

A THE MAHARASHTRA PUBLIC SERVICE COMMISSION
THROUGH ITS SECRETARY

v.

SANDEEP SHRIRAM WARADE AND OTHERS

B (Civil Appeal No. 4597 of 2019 etc.)

MAY 03, 2019

[ARUN MISHRA AND NAVIN SINHA, JJ.]

Service Law:

- C *Essential eligibility qualification – For appointment to the posts of Asstt. Commissioner (Drugs) and Drug Inspectors – Practical experience in manufacturing and testing of drugs along with academic qualification were essential qualifications for appointment – Practical experience in research and development laboratory was a desirable qualification – Respondents-candidates holding the desirable experience were declared ineligible for consideration – State Administrative Tribunal held that the experience of manufacturing or testing in research and development laboratory could not be termed as essential qualification for the appointment – High Court reversing the order of Tribunal held that research experience would also count as eligibility condition – Appeal to Supreme Court, held: It is for the employer to decide eligibility conditions for appointment – The court in the garb of judicial review cannot lay down the conditions of eligibility by an interpretive rewriting of the advertisement – Questions of equivalence will also fall outside the domain of judicial review – Experience of testing of drugs in a research and development laboratory cannot be said to be at par with the testing done at the time manufacture – Judicial Review – Drugs and Cosmetics Act, 1961 – s.3(f).*
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Allowing the appeals, the Court

- G **HELD : 1. The essential qualifications for appointment to a post, are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay**
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down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law, the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same. [Para 10] [98-H; 99-A-C]

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2. The fact that an expert committee may have been constituted and which examined the documents before calling the candidates for interview cannot operate as an estoppel against the clear terms of the advertisement to render an ineligible candidate eligible for appointment. [Para 11] [99-D]

3. ‘Manufacture’ has been defined as a process for making, altering, ornamenting, finishing, packing, labelling, breaking up or otherwise treating or adopting any drug or cosmetic with a view to its sale or distribution. Therefore, the experience of testing has to be correlated to the manufacturing process which naturally will be entirely different from the testing carried out in the research and development laboratory before the product is released for manufacture and sale in the market. To say that experience in testing of drugs in a research and development laboratory would be at par with the testing done at the time of manufacture before sale cannot be countenanced and has to be rejected. [Para 13] [99-F-H]

4. The term “preference” mentioned in the advertisement cannot be interpreted to mean that merely because a candidate may have had the requisite experience of testing in a research and development laboratory he/she possessed the essential eligibility and had a preferential right to be considered for appointment. [Para 14] [100-B]

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- A **5. Therefore, the interpretation of the terms of the advertisement as made by the High Court both with regard to the posts of Assistant Commissioner (Drugs) and Drug Inspectors cannot be upheld. [Para 16] [101-A]**

Secretary (Health), Department of Health & F.W. and Another vs. Dr. Anita Puri and Others 1996 (6) SCC 282 : [1996] 5 Suppl. SCR 361 – relied on.

Case Law Reference

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| [1996] 5 Suppl. SCR 361 | relied on. | Para 15 |
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- C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4597 of 2019.

From the Judgment and Order dated 17.07.2017 of the High Court of Judicature at Bombay in Writ Petition No. 7960 of 2016.

With

- D Civil Appeal Nos. 4598-4601 and 4602 of 2019.

Ms. Pinki Anand, Mrs. Madhavi Divan, ASGs, Sanjay Kharde,

Samrat Shinde, Sunil Kumar Verma, Somiran Sharma, Amit Kumar, Arjun Bhadene, Ms. Snidha Mehra, Ms. Kirti Dua, Surender Kumar Gupta,

- E Gurmeet Singh Makker, Ms. Swarupama Chaturvedi, Nishant Ramakantrao Katneshwarkar, Amol B. Karande, Satyajit A. Desai, Ms. Anagha S. Desai, Sandeep Sudhakar Deshmukh, Sunil Kumar Verma, Advs. for the appearing parties.

The Judgment of the Court was delivered by

- F **NAVIN SINHA, J.**

1. Delay condoned. Leave granted.

- G 2. The appellants are aggrieved by the orders of the High Court holding that candidates possessing the requisite years of experience in research and development of drugs and testing of the same, are also eligible to be considered for appointment to the post of Assistant Commissioner (Drugs) and Drug Inspectors under separate advertisements dated 04.01.2012 and 31.03.2015.

3. Learned counsel for the appellants submitted that academic qualifications coupled with the requisite years of practical experience in

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the manufacturing and testing of drugs were essential qualifications for appointment. Research experience in a research and development laboratory was a desirable qualification which may have entitled such a person to a preference only. The latter experience could not be equated with and considered to be at par with the essential eligibility to be considered for appointment. The High Court erred in misreading the advertisement to redefine the desirable qualification as an essential qualification by itself.

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4. Learned counsel for the respondents submitted that they were Post Graduates (M. Pharma) having more than three years experience in research and development coupled with testing of drugs in a laboratory. They were also eligible to be considered for appointment and were called for selection after scrutiny of their documents by a Committee constituted for the purpose and which recommended them as eligible for consideration. Once they were consciously permitted to participate in the selection process, they could not be declared ineligible for consideration. Reliance was placed on the definition of manufacturing process in Section 3(f) of the Drugs and Cosmetics Act, 1961 (hereinafter called “the Act”). No other grounds were urged by the parties.

