

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
CONTEMPT PETITION No. 57/2018
IN ORIGINAL APPLICATION NO.703/2016 (D.B.)

Sachin Govindrao Bawane,
Aged about 39 years, Occ. Lawyer,
R/o Yeshwant Colony, near Hanuman Temple,
Karanja (Lad), Tq. Karanja (Lad),
District Washim.

Applicant.

Versus

- 1) Shri Sudam Thavhare,
Section Officer,
Maharashtra Public Service Commission, 5½, 7 and 8 floor
Cooperage Telephone Exchange Building, Maharishi
Karve Marg, Cooperage, Mumbai- 400 025.
- 2) The State of Maharashtra,
through its Secretary, Department of Law & Judiciary,
Mantralaya, Mumbai-32.
- 3) Maharashtra Public Service Commission,
5,7 & 8 floor, Cooperage Telephone Exchange
Building, Maharishi Karve Marge, Cooperage
Mumbai-400 021.
Fort Office, 3rd floor, Bank of India Building,
Fort, Mumbai-400 001.
- 4) The Director of Prosecution, Mumbai,
Through the Assistant Director of Prosecution,
Barrack No.6, Free Press Journal Marg,
Nariman Point, near Manora MLA Hostel,
Mumbai-400 021.

Respondents.

Shri S.V. Sohoni, Advocate for the applicant.
Shri P.N. Warjurkar, P.O. for respondents.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 6th February,2020.

Date of Pronouncement of Judgment : 27th April, 2020.

JUDGMENT**Per : Member (J).****(Delivered on this 27th day of April, 2020)**

Heard Shri S.V. Sohoni, learned counsel for the applicant and Shri P.N. Warjurkar, learned P.O. for the respondents.

2. It is submission of the applicant that the O.A.No. 703/2016 was filed by the applicant and the learned Single Bench decided the O.A. on 17/11/2017. It is contention of the applicant that the direction given in O.A.703/2016 is not complied by the respondent no.1 and therefore all the respondents have committed the contempt of the judicial order and they are liable to be punished. It is submission of the applicant that the respondent no.1 did not consider the office memorandum dated 29/12/2005 and the provision in the Rules of 2014 relating to the relaxation of the norms. According to the applicant lame excuses are shown by the respondent no.1 for not giving benefit to the applicant and therefore there is a willful contempt.

3. It is grievance of the applicant that the respondent no.1 did not consider the Circular issued by the Government of Maharashtra dated 19/3/2010 and therefore the respondent no.1 is guilty of contempt.

4. We have perused the affidavit filed by the respondent no.1 and respondent no.3. There is no dispute about the fact that the

applicant secured **70** marks in the screening test, but he secured 14 marks out of 50 in the personal interview. According to the respondents, as the applicant did not score 41% marks in the personal interview, therefore, as per the Rule 9 (ix) of the Rules, the applicant was not eligible for the recommendation. It is contention of the respondents that the Rule 9 (ix) is mandatory in nature and is applicable to all categories. It is submitted that the provision of relaxation of marks as per the category was already taken into consideration by the Commission and different cut off marks were fixed for different categories. So far as this relaxation is concerned, the cut off marks were fixed for the different categories and the physically handicapped candidates were already allowed for the interview on the basis of the relaxed standard and therefore again this benefit cannot be given to the applicant. It is contention of the respondents that there is no provision of relaxation of marks obtained in the interview and therefore the applicant was not eligible for the recommendation. The respondents have submitted that they have not committed contempt and there is no substance in the application.

5. We have perused the order passed by the Bench in O.A.703/2016. It is as under –

“(i)The application is partly allowed.

(ii)The respondent authorities are directed to re-consider the case of the applicant on the point as to whether the applicant's case can be considered for relaxation of the norms given under the Rules of 2014 coupled with directions issued in the office memorandum dated 29/12/2005. The decision on such aspect shall be taken within three months from the date of this order and shall be communicated to the applicant in writing. No order as to costs”.

6. After reading this order, it seems that the respondents were directed to re-consider the case of the applicant whether his case can be considered for the relaxation of norms as per the rules of 2014 and the memorandum.

7. We have gone through the Clause 22 of the memorandum dated 29/12/2005. As a matter of fact this memorandum was issued by the DOPT, Government of India and Clause-22 says that if sufficient number of persons with disabilities are not available on the basis of general standard to fill all the vacancies reserved for them, then candidate belonging to that category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts.

8. The plain reading of Clause-22 is that discretion is conferred on the recruitment agency to relax the standard to fill the post reserved for disabled candidates. The Clause-22 did not say that the recruiting agency in all events shall reduce the norms for filling the

posts. Secondly as the respondent no.2 MPSC has already set different norms for different categories and for the physically disabled candidates relaxation was given and low norms were fixed, therefore, the Commission decided not to relax the norms as mentioned in the Rule 9 (ix) which is mandatory in nature.

9. The legal position is settled that when the discretion is conferred on any authority that authority has to take the decision as per the rules and if that discretion is exercised by the authority as per the rules, then it is not possible to say that the authority has breached any substantive rules. While exercising the discretion in the present matter, the respondent no.1 considered the Rule 9 (ix), similarly Clause-22 of the memorandum issued by the DOPT was also taken into account and therefore, it is not possible to say that deliberately relief is not given to the applicant. On the contrary, we will say that the discretion is exercised in fair manner by the respondent no.1, therefore, we are unable to accept that the respondents have committed contempt. Hence, we do not see any merit in the contempt petition. The contempt petition stand dismissed. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 27/04/2020.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 27/04/2020.

Uploaded on : 30/04/2020.