

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 729 OF 2021

DISTRICT : SATARA

Shri Amit Satish Kamble,)
R/o: Nimbhore, Tal-Phaltan,)
Dist-Satara.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Government of Maharashtra,)
Irrigation Department,)
Mantralaya, Mumbai 400 032.)
2. The Superintending Engineer,)
Krishna Valley Development)
Corporation, Construction)
Circle, Kolhapur,)
Warna Bhavan, 2nd floor,)
Tarabai Park, Kolhapur.)
3. The Executive Engineer,)
Construction Division No. 3B,)
Koyana Nagar, Wathar Vasahat)
Veer, Tal-Khandala, Dist-Satara)
4. The Executive Engineer,)
Construction Division No. 3,)
Koyana Nagar, Tal-Patan,)
Dist-Satara.)...**Respondents**

Shri S.S Dere, learned advocate for the Applicant.

Ms Archana B.K, learned Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)

RESERVED ON : 07.12.2023

PRONOUNCED ON : 08.01.2024

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicant prays that the office order dated 21.4.2018 passed by Respondent No. 2, thereby terminating the services of the applicant as Clerk-cum-Typist be quashed and set aside. He further prays that the Respondents be directed to forthwith reinstate him in service with continuity in service and back wages from 21.4.2018.

2. Learne counsel has submitted that the applicant was appointed on compassionate ground on 22.4.2016 and his services came to be terminated on 21.4.2018, without giving any show cause notice, without calling explanation and without giving opportunity of being heard to the applicant. Learned counsel has submitted that the services of the applicant came to be terminated on the ground that the applicant did not submit the Typing & Computer Certificates within the stipulated period. Learned counsel submitted that the applicant appeared for the Typing examination in May, 2018, i.e., after his termination. Learned counsel has submitted that the applicant again appeared for the examination in Typing in March, 2021 and cleared the said

examination, the result of which was declared on 27.5.2021. The order is bad in law and is to be set aside on the ground that no show cause notice to the applicant before the order of termination dated 21.4.2018 was issued. Hence, principle of natural justice is violated. Learned counsel has submitted that the G.R dated 30.9.2011 is required to be made applicable in case of the applicant in view of the judgment of the Hon'ble Bombay High Court, Aurangabad Bench dated 2.12.2011 in W.P 8444/2011, Sandeep H. Birajdar Vs. The State of Maharashtra & Ors. Learned counsel has further submitted that the applicant had genuine difficulty and that could have been taken into account and he could have explained the same, if a show cause notice would have been issued. Learned counsel has submitted that the applicant lost his father in the year 2011 and at that time he was 20 years old. Now he has to shoulder the responsibility of his mother, ister, wife and daughter. Learned counsel submitted that the Respondent has given option on 19.4.2018 to the applicant to submit his consent that he is ready to work in Group 'D' post. However, the applicant submitted his representation to the Minister on 20.4.2018, wherein he has mentioned that at Koyna Nagar, Wathar Vasahat, Tal-Khandala, Dist-Satara, the class for Typing and Computer were not available. Learned counsel relied on G.R dated 30.9.2011 issued by Water Resources Department, pertaining to giving extension of one year to the Clerk-cum-Typist for passing the Typing test.

3. Learned counsel for the applicant relied on the following judgments:-

- (1) Judgment of M.A.T, Aurangabad Bench dated 19.12.2014 in O.A 343/2013 with M.A 333/2013, Yogesh G. Khanke Vs. The State of Maharashtra & Ors.

- (2) Judgment of the Hon'ble Bombay High Court, Aurangabad Bench dated 14.3.2013 in W.P 4872/2012, Sachin V. Kshirsagar Vs. The State of Maharashtra & Ors.
- (3) Judgment of the Hon'ble Bombay High Court, Aurangabad Bench dated 2.12.2011 in W.P 8444/2011, Sandeep H. Birajdar Vs. The State of Maharashtra & Ors.

4. In response, learned P.O has submitted on the point of issue of show cause notice, relied on the affidavit in reply dated 6.12.2023 filed by Anil P. Kulkarni, Deputy Engineer, in the office of Construction Division (E & M) No. 3 Koyna Nagar, Tal-Patan, Dist-Satara. Learned P.O stated that the notices dated 7.3.2018, 22.3.2018, 10.4.2018 and 13.4.2018 were issued and served on the applicant and the copies of the same are produced. Learned P.O also relied on the affidavit in reply dated 22.7.2023 filed by Shri Pravin P. Birade, Executive Engineer, in the office of Construction Division, (E & M) No. 3, Koyna Nagar, Tal-Patan, Dist-Satara.

5. In the case of **Yogesh G. Khanke (supra)**, the Tribunal has considered two issues in respect of the said case on the point of passing of the typing test and producing Certificate within two years from the date of the appointment, in view of G.R dated 30.9.2011 and it is held that after completion of the limited period of two years, one year period is required to be extended to all the candidates. Further, it is also held that before terminating the services, the Respondents are required to give show cause notice and opportunity of hearing to such Government employee to explain the situation. Learned counsel submitted that in the present case neither show cause notice was given to the applicant, nor period of one year extended as per G.R dated 30.9.2011.

6. In the case of **Sachin V. Kshirsagar (supra)**, the Petitioner was appointed on compassionate ground as Clerk-cum-Typist and

he did not clear the typing test within the stipulated period of one year as mentioned in the advertisement and the appointment order of the applicant. The Hon'ble High Court has relied on the G.R dated 8.9.1997, wherein 2 years' time period from the date of joining service is given to the employees in Government service to pass the Typing test. However, in that case, the applicant appeared within the stipulated period of one year, but the result was delayed. Therefore, the Hon'ble High Court has accepted that explanation and termination was set aside.

