

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NOS 1020 & 1140 OF 2023

DISTRICT : MUMBAI

1. ORIGINAL APPLICATION NO. 1020 OF 2023

Miss Manisha Mangesh Parkar,)
[Mrs Manisha Sunil Mungekar])
Clerk at Water Resources Department)
Mantralaya, Mumbai.)
R/O Room No. 13, Chawl No. 14,)
Chandrakant Dhuruwadi, Agar)
Bazar, Dadar [W], Mumbai – 28.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Chief Secretary,)
M.S., Mantralaya, Mumbai.)
2. The Additional Chief Secretary)
G.A.D., Mantralaya,)
Mumbai)...**Respondents**

2. ORIGINAL APPLICATION NO. 1140 OF 2023

1. Shri Nilesh B. Bramhane)
Working as Clerk-cum Typist)
Office at Revenue & Forest)
Department, Mantralaya,)
Mumbai. R/o Room No. 63,)
Bldg No. 4, Kamgar Hospital,)
Mulund, Mumbai.)
2. Shri Firoj Jamadar Tamboli,)
Clerk-cum-Typist,)
Office at Medical and Education)
Department, Mantralaya,)
Mumbai. R/o : Room No. 13,)
Bldg No. 1, Kamgar Hospital,)
Mulund, Mumbai.)

3. Shri Yogesh Laxman Gaikwad,))
 Clerk-cum-Typist,))
 Public Works Department,))
 Mantralaya, Mumbai.))
 R/o: Room No. 201,))
 Ashapura CHS, Kalyan [W],))
 Dist-Thane.)...**Applicant**

Versus

1. The State of Maharashtra))
 Through The Additional))
 Chief Secretary))
 G.A.D., office at Room No. 557))
 5th floor, Extension Bldg,))
 M.K Marg, Mantralaya,))
 Mumbai-400 032))
 2. The Secretary,))
 M.P.S.C,))
 Having office at Trishul Gold))
 Field, Plot No. 34,))
 Opp. Sarovar Vihar, Sector-11,))
 C.B.D Belapur,))
 Navi Mumbai, Thane- 400 614.)...**Respondents**

Shri K.R Jagdale and Shri B.A Bandiwadekar, learned Advocates for the Applicants.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Shri Debashish Chakarbarty (Member) (A)

DATE : **22.09.2023**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. The applicants pray that this Tribunal be pleased to quash and set aside the impugned communication of G.A.D dated 3.7.2023 regarding 'Limited Competitive Departmental Exam :

2023' for the posts of Assistant Section Officers and strictly allow only those candidates who have completed 5 years 'Regular Service' as on 10.7.2023 on the post of Clerk-cum-Typist as per their actual 'Date of Joining' to appear for it as per M.P.S.C Advertisement No. 32/2023 dated 14.6.2023.

2. The applicants in both the Original Applications challenge the impugned communication of G.A.D dated 3.7.2023 made to concerned Joint Secretaries/Deputy Secretaries of all Administrative Departments about various terms and conditions and regarding eligibility of candidates who have completed 5 years' 'Regular Service' in the feeder cadre of Clerk-cum-Typists to appear for Limited Competitive Departmental Exam 2023 for the posts of Assistant Section Officers.

3. The M.P.S.C Advertisement No. 32/2023 dated 14.6.2023, is for the 'Limited Departmental Competitive Examination : 2023' for appointment to the posts of Assistant Section Officers. The Applicants are eligible to appear for it but their contention is about those candidates who have put in less than 5 years' 'Regular Service' as on 10.7.2023 in the feeder cadre of Clerk-cum-Typist but are being allowed to appear for the said Limited Departmental Competitive Examination 2023 to be held on 24.9.2023.

4. The applicants seek Interim Relief as the Limited Competitive Departmental Exam : 2023 for the posts of Assistant Section Officers to be held on 24.9.2023. However, we are of the view that while considering the Interim Relief, we need to go through the main issue which revolves round the interpretation of the 'Eligibility Criteria' in the G.A.D Notification dated 1.6.2022 and the M.P.S.C Advertisement No. 32/2023 dated 14.6.2023. It is

appropriate to reproduce the relevant Rule 3 in the Notification dated 1.6.2022.

“3. Eligibility to appear for Examination – (a) Persons eligible to appear for the Examination.

