
(2018) 02 BOM CK 0074
In the Bombay High Court
Case No : 8222 of 2016

Rahul s/o. Upasrao Rohankar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-02-2018

Acts Referred:

[Maharashtra Animal And Fishery Sciences University Act, 1998](#),
[Section 34](#)

Citation : (2018) 02 BOM CK 0074

Hon'ble Judges : S.S.Shinde, S.M.Gavhane

Bench : Single Bench

Advocate : U.B.Bilolikar, ?C.S.Kulkarni, P.G.Rodge

Final Decision : Dismissed

Judgement

1. Heard. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

2. This Petition is filed with the following prayer: B. By issuing appropriate, writ, order or directions in the like nature the impugned communication dated 19.12.2015 issued by respondent No.2 (bearing No.MAFSU/Est.1/5694/2015) may be quashed and set aside and the petitioner may kindly be appointed on the post of Assistant Professor Veterinary Anatomy and Histology which is reserved for S.C. category.

3. It is the case of the petitioner that, the petitioner belongs to "Scheduled Caste" category. The petitioner passed B.V.Sc. & A.H. in the year 2003 with a C.G.P.A. 6.5 [i.e. with 65% marks]. In the year 2006, the petitioner got masters Degree i.e. M.V.Sc. [Anatomy] with 7.6 C.G.P.A. [i.e. with 76% marks]. In the year 2014, the petitioner got Ph.D. degree. The petitioner is a meritorious student, and having Doctorate in Veterinary Anatomy and Histology. It is further the case of the petitioner that, on 17.07.2014, respondent no.2 has advertised various posts in the faculty of Veterinary Science. The post of Assistant Professor

in Veterinary Anatomy and Histology was also advertised. Out of the three posts advertised, two posts were unreserved, and one post was reserved for S.C. category. As per the advertisement, the requisite qualification for the post of Assistant Professor was Ph.D. in respective discipline or M.V.Sc. in respective discipline along with National Eligibility Test [NET] conducted by ICAR/UGS/CSIR. In the aforesaid advertisement, various conditions and general instructions were given. So far as the conditions regarding mode of selection is concerned, if disproportionately large number of applications are received, the University may conduct screening test or adopt a suitable criteria to short list the candidates to call for the interview. It was also mentioned that, during interview session meant for direct appointments, each candidate has to invariably make a presentation of about 10 minutes with regard to his or her past performance, and his vision for development in relation to the Universities goal and objectives as committed academician, which shall be followed by personal interview, except these two conditions, nothing was mentioned regarding the minimum qualifying marks to be obtained by the student for remaining in the selection process.

4. It is further the case of the petitioner that, the petitioner, being qualified and eligible for the said post, applied for the post of Assistant Professor. The application along with all annexures were sent to the University. As the petitioner is in service, the application was sent through proper channel and advanced copy of application was also submitted. On 30.05.2015, the Registrar has sent a call letter to the petitioner for appearing for interview on 20.06.2015. The petitioner was the only eligible candidate, who appeared for interview from S.C. category. The other S.C. candidates were not even qualified for the interview. The petitioner appeared before the Selection Committee, and performed to the best of his ability and being the only candidate for the post reserved for S.C. category, the petitioner was confident that, he would be selected for the post of Assistant Professor, however, the petitioner was not informed anything regarding the result of the interview. Therefore, the petitioner made correspondence with respondent no.2. Thereafter, respondent no.2 i.e. the Registrar, has informed the petitioner, by order dated 19.12.2015 that the petitioner has not been selected for the post of Assistant Professor. Thereafter, the petitioner sought information from respondent no.2 regarding mode of selection.

5. Learned counsel appearing for the petitioner submits that, respondent no.2 has not stated anything in the advertisement regarding conditions of selection and the Rules for selection. So far as the written examination or the screening test is concerned, it was only mentioned that the screening test will be conducted if large number of applications are received. However, for the purpose of interview, there was no stipulation in the advertisement regarding maximum marks and the minimum marks to be obtained by the candidate, appearing for the interview. It was only after the petitioner sought the information it was informed that, for personal interview 08 or more marks out of 20 from 50% of the selection Committee members is necessary. The procedure adopted by the Selection Committee is arbitrary. It is submitted that, there were in all three

posts out of which one post was reserved for S.C. category. The petitioner was the only candidate from the S.C. category appearing for the interview, and therefore, the Selection Committee ought to have selected him. It is submitted that, in view of 82nd Amendment to the Constitution of India, Article 335 is amended and a proviso is added, which is as under: ["Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes or services or posts in connection with the affairs of the Union or of a State"]

