

Bombay High Court

Mrs.M.G.Khandagale vs 6 Mr.G.S.Gangurde on 17 February, 2010

Bench: J.N. Patel, K. K. Tated

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2 of 1996

Mrs.M.G.Khandagale,
residing at R-H-4,
P-5, Sector-4, Vashi,
New Bombay.

..Petitioner

-VERSUS-

1 The State of Maharashtra.

2 Through Industries Energy &
Labour Department.
Maharashtra Public Service
Commission, Bank of India

Building, 3rd Floor,
M.G.Road, Fort,
Bombay-400023.

3 The Commissioner of Labour
Commerce Centre, Tardeo,

Bombay-400034.

4 Mr.B.K.Patil,

Dy.Commissioner of Labour,
71, Government Colony,
Bandra (E), Bombay-400051.

5 Mr.P.T.Jagtap,

Gomati, Flat No.13, 6th Floor,
Khan Abdul Gaffar Khan
Road, S.No.12A/13, Worli Sea Face,
(North), Bombay-400025.

6 Mr.G.S.Gangurde,
Dy. Commissioner of Labour,
Station Road, Aurangabad. .. Respondents

.....
Mr.S.C.Naidu with Mr.S.D.Kulkarni i/b C.R.Naidu & Company, for
the Petitioner.

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Mr.R.J.Mane, AGP for the Respondents Nos.1 to 3/State.

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CORAM : J.N. PATEL & K.K. TATED, JJ.

Dated 17th February, 2010.

JUDGMENT (Per K.K.Tated, J):

1 The Petitioner filed the present Writ Petition as Public Interest Litigation under Articles 14, 15, 16, 309, 320 and 226 of the Constitution of India challenging the appointments to the posts of Deputy

Commissioner of Labour pursuant to the notification dated 06th May, 1992 at Exhibit-D to the petition issued by the Respondent No.2-Maharashtra Public Service Commission (in short MPSC) as the same is ultra-vires of Articles 14, 16, 309 and 320 of the Constitution of India.

2 It is to be noted that the Petitioner has already retired from service as well as the Respondents Nos.4, 5 and 6 whose appointments are challenged by the Petitioner in the present petition have also retired from service. Therefore, only the academic interest/question of the appointments and validity of the notification dated 06th May, 1992 has to be considered in the present Writ Petition.

3 A few facts of the case are as under:-

The Petitioner is a graduate in Arts and has a degree in Law in second class. The Petitioner has two years Post Graduate *3* Diploma in Labour Welfare Industrial Relations and Personnel Management from the Institute recognized by the Bombay University and by the Government for recruitment to the post of Welfare Officers. The Petitioner joined services of the State Government as Labour Investigator in the year 1969. Thereafter, the Petitioner was promoted to the post of Government Labour Officer on 04.08.1976 and thereafter, as Assistant Commissioner of Labour on 12.11.1984. The Petitioner retired from service in December, 2000 as Assistant Commissioner of Labour. It is the case of Petitioner that the the Recruitment Rules for the posts of Government Labour Officer have been framed by the State Government and notified under the notification dated 28th September, 1981. Similarly, the Recruitment Rules for the posts of the Additional Commissioner of Labour and the Deputy Commissioner of Labour have been framed by the State Government and notified under notification dated 28th August, 1985. It is case of Petitioner that the MPSC issued an advertisement in daily news paper "Lok-Satta" dated 07th May, 1992 publishing notification dated 06th May, 1992 inviting applications for the posts of the Deputy Commissioner of Labour. The detailed qualifications, experience and reservations for the Scheduled Caste, Scheduled Caste converted into Buddhism and Scheduled Tribes etc. were *4* mentioned in the said notification. The qualifications are mentioned in paragraph No.4 of the notification dated 06th May, 1992.