5. The Maharashtra Administrative Tribunal (hereinafter referred to as “the Tribunal”) in O.A. No.820 of 2013 held that experience of manufacturing or testing in a research and development laboratory could not be termed as experience for the purposes of the present recruitment. The said experience only entitled the candidate for a preference subject to possessing the basic eligibility and requisite experience in the manufacture and testing of drugs.

6. Reversing the conclusion of the Tribunal, the High Court in W.P. No.6637 of 2014 and analogous cases held that to deny opportunity to a candidate possessing research experience in synthesis and testing of drugs in a laboratory on the ground that such research experience cannot be linked with manufacturing, would be a perverse interpretation. A candidate having research experience in synthesis and testing of drugs in a laboratory needed to be preferred and could not be denied opportunity by misreading the eligibility conditions. Research work carried out in well reputed laboratories is for the purposes of manufacturing drugs. This order was followed by the High Court in W.P. No. 7960 of 2016 instituted before the High Court directly.

A 7. We have considered the respective submissions. It is considered prudent to first set out Section 3(f) of the Act and the extract of the advertisements.

“3(f) “manufacture” in relation to any drugs (or cosmetic) includes any process or part of a process for making, altering, ornamenting,

B finishing, packing, labelling, breaking up or otherwise treating or adopting any drug or cosmetic with a view to its sale or distribution but does not include the compounding or dispensing of any drug or the packing of any drop or cosmetic in the ordinary course of retail business and to manufacture shall be construed accordingly.”

C 8. The qualifications in the advertisement dated 04.01.2012 for Assistant Commissioner (Drugs) reads as follows:

“(b) Possess qualification and experience prescribed for as under: -

D (i) Degree in Pharmacy or Pharmaceutical Chemistry or in medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law, and

(ii) Experience gained after acquiring qualification in the manufacture or testing of drugs or enforcement of the provisions of the Act for a minimum period of five years.”

E 9. The advertisement for Drug Inspectors, reads as follows: -

Clause 4.5 - Degree in Pharmacy or Pharmaceutical Chemistry or in medicine with specialization in clinical Pharmacology or Microbiology from a University established in India by law; and

F **Clause 4.6** – Practical experience gained after acquiring qualification [above in clause (i) in the manufacture or testing of drugs or enforcement of the provisions of the Act for a period of not less than three years;

G **Clause 4.7** – Preference may be given to candidates having a post graduate degree in a subject mentioned in clause 4.5 or research experience in the synthesis and testing of drugs.”

H 10. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the

employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.

11. The fact that an expert committee may have been constituted and which examined the documents before calling the candidates for interview cannot operate as an estoppel against the clear terms of the advertisement to render an ineligible candidate eligible for appointment.

12. The plain reading of the advertisement provides that a degree in Pharmacy or Pharmaceutical Chemistry or in medicine with specialization in Clinical Pharmacology or Microbiology from a University coupled with the requisite years of experience thereafter in manufacturing or testing of drugs were essential qualifications. Preference could be given to those possessing the additional desirable qualification of research experience in the synthesis and testing of drugs in a research laboratory.

13. Manufacture has been defined as a process for making, altering, ornamenting, finishing, packing, labelling, breaking up or otherwise treating or adopting any drug or cosmetic with a view to its sale or distribution. Therefore, the experience of testing has to be correlated to the manufacturing process which naturally will be entirely different from the testing carried out in the research and development laboratory before the product is released for manufacture and sale in the market. To say that experience in testing of drugs in a research and development laboratory would be at par with the testing done at the time of manufacture before sale cannot be countenanced and has to be rejected.

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- A 14. The preference clause in Clause 4.7 only means that if a candidate with the required degree qualification and practical experience in the manufacturing and testing of drugs for stipulated period of years has an additional desirable attribute of a research experience in a research laboratory, other things being equal, preference could be given to such a candidate. The term “preference” mentioned in the advertisement cannot be interpreted to mean that merely because a candidate may have had the requisite experience of testing in a research and development laboratory he/she possessed the essential eligibility and had a preferential right to be considered for appointment.
- B 15. The view taken by the Tribunal finds approval in *Secretary (Health), Department of Health & F.W. and Another vs. Dr. Anita Puri and Others*, 1996 (6) SCC 282, observing as follows:-
- “7. Admittedly, in the advertisement which was published calling for applications from the candidates for the posts of Dental Officer it was clearly stipulated that the minimum qualification for the post is B.D.S. It was also stipulated that preference should be given for higher dental qualification. There is also no dispute that M.D.S. is a higher qualification than the minimum qualification required for the post and Respondent 1 was having that degree. The question then arises is whether a person holding a M.D.S. qualification is entitled to be selected and appointed as of right by virtue of the aforesaid advertisement conferring preference for higher qualification? The answer to the aforesaid question must be in the negative. When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher qualified candidates. But by no stretch of imagination it can be construed to mean that a higher qualified person automatically is entitled to be selected and appointed..... In this view of the matter, the High Court in our considered opinion was wholly in error in holding that a M.D.S. qualified person like Respondent 1 was entitled to be selected and appointed when the Government indicated in the advertisement that higher qualification person would get some preference. The said conclusion of the High Court, therefore, is wholly unsustainable and must be reversed.”
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16. We are therefore unable to uphold the interpretation of the terms of the advertisement as made by the High Court both with regard to the posts of Assistant Commissioner (Drugs) and Drug Inspectors. The impugned orders of the High Court dated 04.05.2017 and 17.07.2017 are set aside. The appeals are allowed. There shall be no order as to costs.

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Kalpana K. Tripathy

Appeals allowed.