

(2017) 02 BOM CK 0106
In the Bombay High Court
Case No : Writ Petition No. 6762 Of 2015

Mrs. Manisha Umaraosing Chavhan

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 09-02-2017

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226

Citation : (2017) 2 AIRBomR 573 : (2017) LIC 1605

Hon'ble Judges : S.C. Dharmadhikari and B.P. Colabawalla, JJ.

Bench : Division Bench

Advocate : Mr. Sandeep Marne i/b. Mr. R.N. Gambhire, Advocates, for the Petitioners in Writ Petition Nos. 6762/2015, 6772/2015, 6773/2015, 6776/2015, 6777/2015, 6778/2015, 7751/2015 and 9161/2015; Mr. P. G. Sawant - AGP, for the Respondent No.1 (State).; Mr. Prathamesh B. Bhargude, Advocates, for the Respondent No. 4 in WP/6762/2015 and 6772/2015.; Mr. K.S. Bapat with Mr. G.H. Keluskar, Advocates, for the Respondent nos. 1 and 2 in WP/9161/2015.

Final Decision : Dismissed

Judgement

S.C. Dharmadhikari, J. (Oral) - Heard. Rule in all the petitions. Respondents waive service. By consent, Rule is made returnable forthwith.

2. By these petitions under Article 226 of the Constitution of India, the petitioners claim to be successful in their educational career, duly qualified and yet not selected for a post of Assistant Civil Engineer in the Municipal Corporation of Pimpri Chinchwad.

3. That Municipal Corporation, through its Commissioner, has selected candidates for appointment, but according to the petitioners, all such selected candidates do not fulfil the eligibility criteria.

4. Both sides state that the facts and circumstances in all these matters and the issue involved is common and therefore, each one of them can be disposed of by this judgment.

5. We proceed on the above lines and take the facts from one of the petitions, which was argued by Mr. Marne.

6. The petitioner in Writ Petition No. 6762 of 2015 is one Mrs. Manisha Umaraosing Chavhan. She has filed this petition aggrieved and dissatisfied with her non-selection to the post of Assistant Civil Engineer, on the establishment of the Pimpri Chinchwad Municipal Corporation. The petitioner states that she has applied pursuant to an advertisement. That advertisement was for various posts, including Assistant Civil Engineer. The circular/advertisement no. 473 of 2015 dated 31st January, 2015 sets out the rules so also the criteria, particularly in relation to the education qualification and experience, copy of which is annexed as Annexure "A" to the petition.

7. The petitioner in this writ petition states that there was a category carved out for ladies. That is how she made an application for appointment to the post of Assistant Civil Engineer (Ladies). She claims to be belonging to "Vimukta Jati (A)", which is styled as such by the State of Maharashtra pursuant to a Government Resolution issued in that regard. The petitioner annexed certain documents with her application, such as certificates passing of the S. C. C. (Xth Standard) and H. S. C. (XIIth Standard) examination, certificate of Construction Supervisor of June, 2013, experience letter dated 19th May, 2015, caste certificate and caste validity certificate etc.

8. It is common ground that the second respondent conducted a written examination on 29th March, 2015. The results of the same were displayed on 20th April, 2015. The petitioner relies upon this list styled as merit list. She says that her name appeared at Sr. No. 9. Her documents were verified on 22nd May, 2015. Thereafter, the select list and waiting list was displayed. That is dated 29th June, 2015. The petitioner states that she duly qualified in the written examination having obtained 136 marks, but she was not appointed. It is her grievance that she is very experienced and respondent no. 2 failed to appreciate the same and selected another candidate having lesser marks of the same category.

9. The petitioner states that a letter was written by her requesting for explanation and seeking a hearing as to how a candidate securing 128 marks has been appointed and not the petitioner, who has secured 136 marks. The application under the Right to Information Act, 2005 was also made seeking some information in relation to the selection process.

10. The argument is that the respondent-municipal corporation did not respond to this application. The petitioner has, therefore, not only arrayed the public body, but has added as party even a selected candidate by virtue of an amendment.

11. An affidavit in reply has been filed on notice being issued. The writ petition is opposed by pointing out that the petitioner in this petition and other petitioners are trying to stall the recruitment process. That recruitment process was

commenced because this court was seized of a public interest litigation being PIL No. 207 of 2010. The issue of illegal and unauthorised constructions in the municipal limits was highlighted. This court passed a detailed order on 6th February, 2015 directing demolition of illegal constructions within a time bound frame. At that stage, the municipal corporation expressed its difficulty of not having the requisite manpower. The State Government was, therefore, directed to sanction additional posts and the current exercise is a result of that sanction of the State Government. That is how Assistant Civil Engineers are required to be recruited emergently. Today, a grievance is made that this process is stalled and because of an ad-interim order passed by this court.

