

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 37 OF 2019

DIST. : AURANGABAD

Chandrasen s/o Kachrusing Bahure,
 Age : 60 years, Occu.: Nil (Pensioner),
 R/o. 118/Gandhi Nagar,
 Behind Fire Brigade Office,
 Railway Station Road, Aurangabad.

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APPLICANT

V E R S U S

1. The State of Maharashtra
 Through its Secretary,
 Agriculture, Animal Husbandry
 Dairy Development & Fisheries
 Department, M.S.,
 Mantralaya, Mumbai - 32.
2. The Commissioner of Agriculture,
 M.S., Central Building,
 3rd floor, Pune – 411 001.
3. The Divisional Joint Director
 Of Agriculture,
 Kranti Chowk, Kotla Colony,
 Samta Nagar, Aurangabad – 05.
4. The Accountant General,
 Plot no. 167, Netaji Nagar,
 Nagpur 440 008.

...RESPONDENTS

 APPEARANCE :- Shri Avinash S. Deshmukh, learned
 Advocate for the applicant.
 : Shri V.R. Bhumkar, learned Presenting
 Officer for the respondents.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman

DATE : **17th APRIL, 2023**

O R A L - O R D E R

1. Heard Shri Avinash S. Deshmukh, learned counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents.

2. The applicant has filed the present Original Application seeking directions against the respondents to forthwith take all necessary steps and issue requisite order regarding successful completion of the probation period by the applicant in the Maharashtra Agriculture Services, Group-B and all the consequential benefits which include the grant of pension and pensionary benefits.

3. The applicant entered into the service of the State Government on 19.5.1980 as Agriculture Supervisor. On 5.12.1998 the applicant was promoted as an Agriculture Officer in Maharashtra Agriculture Services Class-II (Junior). In the year 2004 the applicant was appointed on the post of Agriculture Officer in Maharashtra Agriculture Services, Group-B cadre through MPSC. By the time the applicant had attained

the age of 45 years on 5.3.2003. According to the applicant, he was thus liable for exemption from passing the Post Recruitment Divisional Accounts Examination. As further contended in the O.A., a proposal regarding grant of exemption to the applicant from passing the said examination was submitted, however, it was not accepted on the ground that applicant having entered in the cadre of Maharashtra Agriculture Services through nomination, the facility of grant of exemption on attaining the age of 45 years for passing departmental examination was not available for him. In the year 2008, the respondent No. 2 submitted a proposal to respondent No. 1 to take appropriate decision at the Government level in regard to issue of grant of exemption to the applicant from passing above referred examination as because unless the exemption is granted the probation period was not liable to be completed by the applicant. It is the contention of the learned counsel that till retirement of the applicant no decision was taken on the said proposal. On 31.3.2016 the applicant retired on attaining the age of superannuation. The applicant has however, not been granted pension and pensionary benefits on the ground that since he did not pass the above referred departmental examination, his probation period has not been terminated and, as such, is not entitled for

any pension or pensionary benefits. Aggrieved by the said order the applicant has approached this Tribunal.

4. The respondents have resisted the contentions raised in the O.A. and prayer made therein by filing their joint affidavit in reply. In the affidavit in reply it is contended that the Agriculture Department, State Service Officers (Accounts Examination) Rules, 1981 and more particularly Rule 4(1) of the said rules mandatorily provides for passing of the Accounts Examination within the period of 2 years i.e. within probation period. It is further contended that the criteria of exemption on completing 45 years of age is applicable to the employees who are appointed by promotion; however, said criteria is not applicable for the employees or the officers appointed by nomination. It is further contended that the proposal seeking exemption for the applicant from passing Accounts Examination as a special case was forwarded to the learned Chief Secretary of the State and the same has been rejected by the High Power Committee under the Chairmanship of learned Chief Secretary. It is further contended that for want of clearing the Accounts Examination the probation period of the applicant has not been terminated and, as such, is not entitled for pension or pensionary benefits.

