

(2023) 05 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 9845 Of 2019, Interim Application No. 2563, 3141,
4129 Of 2019

Maharashtra Public Service Commission

APPELLANT

Vs

Ruchita Vasant Somane (After Marriage) And Others

RESPONDENT

Date of Decision : 02-05-2023

Acts Referred:

Masters Degree Through Formal Education) Regulations, 2003 — Regulation 2.1

Citation : (2023) 05 BOM CK 0048

Hon'ble Judges : S.V. Gangapurwala, J;Sandeep V. Marne, J

Bench : Division Bench

Advocate : Ashutosh Kulkarni, Akshay R. Kulkarni, Sandeep G. Rane, B.V.
Samant

Final Decision : Disposed Of

Judgement

Sandeep V. Marne, J

1) Rule. Rule is made returnable forthwith. With the consent of parties, petition is taken up for final hearing.

2). Maharashtra Public Service Commission (MPSC) has filed the present petition challenging the judgment and order dated 20.02.2019 passed by the Maharashtra Administrative Tribunal (Tribunal) in Original Application No. 651/2018. The Original Application was instituted by respondent no.1 challenging the advertisement dated 29.04.2017 issued by the MPSC for filling up the post of Secretary (Group-A) in the Maharashtra State Board of Production of Marathi Vishwakosh. The advertisement was challenged to the extent of prescription of qualification of bachelor's degree in Marathi or Sanskrit and seeking declaration that candidates possessing qualification of Master's Degree in Sanskrit should be held eligible. By judgment and order dated 20.02.2019, the Tribunal has proceeded to allow the Original Application holding that respondent no.1 fulfilled the eligibility criteria mentioned in the advertisement. Her candidature has been

directed to be considered in the selection process. The Tribunal has held that the Change of Faculty Test undergone by her for securing admission to the course of Masters Degree in Sanskrit to be equivalent to Bachelor's Degree in Sanskrit.

3). The petitioner underwent course of Bachelor's Degree in Science (Micro-Biology) in April, 1993. She also acquired Master's Degree in Bio-Chemistry in May, 1995. She later obtained Diploma Certificate in Sanskrit in May, 1999. She also acquired qualification of B.Ed in March, 2000.

4). The Mumbai University provided an opportunity to graduates from other than Arts to seek admission to course of master's degree in arts. Petitioner was interested in undergoing the master's degree in Sanskrit and accordingly appeared for Change of Faculty Test (Entrance Test) containing two papers of Sanskrit. After clearing the Change of Faculty Test, she secured admission to M.A. Degree Course in Sanskrit. She acquired M.A. degree in Sanskrit in the year 2003. Later she completed her post-graduation-M. Phil in Education in the year 2012.

5). An advertisement was issued by MPSC for filling up the post of Secretary (Group-A) in the Maharashtra State Board of Production of Marathi Vishwakosh under the Marathi Language Department. The educational qualification prescribed in the advertisement was (i)possession of degree in Marathi or Sanskrit subject with at least 55% marks and (ii)possession of Master's degree in Marathi or Sanskrit subject with at least 55% marks. Experience of working in administrative or executive post for five years was also prescribed. Petitioner applied in pursuance of the advertisement. MPSC published list of eligible candidates, in which name of respondent no.1 figured at serial no.2. She was subjected to interview held on 6.02.2018. During the course of interview, oral enquiry was made as to whether respondent no.1 possessed the qualification of Bachelor's Degree in Sanskrit. Respondent no.1 gave information in writing on 6.02.2018 about non-possession of Bachelor's Degree in Sanskrit but stated that she passed Entrance Test in Sanskrit subject held by Mumbai University for securing admission to Course of M.A. (Sanskrit). The interview of respondent no.1 was accordingly conducted. She claims to have secured highest marks in the interview and was looking forward to her selection and appointment on the advertised post. However, since nothing was heard in the matter, she made representation dated 16.02.2018. Merit list was published by MPSC in which name of respondent no.1 was excluded.