4 It is the case of Petitioner that those qualifications as published by the MPSC in the notification dated 06th May, 1992 are contrary to the Rules framed by the State of Maharashtra under Article 309 of the Constitution of India known as the Maharashtra Welfare Officers (Duties, Qualifications and Conditions of Service) Rules, 1966 (hereinafter referred to as "the said Rules of 1966"). In the notification dated 06th May, 1992 in all 21 degrees and diplomas from several universities of different States in India are stated and out of 21, 10 degrees and diplomas are from the Bombay University and Nagpur University which are in the State of Maharashtra. The Petitioner contended that the qualifications prescribed by the MPSC as per the notification dated 06th May, 1992 at Exhibit-D are not according to the said Rules of 1966 framed by the State of Maharashtra and therefore, the appointments made by the Respondents Nos.1 to 3 pursuant to the said notification dated 06th May, 1992 and advertisement dated 07th May, 1992 are against justice, equity and good conscience and same are liable to be set aside. It is the case of Petitioner that during the last 24 years of her service in the office of the Respondent No.3, the Petitioner had *5* applied in response to almost all advertisements issued by the MPSC for the posts of Government Labour Officer

(Class-II)/ Assistant Commissioner of Labour (Junior Class-I), however, the MPSC issued the call-letters to the unqualified candidates for interviews for extraneous considerations and selected those candidates who did not possess the qualifications and experience as required under the said Rules of 1966 and the Recruitment Rules. It is the case of Petitioner that under the Recruitment Rules, a person possessing the qualifications prescribed under the said Rules of 1966 has a prior claim for being considered for appointment to the posts of the Government Labour Officer/ Assistant Commissioner of Labour / Deputy Commissioner of Labour. The question of considering other candidates arises only if the suitable qualified candidate is not available. Thus, it is the case of Petitioner that the MPSC has acted arbitrarily in violation of the powers under Article 320 of the Constitution of India and appointed unqualified persons.

5 The learned counsel appearing for the Petitioner submitted that in the present case the two pillars for selection is educational qualification and the experience. These two factors are most relevant for judging inter-se merit of the candidates. He further submitted that the candidates with inferior qualification *6* cannot elbow out the candidate with superior qualification merely because the selection authority so deems fit. The counsel further submitted that the object of any process of selection for entering into public service is to secure the best and most suitable candidate for the job. The selection based on merit, tested impartially and objectively is the essential foundation of any useful and efficient public service. He further submitted that under the Recruitment Rules, a person possessing the qualifications prescribed under the said Rules of 1966 has a prior claim for being considered for appointment to the said posts. In the present case, the Respondents Nos.1 to 3 mis-interpreted the said Rules of 1966 at the time of issuing the notification dated 06th May, 1992 and therefore, the said notification is liable to be set aside.

6 Per contra, the learned Assistant Government Pleader appearing on behalf of the Respondents Nos.1 to 3/State submitted that after following due process of law, the MPSC issued the advertisement in news paper dated 07th May, 1992 inviting applications for the posts of the Deputy Commissioner of Labour in the State of Maharashtra. He further submitted that the MPSC framed the qualifications by notification dated 06th May, 1992 considering the said Rules of 1966 and therefore, there is no substance in the present Writ Petition and the same is liable to be *7* dismissed. It is to be noted here that though two weeks' time was granted for filing the reply by order dated 09th April, 1999, the Respondents failed to file the same.

7 We have gone through the said Rules of 1966 and the notification dated 28th September, 1981 issued by the Industries, Energy & Labour Department, Maharashtra State in exercise of powers conferred by the proviso to Article 309 of the Constitution of India. A conjoint reading of the notification dated 06th May, 1992 issued by the MPSC and the said Rules of 1966, it is clear that the MPSC mis-interpreted the Recruitment Rules and selected other candidates though the candidates possessing the qualifications prescribed for the said posts were available. By such interpretation, the MPSC is trying to legislate the rule which is beyond its power under Articles 309 and 320 of the Constitution of India, as those Rules have been framed by the State Government and not by any other body or individual. Article 309 of the Constitution of India reads as under:-

"309. Recruitment and conditions of service of persons serving the Union or a State. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the *8* President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act. "

8 Plain reading of the Article 309 of the Constitution of India shows that the power conferred is subject to the opening body of the Article which governs not only the power of legislature but also rule making power conferred by the proviso. Hence, if any rule contravenes any provision of the Article including fundamental right, the rule shall be void. In the present case, the MPSC issued the notification dated 06th May, 1992 which is contrary to the said Rules of 1966 framed by the State Government as per Article 309 of the Constitution of India. It is clear that the MPSC issued notification dated 06th May, 1992 without any power under Article 309 of the Constitution of India. In our opinion the said notification dated 06th May, 1992 at Exhibit-D to the petition is contrary to the principle laid down under Article 309 of the Constitution of India.

