

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 959 OF 2019**

**DISTRICT : AURANGABAD**

1. **Rahul S/o Devarao Sathe,** )  
Age : 51 years, Occu. : Service, )  
As Deputy Chief Officer, )  
Municipal Council Vaijapur, )  
Tq. Vaijapur, Dist. Aurangabad. )
  2. **Abdul Sattar S/o Abdul Gafar,** )  
Age : 53 years, Occu. : Service as, )  
Deputy Chief Officer, Paithan, )  
Municipal Council Paithan, )  
Tq. Paithan, Dist. Aurangabad. )
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**APPLICANTS**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Secretary, Urban Development )  
Department, Mantralaya, Mumbai -32. )
  2. **The General Administration Department,** )  
Mantralaya Mumbai, Through its Secretary.)
  3. **The Commissioner and Director of** )  
Municipal Administration Directorates, )  
Government Transport Service Building, )  
3<sup>rd</sup> Floor, Sir Pochkhanwala Road, Warli, )  
Mumbai -400030. )
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**RESPONDENTS**

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**APPEARANCE** : Shri R.D. Khadap, Advocate for the  
Applicants.

: Shri B.S. Deokar, Presenting Officer for  
respondents.

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**CORAM** : **Justice Shri P.R. Bora, Member (J)**  
**and**  
**Shri Bijay Kumar, Member (A)**

**Reserved on** : **07.04.2022**

**Pronounced on** : **20.04.2022.**  
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**ORDER****(Per : Shri Bijay Kumar, Member (A))**

1. This Original Application has been filed by two applicants on 15.10.2019 invoking provisions of Section 19 of the Administrative Tribunals Act, 1985 challenging Rule 4 (2) (b) of the Maharashtra Municipal Chief Officers' Services (Recruitment and Conditions of Services) (Amendment) Rules 2019, issued by Respondent No. 1 on 06.03.2019 vide Government Resolution No. संकीर्ण-२३१८/प्र.क्र.३/का. १७, मंत्रालय, मुंबई-३२, dated 01.03.2018, which is enclosed as Annexure A -7, page 59 of the paper-book. The applicants had also filed a Miscellaneous Application No. 513/2019 in this Original Application on 15.10.2019 seeking leave to sue jointly which was granted vide Oral Orders of this Tribunal on 18.10.2019. The applicants had also filed yet another Miscellaneous Application No. 554 Of 2019 on 11.11.2019 for grant of interim relief in terms of staying the promotion under provisions of amended recruitment rules of year 2019 which was rejected by the Tribunal vide order dated 20.11.2019. However, the Original Application was registered and notices were duly served on the respondents.

**2. Background Facts :-** The Facts of the matter as submitted by the applicants may be summed up as follows :-

(a) Applicant No. 1 had joined as Draughtsman (Civil) at Municipal Council, Parli Vajjnath, District-Beed and worked

there up to year 2008. Applicant No. 2 joined initially as Steno in Municipal Council, Beed.

(b) Both the applicants were later on, absorbed in Maharashtra State Municipal Council Employees Cadre by Respondent No. 2 vide order dated 02.02.2008 and 03.10.2008 respectively as per provisions of the Maharashtra Municipal Council, Nagar Panchayats and Industrial Township State Services (Absorption and Condition of Services) Rules 2006 on post of Tax Assessment Officer & Administrative Services (Grade-C-2). At present, the applicants are working as Deputy Chief Officers in Municipal Councils of Vaijapur, District-Aurangabad and Deputy Chief Officer, Paithan, District-Aurangabad respectively.

(c) The applicant have further stated that there are six cadres in the Maharashtra State Municipal Employees namely :-

- (i) *Maharashtra State Municipal Council Engineering Services (Civil / Electrical/ Computer)*
- (ii) *Maharashtra State Municipal Council Water Supply and Sanitation Engineering Services*
- (iii) *Maharashtra State Municipal Council Accounts & Audit Services*
- (iv) *Maharashtra State Municipal Council Tax & Administrative Services*
- (v) *Maharashtra State Municipal Council Town Planning & Development Services*

(vi) *Maharashtra State Municipal Council Fire Services*

(d) The applicants have referred to provisions of Rule (4) (2) of the **Maharashtra State Municipal Chief Officers Services (Recruitment and Condition of Service) Rules 1983** (*notified on 17.12.1983*) and compared the same with the Rule (4) (2) of the **Maharashtra State Municipal Chief Officers Services (Recruitment and Condition of Services) (Amendment) Rules 2019** (*provisionally notified on 05.02.2019 and final notification on 06.03.2019*), to substantiate the grounds for relief sought by this Original Application. Comparative statement of Rule (4) (2) of the Maharashtra State Municipal Chief Officers Services (Recruitment and Condition of Service) Rules 1983 and the Rules (4) (2) of the Maharashtra State Municipal Chief Officers Services (Recruitment and Condition of Services) (Amendment) Rules 2019 for the purpose of substantiating grounds for seeking relief, the comparative provisions are shown in Table A which follows :-