6). Respondent no.1 therefore filed O.A. No. 651/2018 before the Tribunal challenging prescription of qualification of Bachelor's Degree in Marathi/Sanskrit, as well as, seeking a declaration that she is eligible to be appointed pursuant to her selection. By judgment and order dated 20.02.2019, the Tribunal has allowed the Original Application holding respondent no. 1 eligible for appointment to the advertised post. MPSC has filed the present petition challenging the Tribunal's decision. By interim order dated 5.11.2019 this Court stayed the order of the Tribunal and the interim order has been continued from time to time as in force

till date.

7). Appearing for the Petitioner- MPSC, Mr. Kulkarni the learned counsel would submit that the Tribunal erred in holding respondent no.1 as eligible despite lacking the qualification of Bachelor's Degree in Sankrit. That the qualifications prescribed in the advertisement are required to be mandatorily possessed by all candidates. That the advertisement does not use the words 'or equivalent' and that therefore the Tribunal erred in determining equivalence of Change of Faculty Test underwent by respondent no.1 with that of Bachelor's Degree in Sanskrit. Mr. Kulkarni would invite our attention to the Recruitment Rules notified on 1st September 2016. That the qualifications prescribed in the advertisement are same as the one prescribed in the Recruitment Rules. That Recruitment Rules were not under challenge. Therefore the Tribunal could not have undertaken the exercise of determining equivalence of two courses. That the Tribunal has exceeded its jurisdiction warranting interference by this Court. In support of his contentions, Mr. Kulkarni has relied upon the following judgments:

(i)Yogesh Kumar and Others Vs. Govt. of NCT, Delhia and Others, (2003) 3 SCC 548.

(ii)Chief Manager, Punjab National Bank Vs. Anit Kumar Das (2021) 12 SCC 80.

(iii) K.G. Ashok and Others Vs. Kerala Public Service Commission and Others, (2001) 5 SCC 419.

(iv) Sanjay Kumar and Others Vs. Narinder Verma and Others, (2006) 6 SCC 467.

(v) Union of India and Others Vs. Ind-Swift Laboratories Limited, (2011) 4 SCC 635.

8). Per-contra, Mr. Rane the learned Counsel appearing for respondent no.1 would oppose the petition and support the order passed by the Tribunal. He would submit that possession of Master's Degree in Sankrit alongwith passing of Change of Faculty Test by respondent no.1 clearly satisfied the criteria prescribed in the advertisement. That no importance can be attached to the technicality of possession of Bachelor's Degree in Sanskrit in light of the fact that respondent no.1 was permitted to undertake the course of M.A. (Sanskrit) by switching from Science Stream by appearing in the Change of Faculty Test. He would place strong reliance on UGC (Minimum Standards of Instructions for the Grant of the Masters Degree through formal Education) Regulations, 2003 ('UGC Regulations'). He would submit that special provision made by Mumbai University for conducting Change of Faculty Test is in tune with the UGC Regulations.

9). Mr. Rane, would further submit that prescription of qualification of Bachelor's Degree in Sankrit in the Recruitment Rules, is arbitrary. That respondent no.1 already possessed higher qualifications of M.A. (Sanskrit). In support of his contention, Mr. Rane relied upon the decision in Rina Dutta & Ors. v. Anjali Mahato & Ors. 2010 (3) Cal.L.J. 321.

10). We have also heard Mr. Samant, the learned AGP for respondent no.1. He would submit that the qualifications prescribed in the Recruitment Rules would prevail and that in absence of challenge to the same, the Tribunal ought to dismissed the Original Application of respondent no.1.

11). Rival contentions of the parties now fall for our consideration.

