

# SUPREME COURT OF INDIA

Sunil Shamrao Jadhav

Vs.

Kolhapur Municipal Corporation

C.A.No.1714 of 2009

(Kurain Joseph and Sanjay Kishan Kaul, JJ.)

12.07.2018

## JUDGMENT

**Kurian Joseph, J.,**

1. The respondent - Corporation, by notice dated 12.10.1992, invited applications for filling up the posts of Assistant Traffic Inspectors. As per Kolhapur Municipal Corporation Regulation No. 1 dated 16.04.1974, the method of appointment is 75% by promotion and 25% by nomination, meaning thereby direct recruitment. However, Regulation 6 made it clear that "in the event of an appointment by promotion, if no candidate is found suitable for such promotion, the appointment may be by nomination, Provided that before taking the recourse to nomination in such cases the reasons for not making the appointment by promotion shall be recorded in writing by the appointing authority. Apparently, in exercise of its power under Regulation 6 only, the applications were invited for appointment of 16 posts of Assistant Traffic Inspectors by direct recruitment.

2. There were 35 posts in the cadre, out of which, 16 posts were sought to be filled up. The educational qualification, as per the Notification, reads as follows:-

"D. Educational Eligibility

1) Age Limit 28 years for Scheduled Caste 5 yrs Relaxed

2) Graduate in any Course from Recognised University

3) 5 years experience in Transport Undertaking

3. It appears that none of the applicants possessed the required experience of five years, which is notified as part of educational qualification. It appears that the Corporation, in exercise of its powers to relax the qualification as per the Transport Resolution No. 119 dated 14.05.1991, relaxed the provision of experience and selected 15 candidates and appointed them as Assistant Traffic Inspectors. That has been challenged by the respondent - Trade

Union on the ground that the candidates did not possess the required experience and hence, they were ineligible for the appointment.

4. It may be specifically noted that the Notification was not under challenge by the union. Only when the appointments were made, the union took up the challenge that the Municipal Corporation could not have relaxed the educational qualification.

5. The High Court, as per the impugned order, took the view that the Corporation could not have relaxed the educational qualification. However, taking note of the fact that, by that time the Judgment was rendered, the appellants had rendered more than 10 years of service, the court granted liberty to the Corporation to conduct fresh recruitment, permitting the appellants also to participate in the selection process, granting them relaxation in the upper age limit. Aggrieved, the appellants approached this Court and by an interim order dated 12.05.2006, the operation of the impugned Judgment was stayed and thus, the appellants have been in continuous service for about 24 years as of now.

6. The respondent - Corporation has filed an affidavit on 23.08.2017 bringing to the notice of this Court certain important factual aspects. According to the Corporation, out of the 25 sanctioned posts of Assistant Traffic Inspectors as of now, only 15 posts could be filled up and 10 posts are still lying vacant. In the feeder category of Traffic Controller, out of 33 sanctioned posts, only 06 could be filled up and 27 posts are vacant. The posts are kept vacant on account of lack of qualified candidates for promotion. The Corporation has also stated in the affidavit their dire need for the Assistant Traffic Inspectors in position. We may extract the relevant paragraphs of the affidavit hereunder:-

"3. In this regard the situation as exists today in the transport undertaking of the Respondent Municipal Corporation needs to be brought on record for this Hon'ble Court to appreciate the controversy from all relevant perspectives. Although at the time when the appointments in question were made the total sanctioned strength for the post of ATI was 35, as of today the sanctioned strength is only 25.

The table below gives the information as to total sanction strength in all the cadres under the transport undertaking together with the total posts filled in and the number of posts lying vacant.

<b>Sr. No</b>	<b>DESIGNATION</b>	<b>SANCTIONED POSTS</b>	<b>POSTS FILLED IN</b>	<b>VACANT POSTS</b>
1.	Driver	214	184	30
2.	Conductor	292	222	70
3.	Timekeeper	05	0	05
4.	Driver Instructor	04	0	04
5.	Traffic Controller	33	06	27
6.	Assistant Traffic Inspector	25	15	10
7.	Traffic Inspector	2	0	2

4. Above said table shows that out of 25 sanctioned posts of ATI, 10 are lying vacant. It is further submitted that out of 15 posts of ATI filled in today only one is held by a promotee candidate namely Shri B.B. Chandan. Said Shri Chandan was promoted in 1995 and is due to retire on 23.04.2022. It is further submitted that the cadre of Traffic Controller is the feeder cadre for promotion to the post of ATI. The minimum educational qualification required as eligibility for promotion to the post of ATI is having passed Matriculation or SSC with English as one of the subjects. Minimum experience of 5 years as Traffic Controller is also the requirement. As of now, out of 6 traffic controllers, four(4) persons do not have requisite educational qualification although they have required experience. Two Traffic Controllers have requisite educational qualification and have very recently attained the minimum experience of Five years.

5. The posts in the cadre of Time Keeper and Driver Instructor are lying vacant. As a result, there is no possibility of any immediate promotee being available for filling in the post of ATI. The Appellants and other persons Appointed as ATI. (whose appointments are subject matter of challenge in the present proceedings) have worked for over 23 years. In case these appointments are quashed there will be only 1 ATI actually working and 2 Traffic Controllers eligible for promotion as ATI. Out of 25 posts, thus, only 3 posts of ATI will be filled in. The role of ATI is extremely crucial in smooth plying of buses and proper supervision and control of the drivers and conductors. The duties of ATI include, inter alia, inspecting any bus of the undertaking on any route at any time, checking if all passengers are issued tickets, collecting fine/penalty from passengers traveling without ticket, inspecting personal cash, official cash, license, ticket blocks, lockers of Drivers and Conductors and reporting to the administration in case of any suspicious material found, scheduling of crews

and buses as per public need, verifying if the buses ply as per schedule, survey of route for assessing demand of the passengers, attending places of attendance for complying with all legal and procedural requirements, inspecting routes of the buses to update about the condition of roads, bridges to assess if any of them have become dangerous, taking decision about the routes of buses during flood situation, preparing audit report at the year end about the entire stock of tickets and submitting the same with corrective measures to the administration, coordinating with city police and RTO for keeping clandestine traffic under control. There are in all 129 buses of the Municipal Transport, daily number of passengers in the range of 1 to 1.25 lakhs, its coverage is of entire municipal area together with 67 villages within 20 KM from municipal limits. It is submitted that it is this factual aspect which is relevant and which needs to be taken into account which deciding the above mentioned Civil Appeal."

7. Having regard to the factual matrix as above, we are of the view that it is only in the interest of everybody and in the interest of justice that the appellants (and others who have been recruited along with them pursuant to the Notification issued in the year 1992) are allowed to continue in their posts as having been regularly recruited and appointed, having regard to the special facts, as stated in the affidavit. Ordered accordingly.

8. We also direct the Corporation to take steps for promoting the eligible candidates as soon as they are available for promotion. The impugned Judgment of the High Court shall stand modified to the above extent. The appeals are allowed as above.