

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 274 OF 2018**

**DISTRICT : MUMBAI**

1. Shri Sunil S. Sawant )  
Working as Account Clerk, )  
Pay & Accounts Clerk, )  
6<sup>th</sup> floor, Raj Mahal Building, )  
Veer Nariman Bldg, Churchgate, )  
Mumbai 400 020. )
2. Shri Madhusudan S. Bodade )  
Working as Junior Accountant, )  
District Treasury Office, Thane, )  
Court Naka, Thane (W) 400 601. )
3. Mrs Bhakti A. Dalvi )  
Working as Account Clerk, )  
Pay & Accounts Office, Lekha Kosh )  
Bhavan, Bandra-Kurla Complex, )  
Bandra [E], Mumbai 400 051. )
4. Mrs Shivani S. Manchekar )  
Working as Account Clerk )  
Pay & Accounts Office, Lekha Kosh )  
Bhavan, Bandra-Kurla Complex, )  
Bandra [E], Mumbai 400 051) )
5. Miss Yogita M. Pawar )  
Working as Audit Clerk, )  
Asst. Director, Local Fund Accounts )  
Audit, 2<sup>nd</sup> floor, Treasury Building, )  
Near Court Naka, Thane 400 601. )
6. Mrs Smita A. Thengodkar. )  
Working as Account Clerk, )  
Joint Director, Account & Treasury, )  
Konkan Division, Konkan Bhavan, )  
Navi Mumbai, CBD, BELAPUR. )...**Applicants**

**Versus**

1. The State of Maharashtra )  
[Accounts & Treasuries], Finance Dept, )  
5<sup>th</sup> floor, Main Building, Mantralaya, )  
Mumbai 400 032. )
2. The Director, )  
Accounts & Treasuries, )  
Mumbai Port Trust, )  
3<sup>rd</sup> floor, Thackersey House, )  
Shoorji Vallabhdas Marg, )  
Ballard Estate, Fort, )  
Mumbai 400 001. )
3. The Secretary, )  
Maharashtra Public Service Commission )  
Cooperage Telephone Exchange Bldg, )  
M.K Road, Cooperage, )  
Mumbai 400 021. )...**Respondents**

Shri U.V Bhosle, learned advocate for the Applicants.

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

**CORAM** : **Shri Justice A.H Joshi (Chairman)**  
**Shri P.N Dixit (Member) (A)**

**RESERVED ON** : **09.01.2019**

**PRONOUNCED ON:** **15.01.2019**

**PER** : **Shri Justice A.H Joshi (Chairman)**

### **ORDER**

1. Heard Shri U.V Bhosle, learned advocate for the Applicants and Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

2. This Original Application along with seven other Original Applications were taken up for hearing. Present Original Application is taken up as lead Original Application.

3. The present Original Application proceeds on following admitted facts:-

- (a) Applicants joined employment in Government of Maharashtra in Finance Department as Accounts Clerk / Audit Clerk.
- (b) They have completed five years of continuous service from the date of joining.
- (c) As per the Maharashtra Finance & Accounts Service, Class-III, Rules, 1965, M.P.S.C is expected to conduct the examination twice a year.
- (d) Passing of examination to be conducted under Maharashtra Finance & Accounts Services, Class-III, Rules, 1965 is a necessary eligibility for selection to the posts listed in Appendix 'A' annexed to the said Rules.
- (e) After the applicants became eligible in the year 2015-16, M.P.S.C did not hold the examination in each year as contemplated by the Rules.
- (f) The examination was held only once in 2015 and not even once in the year 2016 and 2017. Thus applicants had no opportunity for the examination.
- (g) Applicants crossed 40 years of age and therefore, they were denied opportunity to appear for the examination.
- (h) Applicants requested for relaxation in age limit for appearing for the examination, which request was favourably recommended by the Director and has been turned down and the decision is communicated by the impugned communication dated 4.1.2018.
- (i) Examination was declared by M.P.S.C in the year 2018. Applicants were not allowed to appear for said examination. Due

to interim relief granted in present O.A, applicants have been permitted to appear for examination, however, results are withheld.

4. Applicants have relied on the judgment of the Hon'ble Supreme Court in State of Maharashtra Vs. Jagannath Achyut Karandikar, AIR 1989 SC 1133, wherein it is held that if a candidate was denied opportunity to appear for the examination because the Department/Competent Authority did not hold the examination, the candidate would be entitled to number of chances to appear for the examination corresponding to the number of chances from which they were denied to him/them.