12. The principal contention in the affidavit in reply is that the written examination was not the only mode of judging the merit of the candidate, but the advertisement required the candidate to fulfil a criteria of experience. Thus, the candidate must possess an additional qualification and as mentioned in Condition No. 1.3 of the advertisement. The applications were received on-line. The candidates were allowed to appear at the written examination without scrutiny of their documents of qualification and experience. These posts are responsible posts. The work experience is contemplated for the purpose of effective working because Pimpri Chinchwad Municipal Corporation is spread over a huge area, within the limits of which, every construction activity and undertaken on a large scale is to be monitored and illegalities have to be checked. Therefore, there should be a real experience, which would enable the municipal corporation to recruit skilled engineers. The petitioner's documents were verified and the authority came to a conclusion that she does not have the work experience of two years. The experience that is claimed is holding of a post or employment purportedly as supervisor, but held prior to the passing of the qualifying examination. This has, therefore, not been taken into consideration. Apart therefrom, the petitioner claims to have worked with one M/s. Sanskruti Construction Company for a period of nearly three years, that is from 15th June, 2012 to 19th May, 2015. The petitioner completed the course of Construction Supervisor (course of one year duration), for which, the examination was conducted in June, 2013. The examination rules of the Maharashtra State Board of Vocational Education contemplates the attendance of minimum 75% of the total lectures/periods, including, theory, practical, term work, tutorials and project work, separately in each and every subject as per the teaching scheme of the Board. When the petitioner claims that she worked continuously from 15th June, 2012 to 19th May, 2015, then, it is doubtful as to whether she has undertaken the required course of study and fulfilled the requirement of minimum attendance and project work etc. It is this aspect of the matter, which, according to the respondents, disqualifies the petitioner from holding the post. The petitioner is accused of having approached this court with unclean hands.

13. A rejoinder affidavit has been filed by the petitioner and in which, what is being urged is that a perusal of the advertisement dated 31st January, 2015 shows that under the columns "Education Qualification" and "Experience", the

candidate ought to have cleared the S. S. C., Civil Engineering Assistant course from Government recognised industrial training centre or institute and two years work experience. The condition of two years' experience is independent of the educational qualification. That is how reliance is placed on the judgment of the Hon'ble Supreme Court of India, which, according to the petitioner, lays down a principle that there is no difference between experience before acquisition of qualification and after acquisition. When there is no connection between experience and qualification, experience earned prior to acquisition of the qualification is also required to be taken into consideration. Absent such a provision or stipulation, the experience gained in the present case cannot be discarded.

14. That is how the petitioner claims to be qualified and fully eligible to hold the post. The rest of the statements in the affidavit in rejoinder contain denials.

15. Mr. Marne learned counsel appearing for the petitioners would submit that there is a common theme and underlying the decision of the municipal corporation impugned in this case. He would submit that the municipal corporation has proceeded on an erroneous footing and its understanding of the advertisement and conditions incorporated therein is contrary to law. He would submit that now as an afterthought the credentials of the petitioners are doubted. Those selected also do not pass the test and as is projected by the respondents. The advertisement simply stated that there should be a certain course of one year duration, which should be undergone by a candidate. Secondly, he/she must possess work experience. The advertisement does not say and expressly that such experience has to be gained after the educational qualification. Therefore, it is erroneous and an after thought to now rely on the above stipulation. In any event, that runs counter to the settled principle and that is to be found in the three Judge Bench judgment in the case of Anil Kumar Gupta and Ors. v. Municipal corporation of Delhi and Ors. (2008) 1 SCC 128 and in the case of B. Ramakichenin Alias Balagandhi v. Union of India (2008) 1 SCC 362.

16. On the other hand Mr. Bapat learned advocate appearing for the municipal corporation and the Municipal Commissioner would submit that this court is exercising its jurisdiction under Article 226 of the Constitution of India. This jurisdiction is equitable and discretionary. None can claim as of right a relief in such jurisdiction. In this case, there is a genuine doubt about the fulfilment of the eligibility criteria. The petitioners in these petitions are not found to have undergone the courses and their certificates do not evidence that they attended any classes, submitted any projects and fulfilled the other criteria, which is evolved by the Maharashtra State Board of Technical Education or the Maharashtra State Board for Vocational Training and Examinations. Once there is a statutory board and which prescribes the requirement for such a course, then, none of these petitioners have produced the relevant and germane material evidencing completion of such course. Secondly, even the certificates that have been produced and some of which are not available with the candidates at the