5. Shri Avinash Deshmukh, learned counsel appearing for the applicant submitted that the General Administration Department of the State vide G.R. dated 1.11.1977 has resolved to grant exemption to the employees from appearing in the Accounts Examination, on attaining the age of 45 years. Learned counsel submitted that the aforesaid G.R. is binding on all the departments of the State. The learned counsel further submitted that with *bona fide* belief that after attaining the age of 45 years the applicant was not required to appear and pass such examination, the applicant did not appear for the said examination. Learned counsel submitted that however, till date of his retirement no adverse action was taken against the applicant as contemplated under Rule 4(1) read with Rule 5(2) of the Agriculture Department, State Service Officers (Accounts Examination) Rules, 1981. Learned counsel further submitted that in the circumstances the applicant shall be held to have completed the probation period successfully and is also entitled for grant of pension and pensionary benefits. Leaned counsel relied upon the judgment delivered by the Principal Seat of this Tribunal at Mumbai in **O.A. No. 1009/2021 (Shri Sandeep Babu Kamble Vs. the Government of Maharashtra and Ors.)** decided on 1.8.2022. Learned counsel taking me through the facts which existed in the said matter submitted that identical facts are

existing in the present matter and, as such, the view taken by the Principal Seat of this Tribunal at Mumbai in the aforesaid O.A. would squarely cover the issue raised in the present matter also.

6. Learned Presenting Officer has opposed the submissions made on behalf of the applicant. According to the learned P.O., in absence of any express provision for grant of exemption on attaining the age of 45 years, the applicant was under an obligation to pass the said examination within the given period and given chances. The learned P.O. further submitted that as the applicant did not pass the departmental examination his probation period cannot be certified to have been completed. Learned P.O. submitted that the action taken by the respondents is within the provisions of the relevant rules and, as such, no error can be found in the action of the respondents. The learned P.O., in the circumstances, has prayed for rejecting the O.A.

7. I have considered the submissions advanced by the learned counsel for the applicant and the learned P.O. for the respondent authorities. I have gone through the pleadings in the O.A. and the affidavit in reply submitted on behalf of the respondents and the documents placed on record. It is not in

dispute that when the applicant was appointed by nomination on the post of Agriculture Officer in Maharashtra Agriculture Services, Group-B cadre through MPSC, he has already crossed the age of 45 years. It is also the matter of record that in the letter of appointment issued in favour of the applicant in the year 2004 a condition is incorporated that the applicant will have to pass the Departmental Accounts Examination within the period of probation i.e. within 2 years. It is however, significant to note that in the aforesaid rules the consequences of not passing the departmental examination are also given which read thus:

“5. Consequence of failure to pass the Examination
:- (1) *No State Service Officer shall be confirmed unless to pass the Examination or has been exempted from passing the Examination under rule 6.*

(2) A State Service Officer who fails to pass the Examination within the period and chances allowed in accordance with the provisions of Rule 4 shall be liable to be :-

(a) reverted to the lower post if he is appointed by promotion, or

(b) discharged from service if he is appointed by nomination.”

8. It is further not in dispute that though the applicant did not pass the said examination, the consequences have not followed. The respondents did not initiate any action against

the applicant and the applicant was allowed to discharge his duties till he attains the age of superannuation. In **O.A. No. 1009/2021** identical facts were existing. In the said matter also the applicant therein was denied pension and pensionary benefits on the same ground. Learned Principal Bench of this Tribunal however, has turned down the objections so raised by the respondents in the said matter. Similar defence is raised by the respondents in the present matter also. In the circumstances, I deem it appropriate to reproduce herein below the relevant portion from the aforesaid judgment which read thus:

“8. Indeed, it is will settled legal position that pension is a right of Government servant and payment of it does not depends upon the direction of Government, but it is governed by Rules. Indeed, right to pension is regarded as right to property under Article 300-A of the Constitution of India. The pension is not bounty but employee earns it by long, continuous, faithful service and such right cannot be taken away without there being any such specific Rule to that effect. As per Rule 5(2)(b) of ‘Accounts Examination Rules of 1981’, the non-passing of Examination within stipulated period entails serious consequences and such Government servant can be discharged from service. However, in the present case, admittedly, no such step was taken even no warning was given to the Applicant for passing examination and on the contrary, even he was given promotion to the post of Agriculture Officer, Group-B by order dated 27.10.2009. Pertinently, even exemption was granted from passing examination by order dated 11.03.2008 which was cancelled by the Respondents belatedly on 22.02.2022 though Applicant stands retired much earlier on 30.09.2020. The very fact that Applicant was found suitable for promotion invariably suggests that there was no deficiency in his service for non-passing the

examination in terms of 'Accounts Examination Rules of 1981'. Indisputably, during the span of 30 years at no point of time any such deficiency was noted by the Department nor any such warning of passing examination has been given to the applicant.

9. *Now turning to Pension Rules of 1981, it is only dismissal or removal of Government servant from service is not entitled to pension as per Rule 45 of 'Pension Rules of 1982'. Whereas Rule 57 of 'Pension Rules of 1982' enumerates certain services, which are not pensionable. Rules 45 and 57 are as under:-*

"45. Forfeiture of service on dismissal or removal – Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service.

57. Non-pensionable service.

As exceptions to rule 30, the following are not in pensionable service:-

(a) Government servants who are paid for work done for Government but whose whole time is not retained for the public service.

(b) Government servant who are not in receipt of pay but are remunerated by honoraria.

(c) Government servants who are paid from contingencies.

(d) Government servants holding posts which have been declared by the authority which created them to be non-pensionable.

(e) Holders of all tenure posts in the Medical Department whether private practice is allowed to them or not, when they do not have an active or suspended lien on any other permanent posts under Government."

10. *Thus, as rightly pointed out by learned Advocate for the Applicant there is no such Rule in 'Pension Rules of 1982' forfeiting Applicant's right to receive pension for non-passing Accounts Examination. This being the position, the right accrued to the applicant cannot be defeated in*

absence of any such specific Rule empowering the Government to deny pension. Otherwise, it would amount to affect the fundamental right of the Applicant under Article 19(1)(f) and 31(1) of the Constitution of India. As such, in my considered opinion, it would be very harsh, arbitrary rather oppressive to deny pensionary benefits to the Applicant when he admittedly rendered qualified service for grant of pension.”

9. The view taken by the principal seat of this Tribunal at Mumbai in **O.A. No. 1009/2021** (cited supra) has been reaffirmed by the Hon'ble Division Bench of the Tribunal at Mumbai while deciding **O.A. No. 114/2022 with M.A. No. 704/2022 (Shri Ankush Nana Dhonde Vs. the State of Maharashtra)** vide order passed on 6.2.2023.

10. In view of the discussion made by the Tribunal while deciding O.A. No. 1009/2021 reproduced hereinabove, there has remained no doubt that not passing of Accounts Examination would not forfeit the right of the present applicant to the pensionary benefits in absence of any such specific rule to that effect. The applicant has admittedly rendered more than 30 years' of service on a substantive post. In the circumstances, the pensionary benefits cannot be denied to him on the aforesaid ground.

11. For the reasons discussed hereinabove the Original Application deserves to be allowed. Hence the following order :-

ORDER

- (i) The applicant shall be deemed to have completed the period of probation successfully and the respondents shall issue a formal order in that regard.
- (ii) The respondents are further directed to process the case of the applicant for grant of regular pension, as well as, the pensionary benefits in his favour within 8 weeks from the date of this order.
- (iii) The Original Application is allowed in the aforesaid terms without any order as to costs.

VICE CHAIRMAN**Place : Aurangabad****Date : 17.4.2023**