12). Before we proceed to decide merits of the matter, we first deal with Mr. Kulkarni's contention that conduct of respondent no.1 was such that the Tribunal ought to have declined her the relief prayed for. He would submit that while filling the Application Form, respondent no.1 clicked on the Tab 'B.A.', even though she did not possess B.A. degree. He would invite our attention to petitioner's Online Application Form, in which petitioner declared that she holds B.A. Degree in Sanskrit from University of Mumbai. She has also declared 76% marks secured in B.A. Degree. The duration of the course is shown as 12 months. Mr. Kulkarni, would submit that respondent no.1 declared marks obtained in the 'faculty changed eligibility test' and misrepresented MPSC to show as if the said marks were secured in B.A. degree course. True it is that declaration made by respondent no.1 in the Application Form about possession of B.A. degree may not be entirely correct. However, respondent no.1 applied in the selection process under a bonafide impression that on account of possession of qualification of M.A. (Sanskrit), as well as, clearing the faculty changed eligibility test she was eligible to apply for the post. There was an ambiguity atleast in the mind of respondent no.1 so far as her eligibility to apply for the post was concerned. In such a situation, it would be difficult to record a concrete finding that respondent no.1 indulged in misrepresentation. We would therefore interfere with Tribunal's Order only on this count. Therefore, reliance of Mr. Kulkarni, on the judgment of the Apex Court in K.G. Ashok (supra) in this regard, would be of no avail.

13). Now we advert to the merits of the matter. The Government of Maharashtra, Marathi Language Department has notified Secretary (Group-A) and Assistant Secretary (Group-B) (Gazetted) in the Maharashtra State Board of Production of Marathi Vishwakosh under the Marathi Language Department (Recruitment) Rules, 2016. Rule-3 provides for appointment to the post of Secretary in the Board and reads thus :

"3. Appointment to the post of Secretary in the Board shall be made either,-

(a)by promotion of a suitable person on the basis of seniority subject to fitness from amongst the persons holding the post of Assistant Secretary in the Board having not less than three years regular service in that post;

(b)by nomination from amongst the following candidates, who,-

(i)are not more than forty-five years of age :

Provided that, the upper age limit shall be relaxed upto five years in case of candidates already in Government Service;

(ii) possess a degree in Marathi or Sanskrit subject with at least fifty-five per cent.

(iii) possess a Masters degree in Marathi or Sanskrit subject with at least fifty-five per cent marks;

(iv) have practical experience of working in administrative or executive post in a responsible position for a minimum period of five years, gained after acquiring qualifications mentioned in sub-clauses (ii) and (iii).

Or

(c) by transfer on deputation of a suitable person holding an equivalent post in Government Department or Office and possessing the qualification and experience prescribed for appointment by nomination in sub-clauses (ii), (iii) and (iv) of clause (b).

14). Thus under the Recruitment Rules, the qualifications prescribed for nomination to the post of Secretary is possession of Bachelor's Degree in Marathi/Sanskrit, as well as, possession of Master's Degree in Marathi/Sanskrit. Thus under the Recruitment Rules, a candidate is required to possess both the degrees of B-Marathi/Sanskrit and MA-Marathi/Sanskrit. The Recruitment Rules do not use the word 'or' between Clauses (ii) and (iii). Thus, possession of both Bachelor's and Master's Degrees in Marathi/Sanskrit is the mandatory requirement. Petitioner did not challenge the Recruitment Rule before the Tribunal.

15). In the advertisement issued by MPSC following qualifications were prescribed :

16). Thus, the qualifications prescribed in the advertisement are in accordance with the provisions of the Recruitment Rules. It is a common ground that respondent no.1 did not challenge the provisions of the Recruitment Rules in her Original Application. In absence of challenge to the Recruitment Rules, MPSC cannot be faulted for prescribing the same qualifications in the advertisement.

17). The Tribunal has proceeded to interpret the qualifications prescribed in the advertisement by entering into the area of 'equivalence'. It has held that the Change of Faculty Test undergone by Respondent No. 1 is equivalent to the Bachelor's degree. Both Recruitment Rules as well as advertisement did not use the word 'or equivalent'. Once the word 'equivalent' is not used in the recruitment rule, the Tribunal could not have ventured into the area of equivalence of qualifications.