time of verification and scrutiny make an interesting reading. Some of the candidates have worked, according to them, as a part of the management team before completion of the course, supervised a site, where some work was going on. The projects and as highlighted in the appointment orders or the experience certificates do not indicate that they were undertaken or in pursuance of which, there was an appointment made. There is a serious doubt as to how such certificates were issued without even the educational qualification being set out therein or taking note of the requirement of the job. There is, thus, a genuine and bona fide dispute raised by the municipal corporation. It is in these circumstances, he would submit that in writ jurisdiction, particularly in the absence of any arbitrariness, discrimination or malafides, this court should not interfere with the discretion of the administrator. It is the administrator's choice and right not to appoint such persons and on a public post. There is no vested right and merely because somebody is successful in the written examination it does not mean that he should straightaway be placed in the select list. He would submit that for the aforesaid reasons the writ petitions be dismissed.

17. If we take the facts from Writ Petition No. 6762 of 2015, what we have is a copy of the advertisement on the record of that writ petition at page 14. That says that the post is Assistant Civil Engineer. The pay scale is notified. The candidate must be S. S. C. (Xth standard) passed. The candidate must possess a civil engineering course clearance certificate from a Government recognised industrial training institute or a Government industrial training institute itself. The certificate must evidence that such a course has been cleared. Then, two years' work experience is required.

18. The other stipulations are pertaining to the age etc. It is common ground that the applications were to be received from 2nd February, 2015 to 16th February, 2015. All the applications were to be received on-line. The testimonials and certificates were to be annexed. There is no age bar for in-service candidates. Pursuant to such an advertisement and which contains other conditions to be found at page 16. That the same sets out guidelines as to how the application forms have to be filled in. It also states that there would be a written test. A reference to the written test is to be found at clause 3.1. It is to judge and test the education qualification, the nature of working experience and common general knowledge, knowledge of language and that examination will carry 200 marks. Then, the selection process is set out in clause 4. Clause 4.1 says that there would be a display of merit list and which would indicate the marks obtained. The candidates would be listed in the order of merit. It is thereafter, the scrutiny of papers and documents would be undertaken only of those candidates whose names are set out in the merit list. Then, what has been set out are the general conditions. What has then been placed on record is a copy of the on-line application. Petitioner Chavhan Manisha Umaraosing, in the application, states that she is born on 15th September, 1986. She belongs to Banjara Vimukta Jati. She has been residing in Osmanabad District. Her address and for contacting and other purpose, including correspondence is that of

Government ITI, Pardi Road, Bhoom, Taluka Bhoom in the State of Maharashtra. The other details need not concern us save and except what she says is that she has cleared her Maharashtra State Board Secondary School Certificate examination in the year 2002. She has cleared 12th Standard examination in 2004 and she has cleared the examination conducted by the Maharashtra State Board of Vocational Education, Mumbai in 2013. She has also a certificate evidencing her familiarity with computers. She states that she has worked, as far as work experience is concerned, from 15th June, 2012 to 15th February, 2015 with M/s. Sanskruti Construction Company, Bhoom. Then, what we have is the S. S. C. certificate, copy of which is at page 25 of the paper book. The 12th Standard clearance certificate is at page 26. At page 27, what we have is a certificate issued by the Maharashtra State Board of Vocational Examination in respect of the one year course, namely, Construction Supervisor. The training for the certificate course in Construction Supervisor of one year is supposed to have been undergone by this petitioner and the examination was held in 2013. Pertinently, the certificate is silent with regard to the educational institution from which this one year course was completed. Then, we have a certificate issued by the Maharashtra State Board of Vocational Examinations and in some cases, including this, what we find is that though the certificate says that the petitioner has successfully completed the certificate course in Construction Supervisor, the course is of one year duration and she has passed the examination in first class in 2013. The Chairman has signed the certificate, there is a number attached to this certificate, but the date of issue of such certificate is not mentioned. Then, what we have is the certificate issued on 19th May, 2015 by M/s. Sanskruti Construction Company. That says that the petitioner was working with their organisation for 2 years and 11 months as site supervisor and drawing the salary of Rs.55,000/- per month. What we have, therefore, to see is whether this is a document which could be relied upon to grant an opportunity to the petitioner to serve the Pimpri Chinchwad Municipal Corporation as an Assistant Civil Engineer. The advertisement for the recruitment to that post was published on 31st January, 2015. The applications could be submitted from 2nd February, 2015 to 16th February, 2015. The petitioner submitted her application and on-line dated 15th February, 2015. She states that from 15th June, 2012 to 15th February, 2015, she was serving this company as a site supervisor. She does not mention her residential address, but mentions the address of Government ITI, Bhoom in the State of Maharashtra. The petitioner is supposed to have already completed this certificate course in 2013. She is supposed to have been working, during the period while undertaking this course, with this Sanskruti Construction Company. This Sanskruti Construction Company issues a certificate on 19th May, 2015. This certificate may have been issued later on, but when its scrutiny was undertaken, the administrators have scrutinised this document and contemporaneously with other record. While there is no dispute that the petitioner may have cleared her S.S.C. and H. S. C. examinations, there is nothing pointed out in the writ petition, which would enable us to conclude that the petitioner attended either Government recognised industrial institute or a Government training institute