In view of this, respondent no.2 ought to have lowered down the standard of evaluation i.e. relaxation ought to have been given to the petitioner, even if the criteria for selection was fixed by the Resolution No.46/2014. Therefore, the communication dated 19.12.2015 is illegal for the reason that, without assigning any reason it is stated that the petitioner is not found suitable. In fact, the petitioner believes that the petitioner appeared for the presentation and for interview and he performed extremely well. When there was no other candidate from S.C. category, the Selection Committee ought to have selected the petitioner. The qualified number of the candidates from reserved category in this stream are very less. When the petitioner was otherwise eligible as per the norms of respondents, in that case respondents ought to have selected the petitioner, but for the reasons best known to respondents, respondents have purposefully avoided the selection of the petitioner. The action on the part of respondents is mala fide, and therefore, the communication / order is illegal, and therefore, the same is liable to be set aside.

6. It is submitted that respondents failed to consider that, the reservation in the appointments are for the purpose of upliftment of the Scheduled Castes and other socially weaker sections, when a eligible and qualified candidate is available, and the post is reserved for Scheduled Caste, the Committee ought to have selected the petitioner, thereby the policy of reservation could have been followed in its true spirit.

7. Learned counsel appearing for the petitioner relying upon the averments in the affidavit in rejoinder to the reply filed by respondent nos.2 and 3 submits that, Resolution No.46/2014 is not a Statute. In view of provisions of Section 34 of the Maharashtra Animal & Fishery Sciences University Act [for short "MAFSU Act"], there is procedure how to get assent from the Hon"ble Chancellor to the Resolution passed by the Executive Committee. Therefore, it is submitted that the aforesaid Resolution No.46/2014 was not sent to the Hon"ble Chancellor for assent. Learned counsel further invites our attention to the pleadings and grounds taken in the Petition, annexures thereto, and also University Grants Commission Regulation, and the judgment in the case of the Ramesh Kumar V. High Court of Delhi and Anr., AIR 2010 SC 3714, and the interim order passed by the Bombay High Court at Principal Seat on 5th May, 2015 in Writ Petition

No.3871/2015 [Dr.Vijay Urkuda Dhande Vs. State of Maharashtra & Ors.] and submits that, the Petition deserves to be allowed.

8. On the other hand, learned counsel appearing for respondent nos.2 and 3 relying upon the averments in the affidavit in reply filed by those respondents submits that, it is true that respondent no.2 issued an advertisement dated 17.07.2014 for three posts of Assistant Professor in Veterinary Anatomy and Histology and other posts. Out of three posts of Assistant Professor, one post was reserved for S.C. category. In response to the said advertisement, the petitioner applied for the post of Assistant Professor in Veterinary Anatomy and Histology reserved for S.C. category since he belongs to S.C. category. The petitioner is having requisite qualifications for the said post as mentioned by him in para 3 of the petition. The certain conditions are mentioned in the said advertisement for general understanding of the candidates so that the candidates should not be deprived from losing their candidature due to any shortfall in their applications. The Executive Council of respondent no.2 University, by Resolution No.46/2014, prescribed criteria for selection to be followed by the Selection Committee so that the Competent and most suitable candidates should be selected. Apart from this, the Selection Committee has its own discretion prescribed in the Maharashtra Animal & Fishery Sciences University Statutes, 2002 [for short "MAFSU Statute"] to make assessment of the candidate during interview and to decide the suitability of the candidate for the post. The petitioner cannot take recourse in the pretext that the criteria prescribed by Resolution No.46/2014 were not mentioned in the advertisement. It is further submitted that, after scrutiny of the application of the petitioner, it was found that the petitioner was eligible to appear for interview, and therefore, he was called for interview by letter dated 30.05.2015. The petitioner was the only candidate of S.C. category for the reserved post of Assistant Professor. However, the selection of the candidate, called for interview, depends upon his performance during the interview, which is to be judged by the experts / members of the Selection Committee. After interviewing the petitioner, the members of the Selection Committee recorded their marks individually, and the petitioner did not get average marks more than 8 out of 20 at the hands of the members of the Selection Committee. Therefore, as per the Resolution No.46/2014 of the Executive Committee, the Selection Committee found the petitioner unsuitable for the post of Assistant Professor, and accordingly, the Selection Committee did not select the petitioner for the said post, and as such, the assumption of the petitioner that he was the only candidate from S.C. category, and he was hopeful to be selected for the said post is meaningless. Statute 54 of the MAFSU statutes provides that "no person shall be appointed by the University to any of the said post, except on recommendation of the Selection Committee" and since the Selection Committee did not select and recommend the name of the petitioner for appointment to the post of Assistant Professor, there is no question of appointing the petitioner to the said post by respondent no.2. However, in response to the correspondence of the petitioner, the respondents by letter dated 19.12.2015 impugned in this Writ

Petition, informed the petitioner that, he is not selected for the said post.