18). It has been held in catena of judgments of the Apex Court that the employer has a right to prescribe qualifications suitable for the post and that the Courts/ Tribunal cannot go into the issue of correctness of qualifications prescribed. Courts or Tribunals cannot also go into the issue of giving weightage to higher qualifications. Reference in this regard can be made to the decisions of the Apex

Court in Chief Manager, Punjab National Bank (supra), in which it is held in para-17.3 as under :

"17.3 Thus, as held by this Court in the aforesaid decisions, it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and as observed hereinabove, it is a conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in directing the appellant Bank to allow the respondent original writ petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement."

(emphasis supplied)

The Tribunal in the instant case has recorded following findings for the purpose of holding Entrance Test undergone by respondent no.1 as equivalent to BA degree in Sanskrit:

"21. As we see what is prescribed in an academic qualification, as averred by the applicant is described as "Degree in Marathi or Sanskrit subject" and it does not contain additional tag or a prescription so as to add any special proficiency and to prescribe any different or superior level of study/proficiency such as B.A. with Hons, or B.A. with all papers in a particular subject Marathi / Sanskrit. It will even comprehend B.A. with Sanskrit or Marathi as only one of the subjects.

22. It has thus to be inferred while acting reasonably and logically that the law makers did not intend to attach excessive or uncompoundable importance to the level of study or proficiency of the degree at first level along with Master's Degree in Marathi or Sanskrit. Thus the prescription of O.A. barely alongwith M.A. needs to be viewed as one of the collateral qualifications of directory character than mandatory or imperative essential qualification. Inclusion of higher degree-Master's degree in one subject connotes the weightage thereto which is higher. Weightage for B.A. is attached only for holding of the said degree, thereby rendering the degree at Graduate level, barely a path than an uncompoundable requirement or eligibility."

20). We fail to comprehend as to how the Tribunal could go into the issue of correctness of the prescribed qualifications in absence of challenge to recruitment rules. Also, it was improper for the Tribunal to enquire whether the

law makers intended to attach importance to the bachelor's degree alongwith the Master's degree. Once the employer prescribed the qualifications of possession of both the degrees, the Tribunal could not have held that possession of one out of two degrees is not necessary. The Tribunal's findings about bachelor's degree being only a path for acquisition of master's degree would go against the spirit of right of employer to prescribe particular qualification suitable for a post. Considering the activities undertaken by the Respondent-Board, it has insisted upon possession of both bachelor's as well as master's degree in Marathi / Sanskrit. It desires that a candidate must undergo graduation and post-graduation in same subject.

Therefore, Petitioner's course of BA in Microbiology cannot be treated as a path for acquiring the master's degree in Sanskrit.

21). The Tribunal has heavily relied upon UGC Regulations while allowing the Original Application. Regulation 2.1 reads thus :

"2.1 No student shall be eligible for admission to a Master's degree programme in any of the faculties unless he/she has successfully completed three years of an undergraduate degree or earned prescribed number of credits for an undergraduate degree, through the examinations conducted by a university/ autonomous institution or possesses such qualifications as recognized by the concerned university as equivalent to an undergraduate degree."

22). We fail to understand as to how Regulation-2.1 of the UGC Regulation would come to aid of Respondent No. 1. Regulation-2.1 merely opens doors for students holding bachelor's degree of one faculty to undergo Master's degree course of a different faculty. Permissibility to switch from one faculty at bachelor's level to another at master's level by passing Change of Faculty Test cannot be confused with the mandatory requirements in the recruitment rules. Also, the UGC Regulation would not mean that there would be equivalence between the Change of Faculty Test undertaken to secure admission in M.A. Course with that of bachelor's degree. The Mumbai University has in fact clarified with letter dated 15.01.2019 that UGC has issued a Public Notice on equivalence of degrees on 19.07.2016 stating that equivalence of degrees, diplomas, certificates etc. are not determined by the UGC. That equivalence is always decided by the concerned University and in cases of employment, by the employing organization. Tribunal's relevance on Regulation-2.1 of the UGC Regulations is therefore completely misplaced.

