



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12799 OF 2023

Sachin Deoram Sable,
Age 38 years Occ :- Service,
R/o Nimgeeri, Tal, Junnar,
Dist – Pune, 410520

...Petitioner

Versus

1. Maharashtra State Road Transport
Corporation, MSRTC Central Office,
Dr. Anandrao Nair Marge,
Mumbai Central, Mumbai
2. State of Maharashtra
Through Secretary, Ministry of Transport
(Maharashtra), Mantralaya, Mumbai -32

...Respondents

...

Adv. Suvarna Yadav for the Petitioner.

Adv. Nitesh Bhutekar for a/w Prathamesh Mandlik for Respondent No. 1.

Adv. O. A Chandurkar Add. GP, a/w A. V. Naik AGP for the State.

...

CORAM : RAVINDRA V. GHUGE

&

ASHWIN D. BHOBE, JJ.

RESERVED ON : 5th DECEMBER, 2024

PRONOUNCED ON : 19th DECEMBER, 2024

JUDGMENT (Per Ashwin D. Bhoobe, J.) :-

1. **Rule.** Rule made returnable forthwith and heard finally by
the consent of the parties.

2. The Petitioner is held ineligible to the post of Divisional Controller, on the ground that the Petitioner does not possess the requisite 10 years experience in a commercial organization with more than 1000 employees (impugned decision). The Respondent No.1 (MSRTC), by the impugned decision has canceled the entire selection process.

3. By the present petition, the Petitioner has prayed for the following substantive relief :-

“(A) This writ petition may kindly be allowed.

(B) By issuing the writ of mandamus or any other appropriate writ, order of direction in the like nature and be pleased to quash and set aside the impugned decision dated 15.07.2019 issued by Respondent No. 1.

(C) By issuing the writ of mandamus or any other appropriate writ or order or direction in the like nature and be pleased to direct the respondent no.1 to consider the representations made by the petitioner and issue appointment letter to the petitioner for the post of Divisional Controller.”

Factual Matrix :

4. Vide Advertisement No. 1/2018, the Respondent No.1 invited applications to the post of Divisional Controller. Petitioner contends that he fulfills and satisfies all the requisite qualifications prescribed in the Advertisement No. 1/2018, as such eligible to be appointed to the post of Divisional Controller. Petitioner alongwith his

application submitted experience certificate issued by ECIL Rapiscan Ltd, certifying the Petitioner having the required experience of 10 years. Petitioner contends that ECIL and Rapiscan Ltd are connected through a joint venture, having its offices at Hyderabad, Mumbai, Bangalore, Chennai, Kolkata, Pune and Ahmedabad with more than 1000 employees. Respondent No. 1 on a contention that the office of ECIL Rapiscan at Pune, having less than the prescribed number of employees has held the Petitioner ineligible. The impugned decision cancels the selection process. Hence, the present Petition.

5. Respondent No.1 has opposed the petition on the grounds raised in the Affidavit-in-reply dated 01.08.2024 filed through Shri. Tulsidas Bharsat, General Manager (P&IR), MSRTC. Respondent No. 1 contends that the documents submitted by the Petitioner in respect of the experience, is of one company by name ECIL Rapiscan Ltd and according to their confidential report, the said company has one office at Pune, with a strength of workers/employees which is less than 1000. Respondent No. 1 therefore prays for dismissal of the Petition.

6. We have heard and considered the submissions of the learned Advocates for the respective sides and perused the records. From the rival contentions urged in the present Petition, the point for

determination that falls for consideration, is whether Respondent No.1 was right in holding the Petitioner ineligible to the post of Divisional Controller, on the ground that the Petitioner does not meet the requirements of the Advertisement No. 1/2018 i.e. experience of 10 years, from a commercial organization with more than 1000 employees ?

Analysis :-

7. Vide Advertisement No. 1/2018, Respondent No.1 invited applications from eligible candidates for the post of Divisional Controller. Condition in the Advertisement No. 1/2018, which is relevant for the present petition is transcribed herein below:-

“(a) First Class degree from any recognized Instituted

Or

Second Class Degree from recognized Institute and Post Graduate Degree or Diploma Business Management, Transport Management, Labour/Employees Management from recognized Institute.

(b) Experience : 10 years experience of Management in Railway/Road/Water Transportation.

Or

10 years experience in commercial organization with more than 1000 employees.

Or

3 years experience of post not less than the rank of Captain in Indian Army or equivalent post in Indian Air force/ Navy.”

8. Petitioner fulfilling the requirements of condition no. (a) of the Advertisement No. 1/2018 and the Petitioner having experience of a period of 10 years is not in dispute. Controversy in the present petition revolves around condition no. (b) of the Advertisement No. 1/2018, in the context of the commercial organization and the number of its employees, in the present case requirement being more than 1000. Petitioner claims that ECIL Rapisan Ltd is a commercial organization having more than 1000 employees. Per contra, the Respondent No.1 claims that the said commercial organization fails to meet the threshold of having more than 1000 employees.

