

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 205 OF 2025

Samarth S/o Narayan Kassa,
Age 28 years, Occu. Service,
R/o Sidheshwar Nagar,
Swagat Nagar, Solapur

...Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department
Mantralaya, Mumbai – 400 032.
2. The Municipal Corporation, Solapur,
through its Commissioner.
3. The Municipal Corporation, Solapur,
through its Deputy Commissioner.
4. Superintendent of General
Administration Department, Solapur,
Municipal Corporation Solapur

...Respondents

(For Respondents copy is served
at the Office of Government Pleader,
High Court of Judicature at Bombay)

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Ms. Sakshi Thombre i/by Mr. Siddheshwar S. Thombre, Advocate
for the Petitioner.

Mr. V.M. Mali, AGP for Respondent No.1/State.

Mr. R.S. Alange, Advocate for Respondent Nos.2 to 4.

CORAM

: RAVINDRA V. GHUGE

&

ASHWIN D. BHOBE, JJ.

RESERVED ON

: 15th APRIL, 2025

PRONOUNCED ON

: 21st APRIL, 2025

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 approached this Court seeking issuance of a Writ of Mandamus to direct the Respondent Authorities to consider the candidature of the Petitioner for the post of Midwife Class-III, since he has a Diploma in General Nursing and Midwifery (GNM). He also has a registration with the Maharashtra Nursing Council (MNC). The Petitioner is at Sr. No.14 on the wait list. Two candidates namely Mahamadyasin Tolan Bagwan, who is at Serial No.32 and Pratibha Dattatrya Kandalwad, at Serial No.33, in the wait list, have been issued with an appointment order on 26th December, 2024.

3. In view of the above, we had directed vide order dated 13th February, 2025, by way of interim relief, that if there are any vacancies existing, one post shall be kept vacant since the Petitioner has produced the certificate of having passed the examination of B.SC. Nursing and Midwifery. The said certificate dated 10th October, 2017, was initially valid upto 30th March, 2022 and a

renewal has been granted upto 30th March, 2027.

4. As such, the issue posed before us is, as to whether a candidate having higher qualifications than those prescribed in the advertisement, could be appointed on a vacant post, when the advertisement does not mention grant of preference to the higher qualifications.

5. The Petitioner has put forth Prayer Clauses (B) and (C), as under :-

“(B) By issuing appropriate writ, order or directions in the like nature, the communication letter dated 27.08.2024 issued by the respondent no.4 may kindly be quashed and set aside and for that purpose issue necessary orders;

(C) By issuing appropriate writ, order or directions in the like nature, the respondent no.2 to 4 may kindly be directed to consider the candidate of the petitioner for the post of Midwife and issue appointment order in favour of the petitioner on the post of Midwife and for that purpose issue necessary orders;”

6. The grievance of the Petitioner is the issuance of the impugned communication dated 27th August, 2024, by which he is informed that since he does not have the GNM certificate, his candidature has been rejected. Respondent No.2 had issued an

advertisement on 9th November, 2023 for filling up various posts in the Solapur Municipal Corporation with 50 posts for Midwife Class-III, out of which 7 posts were reserved for the OBC.

7. The Petitioner contends that he had applied for the post of Midwife Class-III from the OBC category. He successfully passed the written examination scoring 122 marks. A provisional merit list and wait list was published on 9th June, 2024. The candidates were called for document verification between 9:00 a.m. to 1:00 p.m. on 12th June, 2024. The Petitioner is at Sr. No.14 in the wait list. The grievance is that his candidature has been rejected by the impugned communication.

8. Respondent Nos.2 to 4 have entered their affidavit in reply dated 4th March, 2025, through the Deputy Municipal Commissioner. It is confirmed that 50 posts of Midwife Class-III were announced, out of which 7 were reserved for the OBC category. The prescribed qualifications, were as under :-

“i. The Candidate must have passed secondary and higher secondary exam with Science faculty.

ii. The candidate must possess the Diploma certificate of General Nursing And Midwifery issued by

the Maharashtra Nursing Council.

iii. The candidate must have worked for 3 years in Government/ Semi Government private hospital.

iv. The candidate must be registered with Maharashtra Nursing Council. I say that the said advertisement is annexed at page no.13 of the present petition.”