Firstly the notification does not expressly show that the same was issued in pursuance to the powers conferred under *9* Article 309 of the Constitution of India and secondly, the Rules are dealing with the functions of the MPSC rather than laying down the Rules regarding recruitment to services or posts.

9 The State Government under Article 309 of the Constitution of India has framed the Maharashtra Welfare Officers (Duties, Qualifications and Conditions of Service) Rules, 1966. In pursuance of the clause (a) of sub-rule (1) of Rule-3 of the said Rules of 1966, the State Government through the Industries & Labour Department issued the notification dated 14th April, 1971 (Exhibit-A to petition) for recognition of Degrees and Diplomas.

Further the State of Maharashtra issued the notification dated 28th September, 1981 (Exhibit-B to petition) under Article 309 of the Constitution of India thereby framing Rules namely "The Maharashtra Gazetted Posts in the Labour Department (Recruitment) Rules, 1981" for the purpose of regulating the recruitment to certain Gazetted posts in the offices of the Labour Department under the administrative control of the Industries, Energy and Labour Department of the Government of Maharashtra.

The Industries, Energy and Labour Department of the State of Maharashtra issued another notification dated 28th August, 1985 (Exhibit-C to petition) under Article 309 of the Constitution of

India in supersession of all earlier rules and regulations and *10* thereby, framed the Rules namely "The Additional Commissioner of Labour and Deputy Commissioner of Labour in the Labour Department (Recruitment) Rules, 1985" for the purpose of recruitment to the posts of Additional Commissioner of Labour (Class-I) and the Deputy Commissioner of Labour (Class-I) in the offices of the Labour Department under the Administrative Control of the Industries, Energy and Labour Department of the State of Maharashtra.

In the year 1992, four posts of the Deputy Commissioner of Labour were to be filled in and for that purpose, the MPSC issued the notification dated 06th May, 1992 (Exhibit-D) bearing No.657(2)/23676-X. In this notification, the requisite qualifications are mentioned in paragraph No.4 which read under:-

"4. Qualifications:- Candidate must possess:-

1. A) Post-graduate degree or two years post-graduate diploma in Labour Welfare, Industrial Relations and Personnel Management declared by Government to be equivalent thereto; or B) A degree at least in Second Class in Arts, Science, Commerce, Economics, Law, Agriculture, Statistics or Mathematics with Statistics as a subject or in social science or social work recognized for the purpose of Maharashtra Welfare Officers (Duties, Qualifications and Conditions of Service) Rules, 1966; and thereafter.

2. Practical experience in the field of investigation of Labour problems and settlement of labour disputes including knowledge of Labour Laws and industrial undertaking, commercial concern, Local authority or in a Government Department, Corporation *11* or Board established by Government, for a period of not less than 3 years.

3. Have adequate knowledge of Marathi."

11 The qualifications in notification dated 06th May, 1992 are not in conformity with the qualifications mentioned in paragraph No.4 of the notification dated 28th August, 1985 which reads thus:-

"4. Appointment to the post of Deputy Commissioner of Labour in the Labour Department shall be made either:-

(A) by promotion of a suitable person on the basis of selection from amongst the person holding the post of Assistant Commissioner of Labour; or (B) by nomination from amongst candidates whom:-

(i) unless already in the service of Government are not more than 40 years of age;

(ii) possess:-

(a) a post-graduate degree or a two years' post graduate diploma in labour welfare, Industrial Relation and Personnel Management declared by Government to be equivalent thereto; or

(b) a degree at least in second class in Arts, Science, Commerce, Economics, Law, Agriculture, Statistics or Mathematics with Statistics as a subject or in a social science or social work recognised for the purpose of Maharashtra Welfare Officers (Duties, Qualifications and Conditions of Service) Rules, 1966;

(iii) possess practical experience in the investigation of Labour problems and settlement of labour disputes including knowledge of labour laws and industrial conditions in a responsible position in the industrial undertaking, commercial concern, local authority or in a Government department, Corporation or Board established by Government, for a period of not less than 3 years, gained after acquiring qualifications mentioned in sub-clauses *12*

(ii); and,

(iv) have adequate knowledge of Marathi."

