



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7229 OF 2022

Govardhan S/o Haribhau Pandit,
Age : 52 years, Occu. Service,
R/o Rewli, Post Sirsala,
Tq. Parli (V), District Beed

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Additional Chief
Secretary, Revenue and Forest Department,
Mantralaya, Mumbai
- 2] The Divisional Commissioner,
Divisional Office, Pune
- 3] The District Collector,
Collector Office, Pune
- 4] The District Employment and Skill
Development Officer, ITI Campus,
Nagar Road, Beed
- 5] Govardhan S/o Bhujang Kawale,
Age : 52 years, Occu. Service,
R/o At Pimpalgaon Unda, Post Nannaj,
Tq. Jamkhed, Dist. Ahmednagar

.. Respondents

...
Advocate for petitioner : Mr. S.S. Thombre
AGP for the respondents no. 1 to 4 : Ms. Neha Kamble
Advocate for the respondent no. 5 : Mr. A.S. Deshpande along with
Mr. V.V. Gujar
...

**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

**RESERVED ON : 22 NOVEMBER 2024
PRONOUNCED ON : 28 NOVEMBER 2024**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith. Learned AGP waives service for respondents no. 1 to 4 and Mr. Deshpande appearing with Mr. Gujar waives service for respondent no. 5.

3. By resorting to Article 226 of the Constitution of India, the petitioner is challenging the judgment and order of the Maharashtra Administrative Tribunal, bench at Aurangabad in Original Application no. 184 of 2020 dated 14-06-2022, whereby it has allowed the original application of respondent no. 5, quashed and set aside appointment of the petitioner on the post of Talathi and directing his appointment against that post.

4. In a recruitment process undertaken by the respondent - District Collector, Pune for the post of Talathi in the month of July 2019. The petitioner as also respondent no. 5 had participated in the process claiming reservation under 10% quota for graduate part time employees. Both had secured equal marks and being elder in age, the petitioner was preferred against respondent no. 5. It is this selection and appointment of the petitioner that was questioned before the Tribunal by respondent no. 5, by preferring the original application.

5. The challenge to petitioner's selection and appointment was on the ground that while submitting the online application, he had consciously claimed that he was applying against such 10% quota reserved for part time employees. Even his original documents which were supposed to be verified on the notified dates i.e. 17-01-2020 or 18-01-2020, were actually verified on 01-02-2020 after publication of the provisional select list on 29-01-2020. Besides, as is required by the government resolution issued by the General Administration Department of the State of Maharashtra dated 26-06-2005 and 17-10-2009, even the petitioner was not registered with respondent no. 4, which is the District Employment and Skill Development Office, as a graduate part time employee having requisite experience, with an affidavit to that effect. Even the call letter dated 29-01-2020, by virtue of clause 14 required such proof at the time of verification of the original documents. Hence, respondent no. 5 claimed that the petitioner was not eligible and still was selected and appointed in 10% quota, reserved for graduate part time employees.

6. Learned advocate Mr. Thombre would at the outset submit that though no specific objection was raised before the Tribunal regarding absence of territorial jurisdiction of the Bench at Aurangabad and even no part of cause of action had arisen within the territorial limits of the jurisdiction of the Bench at Aurangabad, it being a question

of law can he agitate at any time. He would submit that the entire recruitment process was undertaken by respondents no. 1 to 3 at Pune. No part of cause of action had arisen within the territorial limits of the jurisdiction of Aurangabad bench of the Tribunal, still, it was entertained, which the Tribunal ought not to have done. He would refer to the decision of a division bench of this Court in the matter of ***Sachin Chhotu Pawar V. Collector, Raigad and others; 2020 (6) Mh.L.J. 285.***

7. Per contra, learned AGP as also learned advocate for respondent no. 5 Mr. Deshpande would submit that the selection and recruitment was for the post of Talathi. The petitioner herein is resident of district Beed, who was respondent no. 4 before the Tribunal. Even respondent no. 4 herein was before the Tribunal being the District Employment and Skill Development Officer of Beed. Since at least two respondents before the Tribunal were residents of district Beed, which comes under the territorial jurisdiction of the Tribunal at Aurangabad, it had the jurisdiction.

