
(2014) 09 BOM CK 0203
In the Bombay High Court
Case No : Writ Petition No. 1290 of 2014

Ku. Vinita

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Citation : (2014) 09 BOM CK 0203

Hon'ble Judges : V.A. Naik, J;P.R. Bora, J

Bench : Division Bench

Advocate : M.P. Khajanchi, Advocate for the Appellant; D.P. Thakre, Addl. Government Pleader, Advocate for the Respondent

Judgement

V.A. Naik, J.—Heard. By this petition, the petitioners seek a Writ of Mandamus directing the Maharashtra Public Service Commission (hereinafter referred to as "MPSC" for the sake of brevity) to accept the applications of the petitioners in response to the advertisement, dated 26th February, 2014 issued by the MPSC calling applications from the candidates interested in appointment on the post of Civil Judge (Junior Division) and Judicial Magistrate First Class (hereinafter referred to as "CJJD and JMFC"). The petitioners also seek a declaration that the petitioners are eligible for appointment to the post of CJJD and JMFC by relaxing the cut -off date fixed for the upper age limit of 25 years, in view of the failure on the part of the respondents to advertise the posts in the year 2013.

2. The necessary facts giving rise to the petition are briefly stated thus :

3. The petitioner No.1 was born on 09.02.1989 and she attained the age of 25 years on 08.02.2014 whereas the petitioner No.2 was born on 28.02.1989 and she attained 25 years of age on 27.02.2014. Both the petitioners were desirous of seeking appointment on the post of CJJD and JMFC. The maximum age, as per the eligibility criteria for appointment on the said post, for fresh law graduates, was 25 years. The Maharashtra Judicial Services Rules, 2008 (hereinafter referred to as the "Rules of 2008") were published in the gazette on 27th August,

2008. The Rules of 2008 were amended from time to time. In view of Rule 6 of the Rules of 2008, according to the petitioners, it was mandatory for the Recruiting Authority to invite applications from intending candidates, who possessed law degree for filling the vacancies on the post of CJJD and JMFC and District Judges every year. One such advertisement was issued by MPSC on 25.07.2012 calling applications for appointment of eligible candidates on 150 posts of CJJD and JMFC. Though 150 posts were advertised, the MPSC selected 51 candidates and their names were placed in the list of recommended candidates. 99 posts remained vacant. According to the petitioners, they would have been eligible for appointment on the post of CJJD and JMFC if an advertisement was issued by the MPSC in July, 2013 to fill the 99 vacant posts. An advertisement was, however, issued by the MPSC on 26th February, 2014 calling applications from eligible candidates for appointment on the post of CJJD and JMFC. As per the said advertisement the maximum age limit of a candidate was 25 years, as on 1st June, 2014. After the advertisement was issued on 26th February, 2014 the petition was filed on 10.02.2014 seeking the aforesaid reliefs, as, according to the petitioners, they would have been eligible for appointment on the post of CJJD and JMFC had the advertisement been issued in the year 2013.

4. Mr. Khajanchi, the learned counsel for the petitioners, submitted that the provisions of Rule 6 of the Maharashtra Judicial Services Rules, 2008 are mandatory and hence, it was necessary for the Recruiting Authority to invite applications from the intending candidates eligible for appointment on the post of CJJD and JMFC, by issuing an advertisement in the year 2013. It is submitted that the petitioners had passed the LL.B. examination on 03.08.2013 and were eligible for being appointed on the post of CJJD and JMFC till February, 2014. It is submitted that had the MPSC issued an advertisement as per Rule 6(b) of the Rules of 2008 in the year 2013, the petitioners could have applied for the post of CJJD and JMFC. It is submitted that it is necessary for the MPSC to advertise the posts every year in case of vacancies and the inaction on the part of the MPSC to issue an advertisement in the year 2013 is bad in law. It is submitted that the petitioners should be considered eligible for appointment by relaxing the upper age limit.

