

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

PRACHI
PRANESH
NANDIWADEKAR

Digitally signed by
PRACHI
PRANESH
NANDIWADEKAR
Date: 2024.04.08
10:37:55 +0530

WRIT PETITION NO.3852 OF 2023

Sharad Devidas Shelke
Age: 33 years, Occu. Student,
R/at C/o. (in the house of)
Vijaykumar Baburao Kayande,
Flat No.204, Shri Sai Park,
Near Suyog Hospital, Nehru Nagar,
Pimpri-Pune,
Pune 411018.

.. Petitioner

Versus

1. The State of Maharashtra,
Through the Director,
Directorate of Account and Treasuries
Maharashtra State, 179/17, Adjustment Chamber,
Bhosale Marge, NPT Colaba, Mumbai 400 021.
2. The Joint Director
Directorate Local Funds Accounts Audit,
Pune Division, Room No.34,
Lekha Kosh Bhawan Treasury,
Pune 411 001.
3. Ms.Archana Bansi Ghadge
R/o. Plot No.33, Siddhi Vinayak Apartment
Mhasaranhas Colony, Talegaon-Dabhade,
Mawal, Pune 410 506.

.. Respondents

Mr.Sandeep Dere a/w Ms.Arati Patil-Dere & Ms.Sonali Pawar for the
petitioner.

Mr.N.C. Walimbe, Addl. G.P. a/w Mr.S.P. Shetye, AGP for respondent
nos.1 & 2-State.

Mr.S.G. Kudle for respondent no.3.

**CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ.**

DATE : 2nd April 2024

Judgment (Per Jitendra Jain, J.) :-

. Rule. Mr.Walimbe, learned Additional Government Pleader waives service for respondent nos.1 & 2-State. Mr.Kudle, learned counsel waives service for respondent no.3. By consent of the parties, the petition is heard finally.

2. By this petition under Article 226 and 227 of the Constitution of India, the petitioner seeks to challenge an order passed by the Maharashtra Administrative Tribunal, Mumbai Bench ('Tribunal') dated 21st February 2023 whereby Original Application No.980 of 2019 (OA) filed by the petitioner came be dismissed.

Brief facts are as under:-

3. On 8th January 2019, respondent no.2 issued an advertisement for the post of Junior Auditor. As per the said advertisement, the candidate should had prescribed qualification for being eligible to make application for the said post on the cut-off date which is 9th January 2019. The qualification prescribed for the said post as per the advertisement is as under:-

- “i) The Bachelor Degree of Commerce Faculty with 55% marks; or*
- ii) The Bachelor Degree of Arts with statistic, Mathematics or economics as one of the main subject with 55% marks; or*
- iii) The Degree in Science with statistics or Mathematics as a main subject with 55% of marks; or*
- iv) The passing of final examination for the course of Chartered Account conducted by Indian Institute of Chartered Accountants of India; or*
- v) The Degree of Business Administration; or*
- vi) Any Degree along with passing of Intermediate Examination of Charter Accountant; or*
- vii) The Engineering Degree with specialized in Computer Technology or Computer Science or Information Technology.*

(The Degree means the Degree obtained from the University having U.G.C. sanction)”

4. As per paragraph 10.5 of the aforesaid advertisement, it is informed to the candidates that if at any stage, the information provided in the online form is found to be incorrect then the candidate would not be considered for the said post and necessary action would be taken against the said candidate. Further, as per paragraph 10.11, if after the final merit list any discrepancy is found in the documents specified in the online form then the candidates would be disqualified. Furthermore, it

states that calling for the documents for verification would not amount to vesting of any rights in the candidate for employment and further it provides that if any information is found to be wrong or erroneous by mistake or on account of any reason then the candidate would not be considered for the said post. In paragraph 13 of the said advertisement, the instructions to be followed by the candidate while filling the online form has been provided. In the said instructions, it is provided that the candidate would have to provide all the details of his educational qualifications. It further provides that the candidate should fill up the form himself.

