in the courses of Sub-Overseer and Construction Supervisor. At the same time, Petitioners themselves have not produced any opinion of any expert body certifying that the two courses are similar. The Municipal Corporation has relied upon the government resolution dated 28th September, 2012 by which equivalence is granted only in respect of post of Surveyor and no such equivalence is granted in respect of course of Sub-Overseer.

14. Equivalence / similarity is required to be recognised in respect of specific courses and the same cannot be assumed on the basis of logic. Petitioners' case stems out of the logic that 'course A' is considered similar/ equivalent to 'course B', which is the qualification required for 'post X' which is created by abolition of 'post Y' and therefore 'course A' automatically

becomes qualification for 'post Y'. Apart from the fact that such logic would have no application for determining similarity/equivalence, the logic otherwise fails for twin reasons of post of CEA not being same as that of Sub-Overseer and the three posts of CEA, Sub-overseer and Asstt. Enrichment Inspector existing in different organisations/employers. Therefore, alleged equation of posts of CEA and Sub-Overseer in PWD/Irrigation departments would not entail automatic equation with the post of Asstt. Encroachment Inspector in Pune Municipal Corporation.

15. It is settled law in catena of judgments that employer is the best judge to determine the exact qualifications required and also about equivalence / similarity of courses. It would be apposite to refer to few such judgments. In **Anand Yadav v. State of U.P.**, (2021) 12 SCC 390, it is held:

32. We may also notice another important aspect i.e. the employer ultimately being the best judge of who should be appointed. The choice was of Respondent 2 who sought the assistance of an expert committee in view of the representation of some of the appellants. The eminence of the expert committee is apparent from its composition. That committee, after examination, opined in favour of the stand taken by the appellants, and Respondent 2 as employer decided to concur with the same and accepted the committee's opinion. It is really not for the appellants or the contesting respondent to contend how and in what manner a degree should be obtained, which would make them eligible for appointment by Respondent 2.

16. In **Zahoor Ahmad Rather v. Imtiyaz Ahmad**, (2019) 2 SCC 404, the Apex Court has held thus:

27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in *Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664]* must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in *Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664]* turned.

17. In **Maharashtra Public Service Commission v. Sandeep Shriram Warade**, (2019) 6 SCC 362, it is held:

9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority

after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.

18. In the present case, the employer has determined the qualifications required for the post of Assistant Encroachment Officer and has further arrived at a conclusion that the course of Construction Supervisor is not similar to the requisite course of Sub-Overseer. We cannot sit in appeal over the judgment of the employer. We are therefore unable to hold that course of Construction Supervisor would be covered by the expression 'similar course' to that of Sub-Overseer. Petitioners have been rightly held ineligible for being considered for appointment on the post of Assistant Encroachment Inspector.

19. In the result no case is made out by petitioners for interference in the action of the Respondent Municipal Corporation. Writ petitions, being devoid of merits, are dismissed with no order as to costs.

SANDEEP V. MARNE, J.

S. V. GANGAPURWALA, ACJ