**TABLE-A**

<b>Comparative Chart Showing Provisions for Recruitment by Promotion to the Post of Chief Officer Grade II as per Clause 4, sub clause (2) (b) and (2) (c) of the 1983 Rules and 2019 Rules</b>			
<b>S. No.</b>	<b>Sub clauses of Rule 4 (2) under contention</b>	<b>As per 1983 Rules</b>	<b>As per 2019 Rules</b>

<b>1</b>	<b>Sub clause 2 (b)</b>	by promotion of a suitable person on the basis of seniority-cum merit from amongst the persons holding the post of Chief Officer, Grade III, having not less than three years' service in that post	by promotion of a suitable person, who has completed regular service not less than 5 years in the cadre and his age is not more than 53 years, on the basis of the selection list prepared as per the merit determined by the Limited Departmental Competitive Examination;
<b>2</b>	<b>Sub clause 2 (c)</b>	Appointment to the post by promotion and nomination shall be made in the ratio of 25:75.	appointment to the post by nomination and promotion shall be made in the ratio of 90:10

(e) The Applicants have also referred to Govt. in Urban Development Department Resolution No., dated, 15.05.2017 and asserted that the provisions in the said GR were appropriate and equitable.

(f) The applicant have also asserted that that the amendment rules have not provided for exemption from passing departmental examination as has been provided for by Govt. in

General Administration Department Resolution No. संकीर्ण-२३१८/प्र.क्र. ३/का. १७, मंत्रालय, मुंबई, dated, 01.03.2018.

(g) The applicant has further submitted that in the year 2007, the Government had stopped new recruitment in cadre of Chief Officer Grade III and filled up 100% posts in the said cadre by direct recruitment through Maharashtra Public Service Commission (in short, "MPSC"). It is in year 2017 that the Urban Development Department had decided to give chance of appointment on the post of Chief Officer Grade II directly from the State Municipal Council Cadre employees through Limited Departmental Competitive Examination and issued a G.R. No. एमसीओ-२०१२/प्र.क्र.१५१/नावि- १७, मंत्रालय, मुंबई-३२, dated 15.05.2017 whereby, it was decided to fill up the post of Chief Officer, Grade-II by promotion and nomination in ratio of 10:90. Promotion quota will be filled by Limited Departmental Competitive Examination conducted by MPSC, from amongst employees from State Municipal Council Cadre. The employees of State Municipal Council Cadre who are not of more than 45 years of age, and who have completed minimum of 7 years of regular service in State Municipal Council Cadre and who are graduate from recognized university or possess equivalent qualification were to be considered as eligible for getting promotion. As per the GR under reference, amended

recruitment rules were to be issued separately, however, when amended recruitment rules 2019 were issued some changes had been incorporated about which the applicant has applied for relief in terms of quashing and setting them aside clause 4 (2) (a) and 4 (2) (b) of Rules 2019.

(h) The two applicants had made separate written representations before respondent No. 3 vide their letters dated 12.02.2019 lodging their objections to the draft notification of Amendment Rules, 2019 making demand as follows :-

- (i) To introduce provision for grant of exemption from participation in Limited Departmental Competitive Examination on attaining 50 years of age, and
- (ii) Introducing provision of making select list for promotion comprising of employees from feeder cadre who have had *minimum five years of regular service* in feeder cadre and have completed 50 years of age on seniority cum merit basis; and also employees who have completed *minimum five years of regular service* in feeder cadre on the basis of their merit position in Limited Departmental Competitive Examination, and,

(iii) Limited Departmental Competitive Exam be conducted by Regional Sub-Ordinate Services Selection Board instead of MPSC.

**3. Pleadings and Arguments** :- Affidavit in reply was filed on behalf of Respondent Nos. 1 & 3 on 17.02.2020. Before filing rejoinder affidavit the applicants filed a writ petition before Hon'ble High Court of Judicature, Bench at Aurangabad bearing No. 8083/2021 seeking relief of quashing and setting aside this Tribunal's order passed in M.A. No. 554/2019 in O.A. No. 959/2019 for interim relief which was disposed of by Hon'ble High Court expressing expectation that this Tribunal will deal with the issue expeditiously. The Applicants filed Rejoinder Affidavit on behalf of Applicants was filed on 19.10.2021. Thereafter, the matter was closed for final hearing on 14.12.2021 which took place on 07.04.2022 and the matter was reserved for Orders on the same day.