5. The petitioner uploaded his application form on 12th January 2019 and appeared for the written exam. The petitioner in his online application form stated his educational qualification as BSc. The petitioner cleared the written exam with 134 marks and was placed at Serial No.11 of the merit list under the OBC-PA category.

6. On 29th July 2019, the petitioner was called upon to submit his documents for verification in support of his online application which the petitioner complied with. Thereafter, on 8th August 2019, the petitioner was informed by respondent nos.1 and 2 that on verification of the documents, he has been found to be ineligible since the petitioner

in his BSc course has not taken Mathematics or Statistics as his main subject.

7. Being aggrieved by the aforesaid communication dated 8th August 2019, the petitioner approached the Tribunal by filing an Original Application which was numbered as 980 of 2019. In the said application, the petitioner for the first time stated that it was by mistake that he has mentioned BSc qualification although he was not only the BSc graduate but also BA in Economics graduate with Mathematics as his main subject. Meanwhile the respondent no.3 was considered for the post of Junior Auditor-OBC category and she continues to work on the said post till today. The said candidate has also filed an Original Application No.24 of 2020 before the Tribunal.

8. On 21st February 2023, the Tribunal dismissed the said Original Application No.980 of 2019 along with the Original Application No.24 of 2020. The Tribunal rejected the contention of the petitioner and observed that the error in mentioning the qualification although inadvertently cannot be condoned and, therefore, the Original Application No.980 of 2019 came to be dismissed and a direction was given to consider respondent no.3 herein for the said post. It is on this backdrop that the petitioner is before us today.

Submission of the petitioner:-

9. The petitioner submitted that at the time of the said advertisement, his documents were at a village in Buldhana District and he was stationed at Pune which is why the online application form was uploaded by the operator of cyber cafe at Chikhli, District Buldhana, who happens to be his relative and, therefore, it is his contention that the mistake/error was committed by the said operator of cyber cafe. The petitioner submits that by not displaying his Economics qualification with Mathematics as the main subject and erroneously disclosing BSc qualification, although he is a qualified graduate under both the courses, he does not stand to gain any undue benefit since his Economics qualification was satisfying the eligibility requirement provided in the advertisement. The petitioner submits that there has been genuine mistake on his part in giving information in online form. The petitioner further submits that he has scored more marks than respondent no.3 and, therefore, he is the rightful candidate to be considered for the post of junior auditor. The petitioner submitted that the decisions relied upon by him before the Tribunal have not been considered in the impugned order. The petitioner further relied upon various decisions and prayed that the impugned order of the Tribunal be reversed and he be considered for the said post.

Submission of respondent nos.1 and 2:-

10. Per contra, respondent nos.1 and 2 submitted that as per the terms and conditions prescribed in the advertisement, if at any stage, the information provided in the online application form is found to be incorrect on account of even one error then the candidate stands disqualified. The respondent nos.1 and 2 further submitted that since in the instant case as per the online application form, the qualification was mentioned as BSc and as per the advertisement, one of the qualification should have been BSc with Mathematics as the main subject and since on verification of the documents submitted by the petitioner, the petitioner was possessing BSc in Agriculture and not Mathematics as main subject, the petitioner was rightly disqualified from being considered. The respondent nos.1 and 2 further submitted that the so called error committed by the petitioner is the material error which cannot be condoned. The respondent submitted that in the online application form, the petitioner has not mentioned his qualification as graduate in Economics with Mathematics but same has been stated for the first time before the Tribunal and such a course of action cannot be permitted. The respondent nos.1 and 2, therefore, submitted that this Court should not interfere in the impugned order of the Tribunal.

Submission of respondent no.3:-

11. The respondent no.3 submitted that assuming there is an error, the petitioner had ample amount of time to rectify the same or at least bring it to the notice of respondent nos.1 and 2 the correct qualification as per the advertisement. The respondent no.3 submitted that the petitioner has purposely suppressed the fact and, therefore, as per the terms and conditions of the advertisement, the petitioner was rightly disqualified from being considered for the post of Junior Auditor. The respondent no.3 further supported the submissions made by respondent nos.1 and 2 and prayed for dismissal of the present petition.

