
(2015) 10 BOM CK 0022
In the Bombay High Court
Case No : Writ Petition No. 2181 of 2015

Nilkanth

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Citation : (2016) 2 ALLMR 116 : (2015) 6 BomCR 287

Hon'ble Judges : S.S. Shinde, J;A.M. Badar, J

Bench : Division Bench

Advocate : S.P. Urgunde, for the Appellant; V.H. Dighe, AGP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.S. Shinde, J—Heard.

2. Rule. Rule made returnable forthwith, and heard with the consent of the parties.

The brief facts leading for filing the Writ Petition as disclosed in the Memo of the Petition are as under:

3. The respondent No. 2 published an Advertisement bearing No. 01/2014, inviting application to fill in the Class-III & IV posts. According to the said Advertisement, 3 posts of Junior Accounts Officer were to be filled in from reserved category. One post each from women and male [open category], and third one from reserved category. As per the relevant condition of the said advertisement, the candidate should possess graduation in any faculty as mentioned in the advertisement, and his age should not be more than 33 years. However, the candidate is having 5 years working experience in Government office or semi-Government offices or the candidate possessing post-graduate in Commerce faculty with the special subject of Accounting and Auditing shall be given preference for the post of Junior Accounts Officer. It is the case of the petitioner that, as per the condition prescribed by the respondent No. 2

Authority, the petitioner is a qualified and eligible candidate, therefore, he did file an application for the post of Junior Accountant on 07.09.2014 from the category of Male [open]. Thereafter, the respondent No. 2 has issued Admit Card, and the written examination was held on 22.11.2014.

4. The petitioner appeared on 22.11.2014 for written examination and result of the said Examination was declared on 15.12.2014 on website of the respondent No. 2 Authority, wherein it was found that, the petitioner secured 136 marks out of 200. The petitioner secured highest marks in the examination conducted by the respondent No. 2 Zilla Parishad. After the result, the candidates were called for verification of documents, submitted by the candidates on 17.12.2014. As per the scheduled date, the petitioner approached to the respondent Authority i.e. the District Selection Committee, and submitted all the documents required by the said Committee, and it was informed that, the selection list will be published on website. The respondent authority instead of publishing the selection list on website, published said selection list on the notice board of Zilla Parishad on 18.02.2015. After looking into the said selection list, the petitioner was surprised as his name was not appearing in the said selection list. Immediately, he approached to the President of District Selection Committee and pointed out the mistake committed by their Officer. The District Collector informed the present petitioner that, the selection of the respondent No. 4 has been made only because he was having experience of 5 years in service of Zilla Parishad, Osmanabad. The petitioner has made detailed representation dated 20.02.2015 to the respondent No. 3, and pointed out the relevant Rules, and clause of the advertisement. However, there was no response.

5. The learned counsel appearing for the petitioner submits that, the select list was not prepared in accordance with the Maharashtra Zilla Parishad District Services [Recruitment] Rules, 1967 [in short "Rules of 1967"]. It is submitted that, the petitioner has secured highest marks in the examination conducted by the respondent Zilla Parishad. It is submitted that, so far preference is concerned, when both the candidates secure equal marks, at that time the additional qualification of that candidate has to be considered. In the present case, the petitioner has secured 136 marks out of 200, and the respondent No. 4 has secured 132 marks, in spite of that, the respondent authority has appointed the respondent No. 4. The oral examination has not been conducted and all the candidates were called on 17.12.2014 for verification of documents submitted by them. The impugned select list is without following due procedure of law and without giving opportunity of hearing. The petitioner is also post-graduate in Commerce faculty, and has completed post-graduation in special subject of accounting and auditing, therefore, as per the condition prescribed in advertisement, the preference has to be given to the present petitioner considering his educational qualification. Therefore, the learned counsel appearing for the petitioner relying upon the Rules of 1967, pleadings in the Petition, grounds taken therein, and annexure thereto, submits that, the Petition deserves to be allowed.

