

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.7009 of 2019

Laxmikant Sambhaji Khade,

Aged about 38 years,

Occ: Service,

R/o Plot No.18, C/o Sudhakar Kawade,

Shivshakti Nagar, Chikhali Road,

Nagpur-34.

... **Petitioner**

Versus

1. The State of Maharashtra,

through its department of Public Health,

Mantralaya, Mumbai,

through its Secretary.

2. Maharashtra Public Service Commission,

Cooprej Telephone Exchange Building,

Maharashi Karve Marg, Cooprej,

Mumbai-21.

... **Respondents**

Shri Mohan Sudame, Counsel for Petitioner.

Shri A.A. Madiwale, Assistant Government Pleader for Respondents.

CORAM : A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.

Date when arguments were heard : 19th June, 2023.

Date when the judgment was pronounced : 8th August, 2023.

JUDGMENT (PER A.S. CHANDURKAR, J.) :

1. Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in the present writ petition is to the order passed by the Maharashtra Administrative Tribunal in Original Application No.274 of 2018 dated 26-6-2019 thereby dismissing the said Original Application preferred by the petitioner. In the said Original Application, the petitioner had challenged the decision of the respondent No.2-Maharashtra Public Service Commission (for short, 'the MPSC') by which the petitioner was held ineligible for appointment on the post of Chief Administrative Officer, Group-A.

3. The MPSC issued an advertisement dated 7-2-2014 calling for applications for filling in the post of Chief Administrative Officer, Group-A. Under the said advertisement, the educational qualification required was having a degree or any other equivalent qualification recognized by the State Government, possessing executive or administrative experience or both for a period of not less than seven years gained in a Government department, commercial concern, local authority or a corporation. According to the petitioner, by virtue of the Directorate of Health Services (Recruitment) Rules, 2002 (for short, 'the Rules of 2002'), the requirements for the post of Chief Administrative Officer, Group-A and Administrative Officer, Group-B have been prescribed. Despite possessing requisite qualification, the petitioner was held ineligible for being considered for the post of Chief Administrative Officer, Group-A. The grievance of the petitioner is that in the light of the qualification prescribed by the Directorate of Health Services, the petitioner has been held ineligible. The

Maharashtra Administrative Tribunal held against the petitioner on two counts, namely that the petitioner had furnished wrong information while indicating his experience in service. It was stated by the petitioner that he was in the office of the Taluka Inspector of Land Records from 21-9-2006 to 7-7-2009. He had also stated that he was serving at the Government Polytechnic from 9-6-2009 to 17-1-2012. Since the aforesaid period was overlapping, the finding was recorded that the petitioner had furnished wrong information. Another ground assigned by the Maharashtra Administrative Tribunal is that since the post of Chief Administrative Officer, Group-A was a promotional post in comparison to the post of Administrative Officer, Group-B, the petitioner did not have the required experience. On these counts, the Maharashtra Administrative Tribunal dismissed the Original Application.

4. It is submitted by the learned counsel for the petitioner that under the Rules of 2002, appointment to the post of Chief Administrative Officer, Group-A could either be by promotion or by nomination. The executive or administrative experience of a period not less than seven years after obtaining the educational qualification was required. The petitioner sought consideration of his candidature by nomination since he was below the age of 40 years, but the Maharashtra Administrative Tribunal proceeded to consider his entitlement on the premise that he was seeking promotion to the said post. Without considering the fact that the requirement for seeking

