

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

WRIT PETITION NO.14411 OF 2023

Ratnakar Chintaman Patil

... Petitioner

Versus

The State of Maharashtra & Ors.

... Respondents

Mr. Sandeep Dere, a/w. Ms. Pooja Mankeji for Petitioner.
Ms. K. N. Solunke, AGP for State.

**CORAM : SANDEEP V. MARNE &
DR. NEELA GOKHALE, JJ.
(Vacation Court)**
DATE : 24 NOVEMBER 2023.

P. C. :

Petitioner is aggrieved by inclusion of his name in the list of ineligible candidates declared by the Maharashtra Public Service Commission (**MPSC**) in selection convened for filling up the post of District Extension and Media Officer (**DEMO**). Petitioner has also challenged Rule 3(i) and 3(v) of the DEMO General State Services, Group-B in the Directorate of Health Services (Recruitment) Rules 2003. Petitioner has also sought a declaration that the Diploma possessing by him qualifies the condition under clause 8.1 of the advertisement with a further direction to grant age relaxation as extended to the employees of the State Government. He has further sought

direction to Respondent No.8 to permit appearance in interviews scheduled to be held on 22, 23 and 28 November 2023.

2. Petitioner is working on the post of Health Assistant in the Primary Health Center of Zilla Parashid, Raigad. The post of DEMO in the office of Directorate of Health Services is filled in accordance with provisions of DEMO, General State Services, Group-B in the Directorate of Health Services (Recruitment) Rules 2003 (**Recruitment Rules**). The post is to be filled by way of nomination from amongst candidates holding the Graduate Degree and Post Graduate Diploma in Health Education. The Recruitment Rules also prescribe possession of experience in Mass Education and Publicity in the field of Family Welfare and Health Education under the State Government for not less than 03 years after possession of qualification. The maximum age limit prescribed in the Recruitment Rules is 35 years except for candidates in government service.

3. MPSC issued advertisement No.023/2022 for filling up total 49 posts of DEMO. In clause-8 of the advertisement following criteria was prescribed.

8.1 Educational Qualification :- (i) Possess degree of statutory University;

(ii) Possess Post Graduate Diploma in Health Education; **AND**

8.2 EXPERIENCE : (i) Possess experience in Mass Education and publicity in the field of Family Welfare and Health Education under the State Government for not less than three years gained after acquiring the qualification mentioned in sub-clauses (i) and

(ii) of 8.1 above.

(ii) Notwithstanding anything contained in clause 8.2 (I) above, if at any state of selection, the Commission is of the opinion that sufficient number of candidates possessing the requisite experience are not available to fill up the vacancies reserved for candidates belonging to Schedule Castes. Schedule Castes converts to Buddhism, Schedule Tribes, Denotified Tribes or Nomadic Tribes, then the Commission may in the matter of such selection, relax the requirement in the respect to period of experience set out therein upto a period of one year and select suitable candidate belonging to such Caste or Tribes.

8.3 Possess adequate knowledge of Marathi.

4. Petitioner claims to be possessing BA Degree. He also possesses Postgraduate Diploma in Community Healthcare from International Institution of Population Sciences. He claims that 'Postgraduate Diploma in Community Healthcare' possessed by him qualifies requirement of 'Postgraduate Diploma in Health Education' prescribed in the Recruitment Rules and the advertisement. Petitioner accordingly applied in pursuance of advertisement issued by MPSC. By Notification dated 08 November 2023, MPSC has declared lists of eligible and ineligible candidates and has also published dates for holding interviews. Name of Petitioner is included in the list of ineligible candidates with a remark that he does not fulfill the educational qualifications prescribed in clause 8.1(ii) of the advertisement. Aggrieved by declaration by MPSC as ineligible, Petitioner has filed the present petition.

5. Mr. Dere, the learned counsel appearing for Petitioner would submit that Petitioner fulfills the requisite eligibility criteria for appointment on the post of DEMO. That the 'Postgraduate Diploma in Community Healthcare' possessed by Petitioner qualifies the criteria of 'Postgraduate Diploma in Health Education'. He would submit that the words 'Health Education' connotes a wider meaning and encompasses Diploma Certificates issued in various disciplines relating to health education. That the discipline of 'Community Healthcare' is covered within 'Health Education'. That there is no specific diploma course in health education and diplomas awarded to candidates in wider areas relating to 'Health' are covered by qualification prescribed in the Recruitment Rules and the advertisement.

6. Mr. Dere would further submit that the MPSC has given a discriminatory treatment to Petitioner by holding him ineligible while holding several other candidates in State service possessing same qualification as eligible. He would invite my attention to the list of 12 candidates mentioned in paragraph No.14 of the petition, who, according to Mr. Dere, have also obtained Postgraduate Diploma from same institute from which the Petitioner has secured his Diploma. That said 12 candidates have been allowed to participate in the selection. Additionally, he would place reliance on the Diploma Certificate issued in favour of Mrs. Neelima B. Khedkar by the same institute and would contend that she is also permitted to participate in the selection process. Mr. Dere would contend that the candidates who happened to be the employees of

the State Government are extended special treatment, both in the areas of grant of age relaxation as well as by recognizing their Diploma Certificates issued by the same institute. That the said Diploma in Community Healthcare is required to be recognized as accepted qualification in the Recruitment Rules as the Diploma course is run by the Family Welfare Training and Science Research Center approved by the Ministry of Health. That Postgraduate Diploma in Community Healthcare is awarded to the Petitioner by the International Institute of Population Sciences, Mumbai which is a deemed university.