8. Besides, the learned AGP as also the learned advocate Mr. Deshpande would advert our attention to a general circular issued by the Chairperson of the Maharashtra Administrative Tribunal, Mumbai dated 21-05-2020, whereby during the period of lockdown pronounced due to spread of COVID-19, a general permission was granted to the

litigants to file original application anywhere, either at Mumbai or benches at Nagpur and Aurangabad of the Tribunal and it is pursuant to that the original application was filed before the Tribunal while the circular was in force. The issue was considered by the Tribunal in the impugned judgment and order expressly observing that *in spite* of rule 6 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988 expressly declaring that the place of residence of the applicant does not determine the place of filing the original application, even the petitioner herein who was respondent no. 4 before the Tribunal, being a resident of district Beed and expressly referring to the circular dated 21-05-2020, the bench at Aurangabad had the territorial jurisdiction.

9. It is trite that the issue of territorial jurisdiction has been raked up before the Tribunal and has even been considered and decided with specific reference to the circular dated 21-05-2020. No challenge has been put to the circular and would govern the fact situation of the matter in hand.

10. Besides, admittedly, the petitioner was respondent no. 4 before the Tribunal. Therefore, even otherwise, since one of the respondents before the Tribunal apart from the respondent no. 4, who is also an Officer from district Beed was before the Tribunal as respondent no. 5, the Tribunal's bench at Aurangabad had the territorial

jurisdiction and has rightly concluded so. There is no illegality going to the root of the jurisdiction of the Tribunal.

11. Reliance of Mr. Thombre on the decision in the matter of **Sachin Pawar** (supra) is misplaced. The issue that was considered and determined in that decision was as to the territorial jurisdiction of the bench of High Court at Aurangabad, to decide the writ petition in the light of clause 2 of Article 226 of the Constitution of India which *ex facie* is not applicable to the fact situation before the Tribunal. The principle laid down therein would operate against the petitioner rather than would go to the root of the territorial jurisdiction of the Tribunal. The place of residence of the persons against whom the reliefs are claimed or a part of cause of action has arisen within the territorial limits of the Court of Tribunal, would be the decisive factors. Since, as is observed hereinabove, even otherwise the Chairperson of the Maharashtra Administrative Tribunal had issued a circular dated 21-05-2020 permitting such filing of the petition at any of the benches in the wake of the pandemic and the lockdown, we do not find any illegality in the conclusion of the Tribunal that it had territorial jurisdiction to decide the original application.

12. So far as merits are concerned, Mr. Thombre submits that the District Selection Committee had issued a notice dated 29-01-2020 whereby it was informed that the candidates who could not remain

present for document verification on 17-01-2020 and 18-01-2020, could remain present for document verification on 01-02-2020. Since the petitioner was unable to remain present on the dates notified earlier, pursuant to this subsequent notice dated 29-01-2020, he remained present on 01-02-2020 and was rightly considered.

13. Mr. Thombre would further submit that the petitioner was duly registered with respondent no. 4 - Employment office. His experience certificate was also verified from the office of the Tehsildar, Parali. It was specifically pleaded in the affidavit in reply by the petitioner. Even respondent no. 3 in his affidavit in reply filed before the Tribunal had placed on record petitioner's job seeker registration slip, which was not considered by the Tribunal. Even when respondent no.3 had accepted the fact in his affidavit in reply, it was not considered by the Tribunal and the impugned judgment and order is perverse and arbitrary.

14. Mr. Thombre would, lastly, advert our attention to the fact that the specific objection raised by respondent no. 5 in respect of the petitioner's selection and appointment was rightly turned down by respondent no. 3 - Collector, Pune. He would submit that the impugned judgment and order is perverse, arbitrary and capricious and is liable to be quashed and reversed.

15. Learned AGP would refer to the affidavit in reply filed by the District Collector, Pune for and on behalf of respondents no. 1 to 3. He would submit that it was incumbent that as per clause no. 3 of the advertisement read with government resolutions dated 26-08-2005 and 27-10-2009 that a candidate should have experience to work in the Government department for a period of three years and the experience was required to be registered with the office of the respondent no. 5 in order to get the benefit of the quota reserved for part time employees.

