

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 735/2021

District : Parbhani

Prashant s/o Sopanrao Pol,)
 Age. 47 years, Occu. : Service)
 (as Assistant Geologist in O/o)
 Senior Geologist, Parbhani,)
 R/o Reddy Bhavan,)
 Plot No. 155, Shivram Nagar,)
 Vasmat Road, Parbhani.)-- **APPLICANT**

VERSUS

1. **The State of Maharashtra,**)
 Through its Principal Secretary,)
 Water Supply & Sewerage Dept.,)
 7 Floor, GT Hospital Bldg. Campus,)
 Near Crofard Market, L.T. Road,)
 New Mantralaya Bldg., Mumbai.)
2. **The Commissioner,**)
 Groundwater Survey & Development)
 Agency, 'Bhujal Bhavan,)
 Wakadewadi Road, Shivaji Nagar,)
 Pune -5.)
3. **The Director,**)
 Maharashtra Environmental)
 Engineering Training & Research)
 Institute, (MEETRA),)
 Opp. Divisional Commissioner Office,)
 ISP Road, Nashik Road,)
 Nashik - 01.)
4. **The Deputy Director,**)
 Groundwater Survey &)
 Development Agency, Aurangabad,)
 Jyoti Nagar, Osmanpura Road,)
 Aurangabad.)
5. **The Senior Geologist,**)
 Groundwater Survey and)
 Development Agency, Parbhani,)
 Central Building, Ground Floor,)
 Near BSNL, Vasmat Road,)
 Parbhani.) -- **RESPONDENT**

APPEARANCE : Shri Avinash S. Deshmukh, learned counsel for
applicant.

Shri S.K. Shirse, learned Presenting Officer for
respondent.

Coram : **Hon'ble Shri Justice P.R. Bora, Vice Chairman**
AND
Hon'ble Shri Bijay Kumar, Member (A)

Date : **23.08.2022**

O R A L - O R D E R

Heard Shri Avinash S. Deshmukh, learned counsel for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondent.

2. The applicant belongs to Scheduled Caste (SC) category. He is also a physically disabled person. He is partially deaf and his disability is in the range of 50% to 70% as certificated in the certificate annexed at Annex. 'A' in the compilation. On 22.7.2008 the applicant was appointed by respondent no. 1 as Assistant Geologist in Group-B category under the Groundwater Survey & Development Agency. The said appointment was on the basis of recommendation by the Maharashtra Public Service Commission (for short the MPSC) on the post reserved for the category of person with disability from the Scheduled Caste. On 28.7.2008, the applicant resumed duty in the office of Senior Geologist, Raigad. The appointment of the applicant was on probation for the period of 2 years subject to conditions mentioned in the order of appointment. The order of appointment is

marked as Annex. 'A-2' in the compilation. Condition no. 5 in the order of appointment was that the applicant shall pass the prescribed departmental examination in the prescribed period and prescribed chances. Condition no. 6 therein was that if the applicant could not achieve the expected standard in his work and could not pass the prescribed departmental examination within the period of probation and if his work is found unsatisfactory his services will liable to be terminated.

3. Insofar as the departmental examination is concerned, there are rules framed by the Government in that regard, which are known as Gazetted Officers (Technical) in the Groundwater Surveys and Development Agency (Departmental Examination) Rules, 1992 (for short the Examination Rules, 1992). These rules were published on 31.7.1992 and were amended on 16.2.1993. As provided in the said rules every person appointed by nomination to the scheduled post which include the post of Assistant Geologist shall be required to pass the examination within the probation period of 2 years failing which he/she will be liable to be discharged from the service. It is further provided in the said rules that the examination shall be held once in a year in the month of October by the MPSC.

4. It is the case of the applicant that the applicant could not pass the departmental examination within the period of 2 years of his probation. In spite of that the applicant has been continued in the service by respondent no. 1. As mentioned in the application there are

several persons alike the applicant, who also could not pass the said examination within the period of 2 years of probation.

5. According to the applicant, there is deemed extension to the period of applicant's probation. It is the further case of the applicant that respondent no. 2 had submitted a proposal to respondent no. 1 for grant of one more opportunity by way of special chance to total 21 Officers including the applicant, who had failed to pass the departmental examination, to appear in the ensuing examination to be conducted by respondent no. 3. It is the further contention of the applicant that the departmental examination of 2020-2021 was initially scheduled on 27th and 28th July, 2021 by respondent no. 3, however, since decision of respondent no. 1 on the aforesaid proposal submitted by respondent no. 2 was awaited, the examination was postponed until further orders.

