

Mangesh Vs. The State of Maharashtra, Through Tribal Development Department and Another

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Court : Mumbai Aurangabad

Decided On : Feb-17-2016

Judge : S.S. Shinde & P.R. Bora

Appeal No. : Writ Petition No. 5215 of 2015

Appellant : Mangesh

Respondent : The State of Maharashtra, Through Tribal Development Department and Another

Judgement :

S.S. Shinde, J.

1. This Writ Petition is filed with following prayers:

B] By issuing appropriate writ, order or directions in like nature, the Respondent no. 2 The Upper Commissioner, Tribal Development, Nasik be Prevented from conducting the written examination for selection of candidates as the same is not provided in rules or advertisement.

C] The Respondent No.2 be directed to consider the merit and eligibility Of candidates on the basis of marks obtained in Teacher Eligibility Test held by

Maharashtra state council of examination, Pune and issue the appointment order to candidates / petitioner in accordance with the same.

2. The learned counsel appearing for the petitioner submits that, respondent No.2 has published an advertisement dated 18th February, 2014, in respect of the recruitment of several posts on Government Ashram Schools and Government Hostels in District Nashik, Nandurbar, Dhule, Jalgaon and Ahmednagar. Accordingly, the applications were called from qualified and eligible candidates within one month i.e. till 18th March, 2014. The petitioner possesses required qualification i.e. H.S.C. D.Ed. in Marathi medium. He has also obtained good marks in Grade A+. Therefore, the petitioner has participated in Teacher Eligibility Test Examination [TET], conducted by the Maharashtra State Council of Examination, Pune. In the said examination, the petitioner has obtained 91 marks i.e. 61.07% and required percentage for eligibility is only 60%.

3. It is submitted that, in pursuant to the advertisement issued by respondent No.2, the petitioner submitted his application for appointment on the post of Primary Teacher [Shikshan Sevak] along with all required documents with copy of challan within stipulated period fixed by the respondent No.2. It is submitted that, as per the norms of examination and guidelines given in the advertisement dated 18th February, 2014, there is no competitive examination prescribed for the posts shown at serial Nos.1 to 3 and 14 for the teacher. The list of candidates was to be prepared on the basis of calculation of marks obtained by the candidates in the examination of 12th standard and D.Ed. There was no requirement of written examination or oral for selection of the candidates on the post Nos.1 to 3 and 14, and the candidates will be called for interview on the basis of afore-mentioned calculation of marks. It is further submitted that, another advertisement was issued on 24th July, 2014, without cancellation of first advertisement dated 18.02.2014. There is no change in the terms and conditions, Rules and guidelines given in the first advertisement and second advertisement, regarding selection of candidates on the said post. Even in the second advertisement, there is no any new condition for submitting the applications by candidates, who have already submitted applications as per first advertisement.

4. The learned counsel appearing for the petitioner invited our attention to the advertisement dated 18th February, 2014, and advertisement dated 24th July, 2014. It is submitted that, since filing of application for the post of Shikshan Sevak, the petitioner was waiting for call or information from respondent No.2, but no any kind of information or calls were given to the petitioner for calling him for interview or selection within period of one year. The petitioner s brother had submitted application on 18th March, 2015, under Right to Information Act in the office of respondent No.2 to get information regarding recruitment and merit list of teachers as per the advertisement dated 18th February, 2014. In reply to the said application, the respondent No.2 has sent letter on 23rd March, 2015, stating therein that, the Government has issued letter dated 7th February, 2015 and informed about written examination for the post of teachers, therefore, the selection of candidates will be as per the marks obtained in written examination. It is submitted that, in fact, subsequent change should have been informed to all candidates including the petitioner, by issuing letter or notice through news paper, but the respondent No.2 has directly changed the process of recruitment and new condition of written examination is imposed for selection of the candidates on the said post, which is not permissible. The same is also against the principle of estoppel and legitimate expectation.

5. It is submitted that, neither in the first advertisement, nor in the second advertisement, there was condition to appear for written examination for the post of Shikshan Sevak. It is the submission of the learned counsel appearing for the petitioner that, since the petitioner has passed Teachers Eligibility Test [TET], held by the Maharashtra State Council of Examination, Pune. Said qualification is sufficient to consider the merit of the candidates and eligibility of the selection on the said post.

