

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 421 OF 2015

DISTRICT: - NANDED.

Saiyed Gaus Saiyed Pasha
Age : years, Occu.: Service
House No. 105/111 Galli No. 3,
Ekbalnagar, Hyderabad Road,
Dhanegaon, Nanded.

.. APPLICANT.

V E R S U S

1. The State of Maharashtra
Through : Secretary
Water Resources Department,
Mantralaya, Mumbai 32.
(Copy to be served on the C.P.O.,
MAT, Aurangabad)
2. The Superintending Engineer
Mechanical Circle,
Upper Penganga Project, Nanded.
3. Mr. Sanjay Manik Sone
Sr. Clerk in the office of
Executive Engineer,
Mechanical Division, Beed
Address : 69 Behind AS Club
Opp South City
Pune – Aurangabad Road,
Teesgaon Aurangabad.

.. RESPONDENTS.

APPEARANCE : Smt. Suchita A. Dhongde, learned
Advocate for the applicant.

: Smt. Sanjivani Deshmukh-Ghate –
learned Presenting Officer for the
respondents.

CORAM : **J.D. KULKARNI, VICE CHAIRMAN**
AND
: **SHRI ATUL RAJ CHADHA, MEMBER (A)**
DATE : **23rd AUGUST, 2018.**

O R A L O R D E R
[Per : J.D. Kulkarni, Vice Chairman]

1. Heard Smt. Suchita A. Dhongde, learned Advocate for the applicant and Smt. Sanjivani Deshmukh-Ghate, learned Presenting Officer for the respondents.

2. The applicant's father was working as Driver in the respondents' department and died on 12.12.2000. The applicant immediately applied for appointment on compassionate ground on 28.2.2001. Thereafter, in 2004 the applicant enhanced his qualification and acquired degree in Bachelors in Arts and MS-CIT. He, therefore, requested the respondent authorities to consider his higher qualification, so that the respondents may appoint him on the proper post. Admittedly, intimation as regards the higher qualification acquired by the applicant has been received to the respondent authorities.

3. In the meantime the applicant's name was included in wait list of the candidates to be appointed on the compassionate ground. Admittedly, the applicant stands at Sr. No. 34 in the said wait list. The respondent authorities have also appointed so many candidates from the said wait list directly on the post of Senior Clerk considering their qualification. Even junior persons than the applicant shown in the wait list have been appointed as Senior Clerk. Learned Advocate for the applicant has filed a copy of wait list, as well as, number of appointment orders in respect of various persons in the said wait list. They are taken on record and marked as document 'X' collectively for the purpose of identification, from which it seems that barring applicant number of other candidates, who were junior to the applicant in the wait list have been appointed as direct Senior Clerk.

4. The applicant thereafter applied to the respondent authorities and requested that considering his qualification, he be appointed as Senior Clerk by nomination. It seems that his request has been accepted by the respondent authorities and, therefore, an order was

passed on 1st January, 2011, Exhibit 'A-8', page-20, which reads as under: -

“श्री सय्यद गौस सय्यद पाशा यांना संदर्भ 9 अन्वये लिपीक-नि-टंकलेखक म्हणुन अनुकंपा तत्वावर नियुक्ती दिली आहे. आता त्यांच्या शैक्षणिक अर्हतेनुसार सदरील आदेशांत सुधारणा करुन श्री सय्यद गौस सय्यद पाशा यांना हे आदेश निर्गमित झालेल्या दिनांकापासून वरिष्ठ लिपीक म्हणुन यांत्रिकी विभाग (उपेप्र), नांदेड अंतर्गत प्रादेशिक कर्मशाळा उप विभाग क्र. 9, नांदेड येथील वरिष्ठ लिपीक रिक्त पदी सहा महिन्यांसाठी नियुक्ती देण्यांत येत आहे.”

5. The said appointment was only for six months and was continued thereafter. In the meantime the applicant requested that his appointment on the post of Senior Clerk shall be treated from initial date. However, the said request was not considered and hence, the applicant has filed the present Original Application.

6. During pendency of the present Original Application, the respondent authorities passed the impugned order dated 31st October, 2015 and thereafter reverted the applicant to the post of Junior Clerk. The said order reads as under: -

“श्री सय्यद गौस सय्यद पाशा यांची संदर्भ क्र. 9 अन्वये लिपीक-नि-टंकलेखक म्हणुन अनुकंपा तत्वावर नियुक्ती दिली होती व संदर्भ क्र. 2 नुसार वरिष्ठ लिपीक पदाची नियुक्ती आदेश निर्गमित करण्यांत आले होते.

परंतु संदर्भिय पत्र. क्र. 3 नुसार परिमंडळ कार्यालय (चे सूचना नुसार हे आदेश निर्गमित झालेल्या दिनांकापासून श्री सय्यद गौस सय्यद पाशा यांची वरिष्ठ लिपीक

पदावरुन पदावन्नत करुन संदर्भ क्र. 9 चे मुळ आदेशा प्रमाणे लिपीक-नि-टंकलेखक या पदावर करण्यांत येत आहे. व ते वरिष्ठ लिपीक पदाकरीता कनिष्ठ लिपीकाच्या जेष्ठता सूची नुसार पात्र होतील.”

7. Admittedly, this order was stayed by this Tribunal and the applicant continued to work as Senior Clerk. The only request of the applicant is that his appointment shall be treated as Senior Clerk right from the date of his initial appointment.

8. The only defense taken by the respondents is that at the time of registration of the name of the applicant in wait list, his qualification was H.S.C. and, therefore, he was considered for the post of Junior Clerk as per his qualification. The said defence however, cannot be accepted since number of candidates, who have been recorded as having qualification H.S.C. have been given appointment of a Senior Clerk. It is also admitted fact that since 2004 itself the applicant had acquired higher qualification and the same was intimated to the department and the department had taken cognizance of the higher qualification of the applicant. Action taken by the respondent authorities in respect of the applicant is,

thus, discriminatory. We feel that the applicant should have been appointed on the post of Senior Clerk directly right from the date of his initial appointment. Hence, we pass the following order: -

ORDER

- (i) The present Original Application is partly allowed.
- (ii) The respondents are directed to issue appointment order in respect of the applicant as a Senior Clerk from the date of his initial appointment i.e. since 18.8.2009. The seniority of the applicant as Senior Clerk shall be reckoned from the date of appointment itself. We are, however, not inclined to grant financial benefits of the Senior Clerk to the applicant since the date of initial appointment till he was appointed to the said post vide order dated 1.1.2011 for the reason that he had not worked as Sr. Clerk during that period.
- (iii) There shall be no order as to costs.

MEMBER (A)

VICE CHAIRMAN

PLACE : AURANGABAD.

DATE : 23rd AUGUST, 2018.

O.A.NO.421-2015(DB)-HDD-2018-Seniority