9. Advertisement No. 1/2018, was the subject matter of the Writ Petition No.1184 of 2021 filed by **Suhas Sudamrao Chaure vs. Managing Director, MSRTC & Anr..** In the said Petition, the Petitioner was held ineligible for the post of Divisional Controller, on the ground that the Petitioner acquired working experience of 10 years, prior to acquisition of the basic qualifications which in the said petition was post graduate degree or diploma in business management. Challenge in the said petition was to the cancellation of the said Advertisement No. 1/2018. This Court relying on the decision of the Hon'ble Supreme Court reported in *1995 SUPP (3) Supreme Court Cases 332 [Subhash, S/o Shriram Dhonde vs. State of Maharashtra & anr.]*, the decision of

the co-ordinate Bench of this Court at Aurangabad in Writ Petition No. 5127 of 2019 [*Sonali Sahadeo Avhad Vs. The State of Maharashtra & Anr.*] allowed the said Writ Petition No.1184 of 2021. Paragraph Nos. 13 to 17 from the judgment in *Suhas Chaure* (supra), are transcribed hereunder :-

“13. Thus, the petitioner is held ineligible only on the ground that he acquired the working experience of 10 years prior to acquisition of the basic qualifications which in this case is post graduate degree or diploma in business management. For this purpose, MSRTC relied upon the directions given by the then Chairman of MSRTC to consider experience, post educational qualification only.

14. The question is whether it is open for the MSRTC to consider the petitioner's eligibility as per the directions of the Chairman after completion of the selection process and that too when the 10 years experience, post acquisition of the basic qualification is not in the contemplation of the advertisement. It is material to note that there is no rule or circular placed for our consideration indicating that experience post acquisition of the basic educational qualification is the prerequisite for appointment as a Divisional Controller. No doubt, in a given case, the MSRTC is empowered to cancel or change the said advertisement. The said power is not open for an arbitrary exercise. At this juncture, we may refer to the decision of the Supreme Court relied by learned advocate for the petitioner reported in 1995 SUPP (3) Supreme Court Cases 332 [Subhash, S/o Shriram Dhonde Vs. State of Maharashtra and anr.], which in our view supports the petitioner's the decision of the Supreme Court relied by learned advocate for the petitioner reported in 1995 SUPP (3) Supreme Court Cases 332 [Subhash, S/o Shriram Dhonde Vs. State of Maharashtra and anr.]case. We reproduce the entire decision which reads thus :

"1. Leave granted. Heard parties.

2. The Tribunal has dismissed the appellant's application only on the ground that the appellant had acquired the working experience of one year prior to acquisition of the basic qualifications which in this case is diploma in Automobile Engineering. For this purpose, the Tribunal relied upon the circular issued by the Government. The rules, namely, the Motor Vehicles Department (Recruitment) Rules, 1991 framed under Article 309 of the Constitution show that a mere possession of the working experience of at least one year in a reputed Automobile Workshop as mentioned under Rule 3(e) is enough. The rule does not make any difference between acquisition of such experience prior to or after the acquisition of the basic qualification. What is further, the record shows that even after the acquisition of the basic qualification as mentioned in Rule 3(c), the appellant has acquired the additional experience of one year in a reputed Automobile Workshop as required even by the said circular. The Tribunal has committed an error in relying upon the circular which cannot replace the rules framed under Article 309 of the Constitution. We are, therefore, of the view that the Tribunal's decision is incorrect. Since the appellant satisfies the qualifications required by the rules, the decision of the Tribunal has to be set aside. We accordingly set aside the impugned decision of the Tribunal and direct the respondent to consider the appellant for appointment, if otherwise he satisfies the requisite qualifications including the marks obtained in the written test and the interview already held. The appeal is allowed with no order as to costs."

15. We also are in agreement with the learned advocate for the petitioner, when he submits that the decision of the co-ordinate Bench of this Court at Aurangabad dated February 27, 2020 in Writ Petition No. 5127 of 2019 [Sonali Sahadeo Avhad Vs. The State of Maharashtra and anr.] supports his case. The relevant portion being

paragraph nos. 5 and 6 are reproduced which reads thus:

"5. Reading the said qualification and the experience clauses of the advertisement, the advertisement does not specify that the experience possessed by the candidate has to be acquired after getting the educational qualification. The same is silent.

6. In case, the advertisement prescribed that the experience should be after the period the candidate acquires the qualification, then the contentions of the respondents certainly would be entertained. However, the advertisement is silent in respect of the same. The petitioner has produced on record the certificate issued by the transport company to justify that the petitioner has the necessary experience in the traffic department from 11.02.2015 to 16.06.2016. How far the certificate would be relevant is for the respondent to consider. Further, the respondent could not have rejected the claim of the petitioner only on the ground that the experience of the petitioner is prior to qualification, more particularly, in absence of said condition in the advertisement."