5. Applicants' contention that impugned order is bad because they did not get opportunity to appear for the examination after they became eligible, because M.P.S.C did not conduct the examination, is factual and not disputed. Applicants' entitlement of number of chances from which they were deprived is thus vivid.

6. Learned C.P.O has opposed the Original Application on the ground that even though Government wants to contest the Original Application and the proposition relied upon by the applicants, it would not be necessary to go into that challenge on the ground that there has been change in the rules.

7. In view of learned C.P.O's submission this Tribunal gave oral directions to the learned C.P.O to the following facts:-

- (i) How can the Government action in denying to the applicant opportunity to appear for the examination refused on the ground of crossing 40 years of age, though the examinations were not held by M.P.S.C before the applicants crossed 40 years of age limit?
- (ii) What is the legal impediment apart from reasons quoted in the impugned communication?

8. During the hearing Learned C.P.O has tendered copy of letter dated 9.1.2018 received by her. The letter contains following text:-

महाराष्ट्र शासन

“क्रमांक न्यासप्र २०१८/प्र.क्र.५२/कोषा प्रशा ३

वित्त विभाग,  
मादाम कामा रोड,  
हुतात्मा राजगुरु चौक,  
तिसरा मजला, विस्तार इमारत,  
मंत्रालय, मुंबई - ४०० ०३२  
दि. - ०९ जानेवारी २०१९

प्रति,  
मुख्य सादरकर्ता अधिकारी,  
मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण,  
मुंबई

विषय - मूळ अर्ज क्र.२७४/२०१८ श्री. सुनिल सावंत व इतर विरुद्ध महाराष्ट्र शासन व इतर.  
संदर्भ - मा. न्यायाधिकरणाने दि.०९.०१.२०१९ च्या सुनावणी दरम्यान दिलेले तोंडी आदेश.

महोदय,  
मा. प्रशासकीय न्यायाधिकरणाने दि.०९.०१.२०१९ च्या सुनावणी दरम्यान दिलेल्या तोंडी आदेशाच्या अनुषंगाने शासनाचे अभिप्राय पुढीलप्रमाणे आहेत.

२. सदरील परीक्षा ही पदोन्नतीसाठीची विभागीय परीक्षा नसून लिपिक पदावरील दोन टप्पे ओलांडून तिस-या वरिष्ठ पदावर जाण्यासाठीची महाराष्ट्र प्रशासनाच्या विविध विभागातील लिपिकांना देण्यात येणारी ऐच्छिक परीक्षा आहे. अनिवार्य नाही.

३. सदरहू परीक्षा मधल्या कालावधीमध्ये न झाल्यामुळे कोणत्याही लिपिक संवर्गातील कर्मचा-याची पदोन्नतीची संधी डावलण्यात आली असे म्हणणे योग्य नाही. दि.०९.०२.१९६५ च्या परीक्षा नियमांनुसार सदर परीक्षेसाठी विहित वयोमर्यादा ४० वर्षे ठेवण्यात आली आहे.

४. आता सदर पदाला दि.०६.०१.२०१७ पासून राजपत्रित वर्ग-२ चा दर्जा देण्यात आल्याने दि.२८.०९.२०१८ च्या अधिसूचनेन्वये सदर पदाचे सेवा प्रवेश नियम बदलण्यात आले आहेत. त्या नुसार सदर पदाची भरती महाराष्ट्र लोकसेवा आयोगाच्या कार्यक्षेत्रात आलेली आहे. त्यामुळे यापुढे दि.०९.०२.१९६५ च्या नियमांनुसार विहित करण्यात आलेली सदरची परीक्षा घेण्यात येणार नाही.

५. याचिकेतील अर्जदारांची मागणी क्र.(a) व (b) च्या संदर्भात संचालक (ले व को) यांचे आदेश दि.०४.०१.२०१८ पहावेत. हे आदेश परीक्षा नियम दि.०९.०२.१९६५ मधील तरतूदीशी सुसंगत असल्याने सदर आदेश रद्द करणे योग्य होणार नाही.

६. तसेच प्रसंगत : नमूद करण्यात येत आहे की, यापुढी घेण्यात आलेल्या परीक्षातही सरसकट तत्वावर वयोमर्यादा शिथिल करण्यात आलेली नाही. आता सुधारीत सेवा प्रवेश नियम दि.२८.०९.२०१८ मधील तरतूदीनुसार यापुढे सदर

परीक्षाही घेण्यात येणार नाही. त्यामुळे अर्जदारांना ४ संधी देणे भविष्यात शक्य होणार नाही. तथापि, मा. न्यायाधिकरणाच्या दि.०४.०९.२०१९ व दि.०७.०९.२०१९ च्या निर्देशानुसार या बाबतचा प्रस्ताव अभिप्रायांसाठी विधी व न्याय विभाग व सामान्य प्रशासन विभागाकडे पाठविला आहे.