(i) must have completed five years of regular service to the post of clerk-typist,

(ii) must have passed the post-recruitment test prescribed for the post of Clerk-Typist or have been exempted from this Examination,

(iii) must have obtained Permanency Benefit Certificate:

Provided that, a Clerk-Typist shall not be eligible to appear for the Examination against whom departmental inquiry is pending on the date of the advertisement of Examination.

(b) The period of regular service on the post of Clerk-Typist shall be calculated from the date of regular appointment on the said post, as per the Clerk-Typist seniority list.

4. The eligibility of five years of regular service on the post of Clerk-Typist shall be determined as on the last date for the receipt of application as per the advertisement published by the Commission.” (emphasis placed).

5. Learned Advocates for the Applicants Shri K.R Jagdale and Shri B.A Bandiwadekar, submitted that on plain reading of this Rule 3, one understands that a Clerk-cum-Typist who has completed ‘Continuous Service’ of 5 years are only eligible to appear for ‘Limited Competitive Departmental Exam : 2023 for appointment the posts of Assistant Section Officers. However, the

impugned communication of G.A.D dated 3.7.2023 made applicable the eligibility condition of candidates having completed 5 years 'Regular Service' to all those Clerk-cum-Typists and thus candidates who have not completed 5 years 'Regular Service' from actual Date of Joining as on 10.7.2023 but who are treated as having completed 5 years 'Regular Service' on account of them being granted 'Deemed Date' of Appointment to the post of Clerk-cum-Typist.

6. Learned Advocate for the Applicants have submitted that by virtue of the 'Deemed Date' of Appointment granted to the Clerk-cum-Typists, they are entitled to get the seniority as per Rule 4 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. But that meaning cannot be adopted and applied while understanding the term regarding completion of 5 years' 'Regular Service' as mentioned in the Rules 3 and Rule 4 of the said Notification dated 1.6.2022. Learned Advocate for the Applicants have submitted that the Applicants are eligible as they have put in 'Continuous Service' of more than 5 years in the posts of Clerk-cum-Typist and if those Clerk-cum-Typists who are completing their 5 years' 'Regular Service' because they were granted the 'Deemed Date' of Appointment are allowed to appear for the Limited Competitive Departmental Exam : 2003 then it will cause injustice to the Applicants. The Applicants will be compelled to compete with more number of candidates and it will be a disadvantage, and thus unjust and unfair.

7. Learned Advocates for the Applicants have submitted that there are total 60 vacancies for the appointment to posts of Assistant Section Officer and as on today 600 candidates have been allowed to appear for the 'Limited Competitive Departmental Exam : 2023'. Learned Advocate for the Applicants have further

submitted that the State Government has to consider 1st September as the recruitment year as per G.R dated 1st August, 2019. Learned Advocates relied on Clause No. 5.1.3 of the said G.R dated 1st August, 2019, which states that for determining the period of eligibility, the year is to be considered from 1st September of a particular year. Learned Advocate for the Applicant have further explained that the said G.R dated 1st August, 2019, has relevance as the State Government in the present case has, as per the impugned G.A.D communication dated 3.7.2023 fixed the date as 10.7.2023, which has no foundation and the date has been fixed very arbitrarily. Learned Advocates for the Applicants have factually demonstrated how the State Government has allowed the ineligible candidates to appear for the 'Limited Competitive Departmental Exam : 2023' to posts of Assistant Section Officer by giving the facts and figures of the recruitment process undertaken in the year 2018 for the posts of Clerk-cum-Typist. By fixing the last date of eligibility as 10.7.2023, the candidates whose actual 'Date of Joining' is after 10.7.2018 but based on 'Deemed Date' of Appointment they are being treated as eligible; as they are considered as having put in regular 5 years' 'Regular Service' as on 10.7.2003. In the recruitment process undertaken in the year 2018, total 147 candidates were recruited by M.P.S.C and all their Appointment Orders are dated 4.7.2018. Thus, the State Government had issued Appointment Orders of all 147 candidates selected as Clerk-cum-Typist on the same date which is 4.7.2018. However, out of 147 candidates, till 10.7.2018, only 36 candidates joined the duties and the remaining 109 candidates joined the duty after 10.7.2018. Hence, all those 109 candidates, now serving as Clerk-cum-Typist had not completed 5 years 'Regular Service' from their actual 'Date of Joining' in the feeder cadre as per the requirement of Rules 3 & 4 of Notification dated 1.6.2022. Learned Advocates have further submitted that by impugned

G.A.D communication dated 3.7.2023 the State Government has enabled these 109 Clerk-cum-Typist who joined after 10.7.2018 to appear for 'Limited Competitive Departmental Exam : 2023' for posts of Assistant Section Officer based on their 'Deemed Date' of Appointment which is counted towards 5 years 'Regular Service'. Thus, this impugned G.A.D communication dated 3.7.2023 declaring these 109 Clerk-cum-Typist as eligible candidates for 'Limited Competitive Departmental Exam : 2023' to posts of Assistant Section Officer is not consistent with Rules 3 & 4 of the said Notification dated 1.6.2022 and therefore it is to be quashed and set aside as illegal and void.