itself. If what the petitioner states in her application is correct and she has, for the purpose of correspondence, set out this address, then, what we have before us is a very curious fact and that is evident from the cause title of the petition, that the petitioner is serving and her address is Government ITI, Pardi Road, Bhoom, Taluka Bhoom, District Osmanabad. If we take this as a residential address, then, what the petitioner says and on oath is that the petition is affirmed at Pune. The petitioner is supposed to be a resident of District Osmanabad. Which institute she attended, how, therefore, she was eligible to appear for examination for the certificate course and passed it with flying colours has not been set out. Pertinently, Mr. Bapat relies upon the Rules for Admission to Examination, Passing Condition, Issue of Statement of Marks, Certificates and Duplicate Certificate, which rules are styled as Maharashtra State Board of Vocational Education Rules applicable for certain courses. The rules regarding admission to an examination/ eligibility for appearing in examination are Rules 5 and 6. These Rules read thus:-

"Rule?5. Admission to an Examination/Eligibility for appearing in examination :- No candidate will be admitted to any examination unless, he took admission in the institute recognised by the Directorate of Vocational Education, Maharashtra State or affiliated to the Board of Vocational Examination and he has filled in examination form along with prescribed examination fees and it is certified by DVETO/Head of Institute that he had fulfilled following conditions. Except direct examination candidates who are already bona fide students of Pre. S. S. C., bifocal or H. S. C. (Voc.) scheme or passed it.

The Candidate has given satisfactory attendance of at least 75% of the total Lecture/Periods including each Theory/Practical/Term work/Tutorials/Project work separately in each and every subjects as per the Teaching scheme of the Board.

Rule-6. Condoning deficiency in attendance

In case the attendance of a candidate falls short by not more than 10% due to the circumstances beyond his control, the head of the institute may condone such deficiency at his discretion and permit the candidate to appear for examination, if he is otherwise eligible."

19. Then, what we have is the requirement, which has to be fulfilled. That is a very important requirement, namely, Assessment of Term Work/Sessional/ Practical/Project Work/Oral/any other head. Once the institute and which has to be attended must be recognised by the Government or must be the Government institute itself, then, in the absence of this very relevant and germane material, we do not think that the Municipal Commissioner was obliged to select or appoint a candidate like the petitioners. That everybody who is selected and is likely to be appointed has gone through a similar process is no answer. One wrong or one error committed by the authority or an administrator does not mean that on that basis the petitioners can claim a vested right. We do not think that the writ jurisdiction permits perpetuation of a wrong or an error. There cannot be equality

in illegality. In the facts and circumstances of the case, we do not think that this argument has any merit.

20. In the rejoinder affidavit, what is urged regarding the specific stand taken by the municipal corporation expressing doubt about the genuineness of the documents relied upon, that the experience of a candidate has to be after acquisition of the educational qualification, is a plea raised as an afterthought. Beyond this, nothing has been stated in the rejoinder affidavit, which would evidence that the petitioners have cleared the certificate course from recognised institute/Government ITI with the criteria and rules for examination being complied with.

