
(2016) 04 BOM CK 0102
In the Bombay High Court
Case No : Writ Petition No. 6551 of 2015

Nitin

APPELLANT

Vs

Maharashtra State Power Generation Company Limited

RESPONDENT

Date of Decision : 20-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 ALLMR 852 : (2016) 4 MhLJ 694

Hon'ble Judges : B.P. Dharmadhikari and P.N. Deshmukh, JJ.

Bench : Division Bench

Advocate : M.V. Mohokar, Advocate, for the Appellant; A.D. Mohgaonkar, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

B.P. Dharmadhikari, J. (Oral) - Rule. Rule is made returnable forthwith and heard finally with the consent of Shri Mohokar, learned counsel for the petitioner and Shri Mohgaonkar, learned counsel for the respondent.

2. Shri Mohokar, learned counsel for the petitioner states that 10.09.2014 was the last date for submission of application form, however, on that date result of Trade Test conducted by the Directorate of Vocational Education and Training, Maharashtra State, Mumbai, was not declared and hence the petitioner could not file on-line application. The respondent extended last date to 20.09.2014. The result of Trade Test was declared on that day only and the petitioner immediately sent his on-line application. The application was within time and was found in accordance with law, therefore, the petitioner was permitted to participate in selection process but ultimately on the ground that his application is belated, his candidature has been turned down. There were total 17 vacancies and only 14 vacancies can be filled in and three vacancies are still available.

3. He invites our attention to the orders of this Court dated 04.12.2015 to urge that one post of Technician Grade III from the OBC category has been directed to

be kept vacant and it is accordingly lying vacant even today.

4. Shri Mohgaonkar, learned counsel is relying upon reply affidavit. He submits that the last date was not extended for candidates from open market like the petitioner. Certain candidates were undergoing in-house training at three Training Centres opened by the respondent and as those Training Centres were started on different dates, to facilitate the trainees therefrom, last date was extended only for those candidates and in relation to certain Trades. He submits that accordingly the agency to which recruitment was handed over was informed but that agency did not publish on-line the complete text and hence under wrong impression that the date 20.09.2014 was the last date for submission of application, the petitioner and one more candidate submitted their application. The learned counsel states that the other candidate has approached Aurangabad Bench and his petition is pending. He further contends that in on-line application form submitted by the petitioner on 20.09.2014, date of passing has been stated as 10.09.2014 and marks obtained are also disclosed as 534 i.e. 76.29%. He submits that this is incorrect information, as the result was actually declared on 20.09.2014 and in that result the petitioner has not scored 534 marks. He submits that thus, on these two counts, the application of the petitioner has not been entertained.

5. Shri Mohokar, learned counsel submits that in actual result declared on 20.09.2014, the petitioner has scored more marks, however, in hurry, to complete the process of submission of application form on-line, the petitioner failed to correct the date of passing of examination and marks obtained by him, therefore, incorrect information was received by the respondent. However, the information cannot cause any prejudice to the respondent as actual result has been looked into by the respondent and it found that the petitioner has passed examination before the last date with more marks.

6. The copy of Provisional National Trade Certificate issued by the Directorate of Vocational Education and Training, to the petitioner which contains details of result is fairly made available for perusal of this Court by Shri Mohgaonkar, learned counsel. A copy of the same is taken on record and marked as Exh. "X" for identification. The Certificate shows date of result as 20.09.2014 and the petitioner has secured 538 marks out of 700.

7. It is apparent that as the result was declared on 20.09.2014 only and the said date was the last date for submission of on-line application, the petitioner in anxiety failed to correct the date of passing and marks obtained, in online application form. However, in view of the data noted by us supra, we do not find any dishonesty on the part of the petitioner in the matter.

8. Though the affidavit filed by the respondent and documents to which our attention has been invited by Shri Mohgaonkar, learned counsel, show that intention of the respondent was to extend date only in relation to particular category of trainees, the notice published on 03.09.2014 shows that it was

issued under the signature of Chief General Manager (H.R.) of the respondent. It does not appear to be a notice published by the agency which had undertaken the exercise of recruitment. The notice unequivocally extends last date for submission of application for everybody and its reading does not show that it is restricted only to a particular category. Thus, representation to general public is that the last date was extended to 20.09.2014 for everybody. The submission of application by the petitioner, who was qualified on 20.09.2014 is not in dispute. His application has been looked into by the respondent. He was also permitted to participate in on-line process for further recruitment and his performance has also been evaluated.

9. The note to which our attention has been invited is prepared on 22.04.2015 and in it a remark is put that result date is 20.09.2014 i.e. after last date of application.

10. In this situation, we find refusal on the part of the respondent to consider the candidature of the petitioner unjustified. The petitioner, at the most, can be blamed for acting hurriedly but having appeared for I.T.I. Examination and having cleared it, he must have been under pressure to negotiate an opportunity of employment, which was then available. In that process he failed to correct the error in on line application form already prepared by him. We have already noted that it was not a dishonest act.

11. Prima facie, it appears that out of total 17 vacancies, only 14 vacancies have been filled in and three vacancies are still available. In any case, orders of this Court dated 04.12.2015 are very clear and one post of OBC is directed to be kept vacant. Hence, we direct the respondent to consider the claim of the petitioner for employment against the vacant post within a period of four months from today.

12. With these directions, we partly allow the present writ petition and dispose it off. Rule is made absolute in above terms. However, in the facts and circumstances of the case, there shall be no order as to costs.