



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6579 OF 2023

Avinash s/o Punjaram Salve
Age : 46 years, Occu: Service as
Senior Manager (Security),
Office of the Chief Engineer,
Bhusawal TPS, Deepnagar – 425307
R/o; Bhusawal TPS, Bhusawal
Dist. Jalgaon.

... PETITIONER

VERSUS

1. The Maharashtra State Power
Generation Company Limited,
through its Chairman and Managing Director,
Address : Prakash Gadh, Anant Kanhekar Road,
Bandra East, Mumbai – 400051.
2. The Executive Director (HR),
MAHAGENCO (Maharashtra State
Power Generation Company Limited.),
Address : Prakash Gadh Anant Kanhekar Road,
Bandra East, Mumbai – 400051.
3. Sandip s/o Ramkrushna Wankar
Age : 46 years, Occu: As Dy G.M. Security
Vidarbha Region, MAHAGENCO,
Office of Chief Engineer, Koradi Thermal
Power Station Koradi, Tq. Kamptee
Dist. Nagpur Pin - 441111

... RESPONDENTS

...

Advocate for petitioner : Mr. Ajinkya S. Reddy
Advocate for respondent Nos.1 and 3 : Mr. Yuvraj S. Choudhari

...

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

**Reserved on : 17.12.2024
Pronounced on : 10.01.2025**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. Learned
advocate Mr. Choudhari waives service for respondent Nos.1 and 3. At

the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner is seeking a relief in the nature of *quo warranto*, questioning eligibility of respondent No.3 who has been appointed on the post of Deputy General Manager (Security), pursuant to an Advertisement No.5/2022 dated 29.06.2022 of the respondent No.1 – the Maharashtra State Power Generation Company Limited (the Company). He is also seeking writ of mandamus directing respondent Nos.1 and 2 to appoint him on the post.

3. Learned advocate Mr. Reddy for the petitioner submitted that the advertisement sought to recruit, on contractual basis for a period of three years, a post of Deputy General Manager (Security) and one of the post was reserved for S.C. category to which the petitioner and respondent No.3 applied for and the latter has been selected contrary to the Rules and Regulations of the respondent – Company applicable to the post. He submitted that a recruitment to the post could be through three different categories of individuals viz. an ex-police Officer of the rank of Additional SP/DCP, an ex-serviceman of the rank of Subhedar Major and above and a departmental candidate having suitable qualification with requisite experience. He submitted that respondent No.3 who is not an employee of the respondent – Company was not eligible for being selected under any of these three categories and ought not to have been selected and appointed.

4. Mr. Reddy would further refer to the affidavit-in-rejoinder and submitted that by an administrative circular of the Company bearing No.400 of 23.01.2018, even the word 'Equivalent' from the pre – requisites regarding eligibility of various posts of the company has been expressly resolved to be excluded and the stand of respondent Nos.1 and 2 in their affidavit-in-reply that respondent No.3 was in the employment of Central Reserve Police Force (C.R.P.F.) and was eligible, by demonstrating similarity in the nature of the duties discharged by him as an Assistant Commandant in the C.R.P.F. with the post of an ex-officer of Indian Army, Navy and Air force, is contrary to their own circular.

5. Lastly, Mr. Reddy would submit that it is unbecoming of the respondent - Company and its Executive Director (HR) to contest the petition joining hands with respondent No.3 when the writ questions his eligibility.

6. Mr. Reddy would also submit that since the petitioner has been in the employment of the respondent–Company posted at Bhusawal, District Jalgaon and where from he was called for the interview and had raised objection about the eligibility of respondent No.3 from Bhusawal, this bench of the Bombay High Court at Aurangabad has the territorial jurisdiction to entertain the petition. He submits that constitutional jurisdiction of the Court could not have been excluded by any statute much less by a condition in the advertisement. Learned advocate for the petitioner would rely upon the following decisions :