16. He would further submit that for the candidates who could not remain present on 17-01-2020 and 18-01-2020 for document verification, were again called for the purpose of document verification on 01-02-2020. While publishing the provisional select list on 19-01-2020, the petitioner's name was shown to be registered with respondent no. 4. Even his work experience was registered on the website of respondent no. 4 having registration no. 523C5943315 dated 07-03-2019. Once it was so registered on the website of respondent no. 4, the petitioner was supposed to put up a flag on the option PTE (Part Time Employee). Since that facility was closed, the District Selection Committee verified the fact of petitioner's registration of work experience. Even the fact was confirmed from the Tahsildar, Parali, who by response dated 30-06-2020 confirmed that work experience of the petitioner was registered on the website

“rojgar.mahaswayam.gov.in” which is placed with the affidavit in reply at **Exhibit R-3**. The petitioner’s work experience was thus uploaded on the portal. As per government resolution dated 07-03-2003, a format has been prescribed for issuance of certificate of experience by Tahsildar enabling the candidates to derive the benefit of being part time employees. Due verification of the original certificate of work experience issued by the Tahsildar, Parali, to the petitioner dated 03-03-2020 and the registration slip dated 07-03-2019 about his registration with respondent no. 4 as per the government resolution dated 13-06-2018 was undertaken. Since the petitioner as also respondent no. 5 scored equal marks, the petitioner being elder to respondent no.5, was selected and has been duly appointed. There was no illegality in his appointment on account of his being ineligible.

17. Learned AGP would further submit that even otherwise, the petitioner has been selected and appointed by a duly constituted selection committee as per Government resolution dated 13-06-2018. The list is valid for one year. The select list wherein even the name of respondent no. 5 was appearing in the wait list, was valid up to 25-02-2019 and the petitioner has been working on the post of Talathi at village Shilimb, Taluka – Bhore, since June 2020.

18. Learned advocate Mr. Deshpande for respondent no. 5 would support the order under challenge. He would submit that the

advertisement in respect of which the dispute arises, was published by respondent no. 3 online on 28-02-2019. The cut-off date for eligible candidates under various reservation categories, for possessing the documents and the eligibility, was 28-02-2019. It was expressly declared in paragraph no. 3 of the advertisement that the candidates who were not eligible / qualified for the post as on 28-02-2019 should not apply. It was also expressly mentioned in the advertisement that for the part time reservation candidates, registration of such candidates in District Skill Development, Employment and Entrepreneurship Guidance Center was mandatory. The petitioner was not so registered with respondent no. 4 on the cut-off date of 28-02-2023. Though he was registered as a job seeker, he was not registered as a graduate part time employee. It was petitioner's stand that he could not do so, though he was trying to do it. It was a mandatory requirement pursuant to the advertisement and the government resolutions dated 26-08-2005 and 27-09-2009 and the fact was specifically admitted by the petitioner in his affidavit in reply filed before the Tribunal. He would submit that in spite of being aware that the petitioner was not duly registered with respondent no. 4 as was required by the aforementioned stipulation in the advertisement, read with two government resolutions, respondent no. 3 turned a blind eye and allowed petitioner's candidature illegally and is now trying to justify such illegalities by improvising the stand in the affidavit in reply. When admittedly, irrespective of the reasons, the

petitioner's experience was not registered with respondent no. 4 as a part time employee on the date of the advertisement dated 07-03-2019, he was not eligible, even if he was otherwise a part time employee. He would thus submit that in order to derive the benefit of reservation being a part time employee having three year's experience, no independent enquiry into such experience was permissible, when the advertisement and the aforementioned two government resolutions required that such experience ought to be registered with respondent no. 4. He would, therefore, submit that it is clearly a matter of discrimination, violative of Article 14 of the Constitution of India.

19. Mr. Deshpande would further submit that respondent no. 4 in his affidavit in reply filed before the Tribunal specifically admitted the fact that the petitioner was registered with his office as a job seeker but was not registered as a part time candidate. There was no record of any such affidavit being filed by him in his office and thus in the absence of such registration as a part time employee, even during his search, he could not find petitioner's name having been registered as a part time candidate on the website of respondent no. 4.