16. Drawing support from the decisions relied above and after giving our anxious consideration to the relevant facts and rival contentions, we are of the considered opinion that the petitioner having satisfied the requisite qualifications prescribed in the advertisement, reliance on the directions of the Chairman of MSRTC after the selection process had reached such an advanced stage, while holding the petitioner ineligible, is unjustified and arbitrary. The advertisement never postulated the requirement of acquisition of 10 years experience post acquisition of basic educational qualification. Despite the prescription in the advertisement authorizing the competent authority to cancel the advertisement, the exercise of such power cannot be countenanced in a situation where the basic premise of MSRTC declaring the petitioner ineligible itself is unjustified and erroneous. We have no hesitation in observing that once the very

reason on which the action of MSRTC to cancel the advertisement is founded on an irrational exercise of power, the petitioner ought not to be deprived of the reliefs claimed in this petition.

17. The writ petition is allowed with no order as to costs. If the petitioner is otherwise eligible, he shall be appointed within three months.”

10. This Court while dealing with the Advertisement No. 1/2018 in another petition filed by Tushar Manohar Gandre against Maharashtra State Road Transport Corporation (Writ Petition No. 8720 of 2022) in identical facts, by relying upon the decision of *Suhas Chaure* (supra) issued directions to the Respondent No. 1 to appoint the said Petitioner namely Tushar Manohar Gandre.

11. In the instant case, the Respondent No.1 has held the Petitioner ineligible only on the ground that the commercial organization relied by the Petitioner in the context of 10 years experience, does not meet the requirement of the said organization having more than 1000 employees.

12. Condition pertaining to experience in the Advertisement No. 1/2018, would indicate that the said advertisement prescribes “10 years of experience in commercial organization with more than 1000 employees.” Reading the said experience clause of the Advertisement

No. 1/2018, the advertisement does not specify or define “commercial organization” . The same is silent. The said Advertisement No. 1/2018 does not limit or restrict the number of employees to one office of the commercial organization. The advertisement never postulated the requirement of 1000 employees of the commercial organization, being either from one of its office or from an office in one city, etc. In the event, the Advertisement No. 1/2018 prescribed that the number of employees, to be from one office of the commercial organization, then the contention of the Respondent No. 1 perhaps could have been entertained. Documents referred and relied by the Petitioner in support of his contention that ECIL- Rapiscan Ltd, being a joint venture , having more than 1000 employees (7500 employees as Exhibit R-1 & R-2 appended to the rejoinder filed by the Petitioner) is not disputed by the Respondent No.1.

13. Rejection of the Petitioner’s candidature on the ground that the Petitioner does not fulfill the requirement of experience clause of the Advertisement No. 1/2018, for the reasons stated herein above is unreasonable and erroneous.

14. Respondent No. 1 does not deny that the Petitioner possesses 10 years experience. The case of the Petitioner would

therefore be squarely covered by the decision in the case of *Suhas Chaure* (supra) and in the case of *Tushar Manohar Gandre* (supra).

15. Despite the vehement opposition of Respondent No. 1, we find from the records that the Petitioner was clearly eligible to be appointed as a Divisional Controller, since he satisfied the criteria that was published in Advertisement No. 1/2018. The learned Advocate for the Respondent No. 1, on the basis of record / Advertisement No. 1/2018, is unable to point out as to which is the criteria which was lacking in the Petitioner. As has been held in *Suhas Chaure* (supra) and *Tushar Manohar Gandre* (supra), once a candidate satisfies the pre-requisites set out in the advertisement, subsequently, the prospective employer or any superior authority of the establishment cannot declare the candidate as being under-qualified or ineligible.

16. Advertisement No. 1/2018, which was canceled by Respondent No. 1, has been interfered with by this Court vide the judgment delivered in *Suhas Chaure* (supra) and *Tushar Manohar Gandre* (supra). Respondent No.1 was directed to consider Suhas Chaure and Tushar Mahohar Gandre, to be appointed as Divisional Controller within a period of three months.

17. In the instant case, the record of Respondent No.1 cannot

lead to a conclusion that the present Petitioner was ineligible. As such, keeping in view that there are posts of Divisional Controller vacant, by adopting the reasoning in *Suhas Chaure (supra)* and Tushar Manohar Gandre (*supra*), we deem it appropriate to follow the same course and grant the same relief, as this Court has granted to *Suhas Chaure (supra)* and *Tushar Manohar Gandre (supra)* .

18. The impugned decision of the Respondent No.1 holding the Petitioner ineligible is hereby held to be irrational and erroneous, consequently the same is quashed and set aside. This Writ Petition is allowed. The Respondent No.1 is directed to appoint the Petitioner as Divisional Controller, within a period of three months, from today.

19. Rule is made absolute in the above terms.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)