

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 1387 OF 2000

DIST. : BEED

Smt. Prayagbai w/o Gangadhar Ghule,)
 Age. 65 years, Occ. : House Wife,)
 R/o Nagdara, Taluka – Parlivajjnath,)
 District : Beed.).. **APPLICANT**

VERSUS

1. The Collector,)
 Collector Office, Beed.)

2. The Executive Engineer,)
 Public Works Division,)
 Division Ambajogai, Dist. Beed.)

3. The Deputy Engineer,)
 Public Works Division,)
 Sub-Division, Ambajogai,)
 Dist. Beed.)

4. The State of Maharashtra,)

5. The Divisional Commissioner,)
 Aurangabad.) .. **RESPONDENTS**

 APPEARANCE :- Shri A.D. Sugdare, learned Advocate for
 the applicant.
 : Shri B.S. Deokar, learned Presenting
 Officer for the respondents.

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
and
Hon'ble Shri Bijay Kumar, Member (A)

RESERVED ON : 18th April, 2023

PRONOUNCED ON: 7th June, 2023

ORDER

(PER : Shri V.D. Dongre, Member (J))

1. This Original Application is filed seeking declaration that the applicant is on duty w.e.f. 5.2.1998 on the post of Peon and is entitled to pay and allowances attached to the said post.
2. The original applicant completed his graduation in B.A. in 2nd Division as reflected in degree certificate (Annex. A-1). He was the only earning member in his family. He was working as Muster Assistant with the office of respondents since 1978. The post of Muster Assistant is Class-III post.
3. The Government of Maharashtra issued Resolution on 1.12.1995 (Annex. R-2 page 27 of paper book) in respect of absorption of Mustering Assistants in various departments. It was the grievance of the original applicant that contrary to the guidelines issued by the Government of Maharashtra regarding absorption, the original applicant was given the post as Peon, Class-IV in the office of Executive Engineer, Public Works Division, Special Project, Sub Division Parali as per the appointment order dated 26.6.1997 (Annex. A-2 at pages 9 & 10 of paper book). As per his educational qualification of B.A., he

ought to have been absorbed in Class-III post equivalent to Mustering Assistant post of Class-III.

4. Being dissatisfied by the said order dated 26.6.1997 (Annexure A-2) the applicant filed Original Application No. 563/1997 praying for appointment on the post of Clerk as Class-III in the office of respondent nos. 2 & 3. While filing the present O.A. the said O.A. No. 563/1997 was pending for final adjudication.

5. Though the Executive Engineer, Public Works Division, Ambajogai issued appointment order dated 26.6.1997 (Annex. A-2) on the post of Peon Class-IV, the said authority by its letter dated 8.8.1997 (Annex. A-3) informed the Sub Divisional Engineer, Public Works Division, Special Project, Sub Division Parali, where the applicant was posted, not to allow the applicant to join the duties.

6. In that regard the applicant made a grievance to the respondents including the District Collector, Beed that he was not being allowed to join duties even as Peon as per the order issued by the Divisional Commissioner, Aurangabad dated 15.5.1997. The respondent no. 2 i.e. the Executive Engineer, Public Works Division, Ambajogai, Dist. Beed by its letter dated

5.2.1998 (Annex. A-4) informed the Collector, Beed that the applicant cannot be allowed to join the duties because the post of Class-IV is not vacant.

7. In the circumstances as above, the original applicant was deprived of his right of absorption in the employment either in Class-IV or Class-III as per his qualification and seniority. Respondent nos. 2 & 3 have acted mala-fide in not allowing the applicant to join the duties on the post of Peon, thereby the applicant is adversely affected and irreparable loss is caused to him. In the circumstances, the original applicant is entitled for the relief of declaration as prayed for. Hence, this application.

8. The record shows that in spite of granting sufficient opportunities the affidavit in reply is not filed on behalf of respondents.

9. Heard Shri A.D. Sugdare, learned counsel for the applicant on the one hand and Shri B.S. Deokar, learned Presenting Officer on the other hand. We have also perused the documents placed on record.

