

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 944 OF 2022

DIST. : NANDED

Suresh S/o Deepchand Machal,)
 Age: 50 years, Occu. Service as a Clerk,))
 R/o Latur Phata, CIDCO Road,))
 Behind Ambedkarwadi Mission,))
 Vinkar Colony, CIDCO, Nanded.)..

APPLICANT

V E R S U S

1. The State of Maharashtra,)
 Through the Secretary,)
 Public Health Department,)
 G.T. Hospital , 'B' Wing,)
 10th Floor, Complex Building,)
 New Mantralaya,)
 Mumbai 400 001.)
2. The Director,)
 Medical Education & Research,)
 Government Dental College & Hospital,))
 4th Floor, in the campus of)
 St. Francis Hospital,)
 P. Dmelo Road, Fort,)
 Mumbai.)
3. The Dean,)
 Dr. Shankarrao Chavan –)
 Government Medical College,)
 Vishnupuri, Nanded,)
 Tq. & District Nanded.)..

RESPONDENTS.

 APPEARANCE :- Shri Vishal Bakal, learned Advocate for
 the applicant.
 : Shri I.S. Thorat, learned Presenting
 Officer for the respondent authorities.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)

RESERVED ON : **22.12.2023**

PRONOUNCED ON : **10.01.2024**

ORDER

[Per :- Shri Vinay Kargaonkar, Member (A)]

1. Heard Shri Vishal Bakal, learned counsel for the applicant and Shri I.S. Thorat, learned counsel for the respondent authorities.

Brief Facts of the case :-

2. The applicant was appointed as a Class-IV employee as a Lohar on 19.7.2005. The applicant was given a posting of Junior Clerk on 14.12.2009. The pay scale of Lohar and Junior Clerk are equal and therefore in the order of Junior Clerk it was mentioned that the services for the purpose of seniority will be counted from his appointment as Lohar i.e. from 19.7.2005. The applicant has passed MS-CIT, English Typewriting 40 w.p.m. speed and Marathi typewriting 30 w.p.m. examinations.

3. On 1.6.2020 the applicant has completed 50 years of age and therefore he is seeking exemption from passing the

departmental examination as per the Government Resolutions dated 1.3.2018 and 17.5.1980. The applicant has also requested the concerned authorities for promotion to the post of Senior Clerk and also for exemption from passing the Departmental Examination. The applicant has also requested for the benefit of "Ashwasit Pragati Yojana"^v The respondent no. 02 has prepared a seniority list for giving promotion to the post of Senior Clerk or equivalent post thereto, but the name of the present applicant is not included in that seniority list. Hence, the applicant has filed this Original Application before this Tribunal.

Submissions by the applicant :-

4. The applicant has submitted that he is entitled for exemption from passing the Departmental Examination as per the Government Resolutions dated 1.3.2018 and 17.5.1980 as he has completed 50 years of age on 1.6.2020. The applicant submits that he was given posting as a Junior Clerk on 14.12.2009 and he has all the requisite qualifications for eligibility for promotion to the post of Senior Clerk. He has passed S.S.C. examination, as well as, English Typewriting 40 w.p.m. examination and Marathi Typewriting 30 w.p.m. examination. The applicant also submits that he is eligible to

get the benefit of “Ashwasit Pragati Yojana”, but the respondents have not considered the case of the applicant for the benefit of “Ashwasit Pragati Yojana”.

Submissions by the Respondents :-

5. The respondents have submitted that the respondent no. 01 is the competent authority to change the cadre of any employee and in the case of the applicant the respondent no. 03 has changed the cadre of the applicant without taking permission from the respondent no. 01. The employee can be appointed to the post of Junior Clerk either by nomination or promotion from Class-IV (Group-D) post. If the employee wants to change his cadre to Junior Clerk by fulfilling the eligibility criteria for Junior Clerk, then only as per the seniority his cadre can be changed. The applicant is not complying with the above mentioned criteria and therefore the claim of the applicant to include his name in the seniority list for promotion to the post of Senior Clerk is invalid.