6. The learned counsel appearing for the petitioner pressed into service exposition of the Supreme Court in the case of Hemani Malhotra Vs. High Court of Delhi (2008] 7 SCC 11)in which it is held that, the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before commencement of selection process, the authority concerned, cannot either

during the selection process or after the selection process, add an additional requirement / qualification that the candidate should also secure minimum marks in the interview. He further submits that, respondent shall conduct selection process in accordance with the conditions prescribed in the advertisement and they cannot deviate from the said selection.

7. Respondent No.2, namely Ashok Laxman Lokhande, has filed affidavit-in-reply. It is stated in the said affidavit-in-reply that, it is true that, in the advertisement dated 24th July, 2014, for the posts of teachers category, it is mentioned that, there is no competitive examination. However, after publication of the advertisement dated 24th July, 2014, the Tribal Development Department of Government of Maharashtra, vide letter dated 7th February, 2015, informed that, there should be written examination for filling the posts of teachers category also and accordingly selection of the concerned candidates will be made as per the marks obtained in the written examination. The learned AGP appearing for the respondent State invited our attention to the contents of the said letter, which is placed on record along with the affidavit-in-reply. It is stated in the said letter that, if written examination is held for filling in the post of teachers / Shikshan Sevak, and if it is based on the marks obtained in the written examination, nothing wrong in it or illegal, since yet selection process is not complete in pursuant to the advertisement dated 24th July, 2014. During the course of hearing, the learned AGP informed this Court that, in pursuant to the second advertisement dated 24th July, 2014, yet selection process is not over. Respondent Department is justified in prescribing the written test for the appointment on the post of Assistant Teacher.

8. The learned AGP further submitted that, the Government of Maharashtra has issued a Notification dated 9th June, 2014, stating therein that, the posts of teachers and Tribal Development Inspectors are required to be filled in from the local candidates, belonging to Scheduled Tribe, and therefore, the advertisement dated 24th July, 2014, has been issued by the respondent No.2. It is further submitted that, the requirement of the written examination for the post of teachers as provided in Government Resolution dated 5th June, 2014, issued by the General Administration Department, Government of Maharashtra, and therefore, the said condition to have written examination for the appointment on the post of

teachers, cannot be treated as Amendment in Rules, after second advertisement dated 24th July, 2014. Therefore, the learned AGP appearing for the respondent State submits that, the Petition may be rejected.

9. We have heard the learned counsel appearing for the petitioner, and the learned AGP appearing for the respondent State at length. With their able assistance, perused the pleadings in the Petition, annexure thereto, both the advertisements placed on record, and also Government Resolution dated 5th June, 2014, of which reference is made herein above. In the said Government Resolution, it is stated that, while selecting the candidates for the Group-C and Group-B [HINDI], oral test should not be conducted, and while selecting the candidates for the said category, written examination of 200 marks be conducted and as per merit appointment should be given.

10. Admittedly, the selection process for the post of Primary Teacher [Shikshan Sevak] in Government Ashram Schools and Government Hostels in various Districts has not yet been completed. It is true that, the condition to pass written examination has been communicated by the letter dated 7th February, 2015, by the respondent No.1 to the Commissioner, Tribal Development Department, Nashik. However, in the said communication, reference of Government Resolution dated 5th June, 2014, issued by the General Administration Department, Government of Maharashtra, has been given. Contents of the said letter reads thus:

HINDI

11. Therefore, if the provisions in the said Government Resolution providing for written examination is kept in view the said condition of written examination is introduced by the Government Resolution dated 5th June, 2014, which is prior to second advertisement dated 24th July, 2014. Therefore, there is no force in the contention of the learned counsel appearing for the petitioner that, the condition for appearing in the written examination is an amendment in Rules subsequent to the advertisement dated 24th July, 2014, since the said condition of conducting written examination for the post of Primary Teacher [Shikshan Sevak] has already been incorporated in the Government Resolution dated 5th June, 2014. It is needless to

observe that, the petitioner and other candidates have yet to appear for the written examination, and therefore, such condition to appear for written examination, which necessitated for the better selection of eligible candidates, cannot be said to be the condition introduced subsequent to the selection process. Therefore, we do not find any merit in the Petition, hence same stands rejected.

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