12. We have heard the learned counsel for the petitioner and respondents and with their assistance have perused the documents annexed to the petition and affidavit-in-reply filed by the parties.

Analysis & Conclusions : -

13. As per the advertisement dated 8th January 2019 for the post of Junior Auditor, the qualification required for the said post was B.Com with 55% marks, B.A. with Mathematics and Statistics or Economics with 55% marks, BSc with Mathematics or Statistics with 55% marks, CA, ICWA, MBA, Inter CA or Engineering Degree. The petitioner in his online application form stated his qualification as BSc. However, at the time of verification of the documents after the written

examination, respondent nos.1 and 2 found that the petitioner's BSc degree is not with Mathematics/Statistics as main subject but it was in Agriculture. Therefore, the petitioner was found to be disqualified. As per the terms and conditions of the advertisement, it is clearly stated that if at any stage, the information provided in the online application form is found to be incorrect even if it is on account of mistake/error then candidate would stand disqualified from the zone of consideration. The respondents, therefore, are justified in contending that since the information provided in the online application form was not found to be correct as per the eligibility on verification of the documents, the petitioner was rightly disqualified.

14. The contention of the petitioner that the online application form was filled up by his relative at Buldhana, who was also operating the cyber cafe and the error occurred at his relative's end cannot be accepted. It is the petitioner who has to bear the brunt of the mistake/error committed by his relative in uploading the information. As per the advertisement and the instructions therein, it is made very clear that the candidate applying for the post is required to give correct information as per instructions of the advertisement and if such a candidate delegates the work of uploading the information to someone else, he must know that he does so at his own peril. The candidate cannot take shelter on

account of an error committed by such third person, since such third person is only acting as an agent for and on behalf of the candidate. It is the ultimate responsibility of the candidate that the correct information is uploaded in online application. Therefore, the reason given for the error by the petitioner in support of his prayer cannot be considered as a valid reason for seeking relief.

15. The educational qualification is prescribed as per the requirement of the post for which the advertisement is issued and the said educational qualification is a material information on the basis of which the applications are further processed. In the instant case, respondent nos.1 and 2 prescribed qualification of BA/BSc with Mathematics/Statistics as the main subject for the post of Junior Auditor. Therefore, in our view, the educational qualification is a “material information” for being considered further in the recruitment process. Any error or mistake in such “material requirement” cannot be ignored or taken lightly. The petitioner, in the instant case, has specified his qualification as BSc but on verification of the documents, it was found that the petitioner has not qualified as BSc with Mathematics/Statistics but in Agriculture as the main subject and, therefore, the respondent nos.1 and 2 were rightly justified in disqualifying the petitioner for non-compliance of basic eligibility criterias.

16. It is also important to note that the petitioner ought to have rectified the said mistake on realizing the same. It is inconceivable that the candidate who is applying for the post of Junior Auditor was not aware about the educational qualification which in the instant case was Bsc or BA or Economics with Mathematics/Statistics as main subject. The petitioner had a copy of the online application form and the advertisement and also had his documents of BSc degree in which he cleared in Agriculture as main subject. Therefore, the petitioner could have at least informed the respondent nos.1 and 2 or rectify the error at the time of verification of the documents since the petitioner was otherwise qualified on account of being an Economic Graduate with Mathematics/Statistics as main subject. However, the petitioner did not attempt to do so, but for the first time before the Tribunal had raised this plea. If that be so, we do not find any fault on the part of respondent nos.1 and 2 in disqualifying the petitioner, since the said information of the petitioner holding Economics Degree with Mathematics/Statistics as main subject was never communicated to the respondent nos.1 and 2. Therefore, on this count also, we do not find any fault in the action of respondent nos.1 and 2.

17. The petitioner was not debarred from mentioning in the online application form his additional qualification of Bachelor in

Economics. However, for the reasons best known to the petitioner, same was not uploaded at the relevant time for filling the online application form and, therefore, the petitioner cannot be said to be aggrieved by the action of the respondent nos.1 and 2 who disqualified the petitioner on the basis of information uploaded and documents submitted at verification stage.