**4. Relief Prayed For** :- Applicants have sought reliefs in terms of Para 10 which is reproduced verbatim for ready reference :-

**“10. RELIEF CLAIMED:-**

**HENCE IT IS PRAYED THAT:**

- A. *The Original application may kindly be allowed with cost;*
- B. *To hold and declare that, the Rule (4) (2) (b) of the Maharashtra State Municipal Chief Officer Services (Recruitment and Condition of Service) (Amendment)*

*Rules 2019 dated, 05.03.2019 are illegal and unreasonable and same may kindly be quashed and set aside or that purpose issue necessary orders.*

- C. The respondents may kindly be directed to modify the Maharashtra State Municipal Chief Officer Services (Recruitment and Condition of Service) (Amendment) Rules 2019 to extent Rule 4 (2) (b) instead of 5 years regular service, 7 years' service and instead of 53 years of age, 50 years age to be inserted.*
- D. The letter dated 21.09.2019 issued by the respondent No. 2 may kindly be quashed and set aside.*
- E. The respondents may kindly be directed to give promotion to the applicants on the post of Chief Officer Grade -II as per the seniority list by giving exemption of the Limited Departmental Examination as per the Government Resolution dated 01.03.2018.”*

**5. Analysis of Facts** :- On considering facts on record and oral submissions made by the two contesting sides, following position emerges :-

- (a) The **Maharashtra State Municipal Chief Officers Services (Recruitment and Condition of Services) (Amendment) Rules 2019** were provisionally notified on 05.02.2019. The applicants registered their objections to certain clauses to the draft Amendment Rules, 2019 by submitting representations dated 12.02.2019. The **Maharashtra State**

**Municipal Chief Officers Services (Recruitment and Condition of Services) (Amendment) Rules 2019** were finalized and *notified on 06.03.2019) after taking in to account objections of the applicants. Therefore, procedural requirements had been fulfilled.*

(b) It is admitted by the two contesting sides that in the year 2007, the Government had stopped new recruitment in cadre of Chief Officer Grade III and filled up 100% posts in the said cadre by direct recruitment through Maharashtra Public Service Commission (in short, "MPSC"). It is in year 2017 that the Urban Development Department had decided to give chance to the employees from State Municipal Council Cadre for appointment on the post of Chief Officer Grade II through promotion as well as through Limited Departmental Competitive Examination and issued a G.R. No. एमसीओ-२०१२/प्र.क्र.१५१/नावि- १७, मंत्रालय, मुंबई-३२, dated 15.05.2017, whereby, it was decided to fill up the post of Chief Officer, Grade II by promotion and nomination in ratio of 10:90. Promotion quota will be filled by Limited Departmental Competitive Examination conducted by MPSC, from amongst employees from State Municipal Council Cadre. The employees of State Municipal Council Cadre who are not of more than 45 years of age, and who have completed minimum of 7 years of regular service in State Municipal Council Cadre and who are graduates from recognized university or possess equivalent

qualification were to be considered as eligible for getting promotion. As per the GR under reference, amended recruitment rules were to be issued separately. However, when amended recruitment rules 2019 were issued some changes had been incorporated about which the applicant has applied for relief in terms of quashing and setting them aside clause 4 (2) (a) and 4 (2) (b) of Rules 2019. The question that emerges whether the respondents were within their powers to notify amendment rules, 2019 which is not the carbon copy of the GR No. एमसीओ-२०१२/प्र.क.१५१/नावि- १७, मंत्रालय, मुंबई-३२, dated 15.05.2017? At this point it is to be borne in mind that the respondents may have to modify structure of the Rules made public by the said GR dated 15.05.2017 during the process of intra-organizational consultation and stake-holders' suggestions and objections have to be taken into account, based on merit, while finalizing amendment Rules. Therefore, the amendment Rules, 2019 does not suffer from any infirmity on the ground that the provisions stipulated in the same are different from those stipulated in GR dated 15.05.2017.

c) The third issue that has emerged for determination is applicability of provisions of G.R. No. संकीर्ण-२३१८/प्र.क.३/का. १७, मंत्रालय, मुंबई-३२, dated 01.03.2018. In other words, to decide whether it is mandatory for the respondents to grant exemption from passing

Limited Departmental Examination to the employees of feeder cadre who have attained 50 years of age and completed minimum 15 years of service on the post on which exemption is sought ? From perusal of the affidavit in reply it is noticed that the respondents have given following reasons behind not providing for any exemption from passing Limited Departmental Competitive Exam :-