9. It is further admitted that the Petitioner tendered his 12th Science (HSC) Certificate, B.SC. Nursing Certificate and a three years experience certificate. It is canvassed that the Petitioner had not submitted or annexed his Diploma Certificate of General Nursing and Midwifery issued by the MNC. He has submitted his B.SC. Nursing certificate which was not the required qualification. It is also contended that he had not tendered the Diploma Certificate of General Nursing and Midwifery issued by the MNC. As the Petitioner was not holding GNM Certificate, the Selection Committee cancelled the candidature of the Petitioner.

10. The Petitioner has placed before us the B.SC. Nursing and Midwifery Certificate, which has been acknowledged by the Certificate of Registration dated 10th October, 2017 issued by the MNC and the Renewal Slip [Rule 79 (2)] extending the certificate of registration until 30th March, 2027.

11. The bone of contention is that the advertisement prescribed the qualification of Diploma Certificate of GNM issued by the MNC and the Petitioner has the B.SC. GNM certificate of registration issued by the MNC, which is a higher qualification. Hence, he was held to be ineligible. The first list of 19 candidates were appointed on 13th June, 2024 and a further list of 17 candidates were appointed on 26th July, 2024. The further list of two candidates were appointed on 26th December, 2024. 38 posts are filled in and 12 posts are vacant.

12. In *Zahoor Aahmad Rather and Others V/s. Sheikh Imtiyaz Ahmad and Others*, (2019) 2 SCC 404, it has been held by the Hon'ble Supreme Court that an Employer must legitimately bear in mind while prescribing the qualifications for a post, several features like the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of the qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State as a public Employer may take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy and judicial review must tread warily.

13. In *Jyoti K.K. and Others V/s. Kerala Public Service Commission and Others, (2010) 15 SCC 596*, it was held that when a qualification has been set out under the relevant rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. A higher qualification must clearly presuppose the acquisition of the lower qualification prescribed for the post in order to attract that part of the rule to the effect that such of those higher qualifications, shall also be sufficient for the post.

14. In *Jomon K.K. V/s. Shajimon P. and Ors., (2025) SCC OnLine SC 711*, the Hon'ble Supreme Court has recently delivered a Judgment on 2nd April, 2025 in SLP (C) Nos.7930-7931 of 2020. It was observed in Paragraph Nos.25 to 38, as under :-

“25. We have further seen from the letter of the Director dated 9th October, 2010 addressed to KPSC that it was not voluntary; rather, it was at the behest of candidates who did not possess current Lascar's licence. It can well be presumed that the Director buckled under pressure. However, notwithstanding that, qualifications statutorily laid down could not have been diluted by what the Director felt should be considered by KPSC and, therefore, it is the statutorily prescribed qualifications that should prevail.

*26. Mr. Nair is also right in referring to us the decision in **M. Tripura Sundari Devi** (supra). Although in such decision it was held that it amounts to a fraud on public to appoint candidates with qualifications*

inferior to the qualifications advertised, which is not precisely the case here because the appellant has higher qualifications than what was required, yet, the other principle of law flowing from such decision is squarely applicable. It has neither been shown that the Director's letter dated 9th October, 2012 was given wide publicity nor has it been shown by the appellant that KPSC had issued any corrigendum vide public notice whereby the zone of consideration was enlarged permitting holders of a Syrang's licence to participate in the process. We, thus, hold drawing inspiration from the said decision that the aggrieved are all those who had similar or even better qualifications than the appellant but who had not applied for the post because they were unaware of the fact that persons not having a current Lascar's licence would also be eligible to apply and compete in the process. Equality of opportunity in matters of public employment being a sine qua non for a fair and transparent selection process, such equality is conspicuously absent in the present case.