- i. Prem Dutt Vs. Kendriya Vidhyalaya Sanghathan, New Delhi; 1998 LAB.I.C. 1676:: (1998) 2 LBLJ 231
- ii. Banashree Bharaddash Alias Banshree Bharadwaj Vs. State of Assam and Ors.; 2015 LAB.I.C.4259:: (2015) 5 GAU LR 56
- iii. Ranajit Kumar Meher Vs. State of Orissa and Ors.; (2017) 4 Supreme Court Cases 568
- iv. Ashish Kumar Vs. The State of Uttar Pradesh and Ors.; (2018) 1 S.C.R. 695
- v. Dr. (Major) Meeta Sahai Vs. State of Bihar and Ors.; (2019) 20 Supreme Court Cases 17
- vi. Maharashtra Chess Association Vs. Union of India and Ors.; (2020) 13 Supreme Court Cases 285
- vii. Mukul Kumar Tyagi Vs. State of Uttar Pradesh and Ors.; (2020) 4 Supreme Court Cases 86
- viii. Suman Devi and Ors. Vs. State of Uttarakhand and Ors.; (2021) 6 Supreme Court Cases 163
- ix. The Employees' State Insurance Corporation Vs. Union of India and Ors.; 2022 LiveLaw (SC) 78
- x. Krishna Rai (Dead) Thr. LRs and Ors. Vs. Banaras Hindu University Thr. Registrar 7 and Ors.; 2022 LiveLaw (SC) 553
- xi. Abhimeet Sinha and Ors. Vs. High Court of Judicature at Patna and Ors.; AIR Online 2024 SC 326

7. Learned advocate Mr. Choudhari, referring to joint affidavit-in-reply of the respondents submitted that this Court being a bench of the Bombay High Court at Aurangabad has no jurisdiction to entertain the petition since there is a specific Clause No.21 in the Advertisement enjoining the prospective candidates to the jurisdictional courts at Mumbai.

8. On merits Mr. Choudhari would submit that Clause (a) of the eligibility pre- requisites/criteria merely expressed that a candidate must be serving or ex-Police Officer of the rank of Deputy Superintendent of Police and since it did not qualify it with any rider, respondent No.3 who was serving as an Assistant Commandant in the Central Reserve Police

Force being in itself a police force, was eligible. He would also submit that under Section 16 (1) of the Central Reserve Police Force Act, 1949 a notification has been issued by the Government of India, Ministry of Human Affairs dated 27.07.1976 which confers powers under the Code of Criminal Procedure which are otherwise available only to a police officer, upon the officials of the C.R.P.F. and, therefore, no fault can be found with respondent Nos.1 and 2 in considering his candidature from that category of police officers.

9. Mr. Choudhari would further try to justify on the basis of the nature of duties performed by respondent No.3 in the C.R.P.F. which is a paramilitary force throughout India to combat insurgency in the North-East of the country, in Jammu and Kashmir and to counter Naxalite activities in several states, on the criteria of equivalence of pay scale of the post held by respondent No.3 with that of the post of Subedar Major in Indian Army, Navy and Air force.

10. Lastly, Mr. Choudhari would submit that petitioner having participated in the recruitment process without demur cannot question the selection process and the challenge put up by the petitioner is an after thought. He would rely upon the following decisions :

- i. **Madan Lal and Ors. Vs. State of J & K and Ors.;**
(1995) 3 Supreme Court Cases 486
- ii. **Anupal Singh and Ors. Vs. State of Uttar Pradesh Thr. Principal Secretary, Personnel Department and Ors.;**
(2020) 2 Supreme Court Cases 173
- iii. **The State of Uttar Pradesh Vs. Karunesh Kumar and Ors.;**
2022 LiveLaw (SC) 1035

11. We have considered the rival submission and perused the record.

12. At the outset, it is necessary to emphasize that there is no dispute on facts. The whole issue revolves around the eligibility criteria provided for the post in question.

