

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
AURANGABAD BENCH, AURANGABAD**

**ORIGINAL APPLICATION NOS. 504 & 505 OF 2015
WITH M.A 62/2016 IN O.A 505/2015**

DISTRICT : JALGEON

1. ORIGINAL APPLICATION NO 504 OF 2015

Ratan Anandrao Suradakar,)
Presently posted as Assistant District)
Entertainment Tax Officer)
(Naib Tahsildar), Jalgaon,)
District Jalgaon)

.....APPLICANT.

VERSUS

1. The State of Maharashtra,)
Through the Secretary,)
Revenue Department,)
Sachivalaya / Mantralaya,)
Mumbai.)

2. Divisional Revenue Commissioner,)
Nashik Road, Nashik.)

.....RESPONDENTS.

2. ORIGINAL APPLICATION NO 505 OF 2015**WITH
MISC APPLICATION NO. 62 OF 2016
IN
ORIGINAL APPLICATION NO 505 OF 2015**

Arvind S/o Goma Gavit,)
Presently posted as Zilla Purvatha)
Nirikshan Adhikari, Zilla Purvatha)
Karyalaya, Nandurbar, Dist-Nandurbar).....**APPLICANT.**

VERSUS

1. The State of Maharashtra,)
Through the Secretary,)
Revenue Department,)
Sachivalaya / Mantralaya,)
Mumbai.)
2. Divisional Revenue Commissioner,)
Nashik Road, Nashik.)...**RESPONDENTS.**

Mrs Amruta P. Paranjape, learned Advocate for the Applicant.

Mrs Deepali S. Deshpande, learned Presenting Officer for the Respondents in O.A no 504/2015

Mrs Sanjivani Deshmukh-Ghate, learned Presenting Officer for the Respondents in O.A no 505/2015.

**CORAM : Shri Rajiv Agarwal, (Vice-Chairman)
Shri J.D Kulkarni (Member) (J)**

DATE : 18.10. 2016

PER : Shri Rajiv Agarwal, (Vice-Chairman)

ORDER

1. Heard Mrs Amruta P. Paranjape, learned Advocate for the Applicant, Mrs Deepali S. Deshpande, learned Presenting Officer (P.O) for the Respondents in O.A no 504/2015, on 21.9.2016 and Mrs D.S Deshpande, learned Advocate for the Applicants and Mrs Sanjivani Deshmukh-Ghate, learned Presenting Officer for the Respondents in O.A no 505/2015 on 22.9.2016.

2. These Original Applications have been filed by the Applicants seeking declaration that they are not required to pass the departmental examination, as they have crossed the age of 45 years. These Original Applications were heard on 21.9.2016 and 22.9.2016 respectively and are being disposed of by a common order as the issues to be decided are identical.

3. Learned Counsel for the Applicant argued that the Applicant in O.A no 505/2015 was appointed as Small Savings Officer at Ahmednagar. He was declared 'surplus' and was absorbed as a Naib Tahsildar by order dated

22.9.2002. The Government issued G.R dated 1.4.2010 regarding benefit of Assured Career Progression Scheme (A.C.P) which provides that a Government servant is eligible to get the pay in the higher post after 12 & 24 years of service, if he is not given regular promotion for want of posts. The Applicant was informed by letter dated 13.4.2015 by the Respondent no. 2 that he was not eligible to get second benefit of the Assured Career Progression Scheme as he had not passed the Revenue Qualifying Examination. Learned Counsel for the Applicant argued that the Divisional Commissioner, Aurangabad had granted second benefit of A.C.P Scheme to those N.T., who had been absorbed from other Departments and have not passed R.Q Examination. The action of the Respondent no. 2 is discriminatory. In any case, the Applicant has crossed age of 45 years and he is exempted from passing Revenue Qualifying Examination.

The facts are also identical in the O.A no 504/2015.

4. Learned Presenting Officer (P.O) argued that the Applicants were working in Finance Department as Small Savings Officer. As their post was declared surplus, they were absorbed in Revenue Department as a Naib Tahsildars. All officers working in Revenue Department are required to pass Revenue Qualifying Examination (R.Q.E) conducted by the Maharashtra Public Service Commission (M.P.S.C). There is no provision in the rules to exempt an officer from