27. There is one other important aspect which also cannot be lightly overlooked. We shall assume for a moment that though the process was commenced for appointment on vacant posts of Lascar, there was no illegality in persons having Syrang's licence being permitted to participate. Of course, there could be aspirants holding Lascar's licence in sufficient numbers who might not have the higher qualifications necessary for even appearing for a viva voce to aim at possessing a certificate of competency as Syrang. Those aspirants, holding a Lascar's licence, might not also be so capable and/or competent for obtaining a Syrang's licence. After all, all individuals are not blessed with the same level of intelligence, human abilities and intellect. The distribution of innate abilities and intellectual prowess being far from uniform, resulting in a diverse spectrum of human potential, it is axiomatic that aspirants having only a Lascar's licence can never be considered for direct recruitment on any post in Class III of the Subordinate

Service other than a Lascar. It is quite but natural that in the matter of observation, perception and memorisation of details of principles of navigation, and skill in respect of seamanship, there would be significant differences in the faculties of different individuals. If persons holding Syrang's licence - who are obviously better equipped than persons holding Lascar's licence - are allowed to apply and participate in the process for appointment on the post of Lascar, the probability of the persons holding Lascar's licence being outperformed by the persons holding Syrang's licence would be quite high. It could also be a distinct possibility where all the vacant posts of Lascar are filled up by persons having Syrang's licence but not having a current Lascar's licence as per the statutory requirement. That would pose a real difficulty for persons not so fortunate and lacking in higher intelligence, abilities and intellect, for, they would cease to have a level playing field of competing with other similarly qualified candidates, and left to compete with candidates having higher qualifications despite the zone of consideration having been specially carved out for holders of current Lascar's licence. It is not that the holders of Syrang's licence are left in the lurch. Those having Syrang's licence could well compete for appointment on the post of Syrang in the 50% direct recruitment quota along with others having current Syrang's licence. If, in case, all the vacant posts of Lascar are filled up by persons having Syrang's licence and such holders of Syrang's licence do not participate in the process for direct recruitment to the post of Syrang, it is fairly likely that the persons holding Lascar's licence would never secure any public employment. That could not have been the intention of a welfare State.

28. *Also, it cannot be gainsaid that not only the qualifications but the nature of duties required to be performed and the nature of service to be rendered by a Lascar and a Syrang are different. Merely because the post of Lascar is a feeder post for promotion to the*

post of Syrang does not per se make the holder of a Syrang's licence qualified for the job of a Lascar. Thus, nothing much turns on it.

29. *Law is well-settled that an appointment made contrary to the statute/statutory rule would be void [see: **Pramod Kumar v. U.P. Secondary Education Services Commission**¹⁹].*

30. *Based on such consideration, we are ad idem with the Division Bench of the High Court that KPSC could not have included candidates with licences other than a Lascar's licence in the "Ranked List" and proceed to recommend those candidates for appointment.*

31. *On merits, therefore, no legally protected right of the appellant having been affected by the impugned action, he has no valid claim.*

32. *We have considered the decisions of this Court in **Parvaiz Ahmed Parry** (supra) and **Chandra Shekhar Singh** (supra).*

33. *In **Parvaiz Ahmed Parry** (supra) the appellant therein possessed degrees in BSc with Forestry as one of his major subjects as well as MSc (Forestry). The qualification prescribed in the Advertisement was "BSc (Forestry) or equivalent from any university recognised by ICAR". This Court held that the appellant's qualifications were equivalent to the minimum prescribed qualifications and should be considered for the concerned post.*

34. ***Chandra Shekhar Singh** (supra) was on the question of whether 'degree' as mentioned in the advertisement therein included a post-graduate degree, which the appellants therein possessed. This Court applying the golden rule of interpretation held that the word 'degree' would include within its scope and ambit all three degrees bachelor's degree, master's degree and a doctorate degree - unless a specific expulsion*

has been made.