13. Admittedly, the post in question could be filled in from three different sources, as mentioned in the advertisement, namely :

- “a) Serving or Ex-Police Officer of the rank of Dy. SP and above with good record at his credit;
OR*
- b) Serving or Ex-Service Officer from Indian Army/Navy/Air force having held the rank of Subedar Major and above or equivalent;
OR*
- c) A departmental candidate having suitable qualifications for the higher post. Should possess a minimum experience of 12 years (including Police/Military & other services) of which at least 8 years of service in the post of Dy. Manager (Security) and above.”*

14. Admittedly, respondent No.3 was not in the employment of the respondent – Company and was not eligible under category (c) which was applicable only to the candidates like the petitioner being departmental candidates.

15. As can be gathered from the stand being taken in the joint affidavit-in-reply filed by the respondents, they are justifying the decision to select respondent No.3 holding him to be eligible under Clause ‘a’ and Clause ‘b’ both.

16. A plain reading of Clause ‘a’ would demonstrate that as has been submitted by Mr. Choudhari it merely expects and makes eligible a

person who is either serving or is an ex-police Officer of the rank of Deputy Superintendent of Police and does not restrict it to any specific police force. At the first blush, the submission appears to be impressive. However, bearing in mind the fact that as distinguished from Clause 'b', clause 'a' does not expressly enables consideration of equivalence, when admittedly respondent No.3 was not holding any post styled as Additional SP/Deputy SP, the whole attempt of the respondents to demonstrate that he was holding a post equivalent to that of Deputy SP would not be permissible in law. It is trite that any recruitment has to be strictly in accordance with the Recruitment Rules and an advertisement. It is equally trite that even a condition in the advertisement which is not compatible with the Recruitment Rules has to be ignored (**Ranajit Kumar Meher and the Employees' State Insurance Corporation** (supra)).

17. It is further pertinent to note that the respondents have not put up a challenge to the stand of the petitioner in the affidavit-in-rejoinder, pointing Circular No.400 dated 23.01.2018 whereby, the respondent - company had expressly declared that in respect of every recruitment for any post, equivalence shall not be resorted to. Even for this reason, the respondents are estopped from demonstrating that respondent No.3 was holding and served on a post which was equivalent to the rank of Deputy SP.

18. Precisely for the same reason, once by Circular No.400 dated 23.01.2018, equivalence was never supposed to be resorted to, to

consider eligibility of a candidate for the recruitment in the respondent - company, the condition in the Advertisement No.5/2022 in case of category 'b' providing for the experience of serving in a post equivalent to Subedar Major from Indian Army/Navy/Air force, would be contrary to Circular No.400 and could not have been resorted to. Rather the respondents would now be estopped from justifying selection of Respondent No.3 by demonstrating the nature of duties performed by him as Assistant Commandant in the C.R.P.F. being at par with that of the post of Subedar Major from Indian Army/Navy/Air force.

19. The attempt of the respondents even to question the locus of the petitioner in questioning eligibility of respondent No.3 is fallacious. It is not a matter of putting up a challenge to any clause of any recruitment rule or the advertisement, in which cases the principle of estoppel would be applicable. The petitioner is purely questioning eligibility of respondent No.3 in the light of the relevant rules and Circular No.400 of the respondent - Company. Any selection contrary to the rules and regulation going to the root of eligibility of a candidate could be a matter which can be raised at any stage and even a stranger would have a *locus standi* to seek a writ of *quo warranto* in respect of a candidate selected in an employment to a public post.

20. So far as the territorial jurisdiction of this bench is concerned, though the advertisement contained Clause 21 and sought to restrict any dispute to the jurisdiction of the Courts in Mumbai, this Court

being a constitutional Court, exercising the powers under Article 226 of the Constitution of India, its jurisdiction cannot be treated as having been excluded by the term in the advertisement.

21. In light of above, respondent No.3 was not eligible to the post of Deputy General Manager (Security) with the respondent - Company and ought not to have been selected and consequently, is not entitled to continue to hold the post.

22. The writ petition is allowed. The selection and appointment of respondent No.3 by the respondent Nos.1 and 2 on the post of Deputy General Manager (Security) is quashed and set aside. The respondent Nos.1 and 2 shall consider candidature of the petitioner to the post independently. The decision shall be taken on its own merits, as expeditiously as possible and in any case within four weeks.

23. Rule is made absolute in above terms.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

habeeb