8. Learned Advocate for the Applicants in support of their submissions especially on the point of considering the period between date of 'Appointment Order' and the actual 'Date of Joining' as Clerk-cum-Typist while computing the period of 5 years 'Regular Service', relied on the judgment of the Hon'ble Supreme Court in the case of **GIRISH KUMAR Vs. STATE OF MAHARASHTRA & ORS, (2019) 6 SCC 647**. Learned Advocates have pointed out that in this case the Hon'ble Supreme Court has considered that the intervening period from date of 'Appointment Order' and actual 'Date of Joining' by giving benefit of 'Deemed Date' of Appointment cannot be included in the period of 'Continuous Service' put in a particular feeder cadre.

9. Per contra, learned C.P.O while defending the said G.A.D Communication dated 3.7.2023, has submitted that the contentions of the Applicants is not correct as the State Government has explained how to compute the period of 5 years 'Regular Service'. She submitted that the Applicants must have 5 years 'Regular Service'. Learned C.P.O relied on Rule 4(2) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982.

Learned C.P.O submitted as per these rules that while counting the period of 5 years 'Regular Service', it is necessary that after taking into account the actual 'Date of Joining' the candidates are given 'Deemed Date' of Appointment. In a particular batch the candidates will not join on any particular date, but are going to join on different dates. Therefore, a prescribed period which is the 'Joining Period' is given to all the selected candidates. Learned C.P.O also relied on the Notification dated 21.6.2022, by which the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 were superseded. Learned C.P.O pointed out that there is no change in the guiding principles in the Old Seniority Rules of 1982 and the New Seniority Rules as per Notification dated 21.6.2022, wherein it is specifically stated that the persons selected as per the original recommendation list in the same batch are required to report during the "prescribed time limit" which thus provides for the 'Joining Period'. Learned C.P.O has further pointed out to the definition of the term "prescribed time limit" mentioned in Rule 2(m) of the Notification dated 21.6.2022. The term "prescribed time limit" is defined as within the period of 30 days from date of 'Appointment Order' of Direct Recruits or issuance of 'Promotion Order' Promotees issued by Competent Authority, as the case may be. Learned C.P.O has further submitted that the ratio laid down by the Hon'ble Supreme Court in the case of **GIRISH KUMAR (supra)** is based on the 'Deemed Date' of 'Promotion' and about 'Continuous Service' and in the G.A.D Notification dated 1.6.2022 the word used is 5 years 'Regular Service'. There is difference in 'Continuous Service' and Regular Service and hence it is not applicable.

10. The issue therefore demands interpretation of the term 'must have completed 5 years' 'Regular Service', to the post of Clerk Typist as the 'Eligibility Criteria' mentioned in Rule 3 & Rule 4 of

the said Notification dated 1.6.2022. We note that while using the term of completion of 5 years 'Regular Service', the law makers have specifically used the term 'regular' as the adjective to the word 'service' and it is not merely mentioned as completion of 5 years of 'Service' on the post of Clerk-cum-Typist. It is neither mentioned that completion of 5 years of 'Continuous Service'. The word "regular" carries a specific connotation and a meaning. In order to understand the word "regular" one has to take into account the context in which it is mentioned and the purpose of computation of this period of 5 years 'Regular Service'. Thus, it is necessary to consider the date of 'Appointment Order' and the actual 'Date of Joining' of the candidates on the posts of Clerk-cum-Typist. The actual 'Date of Joining' in a plain reading should mean the date when a candidate actually joins. However, the actual 'Date of Joining' cannot be treated as 'Appointment Date' when complete batch of 'Direct Recruits' are appointed in Government Service. As pointed out by the learned Advocates for the Applicants that for the 'Direct Recruits' of the year 2018 batch of Clerk-cum-Typist, the Appointment Order was issued on 4.10.2018. In the said order, it was mentioned that the candidates are required to join the service within the "Joining Period". The 'Joining Period' is analogous to 'prescribed time limit' as stated in Rule 2(m) of Notification dated 21.6.2022 is 30 days. For the batch of 2018, of 'Direct Recruits' to posts of Clerk-cum-Typist, i.e., for 147 candidates now shown as eligible candidates, New Seniority Rules as per Notification dated 21.6.2022 are not applicable, but they are covered under the old Seniority Rules of 1982. In the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, the term 'prescribed period' is not defined. Under the definition Clause 3, the word 'Continuous Service' is defined but 'Regular Service' is not defined. However, Rule 4(2) states which date is to be treated as 'Appointment Date' for the 'Direct Recruits' in a

