

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12859 OF 2023

Jyoti Sandip Gaikwad

Age :- 30 Years, Occ.:- Service,

R/o Raigaon, Tal.:- Jawali,

Dist.:- Satara – 415 020

...Petitioner

Versus

1. Maharashtra State Road Transport
Corporation, MSRTC Central Office
Dr. Anandrao Nair Marg Mumbai Central,
Mumbai

2. The State of Maharashtra
Through the Secretary, Ministry of
Transport Mantralaya Mumbai - 32

...Respondents

Ms. Priyanka Deshpande a/w Ms. Suvarna Yadav, Ms. Prachiti
Deshpande, Advocate for the Petitioner.

Mr. Nitesh Bhutekar, Advocate for Respondent No.1.

Mr. N.K. Rajpurohit, AGP for Respondent No.2/State.

CORAM : RAVINDRA V. GHUGE

&

ASHWIN D. BHOBE, JJ.

DATE : 13th DECEMBER, 2024

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.) :-

1. **Rule.** Rule made returnable forthwith and heard finally
by the consent of the parties.

2. The Petitioner has put forth prayer clause (a), as under :-

“(a) That, this Hon’ble Court be pleased to issue writ of mandamus or any other appropriate writ, direction or order under Article 226 of the constitution of India and be pleased to quash and set aside the impugned decision dated 15.07.2019 issued by Respondent No. 1.”

3. Though, we have considered the strenuous submissions of the learned Advocates for the respective sides and especially the vehement objections of the learned Advocate representing the MSRTC, on the basis of the Affidavit-in-reply dated 21th August, 2023 filed through Shri. Ajit Gaikwad, General Manager MSRTC, we find that we would be enlarging the size of this judgment by reproducing their contentions, keeping in view that in identical set of circumstances, this Court [Dipankar Datta, CJ, (as his Lordship then was) and M.S. Karnik, J.] delivered a judgment dated 7th June, 2022 in Writ Petition No.1184 of 2021 (***Suhas Sudamrao Chaure vs. Managing Director, MSRTC And Anr.***)

4. This Court has dealt with the factum of the Advertisement No. 1/2018, which was at issue in ***Suhas Chaure***

(supra), as well as in the case of before us. The MSRTC had cancelled the advertisement. It would be apposite to reproduce paragraph Nos. 13 to 17 from the judgment in ***Suhas Chaure*** (supra), hereunder :-

“13. Thus, the petitioner is held ineligible only on the ground that he acquired the working experience of 10 years prior to acquisition of the basic qualifications which in this case is post graduate degree or diploma in business management. For this purpose, MSRTC relied upon the directions given by the then Chairman of MSRTC to consider experience, post educational qualification only.

14. The question is whether it is open for the MSRTC to consider the petitioner's eligibility as per the directions of the Chairman after completion of the selection process and that too when the 10 years experience, post acquisition of the basic qualification is not in the contemplation of the advertisement. It is material to note that there is no rule or circular placed for our consideration indicating that experience post acquisition of the basic educational qualification is the prerequisite for appointment as a Divisional Controller. No doubt, in a given case, the MSRTC is empowered to cancel or change the said advertisement. The said power is not open for an arbitrary exercise. At this juncture, we may refer to the decision of the Supreme Court relied by learned advocate for the petitioner reported in 1995 SUPP (3) Supreme Court Cases 332 [Subhash, S/o Shriram Dhonde Vs. State of Maharashtra and anr.], which in our view supports the petitioner's case. We reproduce the entire decision which reads thus :

"1. Leave granted. Heard parties.

2. The Tribunal has dismissed the appellant's

application only on the ground that the appellant had acquired the working experience of one year prior to acquisition of the basic qualifications which in this case is diploma in Automobile Engineering. For this purpose, the Tribunal relied upon the circular issued by the Government. The rules, namely, the Motor Vehicles Department (Recruitment) Rules, 1991 framed under Article 309 of the Constitution show that a mere possession of the working experience of at least one year in a reputed Automobile Workshop as mentioned under Rule 3(e) is enough. The rule does not make any difference between acquisition of such experience prior to or after the acquisition of the basic qualification. What is further, the record shows that even after the acquisition of the basic qualification as mentioned in Rule 3(c), the appellant has acquired the additional experience of one year in a reputed Automobile Workshop as required even by the said circular. The Tribunal has committed an error in relying upon the circular which cannot replace the rules framed under Article 309 of the Constitution. We are, therefore, of the view that the Tribunal's decision is incorrect. Since the appellant satisfies the qualifications required by the rules, the decision of the Tribunal has to be set aside. We accordingly set aside the impugned decision of the Tribunal and direct the respondent to consider the appellant for appointment, if otherwise he satisfies the requisite qualifications including the marks obtained in the written test and the interview already held. The appeal is allowed with no order as to costs."

