

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

WRIT PETITION NO. 19198 OF 2024

Pranali Prakash Palande

Adult, Indian Inhabitant, Age 50 years,
Currently serving as a Nirvah Bhattadharak
at Maharashtra State Electricity Board,
Residing at Palandewadi, At Post Nagave,
Kolakwadi, Taluka- Chiplun,
Dist. Ratnagiri 415 603

... Petitioner

versus

1. The State of Maharashtra,
Maharashtra State Power Generation
Co. Ltd., To be served through Assistant
Government Pleader, High Court (A.S.),
Bombay.

2. Managing Director,
Maharashtra State Power Generation
Co. Ltd., Prakashgad Plot No. G-9,
Bandra (East), Mumbai – 400 051.

3. Executive Director (HR),
Maharashtra State Power Generation
Co. Ltd., Prakashgad Plot No. G-9,
Bandra (East), Mumbai- 400051

... Respondents

Mr.Anand Mishra i/b. Dr.Prasad Rokade for the Petitioner.

Mr.P.P.Kakade, Addl.GP with Mr.V.M.Mali, AGP for Respondent
No.1, State.

Mr.A.A.Alaspurkar for Respondent Nos. 2 and 3.

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.**

DATE : 7th February, 2025

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

1. **Rule.** Rule made returnable forthwith and heard finally with 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 appropriate Writ, Order and Direction thereby directing the Respondent to consider the relaxation of Age Limit up to 57 years and accordingly the Respondent be directed to give one chance to Petitioner to appear in direct service recruitment examination for Technician -3 on such terms and condition may deem fit and proper”.

3. We have considered the submissions of the learned Advocates extensively. The facts of the case can be summarized as under:

(a) The Petitioner’s husband is said to be working in a private company;

(b) The Petitioner was inducted in the training programme under the मुलभूत प्रशिक्षण तथा अनुषंगिक सूचना

केंद्र (Basic Training and Related Instructions) (B.T.R.I.), at Pophali, Hydro Electric Training Center, Sub Center on 14th April, 2013 until 13th April, 2016;

(c) She was issued with a three years Switch Board Attendant (B.T.R.I) Certificate bearing No. 034113 (date not mentioned on the certificate). Thereafter, she was inducted in the Advanced Vocal Training programme from 2016 to 2019. This programme ended after the candidate reached the age of 45 years;

(d) A Benevolent Scheme was introduced by the Respondent company known as the '*Subsistence Allowance Scheme*' (Nirvaah Bhatta Yojana) meant for providing a source of earning to the poorest of the poor persons and who have the PAP certificate, after completing 45 years of age and having completed the Advanced Vocal Training programme. At that juncture, a candidate has three options viz. of accepting lump sum Rs. 5 lakhs from the company and exit or transfer the PAP certificate to any legally eligible dependent or opt for the Subsistence Allowance Scheme (SAS);

(e) The Petitioner opted for the (SAS). She continues to work on Switch Board on account of her training as a Switch Board Attendant. Each year, the Subsistence Allowance is increased by Rs. 1000/- and the Petitioner can continue under the (SAS) until the age of 58 years;

(f) An advertisement bearing No. 02 (February)/ 2016 was published for inducting candidates to the position of Technician-3. Around two lakh candidates had applied;

(g) The Petitioner does not appear to have applied for the said post;

(h) Again, one more advertisement was published in 2019, bearing No. 04 of 2019 for recruiting candidates to the position of Technician-3. The Petitioner turned 45 years on 30th June, 2019;

(i) The advertisement at issue bearing No. 04 of 2024 is also for filling in Technician-3 position. ITI and B.T.R.I. candidates are eligible to apply, provided

they are in between 18 to 38 age group as on 1st October, 2024;

(j) The age limit is relaxed until 45 for the backward category candidates or the economically backward candidates;

(k) For the physically challenged, ex-serviceman and sports category candidates, the age limit is 45 years;

(l) For the PAP candidates and the earthquake affected candidates, the age is relaxed upto 45 years. However, those who are the regular employees of the Respondent company, are eligible to apply for such post until the age of 57. The retirement age in service is 58 years.