7. In the case of **Sandeep H. Birajdar (supra)**, the applicant is similarly placed as Clerk-cum-Typist, appointed on compassionate ground on 2.8.2008. He failed to pass the Typing examination within 2 years and therefore his service was terminated. The Hon'ble High Court has relied on the G.R dated 30.9.2011. In the said case also, the Petitioner has appeared for the Typing examination in the month of May, 2010, i.e., within a period of 2 years. However, the result was declared in September, 2010, before which the deadline of two years had arisen. Hence the relief was granted to the applicant.

8. Learned P.O while opposing this Original Application relied on the affidavit in reply dated 22.6.2023, filed by Pravin P. Birade, Executive Engineer in the office of Construction Division (E & M) No. 3, Koyna Nagar, Tal-Patan, Dist-Satara. She pointed out that the applicant was aware of the conditions of his appointment and that period of two years was available to him to complete the Typing and MS-CIT examination and produce the Certificate. She submitted that at Wathar, Tal-Khandala, Dist-Satara, where he was posted, the courses were available and the work place was also nearby to the other Taluka places, where he could have attended. Learned P.O submitted that if at all he is allowed to

continue, then it would be a wrong precedent. The applicant has no case and no good reason to challenge his termination. She pointed out that the applicant went on writing letters to the Hon'ble Ministers which was not necessary. She further argued that the Administration has written three letters to the applicant not only making him aware and giving warning that his service is going to end in April 2018 for non-completion of the requisite course and non-production of the Certificate. She therefore prays that the Original Application be dismissed.

9. We have gone through the notices dated 7.3.2018, 22.3.2018, 10.4.2018 and 13.4.2018, as mentioned in the affidavit in reply of Mr Anil P. Kulkarni. The applicant's period was to get over on 21.4.2018 and so before that the Department has taken abundant care of issuing four show notices to the applicant, informing him that he is going to complete his two years of service on 21.4.2018 and his service is going to be terminated unless he produces his Typing and MSCIT Certificate. On 22.3.2018, Executive Engineer, Construction Division (E & M) No. 3, has sent letter to the Superintending Engineer, Construction Mandal, Tarabai Park, Kolhapur, that applicant has not produced the Typing Certificate within 2 years from the date of joining and as his two years tenure will over on 21.4.2018, his services will come to an end on that date. The copy of the said letter was addressed to the applicant. By letter dated 10.4.2018 of Superintending Engineer, addressed to the applicant, informing that he is required to produce Typing and MSCIT Certificate within two years from the date of joining and if the Certificates are not produced before completion of two years on 21.4.2018, necessary action will be taken against him and he alone will be held responsible for the consequences. Last letter was issued on 13.4.2018 by Assistant Superintending Engineer addressed to the Executive Engineer,

wherein it is mentioned that his services is going to be terminated within two years for not submitting the Typing and MSCIT Certificate in time. However, in the said letter it is informed that the applicant should give option if he is ready and willing to work on the reverted post in Group-D, then he can be continued in service on lower post. In earlier three letters addressed to the applicant it is true that the words that 'it is a show cause notice' are not used. However, the applicant is made aware of these three letters that on a specific date his service is going to be terminated and the reason for the same is also mentioned therein. It was an opportunity given to the applicant to give a plausible explanation praying extension or to accept lower post.

10. Thus, we are of the view that these letters serve the purpose of serving of show cause notice as the applicant is also aware about the termination of his services by giving reasons. It is to be pointed out that the applicant has replied to the letter. We have gone through the explanation given by the applicant on 5.4.2018, wherein he has written letter to the Minister, Water Resources and informed that he is transferred to Wathar Vasahat, Tal-Khandala, Dist-Satara, and at that place the classes for Typing and MSCIT are not available. Moreover, his old mother is residing alone at native place and applicant also has to shoulder responsibility of her well being and so he had to go to Phaltan, and so he could not appear for the examinations. He had joined one Typing Institute at Karad on 5.4.2018. Further he has written another letter to the same Minister on 20.4.2018, pursuant to letter dated 13.4.2018 sent by the Superintending Engineer, Koyna Nagar to him, informing him that it was not possible for him to attend the classes for MSCIT at Koyna Nagar so he could not appear for the examination of Typing and MSCIT. Therefore, he has prayed that

he should be given four months' time for production of the Certificates.

11. We have taken into account the period of Covid-19 Pandemic of the year 2020, when the entire administration and social activities were standstill. Thus, for all administration and judicial processes this year is not counted while calculating any stipulated period or period of limitation. However, that benefit cannot be given to the present applicant because he was appointed in the year 2016 and he was aware that he has to clear the Typing and MS-CIT Examination and produce the requisite Certificates before completion of 2 years after his appointment. The applicant did not take extra efforts for joining any Institute and study the subject and procure the Certificate. His services were terminated in the year 2018 and before that he appeared for the examination, but he failed as per the result of May, 2018. The applicant did not appear for the examination thereafter in the year 2018 and also in the year 2019 and that period of nearly 1 ½ years was very much available to the applicant to appear for the Typing and MS-CIT examination, clear the same and produce the requisite Certificates. The applicant cleared the examination much later in the year 2021. The applicant is the beneficiary of the Scheme of appointment on compassionate ground and hence he should have been all the more particular about acquiring the requisite Typing and MS-CIT Certificates. The period of 2 years after the appointment given to the employee is reasonably sufficient. We are not inclined unnecessarily to stretch the time till 2021 when he cleared the examination. We do not find any reason as to why the applicant did not clear even within one year after his termination of service when he had full time and access to appear for the Typing and MS-CIT examination and clear the same.

12. In view of the above, we find no merit in the Original Application and the same stands dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 08.01.2024
Dictation taken by : A.K. Nair.