5. Mr. Thakre, the learned Additional Government Pleader, appearing on behalf of the respondent Nos.1 and 2, took us through the affidavit in reply filed on behalf of the respondent No.2 to point out that it was not possible for the MPSC to issue an advertisement in the year 2013. It is stated that initially the Government had sent a requisition for filling in 125 posts of CJJD and JMFC on 23.12.2012 and thereafter a revised requisition for 224 posts was sent to the MPSC on 30th April, 2013. Taking these requisitions into consideration, according to the learned Additional Government Pleader the MPSC had initially scheduled the preliminary examination on 15th September, 2013. It is submitted that the MPSC desired to start the selection process in accordance with the Rules of 2008 and as per its time table. It is submitted that the Bombay High Court however informed the

MPSC regarding the proposed amendment to Rule 6(1)(e) of the Rules of 2008. It is submitted that by the amendment to Rule 6(1)(e) some sweeping changes were made in the eligibility criteria and the passing marks of the tests conducted by the MPSC. In view of the changes in Rule 6(1)(e) of the Rules of 2008, it is submitted on behalf of respondent Nos. 1 and 2, that the MPSC was not in a position to initiate the selection process as per the schedule. It is submitted that the procedure was completed on 13.02.2014 after taking the amended rules into consideration and immediately the advertisement was issued on 26.02.2014. It is submitted that Rule 6(b) of the Rules of 2008 is not mandatory and there could be a relaxation of the Rule whenever it is impossible for the MPSC to advertise the posts for the reasons beyond the control of the MPSC. It is submitted that the maximum age limit for fresh law graduates is 25 years, whereas the maximum age limit for the practicing advocates is 35 years. It is stated that the petitioners can gain three years' experience as advocates and then apply for the post of CJJD and JMFC. It is lastly submitted that the MPSC has acted in accordance with the Rules of 2008 and adhered to the eligibility criteria in regard to the age, thereby rejecting the candidature of the petitioners. The learned Additional Government Pleader sought for the dismissal of the writ petition.

6. On hearing the learned counsel for the parties and on a perusal of the affidavit in reply filed on behalf of the respondent No.2, it appears that the relief sought by the petitioners cannot be granted and the MPSC cannot be directed to accept the forms of the petitioners and consider the petitioners eligible for appointment on the post of CJJD and JMFC. Further, in the facts of the case, a declaration cannot be granted in favour of the petitioners that the petitioners are eligible for appointment to the post of CJJD and JMFC on account of the failure on the part of the respondent to advertise the posts in the year 2013. Both the petitioners had passed the LL.B. examination when they were twenty four and half years of age when normally LL.B. degree is secured at the age of 22 or 23. Only six months would have been available to the petitioners to apply for the post of CJJD and JMFC. Though, it is the case of the petitioners that Rule 6 (b) of the Rules of 2008 is mandatory and it would be necessary for the MPSC to advertise every vacancy during each year, the petitioners had not made any efforts to find out whether the MPSC had issued an advertisement every year after the Rules of 2008 came into force. It is no doubt true that only 51 posts of CJJD and JMFC were filled in pursuance of the advertisement dated 25.07.2012 and it was necessary to fill the remaining vacancies. It appears from the affidavit in reply filed on behalf of the respondent No.2 that the MPSC had taken the initiative to fill the vacancies in the year 2013, however, the MPSC was not able to do so in view of several genuine difficulties. The Government had initially sent a requisition for 125 posts of CJJD and JMFC on 23.12.2012 and thereafter a requisition for 224 posts was sent on 30.04.2013. Taking these requisitions into consideration the MPSC decided to schedule the preliminary examination on 15th September, 2013. It appears from the affidavit in reply that the MPSC wanted to complete the selection process as per the time table but it failed to do so as the