18. It is also important to note that respondent no.3 has been already appointed to the said post which was the solitary post reserved under OBC category. The advertisement was in the year 2019 and respondent no.3 has already put in more than 1½ years of service on the said post. It is also not the contention of the petitioner that respondent no.3 should be displaced and rightly so in the light of the decision of the Supreme Court in the case *Vikas Pratap Singh & Ors. Vs. State of Chhattisgarh & Ors.*¹. Furthermore, this Court under Article 226 of the Constitution of India cannot direct respondent nos.1 and 2 to create an extra post for the petitioner. Therefore even on this count, the petitioner cannot be granted any relief.

19. The advertisement was issued on 9th January 2019, the petitioner uploaded his application on 12th January 2019 and the last date for uploading was 29th January 2019. On 29th July 2019, the

1 (2013) 14 SCC 494

petitioner was called for verification of the documents. Even at this stage, the petitioner did not bring to the notice of respondent nos.1 & 2 that he has committed an error by providing wrong information when he knew that B.Sc. is the subject in the online application but since he was also a graduate in Economics with Mathematics/Statistic as a main subject, he could be considered for the post of Junior Auditor. It is only after the rejection vide communication dated 8th August 2019 and for the first time, before the Tribunal, the petitioner has made his claim on the basis of his graduation in Economics. In our view, on these facts, certainly the petitioner's conduct cannot be said to be bonafide. The petitioner is a double graduate candidate and therefore, cannot be expected to be so negligent when it comes to making an application for the job. He should have been more diligent.

20. We can understand the fate of the petitioner as he has the requisite qualification yet would suffer on account of the error on his part in filling the online application form. However, accepting the plea of the petitioner would lay down a wrong precedent which would only lead to an administrative confusion and chaos. The whole selection process would have to be reversed after a period of 3 to 4 years.

21. In our view, the administrative difficulties should be

balanced with the adverse impact befalling the candidate. It is not the case of the petitioner that there was any vagueness or the terms and conditions of the advertisement were unclear. In these circumstances, in our view, the administrative difficulties must be given primacy, for otherwise the selection process would become disorderly and crumble. The acceptance of the petitioner's prayer would result in subjecting the respondent to reopen the merit list and the entire selection process for the admitted fault of the petitioner himself; which we are not inclined to allow. The petitioner was negligent in uploading the information relating to his educational qualification and for his negligence, the respondent nos.1 and 2 cannot be directed to deviate from the advertisement inviting applications or to reopen the selection process. Any such direction would be against the interest of respondent no.3.

22. The issue in the present petition is not whether the petitioner has gained any advantage by not giving information with respect to Economics degree with Mathematics/Statistics as its main subject but the issue is whether respondent nos.1 and 2 can be said to have acted arbitrarily or unreasonably if they have taken a decision of disqualifying the petitioner on the basis of the information uploaded online and which on verification of the document would not fulfill the required educational qualification. In our view, the petitioner ought to

have been careful moreso, when he is applying for post of a job of a Junior Auditor and for which the educational qualification required is vital and material information. The petitioner ought not to have taken the process of uploading relevant information in such an inattentive manner when the vacancy under the OBC Category was only for one post and there would be many candidates applying for the same. The acceptance of the petitioner's prayer would amount to giving an opportunity to the candidates who are negligent in uploading the information which is material information for the post for which the application is made and such cannot be permitted by this Court.

23. In matters of public affairs, like the process of recruitment to posts under the State, there has to be an element of certainty. The process of recruitment must proceed on the foundation of firm and reliable data. A public recruitment cannot be permitted to be a shaky affair with shifting positions of aspirants about their candidature. If this were to be permitted, it would introduce uncertainties in the recruitment process leading to its embarrassment. It has also to be borne in mind that where a number of posts have to be filled up, expeditious conclusion of the recruitment process requires an unhassled and unhindered course to be run. It is bearing, thus, objectives all legitimate, in mind that the candidates have been held bound down by the entries

they make in the application forms. This cannot be permitted to be set at naught by falling back upon the rather out of place consideration for 'human error'.