appointment by nomination was distinct from the requirement while seeking promotion, the petitioner had been held ineligible. It was further submitted that though in the application form the petitioner had mentioned that he was in the office of Taluka Inspector of Land Records till 7-7-2009 and in the Government Polytechnic from 9-6-2009, the latter date was inadvertently mentioned. Referring to the experience certificate issued by the Education Officer (Secondary), Zilla Parishad, Nagpur, it was pointed out that the petitioner was serving with the Government Polytechnic from 9-7-2009 to 17-1-2012. Hence there was no overlapping of service. Incorrect information had not been supplied by the petitioner. It was then submitted that since the advertisement was issued by the MPSC and it was undertaking recruitment, it ought to have acted in accordance with the Maharashtra Public Service Commission Rules of Procedure, 2014 (for short, 'the Rules of Procedure, 2014') and especially Rule 4(2) thereof. As per that Rule, whenever decision is required to be taken on the general principles to be adopted in the matter of promotion by nomination, such decision had to be taken by the MPSC itself. There was no justification on the part of the MPSC in issuing communication dated 24-3-2017 and seeking the opinion of the Health Department of the State of Maharashtra. Having found the candidature of the petitioner eligible from the Other Backward Class category and having called him for the screening test, it was not permissible to hold the petitioner to be not eligible when the interviews were being

conducted. The Maharashtra Administrative Tribunal failed to consider these relevant aspects and held against the petitioner. In support of the aforesaid contentions, the learned counsel for the petitioner relied upon the decisions in *P Mahendran and others Versus State of Karnataka and others* [(1990) 1 SCC 411], *Gopal Krushna Rath Versus M.A.A. Baig (Dead) by LRs. and others* [(1999) 1 SCC 544] and *Tushar Babanrao Deshmukh Versus State of Maharashtra and others* [2013(3) Mh.L.J. 673].

5. The learned Assistant Government Pleader appearing for the respondents relied upon the affidavit-in-reply and supported the order passed by the Maharashtra Administrative Tribunal. It was submitted that since the petitioner lacked the requisite experience, he was rightly not found eligible for being considered for appointment on the post of Chief Administrative Officer Group-A. The information furnished by the petitioner in his application form was taken into consideration and since the service rendered by him was shown to be overlapping, the Maharashtra Administrative Tribunal rightly held him ineligible for consideration. The experience possessed by the petitioner was on posts lower than the post of Superintendent or Head Clerk. He was therefore not eligible even for the post of Administrative Officer, Group-B. It was thus submitted that the Maharashtra Administrative Tribunal considered all the relevant aspects and thereafter passed the impugned order. There was no reason to interfere with the same.

6. We have heard the learned counsel for the parties and we have perused the documents on record. As stated above, the Maharashtra Administrative Tribunal has found that the experience in service indicated by the petitioner was by giving incorrect information. It was found that the service rendered at the office of the Taluka Inspector of Land Records was from 21-9-2006 to 7-7-2009 and at the Government Polytechnic from 9-6-2009 to 17-1-2012. It is however seen from the experience certificate dated 11-8-2014 issued by the Education Officer (Secondary), Zilla Parishad, Nagpur that there is no overlapping of services of the petitioner. The said certificate indicates that the petitioner was in the office of Taluka Inspector of Land Records from 21-9-2006 to 7-7-2009 and in the Government Polytechnic from 9-7-2009 to 17-1-2012. It is urged by the learned counsel for the petitioner that this experience certificate was uploaded alongwith all other documents but the same has not been taken into consideration. There is no specific denial to this aspect by the respondents. The Maharashtra Administrative Tribunal has proceeded on the basis of the information furnished in the petitioner's application form dated 27-2-2014. It is true that the dates are shown to be overlapping in the said application form. However with the issuance of the experience certificate by the Education Officer (Secondary), Zilla Parishad, Nagpur, the position becomes clear that there is no overlapping of such services. The same has been issued after verifying the petitioner's service book. The Maharashtra Administrative

Tribunal in Paragraph 6 has referred to the application form submitted by the petitioner and has held against him on this count.