6. The learned counsel appearing for the respondent No. 2 invited our attention to the averments in the affidavit-in-reply and submits that, an advertisement was issued for the recruitment of three posts of Junior Accounts Officer, out of which, 1 post was for reserved category, remaining two posts were for the candidates from Open category, out of which one was for women. The petitioner applied for the post of the Junior Accounts Officer against the unreserved post. The procedure for calling application online was handed over to the Zeltek Company. The petitioner and other applicants applied through online and no documents were attached to the application form. The said Company without scrutinizing applications, issued admit cards to the petitioner and other applicants. As the admit card was issued, the petitioner appeared to the written examination on 22.11.2014. The result was also declared and the petitioner got highest marks i.e. 136 marks, and hence, his name appeared at serial No. 1 in merit list. It is submitted that, the petitioner and other candidates who passed the written examination were called for verification of all documents on 17.12.2014. The scrutiny of the documents were conducted before the District Selection Committee headed by the President i.e. the Collector, Osmanabad. The petitioner applied for the post of Junior Accounts Officer, but he was not qualified for the post of Junior Accounts Officer and only due to the online procedure adopted for the recruitment process, the form of the petitioner was accepted and he was permitted to participate in the written examination. The petitioner is not fulfilling the basic qualification for the selection for the post of Junior Accounts Officer. The petitioner was not fulfilling the basic criteria given by The Maharashtra Zilla Parishads District Services [Recruitment] Rules, 1967. The Appendix-XI of the said Rules lays down qualification of candidates and method of appointment to the posts included in District Service [Class-III] [Accounts]. After perusing the relevant rules, it is crystal clear that, the candidate who is being nominated for the said post unless already in the service of Zilla Parishad, are not more than 30 years of age and possess a degree of a recognized University and have practical experience in accounts and auditing work in any Government Office or a business firm or a local authority for a continuous period of at least 5 years and the preference is being given to those who hold a degree in Commerce with Accountancy and Audit as Special subjects or a 1st or 2nd Class degree. The petitioner is admittedly not having any experience and hence he is not qualified to be appointed as Junior Accounts Officer and hence the District Selection Committee rightly rejected the candidature of the petitioner and selected the respondent No. 4, who secured 2nd highest marks in the merit list. It is submitted that, the respondent No. 2 has already issued appointment order in favour of respondent No. 4 on 18th February, 2015 and hence there is no any violation of interim order passed by the Hon"ble High Court. Therefore, he prays that, Writ Petition may be rejected.

7. The learned counsel appearing for the respondent No. 2, on written instructions, which are placed on record submits that, at present there is no any vacant post of the Junior Accounts Officer in the Establishment of the respondent

No. 2.

8. The learned counsel appearing respondent No. 4 submitted that, the issue raised in this Petition is no longer res-integra and covered by the unreported Judgment of the Bombay High Court, Bench at Aurangabad in the case of Babasaheb Raghunath Mundhe Vs. The Regional Selection Board & others in Writ Petition No. 4211 of 1994 decided on 21st July, 2010. It is submitted that, the appointment order of the respondent No. 4 is issued, by following due procedure of law. The advertisement for the recruitment of three posts of Junior Accounts Officer, one post was for reserved category, remaining two posts were from Open Category. The petitioner applied for the post of Junior Accounts Officer against unreserved post. It is submitted that, the Company which was given job to scrutinize applications, inadvertently, issued admission card to the petitioner and other applicants. After written examination and the scrutiny of the documents were conducted before the District Selection Committee headed by the District Collector, Osmanabad, the respondent No. 4 is appointed on the post of Junior Accounts Officer. It is submitted that, the petitioner did not qualify for the post of Junior Accounts Officer and only due to online procedure adopted for the recruitment process, the form of the petitioner was accepted and he was permitted to participate in the written examination. The petitioner is not fulfilling the basic qualification for the selection on the post of Junior Accounts Officer. It is submitted that, the Maharashtra Zilla Parishad District Services Recruitment Rules, 1967, Appendix XI of the said Rules laid down qualifications of the candidates and method of appointment to the post included in the District Services Class-III [Account]. It is submitted that, upon perusal of the said Rules, it is crystal clear that, the candidate who is being nominated for the said post unless already in the service of the Zilla Parishad, is not more than 30 years of age and possess a degree of recognized University and have practical experience in accounts and auditing in any Government office or business firm or a local authority for a continuous period of at least 5 years, he / she cannot be appointed as an Account Officer. It is submitted that, preference is being given to those who hold a degree in Commerce with Accountancy, and Auditor as special subjects or 1st or 2nd Class degree. Admittedly, the petitioner is not having any experience and he is not qualified to be appointed as Junior Accounts Officer and hence the District Selection Committee has rightly selected the respondent No. 4, who secured 2nd highest marks in the merit list. It is submitted that, the respondent No. 4 has sufficient experience of work in the Zilla Parishad, and therefore, the Selection Committee, in the light of the relevant Rules, rightly appointed respondent No. 4. The Division Bench of the Bombay High Court, Bench at Aurangabad in similar facts situation in the case of Babasaheb Raghunath Mundhe [supra], held that, the candidate, having experience and requisite qualification as per the conditions in advertisement, was eligible for the appointment, however, in the facts of that case, respondent No. 5 therein was not possessing requisite experience, therefore, it was held that, respondent No. 5 could not have been considered for the post of Junior Accounts Officer.

Without prejudice to the submissions made herein before, by way of alternate submission, the learned counsel appearing for the respondent No. 4 submits that, if this Court comes to the conclusion that, the petitioner was entitled for the appointment on the post of Junior Accounts Officer instead of respondent No. 4, in that case keeping in view the observations of the Division Bench in the case of Babasaheb Raghunath Mundhe [cited supra] in para No. 6, the appointment of the respondent No. 4 deserves to be protected.

