

(2024) 02 BOM CK 0090
In the Bombay High Court
Case No : Writ Petition No.2542, 2543 Of 2024

Subham Suresh Misale

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 26-02-2024

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2024) 02 BOM CK 0090

Hon'ble Judges : A. S. Chandurkar, J; Jitendra Jain, J

Bench : Division Bench

Advocate : Rupesh K. Bobade, Reena A. Salunkhe

Final Decision : Dismissed

Judgement

Jitendra Jain, J

1. Rule. Rule made returnable forthwith. The learned Assistant Government Pleader waives service of notice for Respondent No.1-State. By consent of the parties, the writ petition is heard finally.

2. By these petitions under Articles 226 and 227 of the Constitution of India, the Petitioner seeks to challenge the order dated 9th February 2024 passed by the Maharashtra Administrative Tribunal ('Tribunal') in Original Application No.668 of 2022 whereby the said OA was dismissed.

Narrative of Events :-

3. On 22nd February 2019, Respondent No.2-Deputy Director of Health Service (DDHS) issued an advertisement for various posts, one of them being for the post of 'Plumber.' For the said post, two posts were vacant, one in the "Open Category" and other in the "Reserved Category".

4. On 14th March 2019, on an application made by the Petitioner for the post of 'plumber,' same was processed and the Petitioner was permitted to participate in selection process. The Petitioner appeared for the written test of 200 marks and

secured 100 marks whereas the Respondent No.3-Kiran Dongare another applicant for the aforesaid post, secured 116 marks. However, Respondent No.2-DDHS issued an appointment letter in favour of Respondent No.3 for the post of plumber.

5. Being aggrieved by the said appointment order dated 31st May 2022, the Petitioner preferred an application that is O.A. No.668 of 2022 before the Tribunal. On 9th February 2024, the Tribunal dismissed the said OA by observing that Respondent No.3-Kiran Dongare has requisite certificate working as 'Plumber' for two years and six months and furthermore, the submission of the Petitioner relying on Clause 3 of the criteria specified in the advertisement, preference would be given to the candidates possessing certificate awarded by Department of Technical Education, Bombay which according to the Tribunal would apply if all the things are equal amongst the candidates came to be rejected. It is on this backdrop that the present Petitioner is before us.

6. We have heard the learned counsel for the Petitioner and the Respondents and with their assistance have perused the documents annexed to the petition.

7. The relevant extracts of the qualification for the post of Plumber as per advertisement is as under :-

(i) have passed Secondary School Certificate Examination and

(ii) possess at least 2 years experience in the line

(iii) preference shall be given a candidate possessing a certificate awarded by the Department of Technical Education Bombay for having completed the plumbers course.

8. The comparative statement of the Petitioner and Respondent No.3 are as under :-

Particulars

Petitioner

Respondent No.3

Education qualification

S.S.C.

H.S.C.

Percentage of marks obtained in

41.8%

66.15%

Experience certificate

13th November 2016 certificate by Government Training Institute from plumbing course being cleared.

Certificate by Directorate of Vocational Education and Training for completing course of fitter

Experience certificate

Issued by Pimpri-Chinchwad Municipal Corporation certifying having done apprenticeship as plumber from 27th Mach 2017 to 23rd March 2018 and 5th May 2021 by OCS Group Private Limited for having worked as plumbing technical from 18th May 2018 to 25th February 2021.

Issued by Bhosekar construction for the period 5th November 2016 to 7th May 2019 has a plumber.

Marks obtained in written test conducted by Respondent Nos.1 & 2

100 marks

116 marks

Merit list position

Serial No.12

Serial No.8

9. It is the contention of the Petitioner that Respondent No.3 has obtained a certificate from M/s. Bhosekar Construction certifying that he has worked as Plumber from 5th November 2016 to 7th May 2019. The Petitioner submits that M/s. Bhosekar Construction was registered with Pune Municipal Corporation from 8th September 2017 to 7th September 2020. The Respondent No.3 could not have worked as a Plumber from November 2016, and therefore, this certificate obtained by him is false. We have perused the certificate obtained by Respondent No.3 and the letter of Pune Municipal Corporation stating the period for which M/s. Bhosekar Construction was registered with them. On a conjoint reading of these two documents, it cannot be said that the experience certificate required as per the advertisement mandates that the experience gained should be with an entity which is registered with the Municipal Corporation. Clause 2 of the qualifications prescribed for the post of Plumber only states that the candidate should at least have two years of experience in the line. There is no requirement that the experience has to be with the Municipal Corporation or with an entity registered with the Municipal Corporation. Therefore, even if M/s. Bhosekar Construction was registered with Pune Municipal Corporation for the period 8th September 2017 to 7th September 2020, the fact remains that the Respondent No.3 has worked as a plumber from 5th November 2016 to 7th May 2019 with M/s. Bhosekar Construction. Therefore, the contention of the Petitioner that this certificate is incorrect cannot be accepted.