24. We now propose to deal with the decisions relied upon by the petitioner.

25. The first decision relied upon by the petitioner is of the Supreme Court in the case of *Dolly Chhanda vs. Chairman, JEE & Ors*². In this case, the appellant before the Supreme Court possessed the requisite qualification on the date of application and the issue was whether relaxation can be given in the matter of submission of proof of possession of said qualification. It is in this context that the Supreme Court observed that the submission of the said proof will not be proper to apply any rigid principle as it pertains in the domain of procedure. The Supreme Court directed the State Government to create an extra seat for the appellant. In our view, the facts of the present petitioner are totally different as narrated by us above, and therefore, the decision of the Supreme Court is not applicable. Furthermore, the Supreme Court in its exercise under Article 142 of the Constitution of India directed the State to create one extra seat for the appellant. This Court is not

2 (2005) 9 SCC 779

empowered to give any such direction. Therefore, the decision relied upon in the case of *Dolly Chhanda (supra)* is not applicable to the petitioner.

26. The next decision relied upon by the Petitioner is the decision of this Court in the case of *Maharashtra Public Service Commission vs. Kisan Narshi Tadvr*³. In this case, the candidate had typed 'No' against Maharashtra Domicile Certificate, and therefore, he was held to be ineligible. On an application made by the candidate to the Tribunal, the Tribunal permitted the candidate to fill up the form with correct information *qua* domicile and further directed the candidate to appear for the main examination. The MPSC challenged the said order. The Court observed that the MPSC did not dispute that the candidate could have corrected his profile on 1st June 2022 and infact, the candidate had updated the correct information on 1st June 2022. The candidate had given the domicile certificate number and stated that he is in possession of Maharashtra Domicile Certificate and the date of issuing such certificate was also mentioned. It is only in the column of availability of domicile certificate that the candidate typed 'No'. The Co-ordinate Bench of this Court observed that when the candidate is allowed to correct the mistake by submitting fresh application upto 26th

3 Writ Petition No.445 of 2023 dtd. 16th January 2023

June 2022, there is no reason why the fresh profile given on 1st June 2022 could not be accepted. It was on these facts that the Co-ordinate Bench in exercise its discretion refused to interfere in the Tribunal's order. In the instant case before us, the petitioner never disclosed that he is making application on the basis of his Economics Graduation with Mathematics/Statistics qualification. It is for the first time pleaded before the Tribunal that he should be considered on the basis of the said qualification. The petitioner in the application stated that he was qualified as a B.Sc. but even that qualification was found not to be with Mathematics as main subject, but with Agriculture. Therefore, the facts of the petitioner and facts in the case of *Kisan Narshi Tadvī (supra)* are totally different and therefore the said decision cannot be made applicable to the case of the petitioner.

27. The next decision relied upon by the petitioner is the decision of Aurangabad Bench of this Court in the case of *Vinod Kadubal Rathod & Anr. vs. Maharashtra State Electricity Generation Co. Ltd.*⁴. In this case, the petitioner applied for the post of Technician and claimed the benefit of the reservation from sports category. The candidates relied upon the sports certificate in Trampoline and applied for the post under Running category. They annexed the certificate in Running category

4 Writ Petition No.981 of 2018

along with application form. On verification, the sports authority communicated that the said certificates in Running category are not as per the Government Resolution dated 1st July 2016 and therefore, the same cannot be considered for reservation. The petitioner contended that they were not aware that national certificates in Running category are not in consonance with Government Resolution dated 1st July 2016. It is on these facts that the Co-ordinate Bench directed the respondents therein to consider the application of the petitioner therein, if the vacancies were available and without going into technicalities. In the instant case before us, there was only one vacancy which has been filled up by appointment of respondent no.3 who has already completed more than one and a half to two years of service and there is no vacancy available. Furthermore, the error with which we are concerned is material and fundamental for being considered for the post of Junior Auditor which was not the case in ***Vinod Kadubal Rathod (supra)***. The Petitioner before us for the first time made a claim for being considered before the Tribunal relying upon his qualification of Economics. Therefore, in our view, for the reasons stated hereinabove, the facts of the petitioner's case and the facts in the case before the Aurangabad Bench are totally different and hence the said decision cannot take the case of the petitioner any further.