4. The Petitioner acquired the ITI training certificate in 2016 from the Basic Training and Related Instructions after the advertisement bearing No. 02(February)/2016 was already published. Under 2024 advertisement, 800 posts are advertised. 400 posts are for Mahagenco -Pragat Kushal Training (Advance Vocational Training Programme) candidates falling within the age group prescribed.

5. The learned Advocate for the Petitioner has vehemently canvassed the grounds formulated below clause 13 (a to e) which are reproduced verbatim as under:

“a) That entire criteria of giving relaxation in the age limit by the Respondent No. 2 and 3 for MCPGCL Employee and the employee of MSPGCL are contradicting and is not tenable in law.

b) The entire act on the part of Respondent is arbitrary and against the interest of justice.

c) The Respondent ought to have given relaxation of age to all persons to complete the exam.

d) The entire act on the part of Respondent No. 2 and 3 is against the law of natural justice.

e) Seek liberty to add amend and alter the ground if need so arises.”

6. The Petitioner has pleaded in paragraph 14 as under :

“14. The Petitioner in view of the aforesaid facts and circumstances the Petitioner is approaching before this Hon'ble Court by way of Present Petition seeking indulgence of this Hon'ble Court to issue appropriate Writ, Order and Direction thereby directing the Respondent to consider the relaxation of Age Limit up to 57 years and accordingly the Respondent be directed to give one chance to Petitioner to appear in direct service recruitment examination for Technician-3 on such terms and condition may deem fit and proper.”

7. It is, thus, obvious that the only hope for the Petitioner

is, if she is treated as an “employee” and is deemed to be an in-service candidate, when she can apply for the said position until she attains the age of 57 years.

8. The definition of employee under Section 3 (5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 reads as under :

“3[(5) "employee", in relation to an industry to which the Bombay Act for the time being applies, means an employee as defined in clause (13) of section 3 of the Bombay Act, and in any other case, means a workman as defined in clause (s) of section 2 of the Central Act, and a sales promotion employee as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976]”.

9. The definition of workman under Section 2 (s) of the Industrial Disputes Act, 1947 reads as under :

“2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

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.....*

(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding

under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]”

10. In order to ascertain the position of the Petitioner, we called upon the learned Advocate for the Respondent company to state as to whether the Petitioner would be entitled for the normal service benefits as are available to the regularly selected and appointed candidates and whether she would be entitled for the post retirement benefits like family pension scheme under the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, gratuity under the Payment of Gratuity Act, 1972 and bonus

under the Payment of Bonus Act, 1965. He submits that SAS is a Benevolent Scheme which is introduced for the poorest of the poor. They are not on the regular rolls of the company, though they have an identity card issued by the company since they have to enter the premises and work on a sensitive section like operation of the switch board. He submits that around 260 such persons are being given work under the Subsistence Allowance Scheme.

11. Having gathered the above details, we find that this Subsistence Allowance Scheme is meant for persons who have no other source of income and is only to ensure that they are economically sustained. This reminds us of the Employment Guarantee Scheme (EGS) wherein persons are taken on the roll of the EGS register and are provided with work as EGS employees. In the case before us, the Petitioner is paid stipend and is on the rolls of SAS.

12. Taking into account the overall factors and service conditions wherein this Petitioner is neither entitled for regular service benefits, as are available to the permanent employees on the rolls of the company, nor is she entitled for any post service

benefits, that we are not convinced that she could be held to be an in-service candidate.

13. The learned Advocate for the Respondent company submits that those who are on the permanent rolls of the company and are in-service candidates, despite they having a secured employment with all benefits incidental and consequential to permanent service, such candidates are eligible to apply until the age of 57 in order to become Technician - III.

14. In view of the above, we cannot conclude that the Petitioner would be covered by clause 3 (5) of the advertisement bearing No. 04 of 2024.

15. As such, 'sans merite' **this Writ Petition is dismissed.**

16. Rule stands discharged.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)