7. Alternatively, Mr. Dere would submit that prescription of qualification of Postgraduate Diploma in Health Education in the Recruitment Rules is faulty to the extent of non-inclusion of 'Postgraduate Diploma in Community Healthcare Services' as recognized qualification. That the Recruitment Rules erroneously seek to exclude the employees of Zilla Parishad by creating two classes amongst the candidates and by extending unfair advantage to employees of state government. That the condition of age is relatable only in case of State Government employees thereby giving discriminatory treatment to the employees of Zilla Parishad. He would therefore urge that Petitioner be provisionally permitted to appear in the interviews by holding him eligible for the post of DEMO.

8. *Per contra* Ms. Solunke, the learned counsel appearing for Respondents would oppose the petition. She would submit that Postgraduate Diploma possessed by Petitioner is not in 'Health

Education; as per requirement of the Recruitment Rules and the advertisement. That no discriminatory treatment is given to the Petitioner as none of the candidates possessing 'Postgraduate Diploma in Community Healthcare' have been considered eligible in the selection. She would produce the Applications and Diploma Certificates in respect of 12 candidates named in paragraph No.14 of the petition to demonstrate that all of them have possess Diploma in Health Education. She would submit that prescription of eligibility criteria is a prerogative of the employer and the Courts cannot interfere in the wisdom of the employer in choosing a particular educational qualification. That the aspect of equivalence of qualifications can also not be gone into by Courts. That since Petitioner does not possess the requisite educational qualification, he has rightly been declared ineligible in the selection process.

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

10. The Recruitment Rules as well as advertisement issued by MPSC prescribe possession of 'Postgraduate Diploma in Health Education' as one of the essential eligibility criteria. Petitioner has been awarded 'Postgraduate Diploma in Community Healthcare' in 2015-16 by the International Institute for Population Science. Thus, admittedly the Postgraduate Diploma possessed by Petitioner is not in 'Health Education'. Though it is sought to be suggested that 'Postgraduate Diploma in Community Healthcare' is also covered within the ambit of

‘Health Education’, no material to that effect is produced by the Petitioner. Therefore, we are not impressed by the submission made on behalf of the Petitioner that the term ‘Health Education’ is wide enough to include ‘Community Healthcare’ discipline within it.

11. Further contention of Petitioner that course in ‘Health Education’ is not conducted by any institute belied production of diploma certificates of eligible candidates which clearly show possession of ‘Diploma in Health Promotion Education’. So far as allegation of discrimination is concerned, we have perused the diploma certificates in respect of 12 candidates listed in paragraph No.14 of the petition and find that each of them possessed Diploma in Health Promotion Education. Therefore, mere issuance of diploma certificates to those candidates by the same Institute i.e. International Institute for Population Science, would not put Petitioner on same pedestal. What is relevant is not the Institute awarding diploma certificate, but the discipline in which the diploma course is completed. All 12 candidates named in para 14 of the Petition have undergone diploma course in Health Promotion Education, which is considered compliant to the requirement of ‘Postgraduate Diploma in Health Education’ both by the employer and MPSC. As against the said 12 candidates, though Petitioner has also undergone diploma course from same Institute, the same is in different altogether discipline of ‘Community Healthcare’. Even in respect of Mrs. Neelima B. Khedkar the Diploma is in the discipline of Health Promotion Education. We therefore not only find no merit in the

compliant of discrimination sought to be raised by Petitioner, but observe that the said compliant is causally raised by him without disclosing the discipline in which those candidates have completed their diploma courses.

12. It is well settled principle that the employer alone can determine the requisite educational qualification for a post. Courts cannot determine the issue of correctness or adequacy of prescribed qualifications nor can venture into the issue of equivalence. The opinion of the employer in that regard is final. Useful reference in this regard can be made to the Judgment of the Apex Court 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.

13. In the present case, the employer as well as MPSC has held that the 'Postgraduate Diploma in Community Healthcare' does not comply with the eligibility criteria prescribed in the Recruitment Rules and the advertisement. It will be beyond the purview of this Court to venture into the issue whether the discipline 'Community Healthcare' is also covered within the discipline of 'Health Education'. Employer's opinion in this regard is final.

14. Another reason for Petitioner's ineligibility could be crossing the maximum age limit of 35 years, though that reason does not find mention in the impugned list of ineligible candidates. Mr. Dere has sought to raise the issue of discrimination meted out to Zilla Parishad employees vis-à-vis state government employees. In our view, since Petitioner does not meet the basic eligibility criteria of Postgraduate Diploma in Health Education, the aspect of prescription of different age limit is rendered academic. We need not decide the issue of grant of age relaxation to Zilla Parishad employees in the present case. The issue is therefore left open to be decided in appropriate case.

15. Thus the decision declaring Petitioner ineligible in the selection process is unexceptionable. No case is made out by the Petitioner for interference by this Court. Writ Petition, being devoid of merits, is dismissed with no order as to costs.

DR. NEELA GOKHALE, J.

SANDEEP V. MARNE, J.