6. Vide G.R. dated 29.10.2021, 20 officers named in the proposal dated 28.5.2021 submitted by respondent no. 2 were granted special chance to pass the examination to be conducted by respondent no. 3. The name of the applicant however was not included in the said list. The applicant alone was denied the said chance to appear in the said examination. Aggrieved by the aforesaid action of respondent no. 1 the applicant has preferred the present O.A. with the following prayer :-

“A) This Original Application may kindly be allowed thereby directing the Resp. No.1 to grant special chance/opportunity to the applicant to appear in the “Departmental Examination for the Gazetted Officers (Technical) in the Groundwater Surveys and Development Agency” to be conducted by the Resp. No. 3.

B) Costs of this Original Application may kindly be awarded to the applicants.

C) Any other appropriate relief as may be deemed fit by this Hon'ble Tribunal may kindly be granted."

7. The following interim reliefs were also prayed for by the applicant:-

D) Pending the admission, hearing and final disposal of this Original Application the Resp. No. 1 may kindly be restrained from taking any adverse action against the applicant including the action of discharge/termination of his services on the ground of non-passing of the "Departmental Examination for the Gazetted Officers (Technical) in the Groundwater Surveys and Development Agency."

E) Pending the admission, hearing and final disposal of this Original Application the Respondents in general and the Resps. No. 1 to 3 in particular may kindly be directed to permit the applicant to appear in the ensuing "Departmental Examination for the Gazetted Officers (Technical) in the Groundwater Surveys and Development Agency" to be conducted by the Resp. No. 3 on 2nd and 3rd December 2021.

8. Vide the interim order passed by this Tribunal on 30.11.2021 the interim relief was granted in terms of prayer clause (D) & (E) and accordingly the applicant was permitted to appear in the said examination however his result has not been declared.

9. The learned counsel for the applicant submitted that since till this date the order has not been passed by the appointing authority of the applicant terminating the period of probation of the applicant, the period of probation shall be deemed to have continued and the applicant is thus still on probation. The learned counsel further submitted that in O.A. No. 286/2012 with some other OAs similar issue

was involved and the Tribunal while deciding the said OAs in para 9 of the said order has held as under :-

“9. Applying the law laid down by the Supreme Court, in the light of the provisions of Rule 4 of the Recruitment Rules and Rule 3 and 4 of the Departmental Qualifying Examination Rules, there cannot be any doubt that passing of the Departmental Examination is a ‘sine qua non’ for assuming confirmation for the reason that the thrust is on passing of the Departmental Qualifying Examination and consequence of failure to pass the examination makes an appointee liable for termination. Though the rules provided that the probation period shall be of two years, there is no stipulation of maximum period of probation beyond which probation cannot be extended. In the absence of any provision negating extension of probation beyond the period of two years and having regard to the fact that the applicants were continued in service after expiry of two years, it has to be held that the probation period is deemed to have been extended. If the conditions contained in the appointment order, the Recruitment Rules and the Departmental Examination Rules are conjointly read, it leaves no room of doubt that the present applicants cannot claim ‘deemed confirmation’ on completion of two years’ probation. We also concluded that the probation period shall be deemed to have been extended beyond two years and in fact it has been so extended, by continuing the applicants in service beyond the period of two years of probation.”

The learned counsel submitted that same criteria must be applied to the case of the present applicant since though he has failed in passing the departmental examination within the given chances and within 2 years period of probation, the respondents have not terminated the services of the applicant, his probation period shall be deemed to have been extended beyond 2 years. The learned counsel pointed out that in the said matters also the applicants therein could not pass the departmental examination within the period of probation and in spite of that they were continued in the service. The learned counsel submitted that the Tribunal while passing the order in the said matters directed

the respondents therein to give one special chance to said applicants to appear for the departmental qualifying examination to be conducted by the MPSC and paved way for their further promotion. The learned counsel submitted that the applicant has made out a case for the similar order in his favour and hence prayed for allowing the Original Application as prayed for.