10. During pendency of this application, the original applicant Gangadhar s/o Maroti Ghule died. The present applicant i.e. the widow of the original applicant is brought on record, who

has continued this Original Application as a heir and legal representative of the original applicant late Gangadhar Ghule.

11. The record shows that O.A. No. 563/1997 and this O.A. No. 1387/2000 were disposed of by this Tribunal by its common order dated 19.12.2007. By the said order both the said O.As. were dismissed.

12. Being aggrieved and dissatisfied by the common order of dismissal dated 19.12.2007, the applicant preferred Writ Petition No. 1164/2008 before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad. The said writ petition is disposed of by order dated 23.9.2019 with certain observations and directions in the concluding paragraph nos. 9, 10 and 11, which read as follows:-

“9. Regretfully, the facts which we have noted hereinabove concerning Original Application No. 1387/2000 have not been noted and much less discussed by the Tribunal.

10. Under the circumstances, maintaining the impugned order respecting the disposal of in Original Application No. 563/1997, we set aside the impugned order insofar as it has dismissed Original Application No. 1387/2000.

11. We restore Original Application No.1387/2000 for adjudication afresh before the Maharashtra Administrative Tribunal with a direction to the Tribunal to decide the same within six months and while so doing, deal with the pleadings as also the documents filed along with the pleadings by the parties.”

13. Perusal of G.R. dated 1.12.1995 (pages 27 to 34 of paper book) would show that the Mustering Assistants were to be absorbed on the equivalent post by adopting the procedure laid down therein. Perusal of appointment letter dated 19.10.1997 (Annex. A-2) would show that there is a reference to the letter dated 17.3.1997 issued by the Divisional Commissioner, Aurangabad. As per the said letter in all 4 Mustering Assistants were appointed on the post of Peon. Out of them, 3 were appointed in the office of Public Works Division, Special Project, Sub Division Parali and one was appointed in the Public Works Division, Sub Division Ambajogai. They are S/shri J.J. Rautmare, G.M. Ghule (original applicant/deceased husband of original applicant on record), D.N. Sathe and V.I. Suravase. During the course of argument it is reported that 3 others were allowed to join. The original applicant, however, was not allowed to join in view of letter dated 8.8.1997 (Annex. A-3) issued by the respondent no. 2 Sub Divisional Engineer, P.W.D.

Special Project, Sub Division Parali, as well as, intimation letter dated 5.2.1998 (Annex. A-4) addressed by the respondent no. 2 to the District Collector, Bbeed. Specifically in the letter dated 5.2.1998 (Annex. A-4) it is mentioned that for want of vacancy the original applicant was not allowed to be joined. During the course of hearing of this matter the respondents were directed to place on record the then vacancy position of the post of Peon, however, the information in that regard is not placed on record.

14. No explanation is forthcoming from the respondents as to on under circumstances the appointment letter dated 26.7.1997 (Annex. A-2) came to be issued without verifying the vacancy position of the post of Peon. In the appointment letter the applicant's name is at sr. no. 2. Mustering Assistants at sr. nos. 1, 3 & 4 in the said order were allowed to join the duties. In view of the same, this is a clear-cut case of injustice being caused to the applicant. In these circumstances, it is crystal clear that since 26.7.1997 right is vested to the original applicant to work on the post of Peon and to get the service benefits of the said post. The original applicant was, however, deprived of the said legal right for no fault on his part. In the circumstances, this is fit case to grant the relief as prayed for by the original applicant. Hence the following order :-

O R D E R

(i) The Original Application No. 1387/2000 is allowed in terms of prayer clause (B) thereof, which reads thus :-

“B. It may be declare that the applicant is on duty from 5.2.1998 and is entitled for pay and allowance attached to the post.”

(ii) The respondents are directed to comply with this order within the period of 3 months from the date of receipt of certified copy of this order.

(iii) There shall be no order as to costs.

MEMBER (A)

MEMBER (J)

Place : Aurangabad

Date : 7/6/2023