10. The educational qualification required for the post of plumber is Secondary

School Certificate Examination (SSC) which the Petitioner has cleared with 41.80%, whereas Respondent No.3 has cleared Higher Secondary School Certificate Examination (HSC) with 66.15% and SSC exam with 77.82% therefore even on this count, Respondent No.3 is better placed on educational front as compared to the Petitioner. In the written test conducted by the Respondent Nos.1 and 2 for the post of Plumber, the Petitioner has secured only 100 marks, whereas Respondent No.3 has secured 116 marks and in the merit lists the Petitioner is placed at serial No.12, whereas Respondent No.3 is placed at serial No.8. Therefore, even on the basis of written test conducted by Respondent Nos.1 and 2, Respondent No.3 has not only scored higher marks but is also placed higher in the merit list than the present Petitioner. Therefore, even on this count, the Respondent Nos.1 and 2 are justified in selecting Respondent No.3 for the post of plumber.

11. The Petitioner has placed reliance on Clause 3 of the qualification required which states that preference shall be given to the candidate possessing a certificate awarded by the Department of Technical Education Bombay for having completed the Plumber Course.

Admittedly, the Petitioner has obtained the said certificate from Department of Technical Education Bombay which Respondent No.3 does not possess. However, Clause 3 only states that the preference shall be given to a candidate possessing such a certificate. From this, it does not mean that if a candidate who is otherwise better placed based on written test, SSC marks and qualifications would not be preferred as compared to a candidate who is lower in the merit list and has scored lesser marks in written test and SSC exam, but is in possession of a certificate awarded by the Department of Technical Education Bombay. Clause 3 of the criteria would apply only if the two candidates are similarly placed. If the Petitioner and Respondent No.3 would have been at the same position in merit list and would have scored same number of marks in written test conducted by Respondent No.2 then the Petitioner would have been justified in making this submission. However, in the present case, the Petitioner has scored less marks in written test as well as placed lower in merit list at serial No.12 compared to serial No.8 of Respondent No.3, and therefore, the Petitioner is not justified in placing reliance on Clause 3.

12. The Petitioner has placed reliance on Resolution of Government dated 22nd October 1959 in support of his submission. The Resolution states that appointment shall be made for the post of Plumber from amongst candidates who are not more than 25 years of age, are literate and possess atleast two years experience in the line and preference shall be given to candidates possessing certificate awarded by Department of Technical Education Bombay for having completed the Plumbers Course. In our view, what is stated in the 1959 Government Resolution is what is incorporated in the advertisement dated 22nd February 2019 and therefore the case of the Petitioner on the basis of this Resolution does not take him any further.

13. It is also important to note that the eligibility criteria for Plumber does not prescribe that the candidate should obtain a certificate for the course of plumber. This is in sharp contrast with the post of Carpenter and Librarian, where it is specifically mentioned that the candidate should possess a certificate in carpentry from Industrial Training Institute of Government of Maharashtra or any other recognized Institute and in case of Librarian, certificate or diploma in library (Science) is required. Therefore, when it comes to the post of Plumber since there is no requirement for possessing certificate for the course of Plumber, the contention of the Petitioner that since he possessed the said certificate he should be considered for selection is to be rejected. What is important as per the eligibility criteria prescribed is the experience in the line of plumbing and therefore even though Respondent No.3 has cleared the course of fitter, but since he has an experience of plumbing coupled with fact that he has scored better in written test and is better qualified than the Petitioner, we do not find any infirmity in the action of Respondent Nos.1 and 2 in selecting Respondent No.3 for the said post.

14. We may observe that the course content issued by All India Engineering Common Entrance Test for "fitter course" contains plumbing as one of the subject, and therefore, the course of fitter is more expansive than a course of plumber.

15. We do not find any perversity in the finding of the Tribunal in dismissing the OA. The Tribunal has rejected the contention of the Petitioner that the certificate obtained by Respondent No.3 is false and furthermore the Tribunal has observed that preferential clause will be applicable if the candidates are equally placed. This Court under Article 226 of the Constitution of India cannot substitute its opinion on the selection made by Respondent Nos.1 and 2 who are best suited to select a candidate for the post of Plumber.

16. In view of above, the writ petitions are dismissed with no order as to costs. Rule is discharged.