23). Respondent No. 1 relied upon the judgment of the Apex Court in Chandrakala Trivedi (supra) before the Tribunal in support of proposition that obtaining higher qualification is equivalent to passing lower examination in the same line/stream. The judgment in Chandrakala Trivedi (supra) is however clearly distinguishable since the educational qualification prescribed for the post of Teacher in that case clearly used the words 'or its equivalent'. In the present case, the words 'or equivalent' are absent. Respondent No. 1 also relied upon the

judgment of the Calcutta High Court in *Rina Dutta (supra)*. However, the issue in that case was again entirely different. The Calcutta High Court has granted relief in favour of the appellants therein as they were continued in employment for 12 years and the advertisement did not disqualify or debarred graduate women candidates.

24). In *Yogesh Kumar (supra)* the Apex Court has held that recruitment to public service must be held strictly in accordance with the terms of advertisement and the Recruitment Rules. In para-8 the Apex Court held as under :

"8. This last argument advanced also does not impress us at all. Recruitment to Public Services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the Rules allows entry to ineligible persons and deprives many others who could have competed for the post. Merely because in the past some deviation and departure was made in considering the B.Ed. candidates and we are told that was so done because of the paucity of TTC candidates, we cannot allow a patent illegality to continue. The recruitment authorities were well aware that candidates with qualification of TTC and B.Ed. are available yet they chose to restrict entry for appointment only to TTC-pass candidates. It is open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made. So far as B.Ed. qualification is concerned, in the connected appeals [CA No. 1726- 28 of 2001] arising from Kerala which are heard with this appeal, we have already taken the view that B.Ed. qualification cannot be treated as a qualification higher than TTC because the nature of training imparted for grant of certificate and degree are totally different and between them there is no parity whatsoever. It is projected before us that presently more candidates available for recruitment to primary school are from B.Ed. category and very few from TTC category. Whether for the aforesaid reasons, B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed. candidates for the present vacancies advertised as eligible. In our view, the division bench of the Delhi High Court was fully justified in coming to the conclusion that B.Ed. candidates were rightly excluded by the authorities from selection and appointment as primary teachers. We make it clear that we are not called upon to express any opinion on any B.Ed. Candidates appointed as primary teachers pursuant to advertisements in the past and our decision is confined only to the advertisement which was under challenge before the High Court and in this appeal."

25). Mr. Kulkarni, has placed reliance on the judgment of the Apex Court in *Sanjay Kumar (supra)* and *Ind-Swift Laboratories Limited (supra)* in support of his contention that the Tribunal could not have read down the Recruitment Rules. We find reliance on those judgments to be unnecessary as neither the Recruitment Rules were under challenge before the Tribunal nor the Tribunal has read down/struck down the same. The Tribunal has gone into the issue of equivalence of qualifications, which we have found to be erroneous.

26). Resultantly, we are of the considered view that in absence of challenge to the Recruitment rules, the Tribunal could not have ventured into the aspect of equivalence. It was incumbent for the respondent no. 1 to scrupulously satisfy the eligibility criteria prescribed in the rules and advertisement. The Tribunal has erroneously determined equivalence between the faculty changed eligibility test and Bachelors degree in Sanskrit when the Recruitment Rules do not use the words "or equivalent". The Tribunal has thus committed error in allowing the Original Application filed by respondent no.1.

27). We therefore find that the impugned judgment and order passed by the Tribunal to be indefensible. The same deserves to be set aside. Accordingly, the Writ Petition is allowed and the judgment and order dated 20.02.2019 passed by the Tribunal in O.A. No.651/2018 is set aside. Rule is made absolute.

28). With disposal of Petition, Interim Applications do not survive. The same also stand disposed of.