9. It is further submitted that, so far as 82nd Amendment of the Constitution of India is concerned, proviso to Article 335 provides for provision in favour of members of Scheduled Tribe and Scheduled Castes, for relaxation of qualifying marks in any examination or lowering the standard of evaluation for reservation in the matters of promotion in any class or classes service. Thus, the said proviso is applicable in respect of reservation while filling in the posts by way of promotion. The said proviso is not applicable in the present case as the post in question has to be filled in by direct recruitment. It is submitted that, the petitioner did not get even qualifying marks in the interview. The respondents denied the contention of the petitioner that, criteria as per Resolution No.46/2014 of the Executive Committee is applicable to only General Category and not to the S.C. category. It is further denied that minimum bench mark was decided at the time of interview. On the contrary, the minimum bench mark has been fixed before the advertisement vide Resolution No.46/2014 of the Executive Committee. There is provision in statutes 51 to 62 of the MAFSU Statutes for selections of qualified and quality Academic Officers and as per the said provisions, due procedure has been followed. However, since the petitioner was having basic qualifications; he was invited for interview and since he did not get qualifying marks in interview, the petitioner was not selected by the Selection Committee. There is no provision to give relaxation in the marks of interview, and therefore, the petitioner is not at all entitled to be appointed as per the above said recruitment process.

10. We have considered the submissions of the learned counsel appearing for the petitioner, learned AGP appearing for the respondent State, and learned counsel appearing for respondent nos.2 and 3. With their able assistance, we have carefully perused the pleadings and grounds taken in the Petition, annexures thereto, affidavit in reply filed by respondent nos.2 and 3, and also rejoinder filed by the petitioner. At the outset, it would be apt to make reference to the Resolution No.46/2014 passed by the Executive Council of respondent no.2 University, which reads thus:

"The Executive Council approves below mentioned criteria of minimum marks required for the past performance and personal interview for the post of Assistant Professor & Equivalent / College Librarian / Assistant Professor [Physical Education]".

"A candidate getting 33 or less marks out of 80 in the past performance shall be rejected and for the personal interview, 08 or less marks out of 20 from 50% of present Selection Committee members, shall be rejected even his total grade may be higher than that of other candidates".

As it is apparent from the reply filed by the respondent nos.2 and 3 that, the petitioner could not secure more than 8 marks out of 20 marks in oral interview, and therefore, the Selection Committee rejected the candidature of the petitioner

for the post of Assistant Professor in Veterinary Anatomy and Histology. The petitioner has raised contention that, proviso to Article 335 of the Constitution of India provides for the provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes or services or posts in connection with the affairs of the Union or of a State. As rightly mentioned in the reply filed by respondent nos.2 and 3 that the post advertised for which the petitioner applied was by direct recruitment, and the same was not by way of promotion. Therefore, there is no question of lowering down the standards, and same would be contrary to the mandate of Resolution No.46/2014. The contention of the petitioner that though he has not secured more than 8 marks, he should have been appointed; deserves no consideration.

11. The aforesaid Resolution No.46/2014 has been passed prior to issuance of the advertisement. Once the decision taken by the Selection Committee to reject candidature of the petitioner for the post of Assistant Professor in Veterinary Anatomy and Histology, is traceable in the aforesaid Resolution, which is not specifically challenged, and the same is in force, we do not see any reason to entertain the present Petition.

12. Admittedly, the petitioner participated in the selection process, and only after he is unsuccessful, he is questioning the mandate of the relevant resolution, and praying for lowering down the standards, deserves no consideration. In that view of the matter, we are unable to persuade ourselves to grant any relief in favour of the petitioner. Hence the Writ Petition stands rejected. Rule stands discharged.

13. The rejection of this Petition shall not be construed as an impediment to the petitioner to apply afresh in future in case there exist vacancy for the post of Assistant Professor in Veterinary Anatomy and Histology.