7. The other reason assigned by the Maharashtra Administrative Tribunal is that the post of Chief Administrative Officer, Group-A being a promotional post, the requisite experience on the executive or administrative side was necessary. In this regard, when the Rules of 2002 are perused, it becomes clear that under Rule 3, appointment to the post of Chief Administrative Officer, Group-A can be made either by promotion or by nomination. A person holding the post of Administrative Officer, Group-B having not less than three years' regular service is eligible to be considered for promotion on the post of Chief Administrative Officer Group-A. Alternatively, appointment to the said post can also be made by nomination. In that category, if a candidate is already in service of the Government and is not more than 40 years of age, he can seek such appointment subject to fulfilling other requirements. The executive or administrative experience or both ought to be for a period not less than seven years. It is his specific case of the petitioner that he satisfies these requirements for seeking appointment by nomination. It is however seen that the Maharashtra Administrative Tribunal has proceeded to consider the experience that is required to apply for the post of Administrative Officer, Group-B. It thereafter proceeded to observe that since the post of Chief Administrative Officer, Group-A was a promotional post, the experience of the petitioner was not fulfilling

the criteria. Since it was found that the petitioner was not eligible to apply for the post of Administrative Officer, Group-B, he was not eligible to seek appointment on the post of Chief Administrative Officer, Group-A.

We find on reading of Rules 3 and 4 of the Rules of 2002 that the appointment to the post of Chief Administrative Officer Group-A can either be by promotion or by nomination. The avenue for seeking appointment to this post by nomination is also available to a candidate who is in the service of the Government and is not more than 40 years of age. It was on this premise that the petitioner was seeking consideration of his candidature. The Maharashtra Administrative Tribunal however give importance to the requirements prescribed for the post of Administrative Officer, Group-B. Those requirements would be material when a candidate seeks appointment to the post of Chief Administrative Officer Group-A by promotion. It is for the reason that only a person holding the post of Administrative Officer, Group-B can seek promotion to the higher post. The petitioner was not seeking promotion but was seeking appointment by nomination to the post of Chief Administrative Officer Group-A. It is thus clear that the Maharashtra Administrative Tribunal misdirected itself when it proceeded to hold that as the petitioner was not eligible to hold the post of Administrative Officer, Group-B, his candidature for the post of Chief Administrative Officer, Group-A was not liable to be considered.

8. Yet another aspect that requires consideration is the effect of Rule 4(2) of the Rules of Procedure, 2014. Thereunder, if any decision is required to be taken on the general principles to be adopted in the matter of appointment by promotion or nomination, the same has to be decided by the MPSC itself. Without doing so, the MPSC on 24-3-2017 sought the opinion of the Public Health Department of the State of Maharashtra and after receiving such opinion, proceeded to go by the same. It would be necessary to consider whether this exercise was permissible in the light of Rule 4(2) of the Rules of Procedure, 2014. In addition, it is also necessary to consider the aspect as to whether accepting the recommendations made by the Public Health Department, the same would result in adopting a change in the selection criteria after commencement of the selection process.

9. We find that these material aspects go to the root of the matter. On the aspect of requisite experience of the petitioner, we find that the Maharashtra Administrative Tribunal has misdirected itself by considering the experience required for the post of Administrative Officer, Group-B for holding the petitioner ineligible to seek appointment on the post of Chief Administrative Officer, Group-A. As regards overlapping of service, the matter now stands clarified with the issuance of the experience certificate dated 11-8-2014 issued by the Education Officer (Secondary), Zilla Parishad, Nagpur. The third aspect with regard to the effect of Rule 4(2) of the Rules of Procedure,

2014 requires consideration. For all these reasons, we are inclined to set aside the order passed by the Maharashtra Administrative Tribunal and remit the proceedings to it for fresh consideration in the light of the observations made hereinabove and after considering other relevant aspects.

10. Accordingly, the following order is passed :

- (i) The order dated 26-6-2019 passed by the Maharashtra Administrative Tribunal in Original Application No.274 of 2018 is set aside.
- (ii) The proceedings are remitted to the Maharashtra Administrative Tribunal for fresh consideration in accordance with law.
- (iii) It is clarified that all contentions of the parties are kept open for being raised and considered by the Maharashtra Administrative Tribunal.
- (iv) We hope that the Original Application would be decided expeditiously and preferably by the end of December 2023.

11. Rule is made absolute in the aforesaid terms with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

LANJEWAR