20. Mr. Deshpande would also submit that even while submitting his application to the post in the requisite format, the petitioner had expressly answered in negative, against the column wherein it was asked whether he was a part time employee. He would,

therefore, submit that when the petitioner while filing the online application for the post, expressly denied to be a part time employee, when he was not even having any experience as mentioned by himself as a part time employee, he was not eligible to claim any seat against reservation. Respondents no. 1 to 3 have tried to hush up everything by enabling the petitioner to obtain a certificate from Tahsildar and taking response from Tahsildar, Parali. This would not make him eligible to claim the post from the quota of part time employees when he was not having any such certificate of registration on the date of advertisement.

21. We have considered the rival submissions and perused the papers.

22. Suffice for the purpose, at the outset to observe that there cannot be any confusion so far as the clause of the advertisement expressly requiring that candidates claiming any kind of reservation should possess the requisite documents to substantiate their claims on the date of the advertisement. The eligibility of the candidates was to be considered as on the date of the advertisement. Even if the objection of respondent no. 5 as regards document verification having taken place in respect of the petitioner on some later date, being not sustainable, since the date was extended to enable the candidates who could not remain present on 17-01-2020 and 18-01-2020, the fact

remains that the petitioner was not eligible to claim any reservation against quota reserved for part time employees on the date of advertisement, which fact even stands confirmed in the affidavit in reply filed by respondent no. 4 herein. Assuming for the sake of arguments that he was factually a part time employee, since admittedly, he was not so registered for having experience, in the office of respondent no. 4, any subsequent confirmation by Tahsildar of the fact of his being a part time employee, in our considered view, would be inconsequential.

23. To repeat, when the advertisement expressly required eligibility to be considered on the date of the advertisement, and when the graduate part time employees claiming seat in the horizontal reservation were expressly declared to be so eligible, by government resolutions dated 26-06-2005 and 17-10-2009, coupled with the fact that even while filing his application online, the petitioner had expressly declared that he was not a part time employee against the specific clause, it being a selection process which ought to take place strictly in accordance with the clauses from the advertisement, the stand of respondents no. 1 to 3 in the affidavit in reply to justify petitioner's appointment on the basis of some evidence gathered at a later point of time, post his selection, would be inconsequential. In other words, whether the petitioner was in fact a graduate part time employee, is not

the only fact which would be determinative of his right to claim reservation under that category. Coupled with that he ought to have complied with the stipulations of the advertisement of requirement of registration of such experience with the office of respondent no. 4 which admittedly was not so registered, as has been the latter's stand in the affidavit in reply filed before the Tribunal.

24. We, therefore, find no perversity or arbitrariness in the conclusion drawn by the Tribunal in the impugned judgment and order to the effect that the petitioner while filling the online application, had expressly denied to be a part time employee by answering 'No' against the specific clause. He was not registered having requisite experience as a part time employee with the office of respondent no. 4 as per the stipulations in the advertisement as was mandated by the advertisement and as was required by the government resolutions dated 26-06-2005 and 17-10-2009.

25. Even if the observations of the Tribunal holding that no verification of the petitioner's experience certificate was done with the concerned office of Tahsildar, is factually incorrect, the fact remains that no such verification was solicited from the office of respondent no. 4 by District Selection Committee and even affidavit in reply of respondent no. 3 – District Collector, Pune does not specifically states about the registration of experience was verified from the office of respondent no. 4.

26. So far as the stand of the respondents no. 1 to 3, regarding the petitioner having already been appointed and has been serving and the life of the select / wait list was only up to 25-02-2019, in our considered view, that cannot be an impediment for the Tribunal, to cause interference in the petitioner's appointment and directing respondent no. 5 to be appointed, once the petitioner has been found to be not eligible for the post.

27. In the circumstances, we find no merit in the petition.

28. Writ petition is dismissed.

29. Rule is discharged.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

30. After pronouncement of the judgment, the learned advocate for the petitioner submits that the petitioner has been protected by virtue of interim relief and it may be extended for a reasonable time for him to approach the Hon'ble Supreme Court.

31. Considering the nature of the dispute, coupled with the fact that interim relief is in operation till date, it is extended for a period of four weeks.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/