

Sachin Vs. The State of Maharashtra Through Principal Secretary Rural Development Department and Others

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Court : Mumbai Aurangabad

Decided On : Jul-19-2016

Judge : S.S. Shinde & Sangitrao S. Patil

Appeal No. : Writ Petition No. 200 of 2016

Appellant : Sachin

Respondent : The State of Maharashtra Through Principal Secretary Rural Development Department and Others

Judgement :

S.S. Shinde, J.

1. This Writ Petition is filed with the following prayers:

C) This Hon'ble Court may be pleased to issue appropriate writ, order or directions and quash and set aside the final selection list dated 10/12/2015 (Exh.D) published by the respondent Nos. 2 to 4 i.e. District Selection Committee, Jalna for the post of Junior Assistant (Clerk), reserved for handicapped (Deaf and Dumb) category.

CA) This Hon'ble court may be pleased to issue appropriate writ, order or direction and quash and set aside the appointment order dated 21/01/2016 issued by respondent Nos. 2 to 4 in favour of respondent No.5 i.e. Mr. Datta S/o Shivajirao Pawar and direct the respondent Nos. 2 to 4 to issue appointment order for the post of Junior Assistant (Clerk) from reserved category for handicapped (Dumb and Deaf) person in favour of petitioner, within stipulated period.

2. The relevant facts for filing this Writ Petition are as under:

The petitioner belongs to N.T.D. category and handicapped (deaf and dumb) category. The petitioner has completed H.S.C., MSCIT with 76%, Marathi Typewriting speed 30 w.p.m., English Typewriting speed 30 w.p.m. and the petitioner has given examination of English typewriting speed 40 w.p.m. On 31st October, 2015, Respondent Nos.2 to 4 published advertisement for the recruitment of various posts in the Zilla Parishad, Jalna. Respondent No.1 had constituted the selection committee comprising of three members i.e. respondent nos. 2 to 4. In the said advertisement, one post of Assistant Junior (Clerk) was reserved for handicapped (Deaf and Dumb) Category. As per the said advertisement, the required qualification was that the candidate should have completed S.S.C., not having more than 33 years of age, having passed in Marathi and English Typewriting speed 30 and 40 w.p.m. respectively, or having passed S.S.C. or equivalent examination with 50% of marks in typewriting.

3. As the petitioner was qualified to the post of Assistant Junior (Clerk), reserved for handicapped (Deaf and Dumb) Category as on 16th November, 2015, he applied Online for the said post. The application form of the petitioner was accepted and the petitioner appeared for examination, passed the same by obtaining 152 marks and stood at Sr. No.1 in the category claimed by him. Respondent Nos. 2 to 4 published the final select list of the candidates for the said post on 10th December, 2015. The name of the petitioner did not appear in that list, instead, respondent No.5, who got 150 marks appeared in that list as selected candidate. Thereafter, the petitioner on 14th December, 2015 made representations to Respondent Nos.2 and 3 asking for the reason for rejection of his candidature, but Respondent nos. 2 and 3 did not assign any reason. Hence

this Petition.

4. The learned counsel appearing for the petitioner invites our attention to the Clerk-Typist in Government Offices Outside Greater Bombay (Recruitment) Rules, 1993 framed by the General Administration Department, Mantralaya, Mumbai on 3rd September, 1993, and submits that as per Rule 3 (b) (iii) of the said Rules, the candidate, who has applied for the post of Junior clerk should possess the Government commercial Certificate for speed of not less than 30 words per minute in Marathi typewriting **or** 40 words per minute in English typewriting, as the case may be. It is the submission of the learned counsel that the candidate should possess either certificate for speed of not less than 30 words per minute in Marathi Typewriting or 40 words per minute in English typewriting. He submits that in the advertisement issued by the Respondents for the post of Junior Clerk, one of the requirements was that the candidate must possess the certificate of Marathi and English Typewriting, having speed of 30 words **and** 40 words per minute respectively is contrary to Rule 3(b) (iii) of the Rules. On the date on which the petitioner applied for the post of Junior clerk, he was possessing the certificate for speed of 30 words per minute in Marathi typewriting. Therefore, the petitioner filed representation to that effect to the concerned Respondent to consider his request for appointment to the said post since the petitioner secured 152 marks, visavis, Respondent No.5, who is appointed as Junior clerk, secured 150 marks.

5. On the other hand, the learned A.G.P. appearing for the Respondent/State submits that the petitioner participated in the selection process and the list of selected candidates was published and thereafter the petitioner filed representation. He submits that on the date when the petitioner filed application, he did not fulfill the requirement of having certificate of English Typewriting of the speed 40 words per minute. Therefore, the petitioner is not entitled for any relief.

6. The learned counsel appearing for Respondent Nos. 3 and 4, relying upon the averments made in the affidavit in reply, submits that the Petition is devoid of merits and same may be dismissed.

7. We have considered the submissions advanced by the learned counsel appearing for the petitioner, the learned A.G.P. appearing for the

Respondent/State and the learned counsel appearing for the Respondent Nos. 3 and 4. With their able assistance, we have perused the pleadings in the Petition, annexures thereto and reply filed by Respondent Nos. 3 and 4.

8. It appears that the advertisement for the recruitment of various posts in the Zilla Parishad, Jalna was issued on 31st October, 2015. The petitioner applied for the post of Junior Clerk on 16th November, 2015. The Respondent published the final selection list of candidates on 10th December, 2015, and the petitioner filed representations to Respondent Nos. 2 and 3 on 14th December, 2015. The petitioner participated in the selection process, without any protest and on being unsuccessful, filed the representations. It is true that the petitioner secured 152 marks and Respondent No.5 secured 150 marks, however, on the date of filling up the application, the petitioner did not possess the certificate showing that he had passed English Typewriting examination of speed of 40 words per minute. The law is well settled that once the candidate participates in the selection process is not entitled to question the said selection process after the same is complete. It appears that Online applications were called and in the advertisement in clause 6.2, the Respondent Authorities put a special note that the candidate is allowed to appear for examination without scrutinizing documents/papers but, he has to submit the certificates possessing the requisite qualification mentioned in the advertisement at the time of verification of the documents. On verification of the documents, it was found that the petitioner at the relevant time did not possess English typewriting speed of 40 words per minute. It is true that the petitioner is at sr. no.1 in the merit list, however, in view of clause 6.2 in the said advertisement, at the time of verification of documents, the petitioner was not possessing the required certificate of English Typewriting of speed of 40 words per minute.

9. The Supreme Court in the case of **Dhananjay Malik and others V/s State of Uttaranchal and others** (2008)4 SSC 171)in para 7 held thus :

7. It is not disputed that the respondent-writ petitioners herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or graduate with diploma in Physical Education. Having unsuccessfully participated in the process of selection

without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

10. In that view of the matter, we are unable to persuade ourself to grant any relief to the petitioner. Hence the Petition stands rejected.

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