21. Equally, we do not find any merit in the contention that because such petitioners are toppers, they deserve to be appointed by condoning any lapses and particularly in fulfilling the criteria of experience. If the requirement is as above, then, the argument that such toppers should not be overlooked does not deserve any acceptance. Which merit the petitioners speak about and highlight is unclear to us. A merit in their case is only of attaining good marks in the written examination conducted by the Pimpri Chinchwad Municipal Corporation. They may have obtained very good marks in the written examination and as highlighted by Mr. Marne, but that does not mean that they are toppers. They can be termed as toppers only when they show us certificates of completion of vocational training or industrial training from recognised institute. The certificate and which is highlighted and which shows that they have passed the course with flying colours does not denote that they attended any recognised institute by fulfilling the eligibility criteria of attending theory, practical, term work etc. In these circumstances, the administrators cannot be faulted for overlooking and not appointing candidates like the petitioners. There is a discretion, which vests in them and they have chosen not to appoint candidates whose claims are doubtful. Some of the claims can be termed as bogus and dubious. Now a days, we see that every attempt is made to highlight such achievements and to gain public employment. Such inflated claims are made by relying on dubious documents. At such a young age if this act is mastered, then, we do not think that candidates producing and relying on documents, whose contents are questionable or disputable should be appointed on a public post. Such candidates, who are frequently obtaining certificates from all corners of the State do not deserve to be appointed. The writ jurisdiction is not meant to overturn the decisions of the statutory authorities and which are taken during the course of administration for they have to select eligible candidates. They are responsible for such decisions as they are discharging public functions and performing a public duty. They cannot be directed to appoint candidates whose claims are suspicious. We do not think that given the above facts and circumstances, we would be required to go into any larger issue. We do not think that our discretion should be exercised. In favour of the petitioners herein.

22. Our attention was invited to a decision of the Hon''ble Supreme Court of

India in the case of Anil Kumar Gupta (supra). What has been stated and observed in that case is that the Municipal Corporation of Delhi invited applications for filling up posts of Assistant Engineer (Civil). The essential qualifications for appointment were degree in Civil Engineering and two years' professional experience. Pertinently, that was a degree course. The norms were prescribed for awarding marks. The list of 60 candidates was prepared and 44 were placed in the waiting list. The unselected candidates filed a writ petition in Delhi High Court, which was dismissed by a learned Single Judge. The Letters Patent Appeals were preferred and some fresh petitions. The Division Bench of the Delhi High Court found that this is a fit case where a retired Judge should be appointed so as to verify whether the allocation of marks by the municipal corporation to the various candidates was in accordance with the norms fixed. The retired Judge was appointed, who once again went through the record and heard the candidates. Based on his report, the court scrutinised the select list. The Division Bench, then came to the conclusion that the candidates who were found to be eligible and appointed by the Municipal Corporation of Delhi and later on found by the retired Judge to be ineligible for appointment may be allowed to continue in service. The candidates, who were found ineligible by the Municipal Corporation of Delhi and later on found by the retired Judge to be eligible for appointment and who have approached the High Court within reasonable time should be accommodated by giving them employment against existing vacancies. The candidates, who were found by the retired Judge to be ineligible for appointment on the ground that they had obtained employment by producing false/fictitious certificates, should be cashiered.

23. It is in these circumstances that the cases were taken up in this order for scrutiny by the High Court and those aggrieved by the outcome of this process preferred the appeals. Anil Kumar was one of them. The argument before the Hon'ble Supreme Court was that there was some irregularity and therefore, the list of the municipal corporation cannot be termed as dubious. We do not go into that aspect. The background facts, therefore, cannot be ignored. While deciding the issue of fulfilment of the experience criteria, whether that experience, gained while holding diplomas, could also be counted in addition to the experience gained after obtaining the degree, was the issue. We cannot gloss over it and allow the petitioners before us to rely upon this decision. Therefore, a certain experience was gained while holding diploma and whether that can be counted in addition to the experience gained after obtaining the degree was the issue before the Hon'ble Supreme Court of India. Naturally, therefore, given the condition in the advertisement with regard to the work experience that the Hon'ble Supreme Court went into the entire record and laid down a principle by relying upon its earlier decisions.

24. We cannot read paras 20, 21 and 23 of this judgment in isolation. Equally, para 24 thereof cannot be seen de hors the factual backdrop. Therefore, the discussion on Point No. 2 centers around matters where the Hon'ble Supreme Court was concerned with not an issue as raised before us. In absence of any

doubt about the genuineness and bonafides of the claims of the candidates that the argument was canvassed and considered by the Hon''ble Supreme Court.

25. Having dealt with all the submissions of the petitioners'' counsel and finding that each one of them are identical to all matters, we dismiss all these petitions. Rule is discharged in each of them. The ad-interim orders are vacated forthwith.

26. At this stage, it is prayed by Mr. Marne that the ad-interim orders passed by this court, restraining the municipal corporation from filling up the posts be continued for a period of two months from today so as to enable the petitioners to approach the higher court.

27. This request is seriously opposed by the learned counsel appearing for the respondents, contending that the municipal corporation has a job at hand. It has not been able to finalise the process.

28. Having noted the argument on this point, we are of the view that in the light of our findings and conclusions, this is not a fit case to continue the ad-interim order. The request in that behalf is refused.