particular batch. The term 'prescribed period' is also not defined in the Seniority Rules of 1982. There is no hurdle in relying on the term 'prescribed time limit' as mentioned in Rule 2(m) of the New Seniority Rules which is period of 30 days; in order to understand the prescribed period as mentioned in Rule 4(2)(a). Thus, in case any candidate lower in 'Merit list' of 'Direct Recruits' joins earlier to the candidate higher in 'Merit List', then the candidate who is higher in 'Merit List' is to be given the 'Deemed Date' of Appointment, i.e., the actual 'Date of Joining' on which the candidate lower in Merit List has joined. The submissions of the learned Advocates for the Applicants that this 'Deemed Date' of Appointment is to be considered only for the purpose of deciding the 'Inter-se Seniority' of all Clerk-cum-Typists and it is not to be used while computing the period of 5 Years' Regular Service as contemplated under Rule 3 and Rule 4 of the Notification dated 1.6.2022 are hyper technical.

11. At this stage, we need to consider the ratio laid down in the case of **GIRISH KUMAR (supra)**. It is a case of appointment by promotion of Office Superintendent. The applicant had challenged the computation of the period of Deemed Date and the actual appointment from the post of Assistant, which is a feeder cadre of Office Superintendent. For the said post in the Recruitment Rules of 1967, the post of Section Officer was requirement of Continuous Service of not less than Three Years. The Respondent No. 3 was promoted on 22.10.2007 to the post of Senior Assistant. However, the Divisional Commissioner, granted Respondent No. 3, the deemed date from 7.10.2005 and it was challenged before the Court. The Hon'ble Supreme Court while dealing with that issue discussed Rule 5 of the Seniority Rules of 1982 and also considered the Recruitment Rules of 1967 and held that Hon'ble High Court had not considered the Recruitment Rules, but only

relied on Rule 5 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. It held the term 'Continuous Service' defined under the service rules of 1982, but it is only for the purpose of fixing 'Inter-se Seniority' and will not be applicable for 'Eligibility Criteria' under the Recruitment Rules. The word 'Continuous Service' is not defined under the Recruitment Rules and therefore the Hon'ble Supreme Court considered the dictionary meaning of the word 'Continuous', which means 'uninterrupted or unbroken'. Thus, applying the rule of interpretation, when the language used is unambiguous, plain and simple, the provisions is required to be read as it is and nothing is to be added. While considering the ratio laid down by the Hon'ble Supreme Court, our attention was rightly drawn by the learned C.P.O that in the case of **GIRISH KUMAR (supra)**, the words used 'Continuous Service' of not less than 3 Years. However, in the rules as per G.A.D Notification dated 1.6.2022 for appointment to the post of Assistant Section Officer, under Rule 3 and Rule 4 used is the term of 5 years 'Regular Service'. We have stated earlier above that adjective 'regular' is chosen by the law makers instead of the word 'continuous'. The term 'regular' is not defined in the Recruitment Rules or in the Seniority Rules. The intent of using 5 years 'Regular Service' may have been to rule out periods of earlier appointment of Clerk-cum-Typists, if any, made on 'Ad-hoc Basis' or 'Contract Basis' as such period of services are often regularized later by giving 'Deemed Date' of Appointment. The dictionary meaning of the word 'regular' is 'constant' or 'definite pattern'. It also means confirming to or governed by an accepted standard of procedure or convention. Thus, to read these words 5 years 'Regular Service', and give it any such meaning to exclude some candidates of the 2018 batch of Clerk-cum-Typists who are Director Recruits and joined after 10.7.2018, will be pedantic and hyper technical approach. The word 'regular' cannot be substituted