35. The said decisions are, thus, distinguishable on facts.

36. We hasten to add that whether or not the action of the employer to exclude an aspirant from the process of selection (on the ground that either he is over qualified for a particular post or has qualifications which, being over and above what is ordained by statutory rules or rules framed under the proviso to Rule 309 of the Constitution, does not match the qualification specifically required) is justified has to be decided considering the rules governing the selection, the qualifications prescribed, the nature of duty to be performed, the nature of service to be rendered and a host of other factors. It has to be remembered that, at times, the employer's need to have the right people at the right place, and not always the higher qualified, has to be conceded. We know of decisions holding that over-qualification cannot be a disqualification since such an approach amounts to discouraging the acquisition of qualifications on the one hand and on the other, such an approach could be seen as arbitrary, discriminatory and not in national interest. However, this principle cannot be put in a straitjacket imposing rigid or inflexible rules or norms. Lack of public employment opportunities in sufficient numbers may force even a Master degree holder to apply for the job of a peon but, if he is appointed upon his application being favourably considered, what happens to the aspirants who have not had the means of pursuing study beyond the 12th standard? Do they remain unemployed for ever, if all or majority of the posts of peon are filled up by such degree holders? What happens if the Master degree holder, in pursuit of greener pastures, leaves the post of Peon for a better and secured higher job commensurate with his qualifications after a couple of years? Does it not, in such a case, burden the public exchequer by requiring the employer to initiate a fresh selection process? Is

not the State, as a model employer, obliged to ensure that the posts of peon are filled up only by those having the basic qualification, and not by over qualified candidates, for sub-serving the common good? Does not the State have the obligation to strive to ensure that all citizens have adequate means of livelihood? These are questions which no Court can afford to ignore. We end by saying that each case that comes before the Court has to be decided on its own peculiar facts and the problem that it presents for resolution and that there can be no universally accepted rule that every time, a higher qualified candidate is to be preferred to a candidate who matches the essential qualification required for the post.

37. It is now time to consider Mr. Ravindran's final submission that this is an eminent case for exercising powers under Article 142 of the Constitution.

*38. This Court in **Ashok Kumar Sonkar v. Union of India**²⁰ held that if an appointment is illegal, it is non-est in the eye of law and rendering the appointment a nullity and principles of equity in a case of such nature would have no role to play; also that, sympathy should not be misplaced.”*

15. It was, thus, concluded in *Jomon K.K. (Supra)*, that if all vacant posts are filled up by persons having higher qualifications, the persons having lower qualifications would never get any public Employment. This would pose a real difficulty to the ‘not so fortunate and lacking in higher intelligence, abilities and intellect’, for, they would cease to have a level playing field for competing with similarly qualified candidates and would have to

compete with candidates having higher qualifications.

It was also observed that those candidates having higher qualifications will not be left in the lurch, since they can compete for appointment on the posts which require higher prerequisite qualifications in direct recruitment.

It was then concluded that ‘it has to be remembered that, at times, the Employer’s need to have the right people at the right place, and not always the higher qualified, has to be conceded’.

The Court also expressed its concern as to what would happen to the aspirant who did not have means to pursue studies beyond the particular post and should they remain unemployed for ever, if all of majority of the posts are filled up by candidates having higher degrees/qualification. If candidates with higher qualifications are appointed on posts at lower levels and if they leave such posts for better and secured higher jobs commensurate with their qualifications, would it not burden the public exchequer by requiring the employer to again initiate a fresh selection process. The State has an obligation to strive to ensure that all the citizens have adequate means of livelihood.

16. In the light of the above, since the Petitioner has

acquired higher qualifications than the prerequisites mentioned in the advertisement, we cannot issue a Writ of Mandamus to the Corporation to issue an appointment order to the Petitioner. Nevertheless, if the posts are lying vacant after exhausting the select/wait list of candidates having the requisite qualifications and if there is an opportunity or need to consider the candidates having higher qualifications, the Respondent Authorities may consider such candidates, including the Petitioner, in accordance with their *inter-se* merit.

17. With the above observations, this **Writ Petition is disposed off.**

18. **Rule is discharged.**

19. No order as to costs.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)