10. The learned Presenting Officer in his arguments reiterated the contentions as raised by the respondents in their affidavit in reply. The learned P.O. submitted that 20 out of 21 officers named in the representation/letter dated 28.5.2021, have availed only 2 attempts to pass the departmental examination, whereas the applicant had already availed 3 chances, and as such, he was not granted the further chance as was granted to the said 20 officers.

11. We have carefully considered the submissions advanced on behalf of the parties. We have also perused the documents filed on record.

12. Under rule 3 of the Examination Rules, 1992 every person appointed by nomination to the Scheduled Post shall be required to pass the Examination within the probation period of two years. The post on which the applicant is working admittedly is the scheduled post. Rule 4 of the Examination Rules, 1992 speaks about the consequences of failure to pass the Examination. It provides that a person appointed on probation to any of the Scheduled Post if fails to pass the Examination within the period specified in sub-rule (1) of rule

3 shall be liable to be discharged from the service. Rule 6 of the Examination Rules, 1992 obliges the MPSC to hold the examination once in a year in the month of October and Commission is also obliged to notify the date of the Examination and publish it in the official gazette.

13. It is not in dispute that the applicant did not pass the departmental examination within the period of probation. The respondents have not brought on record any document to show that the probation period of the applicant has been terminated. Even there is nothing on record showing that by any written order the period of probation has been extended by the respondents. It is also a fact that the respondents have not terminated the services of the applicant despite his failure to pass the departmental examination within the probation period of 2 years.

14. In the aforesaid factual matrix as has been observed by the Tribunal in the order passed in O.A. No. 286/2012 in para 9 of its judgment, which we have reproduced hereinabove, in the present matter also the period of probation of the applicant must be deemed to have been extended beyond 2 years and in fact it has been so extended and the applicant has been continued in service beyond period of 2 years of probation.

15. The applicant has not disputed that he has already availed 3 chances for appearing in the examination, but failed. It is the

contention of the respondents that since the applicant has already availed 3 chances for appearing in the departmental examination, as provided in sub-rule 2 of rule 3 of the Examination Rules, 1992 he cannot be now given any additional chance. The plea so taken by the respondents cannot be accepted. The Examination Rules, 1992, if read with amendment thereto in 1993, there is specific distinction between the persons who are appointed on a scheduled post through mode of nomination and the persons promoted to the said post. For promotees while there are stipulated number of chances within which the examination is required to be passed, there is no such stipulation insofar as the persons appointed by nomination are concerned.

16. Rule 3 of the Rules of 1992 prescribes that the persons appointed by nomination to the scheduled post shall be required to pass the examination within the probation period of 2 years. As held by us in the earlier paragraph the period of probation of the applicant must be deemed to have been extended beyond 2 years since the applicant has been continued in service beyond the period of 2 years of probation. As such, so long as the applicant is on probation, he has right to appear for the departmental examination. Nagpur Bench of this Tribunal has taken this view while deciding O.A. No. 286/2012 (cited supra). We see no reason to deviate from the view so taken by coordinate Bench. Resultantly, we firstly hold that the period of probation of the applicant shall be deemed to have been extended beyond the period of 2 years and secondly that the applicant has therefore right to appear for the

departmental examination. Vide order passed on 30.11.2021 by way of interim relief we had directed the respondents to permit the applicant to appear in the departmental examination held on 2nd/3rd December, 2021. Accordingly, the applicant did appear for the said examination, however, his result has not yet been declared. In view of the conclusion recorded by us hereinabove there may not be any impediment now to direct the respondents to declare the result of the applicant. For the reasons stated above, we are inclined to allow the present O.A. with the following order :-

O R D E R

- (i) The applicant's probation period shall be deemed to have been extended beyond the period of 2 years.
- (ii) The applicant is held entitled to appear for the departmental examination since he continued to be on probation beyond the period of 2 years.
- (iii) The respondents shall declare the result of the applicant of the departmental examination held on 2nd/3rd December, 2021 and if he is noticed to have passed in the said examination, the applicant shall be deemed to have completed the period of probation successfully making him entitled for further promotions, if any.

(iv) The present Original Application thus stands allowed in the aforesaid terms without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

ARJ O.A. NO. 735 OF 2021 D.B. (DEPARTMENTAL EXAMINATION)