by the word 'continuous'. Thus, in fact, the word 5 years 'Regular Service' can be interpreted in two ways, i.e., from the actual 'Date of Joining' and from 'Date of Appointment' within the Joining Period as mentioned in the Appointment Order. We are of the view that the second interpretation is to be accepted as it is beneficial and it serves the purpose. The procedure of fixing the 'Date of Appointment' is mentioned in Rule 2 (a) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. The joining within the prescribed period of 30 days has vital bearing over this procedure of fixing the Date of Appointment of all the batchmates of 2018, 147 Direct Recruits to posts of Clerk-cum-Typist. The main objection is taken to the inclusion of 109 Direct Recruits of the batch of 2018 as they are allegedly ineligible as on 10.7.2023. The ground of ineligibility argued is that 109 out of 147 Direct Recruits of Clerk-cum-Typists, who had joined after 10.7.2018 is incorrect and not sustainable. The said date 10.7.2018 is not mentioned in the M.P.S.C Advertisement No. 32/2023 dated 14.6.2023. The State Government is required to adhere to the proper procedure as prescribed in the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. This can be demonstrated by taking example from the 2018 batch of Direct Recruits of Clerk-cum-Typist based on the factual position. Learned C.P.O has submitted that 36 candidates had joined before 10.7.2018 and the topper in the Merit List had joined later on 21.7.2018. Thus, if only these 36 candidates were to be eligible for 'Limited Competitive Departmental Exam : 2023' to posts of Assistant Section Officers only because they joined before 10.7.2018 will amount to grave injustice to all the remaining 109 candidates who were above those 36 candidates in the Merit List. While framing Rule 4(2)(a) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, the law makers in their wisdom has taken into account likelihood of such anomaly and possibility of injustice to the meritorious

candidates as per their ranks in the Merit List. Therefore, the 'prescribed period' is given in the Appointment Order itself as Joining Period for 'Direct Recruits' in a particular batch. Thus, the selected 'Direct Recruits' who joined within that prescribed period of 30 days do not lose their placement based on rank in the Merit List and such meritorious candidates are then given the Deemed Date of Appointment of the candidates who were lower in rank to those higher in rank in the Merit List. This situation was contemplated in Rule 4(2) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, gives the correct insight while understanding the word 5 years 'Regular Service'. Thus, it is not use of the word "5 years Continuous Service" or just "5 years "Service", as 5 years 'Regular Service' has to be counted from the 'Deemed Date' of 'Appointment' and not from actual 'Date of Joining' and is necessarily a regularized period of service as it is conjunct to the identical date of 'Appointment Order' which is identical for all "Direct Recruits" of any particular batch in all cadres of Government Servants unlike in the individual cases of 'Promotion Orders' in which the 'Next Below Rule' is made applicable. Moreover, in the case of **GIRISH KUMAR (supra)**, the Hon'ble Supreme Court has dealt with the term 'Date of Promotion' under Rule 5 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, and in the present case, we are dealing with the identical date of 'Appointment Order' along with actual 'Dates of Joining' which are different but fall within the 'prescribed period' of just 30 days. The Deemed Date of 'Promotion Orders' in individual cases may be issued later on account of pendency of Departmental Enquiries or Criminal Cases. The 'Deemed Date' of 'Promotion Order' is granted in individual cases as it is to be counted towards 'Eligibility Criteria' for promotions to next 'Higher Posts' with respect to Minimum Experience required working in immediate Lower Post. Thus, the use of 5 years 'Regular Service' is

for fixing 'Eligibility Criteria' and not counting period of Minimum Experience. Thus, by applying the rule of purposive construction we hold that the impugned G.A.D communication dated 3.7.2023 is an interpretative explanation as to how the State Government is going to construe the word 5 years 'Regular Service' and it is not contrary to the Recruitment Rules as per Notification dated 1.6.2022. It is very much consistent and therefore, we do not find any illegality in the said Recruitment Rules as per Notification dated 1.6.2022. However, we perceive that this G.A.D communication dated 10.7.2023 was required only because there was some lack of clear communication between M.P.S.C and the G.A.D about fixing the date of 10.7.2018 as the reference date for computation of the period of 5 Years 'Regular Service' as Clerk-cum-Typists to be eligible for 'Limited Competitive Departmental Exam : 2023' for posts of Assistant Section Officer.

12. As we find no merit in the Original Applications, the same stands dismissed.

Sd/-
(Debashish Chakarbarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 22.09.2023
Dictation taken by : A.K. Nair.