*“07. About the contents of Para No. L & M, I say and submit that, as per the Government Resolution dated 01.03.2018 issued by the General Administration Department, exemption up to 50 years of age is given for permanency and regularization in service purpose. Procedure of selection to the post of 10% Chief Officer- B (Gazetted) is independent by way of Limited Departmental Examination and qualification of the candidate. Therefore, the Government Resolution dated 01.03.2018 is not applicable to this case.”*

The learned Presenting Officer has advanced his arguments on above lines during final hearing too. It appears that the respondents relied solely on the provisions of Clause-1 of the said G.R.; whereas, the other hand, clause-2 of the said G.R. reads as follows :-

*“२. पदोन्त्तीसाठीची विभागीय परीक्षा उत्तीर्ण होण्यापासून सूट मिळण्याकरीता कर्मचा-याने त्या पदावर किमान १५ वर्षे सेवा पूर्ण करणे अनिवार्य राहिल. त्यामुळे संबंधित पदावर कर्मचा-याची १५ वर्षे सेवा पूर्ण झाल्याच्या दिनांक किंवा त्याच्या वयाची ५० वर्षे पूर्ण झाल्याचा दिनांक यापैकी जे नंतर घडेल त्यानंतर लगतचा दिनांक हा कर्मचा-यास*

पदोन्नतीसाठी विहित केलेली विभागीय परीक्षा उत्तीर्ण होण्यापासून सूट देण्याचा दिनांक समजण्यात येईल.”

In this context reference is also drawn to clause (3) and (4) of the G.R. dated 01.03.2018, which read as follows :-

“३. सर्व शासकीय विभागांची सदर निर्णय त्यांच्या अखत्यारितील सर्व कार्यालयांच्या निदर्शनास आणून द्यावा व सर्व संबंधित सेवाप्रवेश नियम / विभागीय परीक्षा नियमातील तरतुदीमध्ये तात्काळ सुधारणा कराव्यात.”

“४. या आदेशाच्या दिनांकापासून सदर सुधारणा अंमलात येतील. त्यामुळे सर्व प्रशासकीय विभागांनी संबंधित परीक्षा नियम / सेवाप्रवेश नियमांमध्ये सुधारणा करताना या आदेशाचा दिनांक हा सुधारणा अंमलात आणण्याचा दिनांक असेल अशी स्पष्ट तरतूद करावी. तसेच परीक्षा नियमामध्ये सुधारणा करेपर्यंतच्या कालावधीतही उमेदवाराला वयोमर्यादेची सूट देण्याबाबत या आदेशातील तरतुदीनुसार अंमलबजावणी करावी.”

After considering submission made by respondents and provisions of Clause (3) and (4) of the G.R. dated 01.03.2018, we are of the opinion that the respondents have not been able to justify their stand in this regard, nor have they been able to explain the reason for not incorporating the same in the Maharashtra State Municipal Chief Officers Services (Recruitment and Condition of Services) (Amendment) Rules 2019.

6. **Conclusion** :- On the basis of analysis of facts on record and oral submissions made by the contesting parties, we are of the considered opinion that the applicants are entitled to relief of getting exemption from passing Limited Departmental Competitive

Examination under provisions of G.R. dated 01.03.2018, on merit of their individual cases and accordingly, pass following orders :-

**ORDER**

Original Application No. 959 of 2019 is partially allowed in following terms :-

(A) The respondents are directed to extend benefits of provisions of exemption from passing Limited Departmental Competitive Examination for purpose of promotion, as stipulated in clause (2) read with clause (4) of the General Administration Department, Government of Maharashtra's GR No. संकीर्ण-२३१८/प्र.क.३/का. १७, मंत्रालय, मुंबई-३२, dated 01.03.2018, to the applicants and similarly situated other employees of the feeder cadres for the post of **Chief Officer Grade II, while filling the post of Chief Officer Grade II by promotion**, based on merit of each individual case, within a period of 4 months from the date of receipt of this order.

(B) The respondents may also take expeditious steps to comply with requirements of clause (3) the General Administration Department, Government of Maharashtra's GR No. संकीर्ण-२३१८/प्र.क.३/का. १७, मंत्रालय, मुंबई-३२, dated 01.03.2018 by incorporating suitable provisions in

the Maharashtra State Municipal Chief Officers Services (Recruitment and Condition of Services) (Amendment) Rules 2019 in order to give effect to the mandate laid down by the Government in this regards vide Clauses (3) and (4) of the Government in G.A.D. Resolution dated 01.03.2018 (supra).

(C) No order as to Costs.

**MEMBER (A)**

**MEMBER (J)**

**Kpb/D.B. O.A. 959 of 2019 PRB & BK 2022 Promotion**