passing the said examination on reaching the age of 45 years. The purpose of the examination is to ensure that the officers working in Revenue Department are familiar with relevant Revenue Laws and procedures. For junior level functionaries like Awal Karkoon, the requirements of passing Revenue Qualifying Examination can be waived as per the relevant rules after reaching the age of 45 years, as they become familiar with the laws due to long years of experience. However, the Applicants are seeking exemption without having adequate experience in Revenue Department. Also, there is no provision for exemption from passing the said examination for Naib Tahsildar. Such persons are not eligible to be promoted to the next higher post unless they pass R.Q.E. This condition was specifically incorporated in the order dated 18.7.2009, absorbing the Applicant in O.A no 505/2015 in the post of Naib Tahsildar. Similar condition was there in order absorbing Applicant in O.A no 504/2015 also. Learned Presenting Officer argued that the Principal Bench of this Tribunal by judgment dated 9.8.2016 in O.A no 875/2015 has upheld this condition in the order dated 18.7.2009. Learned Presenting Officer argued that G.R dated 1.4.2010 is regarding benefits of Assured Career Progression Scheme, which the Applicants are calling 'deemed promotion'. However, benefit of A.C.P Scheme can be given to a Government servant who is eligible to be given regular promotion but could not be promoted for want of availability of vacancies in the higher posts. As the Applicants are not eligible for promotion, unless they pass the Revenue

Qualifying Examination, they are not eligible to be given second benefit of Assured Career Progression Scheme. Learned Presenting Officer argued that if some person has been given such benefit wrongly, that cannot be a reason to perpetuate the wrong.

5. We find that the Applicants were declared surplus in their earlier post of Small Savings Officer in Finance Department and by order dated 18.7.2009, they were absorbed as Naib Tahsildar in Revenue Department. Condition no. 3 of the order is reproduced below:-

“ ३) अल्पबचत अधिकारी यांची वेतनश्रेणी व नायब तहसिलदार पदाची वेतनश्रेणी सारखीच आहे. तथापि, अल्पबचत अधिकारी व नायब तहसिलदार यांचे कामात भिन्नता असल्याने त्यांना प्रशिक्षण द्यावे लागेल तसेच महसूल अहर्ता परिक्षा उत्तीर्ण करावी लागेल. सदर परिक्षा उत्तीर्ण झाल्याशिवाय सदर अधिका-यांच्या पुढील पदोन्नतीसाठी विचार कतरा येणार नाही.”

It is clearly mentioned that the nature of work of a Small Savings Officer is different from that of a Naib Tahsildar, and there the officers absorbed as Naib Tahsildar will have to pass the Revenue Qualifying Examination. This is the most important condition for absorption of the Applicant as Naib Tahsildar. It is also made clear that unless a person absorbed as Naib Tahsildar passed this examination, he will not be considered for further promotions. The Applicants have accepted this condition, when they joined / were absorbed as Naib Tahsildar. They cannot, now be, allowed to turn around and challenge this condition. This issue has

been examined by this Tribunal (Principal Bench) in O.A no 875/2015 wherein by judgment dated 9.8.2015, this Tribunal has held that the aforesaid condition no. 3, is legal and valid and cannot be challenged by the person who were absorbed as Naib Tahsildar, subject to this condition. In the affidavit in reply dated 11.4.2016, the Respondent no. 2 has stated that Naib Tahsildars are required to pass Revenue Qualifying Examination conducted by M.P.S.C and there is no provision of exemption from passing this examination under the relevant rules. This Tribunal in the judgment referred to above has also held that G.R dated 1.11.1997 giving exemption from passing Departmental Examination will have no application in the facts and circumstances of the present case.

6. Let us now examine whether the Applicants are eligible for second benefit of Assured Career Progression Scheme (called 'deemed promotion' by the Applicant) in terms of G.R dated 1.4.2010. There is no ambiguity that an employee is eligible for benefit of Assured Career Progression Scheme, if he is eligible for regular promotion to the higher post and he could not be promoted for want of vacancy in the higher post. The Applicants are not eligible for further promotion, unless they pass the Revenue Qualifying Examination as per order dated 18.7.2009, absorbing them in the post of Naib Tahsildar. They are, therefore, not eligible for getting benefit of Assured Career Progression Scheme.

7. The Applicants have claimed that the Revenue Commissioner, Aurangabad, has granted benefit of A.C.P scheme to Naib Tahsildars who have not passed Revenue Qualifying Examinations. In the case of **CHANDIGARH ADMINISTRATION Vs. JAGJIT SINGH : 1995 AIR SC 705**, Hon'ble Supreme Court has held as follows:-

“Generally speaking the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the Petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order.”

In the present case, we are satisfied that the Applicants are not eligible for any relief and we cannot grant them relief to on the basis of an order which may not be legal or warranted.

8. Having regard to the aforesaid facts and circumstances of the case, these Original Applications stand dismissed with no order as to costs. As the O.A no 505/2015 is dismissed, nothing survives in M.A no 62/2016, which stands disposed of with no order as to costs.

**J.D KULKARNI
(MEMBER. J)**

**RAJIV AGARWAL
(VICE-CHAIRMAN)**

**Date : 18.10.2016
Place : Aurangabad
Dictation taken by : A.K Nair**

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