Bombay High Court informed the MPSC about the amendment to the Rules of 2008 on 16th August, 2013. We find that drastic changes were made in the eligibility criteria and the process of selection by the amendment to Rule 6(1)(e) of the Rules of 2008. The MPSC then proceeded in accordance with the amended Rules and was able to start the selection process for the said posts only in the year 2014. The procedure liable to be completed before the issuance of the advertisement could be completed by the MPSC in view of the aforesaid difficulties only on 13.02.2014 and the advertisement was issued on 26.02.2014. The petitioners were not eligible for appointment on the post of CJJD and JMFC since the petitioners had completed 25 years of age in February, 2014. As the petitioners were age barred in June, 2014, the candidature of the petitioners was rightly rejected. In the facts, as stated herein -above, it was not possible for the MPSC to advertise the vacancies in the year 2013. The petitioners had less than six months of eligibility for appointment on the post of CJJD and JMFC as they had passed the LL.B. examination in August, 2013 and had completed 25 years of age in February, 2014. If the prayer made by the petitioners is granted, other several similarly situated candidates would be deprived of an opportunity of being considered for appointment on the post of CJJD and JMFC. It is also surprising, why the petitioners have approached this Court after the advertisement was issued in the year 2014. If, according to the petitioners, the Rule was mandatory, the petitioners could have approached this Court in the midst of 2013 to seek a direction to the MPSC to issue an advertisement for filling the then existing vacancies. However, for the reasons best known to the petitioners that was not done and when the advertisement was issued on 26.02.2014 the petitioners have approached this Court with a prayer to hold the petitioners eligible for appointment on the post of CJJD and JMFC on the ground that the MPSC had failed to issue an advertisement in the year 2013 when the petitioners were eligible. We doubt whether the petitioners would have been eligible even if the advertisement was issued in the month of June or July, 2013 and the applications were to be called by July, 2013, as admittedly, the petitioners, had passed the LL.B. examination in the month of August, 2013.

7. It would now be necessary to consider whether Rule 6(1)(b) of the Rules of 2008 is mandatory in nature. Rule 6(1)(b) of the Rules of 2008 reads thus:

Rule 6(1)(b). Every year the Recruiting Authority shall, by advertisement in the Official Gazette and in at least two newspapers, invite applications in such form as it may determine, for intending candidates, who possess the qualifications for filling in the vacancies.

8. We do not find that the provisions of Rule 6 are mandatory. The word "shall" in Rule 6 could be construed as directory. Where a Rule imposes a duty and lays down the manner in which and the time during which the duty shall be performed, injustice or inconvenience resulting from a rigid adherence may be relevant to hold that the Rule is only directory. The expiry of the period during which the duty is to be performed would not confer a right on a party, like a right

in the petitioner to seek the relaxation of age, as is sought in this case. In a given case, there may be only 2 or 3 vacancies in a particular year. The tedious process of selection and appointment may not be conducted by the MPSC during that particular year and those couple of vacancies could be forwarded to the next year. In such a case, there would be many eligible candidates who may lose the opportunity of being considered during that year. There are several such cases where a benchmark in respect of some criterion is fixed and for the reasons beyond the control of the candidate or the Recruiting Authority, a candidate may miss the chance and would not be eligible for being appointed on a particular post.

9. In the instant case also though the MPSC desired to advertise the vacancies in the year 2013, for the reasons beyond the control of the MPSC, the advertisement could not be issued till 26.02.2014. We have already narrated the circumstances which resulted in the delayed issuance of the advertisement and it would not be necessary to restate the facts incorporated in the previous paragraphs. In the instant case, we do not find that the MPSC has committed any illegality in not advertising the vacancies for the post of CJJD and JMFC during the year 2013. We may however hasten to observe that a Public Service Commission should not deviate from the time table, as prescribed by Rule 6(1) (b) as the posts of CJJD and JMFC are important posts, considering the pendency of the cases in the subordinate judiciary and it would be for the Commission to ensure that the time table, as prescribed by Rule 6 of the Rules of 2008 is adhered to. Be that as it may, we find no illegality or impropriety in the action of the MPSC in not issuing the advertisement in the year 2013. For the reasons recorded herein -above, the petitioners would not be entitled to a declaration that the petitioners are eligible to be considered for appointment on the post of CJJD and JMFC, as they were admittedly age barred on the cut off date, i.e. 1st of June, 2014. When a benchmark in regard to the age is fixed in the advertisement issued by the Public Service Commission, the benchmark needs to be strictly adhered to. Non adherence and relaxation of the same in certain cases, in the absence of any Rule, would result in chaotic situation. We also find that two other petitions seeking an identical relief have been withdrawn today, probably because of the ineffective challenge.

10. The relief sought by the petitioners cannot be granted and the writ petition is liable to be dismissed. We dismiss the same with no order as to costs.