15. We also are in agreement with the learned advocate for the petitioner, when he submits that the decision of the co-ordinate Bench of this Court at Aurangabad dated February 27, 2020 in Writ

Petition No. 5127 of 2019 [Sonali Sahadeo Avhad Vs. The State of Maharashtra and anr.] supports his case. The relevant portion being paragraph nos. 5 and 6 are reproduced which reads thus:

"5. Reading the said qualification and the experience clauses of the advertisement, the advertisement does not specify that the experience possessed by the candidate has to be acquired after getting the educational qualification. The same is silent.

6. In case, the advertisement prescribed that the experience should be after the period the candidate acquires the qualification, then the contentions of the respondents certainly would be entertained. However, the advertisement is silent in respect of the same. The petitioner has produced on record the certificate issued by the transport company to justify that the petitioner has the necessary experience in the traffic department from 11.02.2015 to 16.06.2016. How far the certificate would be relevant is for the respondent to consider. Further, the respondent could not have rejected the claim of the petitioner only on the ground that the experience of the petitioner is prior to qualification, more particularly, in absence of said condition in the advertisement."

16. Drawing support from the decisions relied above and after giving our anxious consideration to the relevant facts and rival contentions, we are of the considered opinion that the petitioner having satisfied the requisite qualifications prescribed in the advertisement, reliance on the directions of the Chairman of MSRTC after the selection process had reached such an advanced stage, while holding the petitioner ineligible, is unjustified and arbitrary. The advertisement never postulated the requirement of acquisition of 10 years experience post acquisition

of basic educational qualification. Despite the prescription in the advertisement authorising the competent authority to cancel the advertisement, the exercise of such power cannot be countenanced in a situation where the basic premise of MSRTC declaring the petitioner ineligible itself is unjustified and erroneous. We have no hesitation in observing that once the very reason on which the action of MSRTC to cancel the advertisement is founded on an irrational exercise of power, the petitioner ought not to be deprived of the reliefs claimed in this petition.

17. The writ petition is allowed with no order as to costs. If the petitioner is otherwise eligible, he shall be appointed within three months.”

5. Despite the vehement opposition of the MSRTC, we find from the records that the Petitioner was clearly eligible to be appointed as a Divisional Controller since he satisfied the criteria that was published in Advertisement No. 1/2018. The learned Advocate for the MSRTC, on the basis of record, is unable to point out as to which is the criteria which was lacking in the Petitioner. As has been held in ***Suhas Chaure*** (supra), once a candidate satisfies the pre-requisites set out in the advertisement, subsequently, the prospective employer or any superior authority of the establishment cannot declare the candidate as being under-qualified or ineligible.

6. The Advertisement No. 1/2018, which was cancelled by the MSRTC, has been interfered with by this Court vide the

judgment delivered in ***Suhas Chaure*** (supra). The MSRTC has finally directed MSRTC to consider ***Suhas Chaure***, if otherwise eligible, to be appointed as Divisional Controller within a period of three months. In the instant case, the record of the MSRTC cannot lead to a conclusion that the present Petitioner was ineligible. As such, keeping in view that there are 7 posts of Divisional Controller vacant, we deem it appropriate to follow the same course and grant the same relief as this Court has granted to ***Suhas Chaure***.

7. In view of the above, **this Writ Petition is allowed**. The MSRTC would appoint the Petitioner as a Divisional Controller within a period of three months from today.

8. Rule is made absolute in the above terms.

9. The learned Advocate for the Petitioner submits that, since the Petitioner spent more than a year in litigation, the training to be imparted to the Petitioner, may be waived. The learned Advocate for the Corporation submits that such a commitment cannot be given by the Corporation, in as much as, this Court should not issue a *Writ of Mandamus*. The submissions of the learned Advocate for the Corporation are well placed. We grant liberty to

the Petitioner to make a representation, if desired and the Corporation may consider the same on its own merits. We make it clear that the rejection of the representation will not create a fresh cause of action, since it is in the nature of a request and not a vested right to seek waiver of training.

(ASHWIN D. BHOBE, J.) (RAVINDRA V. GHUGE, J.)