6. The Government Resolutions dated 17.5.1980 and 1.3.2018 are not applicable to the applicant. The applicant's cadre was not changed as per the recent procedure and therefore his name is not included in the seniority list. The

appointment of the applicant on the post of Junior Clerk is void *ab initio* and therefore his name is not included in the seniority list.

Conclusions :

7. Two main issues are contested in this original application 'Whether or not applicant is entitled for exemption from passing the Departmental Examination as per Government Resolutions dated 1/03/2018 and 17/05/1980'

Relevant part of GR dated 01/03/2018 is reproduced below:

“१. शासन सेवेत कायम करणे किंवा नियमित करण्यासाठी घेण्यात येणाऱ्या सेवाप्रवेशोत्तर प्रशिक्षण परीक्षा | विभागीय परीक्षा उत्तीर्ण होण्यासाठी शासकीय अधिकारी | कर्मचारी यांना वयाची ४९ वर्ष पूर्ण केल्यानंतर मिळणारी सूट यापूढे वयाची ५० वर्ष पूर्ण केल्यानंतर अनुज्ञेय राहिल.

(अ) मात्र, यास खालील अपवाद राहतील :-

(१) प्रशासकीय विभागांनी त्यांच्याकडील तांत्रिक स्वरूपाचे कामकाज हाताळणाऱ्या अधिकारी/कर्मचारी यांना शासन सेवेत नियमित किंवा कायम करण्यासाठी घेण्यात येणा-या सेवाप्रवेशोत्तर/विभागीय परीक्षा उत्तीर्ण होण्यापासून वयोमर्यादेची सूट न देण्याचा जाणिवपूर्वक निर्णय घेतला असेल तर त्यांसाठी उपरोक्त वयोमर्यादेची सूट लागू राहणार नाही.

(२) परिवीक्षाधीन कालावधीत सेवाप्रवेशोत्तर प्रशिक्षण परीक्षा उत्तीर्ण न केल्यास उमेदवाराची सेवा समाप्त करण्याची जर सेवाप्रवेश नियमामध्ये तरतूद असेल तर अशा परिवीक्षाधीन अधिकारी/कर्मचारी याने त्याच्या ययाची ५० वर्षे पूर्ण केली या कारणास्तव परीक्षा उत्तीर्ण होण्यातून सूट देता येणार नाही.”

8. Respondents have submitted that the applicant is not entitled for exemption from passing the departmental examination as the resolutions dated 01/03/2018 and 17/05/1980 are not applicable to the applicant. However respondents have not given any reason or justification for that. Para 1 (A) of the GR dated 01/03/2018 says that competent authority can take a conscious decision of not giving exemption if the employee is handling technical work. In this case applicant is "Clerk". He is neither a technical employee nor there is any conscious decision taken by the competent authority denying exemption to the applicant as he is handling a technical work. In these circumstances one can infer that applicant is entitled for exemption from passing the Departmental Examination as per GR dated 01/03/2018.

9. Second issue is competent authority to appoint the Junior Clerk. Respondents have argued that appointment of the applicant to the post of Jr Clerk was done by respondent no 3 without any permission and approval from the respondent no 1 and therefore appointment of applicant on post of Jr Clerk is void ab initio. Again the respondents have not submitted any Government Resolution, Rules or Manual to substantiate their

argument. On the contrary applicant has submitted a letter dated 11/06/2003 which states that the authority to promote Class 4 employee to the post of Clerk cum Typist is given to the respondent no 3 by respondent no 1. There is no justification in the arguments of the respondents that the appointment of the applicant to the post of Jr Clerk is void ab initio. In fact letter dated 11/06/2003 proves that respondent 3 is the competent authority to promote Class 4 employee to the post of Clerk cum Typist. Hence following order:

ORDER

- (i) Original Application is allowed.
- (ii) Applicant is exempted from passing the Departmental Examination for promotion to the post of Senior Clerk.
- (iii) Respondent No 2 shall include name of applicant in the seniority list prepared for the purpose of promotion to the post of Senior Clerk provided the applicant is otherwise eligible.
- (iv) Benefit of "Ashwasit Pragati Yojana" shall be given to the applicant, if he is otherwise eligible for it.
- (v) There shall be no order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 10.01.2024