७. उपरोक्त वस्तुस्थिती दि.१०.०९.२०१९ च्या सुनावणीवेळी मा. न्यायाधिकरणाच्या निदर्शनास संविनय आणून देण्यात यावी, ही विनंती.

सही/-  
(शु.रा. शेठ)  
सहसचिव, महाराष्ट्र<sup>a</sup> शासन

9. Upon production of the letter quoted in foregoing para, learned C.P.O argued as follows:-

- (a) In view of subsequent developments, the first question/query posed by this Tribunal becomes academic because due to enactment of Maharashtra Accounts and Finance Service, Assistant Accounts Officer, Group-B (Gazetted) (Recruitment) Rules, 2018, the holding and passing of examination have become redundant.
- (b) Due to this new set of rules, now promotion to these posts are governed by Rules 3 & 4. The said Rules 3 & 4 read as under:-

“3. Appointment to the post of Assistant Accounts Officer, Group-B (Gazetted) in the Maharashtra Accounts and Finance Service, shall be made either:-

- (a) by promotion of suitable person on the basis of seniority subject to eligibility from amongst the persons holding the following posts in the Maharashtra Finance and Accounts Service for a period of three years of regular service on that post, namely:-

- (i) Assistant Superintendent in the office of Directorate of Accounts and Treasuries or the offices under the Regional Joint Director, Accounts and Treasuries in the State;
- (ii) Senior Auditor in the office of the Directorate of Local Fund or the offices under the Regional Joint Directors, Local Fund in the State;
- (iii) Selection Grade Clerk in the Pay and Accounts Office, Mumbai; or

- (iv) Deputy Accountant in the offices under the Regional Joint Directors, Accounts and Treasuries and the office of the District Treasuries in the State;
- (b) By nomination from amongst the candidates, who:-
- (i) are not more than 38 years of age, for the candidates belonging to General Category and not more than 43 years, for the candidates belonging to the Backward Class Category; and
  - (ii) possess any of the following qualifications, namely:-
    - (a) a degree with at least fifty-five per cent marks in Commerce faculty; or
    - (b) a degree with at least fifty-five per cent marks in arts with statistics or mathematics or economics as main subject; or
    - (c) a degree with at least fifty-five per cent marks in science faculty with statistics or mathematics as main subject; or
    - (d) have passed the final examination of Cost Accounting conducted by the Institute of Cost And Works Accountants of India; or
    - (e) a degree in the Business Administration / Financial Management with Specialization in Finance; or
    - (f) have passed Professional Competence Examination conducted by the Institute of Chartered Accountants of India.

4. Appointments to the posts of Assistant Accounts Officer, Group-B (Gazetted) by promotion and by nomination shall be in the ratio of 50:50:

Provided that, if suitable candidates are not available, the Appointing Authority may relax the ratio for appointment by promotion and by nomination with the prior approval of the Government:

Provided also that, the ratio mentioned in this rule shall be made applicable after the appointment of all the candidates who have passed the Maharashtra Finance and Accounts Service Examination, Class-III (Part-I and Part-II) conducted by the Commission.”

10. The fact that applicants may or could and have passed the examination in past or in future if a chance is required were to be given or given, is of no practical consequence whatsoever. Eventuality of

passing of the said examination in future cannot stand to the credit of eligibility in favour of the applicants.

11. The position that the Recruitment Rules are changed and the Maharashtra Finance and Accounts Services, Class-III Rules, 1965 have now become obsolete, is incapable of being disputed.

12. In view of the foregoing factual and legal position and observations of this Tribunal, based on the statement of learned C.P.O about position of law, it is not disputed and is not disputable, the very purpose of present Original Application being outlived.

13. Hence present Original Application has become infructuous and is disposed of as infructuous.

14. Parties are directed to bear their own costs.

**Sd/-**  
**(P.N Dixit)**  
**Member (A)**

**Sd/-**  
**(A.H. Joshi, J.)**  
**Chairman**

**Place : Mumbai**  
**Date : 15.01.2019**  
**Dictation taken by : A.K. Nair.**