9. We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, learned AGP appearing for the Respondent - State, and the learned counsel appearing for the Respondent No. 2 and the respondent No. 4. With their able assistance, we have perused the pleadings and grounds taken in the Petition, qualifications mentioned in the advertisement for the appointment on the post of Junior Accounts Officer, and also other documents placed on record, reply filed by the respondent No. 2 and the Judgment in the case of Babasaheb Raghunath Mundhe [cited supra]. It is not in dispute that, the petitioner and the respondent No. 4 along with other candidates applied in pursuant to the advertisement placed at Exhibit-A for the post of Junior Accounts Officer in respondent No. 2 Zilla Parishad. It appears that, there were two posts advertised from Open Category. Out of 2 posts, one was reserved for women and another for male. The relevant portion of the advertisement, for the purpose of proper adjudication and for reaching to the correct decision in the Writ Petition, reads thus:

[Underlines added]

10. Upon perusal of the documents placed on record, it appears that, the petitioner herein has completed his Graduation in the Year 2007, from Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, and secured 70% marks, and post graduation in Commerce Faculty from University of Pune by securing 58% marks in the Year 2009, with special subject of accounting and auditing.

11. Upon careful perusal of the copy of an application, which was filled in by the petitioner in pursuant to the advertisement for the appointment on the post of Junior Accounts Officer, the aforesaid qualifications are mentioned in the said application. The relevant portion from the advertisement, which is reproduced herein above, if carefully perused, in case of candidate who has passed post-graduation examination with Mathematics or Commerce, auditing and accounting, in that case such candidate can be appointed directly . Therefore, the petitioner, who has completed post graduation with commerce subject from the commerce faculty, with special subject of accounting and auditing, the experience of working in the Zilla Parishad or in other establishments as mentioned in the advertisement was not necessary. It is undisputed position that, the petitioner stood first in the merit list by securing 136 marks, and the respondent No. 4 stood at serial No. 2 by securing 132 marks. Therefore, on fulfilling requisite conditions / qualifications as mentioned in the advertisement,

which is in conformity with the Rules of 1967, inevitable conclusion is that, the petitioner should have been appointed on the post of Junior Accounts Officer. It is true that, the respondent No. 4 has experience of working in the Zilla Parishad at his credit. However, on fulfilling requisite qualifications and after securing highest marks in the merit list, the petitioner was entitled for the appointment and not the respondent No. 4. The fact that the petitioner secured highest marks is not disputed.

12. The reliance placed by the learned counsel appearing for the respondent No. 4 in the case of Babasaheb Raghunath Mundhe [cited supra] to contend that, on the count of equity the appointment of the respondent No. 4 may not be set aside, cannot be accepted in the facts of the present case. In the facts of that case, the respondent No. 5 therein was working since 20th August, 1994 and Petition was decided on 21st July, 2010. Therefore, keeping in view length of service and the fact that, by the time Judgment was delivered the respondent No. 5 must have crossed upper age limit, the sympathetic view was taken. However, in the present case, the facts are quite distinguishable inasmuch as respondent No. 4 was already working in the respondent Zilla Parishad on some other post, and selection process is conducted in the Year 2014, and final list of successful candidates was declared on 18.02.2015, therefore, we are not inclined to accept the prayer of the learned counsel appearing for the respondent No. 4 that, his appointment as Junior Accounts Officer may not be set aside. However, we make it clear that, the post which was occupied by the respondent No. 4, prior to his appointment as Junior Accounts Officer, the respondent No. 4 shall be restored back to said position in the service by the respondent No. 2 Zilla Parishad.

13. The learned counsel appearing for the respondent No. 2 has informed this Court that, as on today there is no any vacant post of the Junior Accounts Officer is available. The learned counsel appearing for the respondent No. 4 also made submission that, in case any vacant post of Junior Accounts Officer is available or if vacancy arises in future, respondent No. 4 may be accommodated on the said post. However, we leave the said aspect for consideration of the respondent No. 2, as and when post becomes available.

14. If the respondent No. 4 is paid salary of the post of Junior Accounts Officer, from the date of his appointment till date, the said payment of salary should not be recovered from the respondent No. 4. Though we are inclined to give deemed date of appointment with effect from 18th February, 2015 to the petitioner, however for the purpose of salary for the period 18.02.2015 till the date of actual appointment of the petitioner, the same should be paid notionally.

15. In the light of discussion and reasons recorded in the foregoing paragraphs, the appointment of the respondent No. 4 deserves to be set aside, and accordingly, the same is set aside, and the respondent No. 2 is directed to give appointment to the petitioner on the post of Junior Accounts Officer i.e. on the post which was occupied by the respondent No. 4, by giving deemed date of

seniority in the cadre of Junior Accounts Officer from 18th February, 2015 within two weeks from today.

16. Rule is made absolute in the above terms. Writ Petition stands disposed of.