12 The clauses (A) and (B) of paragraph No.4 of the notification dated 28th August, 1985 are not included in the notification dated 06th May, 1992 issued by the MPSC and thereby, the persons already serving in Labour Department and having requisite qualifications and not more than 40 years of the age and who were also qualified to be appointed as Deputy Commissioner of Labour, are excluded and the candidates like the Respondents Nos.4 to 6 who were not possessing better qualifications were recruited and the candidates like the Petitioner who were having better qualifications and who were serving in the Labour Department were not selected.

13 As provided under Article 320 of the Constitution of India, the Public Service Commission is advisory body. Article 320 of the Constitution of India reads thus:-

"320. Functions of Public Service Commissions:-

(1) It shall be the duty of the Union and the State Public Service Commission to conduct examinations for appointments to the services of the Union and the services of the State respectively. (2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more State so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

13 (3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted:-

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award, and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor, of the State, may refer to them: Provided that the President as respects the all India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public *14* Service Commission to be consulted.

(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of Article 16 may be made or as respects the manner in which effect maybe given to the provisions of Article (5) All regulations made under the proviso to clause (3) by the President or the Governor of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid."

14 The Public Service Commission has to assist the Government in recruitment of the candidates possessing special qualifications. The State Government has to consult the Public Service Commission under Article 320(3) of the Constitution of India on all matters relating to methods of recruitment to civil services and for civil posts. In the matter of selection of the candidates, the Public Service Commission must faithfully follow the statutory rules of recruitment of the candidates relating to the services in question. In this connection, reference may be made to the decision of the Apex Court in case of Shri Durgacharan Misra vs. State of Orissa and others, AIR 1987 SC 2267. Under Article 320(3) of the Constitution of India, the State Public Service *15*

Commission has to be consulted by the State Government in the matter of recruitment to civil services and civil posts and it is the duty of the State Public Service Commission to assist the State Government as provided therein. Paragraphs Nos.15 and 16 of Durgacharan Misra's case (supra) read thus:-

"15. But the crux of the matter is whether the Judge present at the viva voce test has the power to add anything to the Rules of recruitment. He may advise the Commission as to the special qualities required for judicial appointments. His advice may be in regard to the range of subjects in respect of which the viva-voce shall be conducted. It may also cover the type and standard of questions to be put to candidates; or the acceptance of the answers given thereof. But his advice cannot run counter to the statutory Rules.

16. The Rules have been framed under the proviso to Article 309 read with the Article 234 of the Constitution. Article 234 requires that the appointment of persons other than District Judge to the Judicial Service of State shall be made by the Governor of the State. It shall be in accordance with the rules made by the Governor in that behalf after consultation with the State Service Commission and with the State High Court. The Rules in question have been made after consultation with the Commission and the State High Court. The Commission which has been constituted under the Rules must, therefore, faithfully follow the Rules. It must select candidates in accordance with the Rules. It cannot prescribe additional requirements for selection either as to eligibility or as to suitability. The decision of the Commission to prescribe the minimum marks to be secured at the viva voce test would, therefore, be illegal and without authority."

16 15 Thus, the State Public Service Commission has to follow the statutory rules framed by the State Government under Article 309 of the Constitution of India and it cannot prescribe the additional requirements. In the present case, the qualifications for the posts of the Deputy Commissioner of Labour mentioned in the notification dated 06th May, 1992 issued by the MPSC are not consistent with the statutory rules made under Article 309 of the Constitution of India by the State Government. Hence, the notification dated 06th May, 1992 issued by the MPSC needs to be struck down.

16 In view of the above, rule is made absolute in terms of prayer clause (a) which reads as under:-

"(a) That this Hon'ble Court may be pleased to exercise its jurisdiction under Article 226 of the Constitution of India and issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order calling for the record and proceedings in the matter of appointment of Deputy Commissioner of Labour pursuant to the Notification dated 06th May, 1992 of the Respondent No.2 and hold and declare the same as ultra-vires to Articles 14, 16, 309 and 320 of the Constitution of India and quash and/or set aside the same."

17 Writ Petition is, accordingly, allowed with no order as to costs.

(K.K.TATED, J.)

(J.N.PATEL, J.)