28. The next decision relied upon by the petitioner is again of Aurangabad Bench of the Bombay High Court in the case of ***Mrs. Patil Vijaya Milind vs. The State of Maharashtra & Ors***⁵. In the said case, the candidate applied for the post reserved for open female, but in clause 13 of the online form which prescribed information whether the candidate is eligible for horizontal reservation, the petitioner filled the information against the said clause as 'No'. The Coordinate Bench proceeded on a footing that this was an inadvertent mistake committed by the petitioner, and therefore, the application could not have been rejected and same was directed to be considered. In our view, in the present case, the petitioner had not disclosed that he was making an application on the basis of his graduation in Economics, but on the contrary he made an application on the basis of B.Sc. degree which too was in Agriculture and not in Mathematics/Statistics as one of the main subject. In our view, the facts of the petitioner, therefore cannot be said to be similar to that of the candidates before the Aurangabad Bench and therefore, the said decision cannot be applied to the petitioner's case.

29. The petitioner has also relied upon the Tribunal's decision which for the reasons mentioned above, we do not propose to deal with since the facts of the petitioner as stated above are totally different.

5 Writ Petition No.393 of 2016 dtd. 22nd January 2016

30. Now we propose to consider the decisions which the view taken by us above.

31. In the case *Pradeep Kumar vs. Union of India*⁶, the High Court of Delhi observed that no deviation from the terms and conditions of an advertisement and Rules for the recruitment for a public office can be permitted, as such deviation would result into gross injustice to the other candidates. The Court further observed that granting relief on the basis of inadvertent mistake may put the entire selection process in jeopardy and will make it an unending process. The Court further observed that the petitioner, despite clear warning, was negligent in uploading his self attested photocopy instead of his photo identity proof with the application, and therefore, the petitioner cannot claim any special equity merely because such mistake went unnoticed at the earlier stage of the recruitment process and was noticed only at the stage of document verification. In our view, this decision would support the case of the respondents moreso, when the facts of the petitioner are much worse than what was before the Delhi High Court.

32. In the case of *UPSC vs. Tarun Arora*⁷ a very similar issue with respect to qualification of a candidate arose before the Hon'ble

6 2022 SCC OnLine Del 239

7 2017 SCC Del 18844

Delhi High Court and the Court after referring to the terms and conditions of the advertisement which is *pari materia* to the advertisement with which we are concerned did not grant the relief to the candidate although the candidate held a post-graduate degree which was the requirement of the advertisement, but the same was not specified in the application form. In our view, this decision directly and squarely applies to the facts of the present petition and therefore, in our view, the respondents nos.1 and 2 were justified in disqualifying the petitioner.

33. In the case of *Kiran Kachhp vs. Union of India*⁸, the Jharkhand High Court observed that if an error is of a fundamental mistake which is subsequently noticed by the authorities during the document verification then no infirmity can be attributed on the part of the authorities in rejecting the candidature. In the instant case, on verification of the documents with the online information provided by the petitioner, the petitioner was found to be ineligible based on eligible qualification criteria required for the said post and therefore no fault can be found with the impugned action of the respondent nos.1 and 2.

34. In view of above, we do not find any fault in the Tribunal's order, so as to interfere under Article 226 of the Constitution of India.

8 2024 SCC OnLine JHAR 766

The Writ Petition is dismissed with no order as to costs.

35. Before parting, we may sound a word of caution as in today's world when everything is online, a candidate must be cautious in uploading the information. The authorities ought to consider making a provision in the system permitting rectification of mistakes prior to the last date of uploading the information. This would go a long way in reducing such situations.

JITENDRA JAIN, J.

A.S. CHANDURKAR, J.