

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 387/2016 (S.B.)

Waman Daulatrao Borkar,
Aged about 61 years, Occ. retired
r/o Ramaji Wadi, Navi Shukrawari, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through the Secretary, Revenue Department,
Mantralaya, Mumbai-400 032.
- 2) The Collector, Nagpur
Civil Lines, Nagpur.
- 3) Food Distribution Officer,
near Museum, Civil Lines, Nagpur.

Respondents.

S/Shri S.P. Kshirsagar, Sunil Patil, Advocates for the applicant.

Shri P.N. Warjurkar, P.O. for respondents.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of Reserving for Judgment : 4th November, 2019.

Date of Pronouncement of Judgment : 7th November, 2019.

JUDGMENT

(Delivered on this 7th day of November,2019)

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

2. The applicant worked as Census Worker in the year 1991-1992, consequently, he requested the respondents to absorb him in the government service as per G.R. dated 12/03/1998. The

request of the applicant and four others was not considered, therefore, the O.A.Nos. 665 to 669 of 2001 were filed. This Bench decided the O.As. vide order dated 6/3/2002 and ultimately it was directed that the respondents shall consider the claims of the applicant and other persons on merits as per the terms of the G.R. dated 12/3/1998 while filling the vacancies in Class-III cadre post, in various Departments of the State Government. It is claimed by the applicant that no heed was paid by the respondents, therefore, the O.A.No.75/2007 was filed by him and others and this Bench decided the application on 10/8/2007 and it was directed that the present applicant being physically handicapped person be absorbed in Class-III post whenever vacancy arises in Class-III cadre.

3. It seems that thereafter the Writ Petition No.08/2011 was filed by the respondents and the order passed in O.A.No.75/2007 was challenged. The Writ Petition No.08/2011 was decided on 12/01/2011 and it was dismissed by the Hon'ble High Court.

4. Thereafter vide order dated 29/11/2013 appointment order was issued to the applicant and he resumed duty as Clerk-cum-Typist and stood retired on superannuation on 30/06/2014.

5. In the present application, it is contended that due to attitude of the respondents belated appointment order was issued to

the applicant and therefore deemed date appointment be granted to the applicant w.e.f. 6/3/2002 or 10/8/2007. It is submitted that due to action of the respondents delaying the matter, the applicant is unable to receive the pension and other retiral benefits and the respondents are responsible for this loss to the applicant. In this background it is claimed by the applicant that the deemed date be given to him and the respondents be directed to fix pension of the applicant and pay him pension and gratuity along with the interest @ 12% p.a.

6. The respondents have submitted in their reply at page no.41. It is submitted that the respondents vied their letter dated 13/5/2003 had informed the applicant that as he had crossed the age limit, therefore, as per the G.R. dated 12/3/1998, it was not possible to absorb him in the government service. Lateron the applicant filed Contempt Petition Nos.917/2003, 918/2003 and in which direction was given to the State Government to consider the case of the applicant. In the Contempt Petition it was held by this Tribunal that no Contempt was committed by the respondents and it was held that if the applicant was of the view that the interpretation of the G.R. dated 12/3/1998 was erroneous then he was at liberty to approach the appropriate forum. Thereafter the applicant filed the O.A.No. 75/2007 contending that he be absorbed in the government service and this Bench decided O.A.No.75/2007 on 10/8/2007. The respondents thereafter

preferred the Writ Petition No.08/2011 before the Hon'ble High Court and the Hon'ble High Court decided the Writ Petition and dismissed the same. Thereafter the SLP was filed in the Hon'ble Apex Court and it came to be dismissed on 19/7/2013 on the ground of delay. It is contention of the respondents that the respondents thereafter issued order dated 29/11/2013 and the applicant was appointed in the service. It is specific contention of the respondents that in the appointment order it was specifically mentioned that the applicant was not entitled to the old pension scheme and he would be governed by the G.R. dated 31/10/2005 and thereafter the applicant resumed duty on 4/12/2013 and he stood retired on 30/6/2014.

7. The learned counsel for the applicant submitted that deliberately the respondents have avoided to absorb the applicant in the government service after the decision in O.A.Nos. 665 to 669 of 2001, dated 6/3/2002 and order passed in the O.A.No.75/2007. The respondents also committed breach of the order passed in the O.A.No.75/2007, decided on 10/8/2007, therefore, it be held that the applicant is entitled to deemed date appointment either from 6/3/2002 or 10/8/2007 and he be given benefit of pension, gratuity etc.

8. The learned P.O. has submitted that as the applicant had crossed the age of 45 years, therefore, he was not considered and the matter was pending in the Court and in the Contempt Petition specific

order was passed and liberty was given to the applicant to approach the competent forum to establish that the decision of the respondents to refuse appointment on the ground that the applicant had crossed the age of 45 years was erroneous. In this background, I would like to point out that in the first O.A. decided on 6/3/2002 there was no specific direction to absorb the applicant in the government service, only direction was given to consider the claim of the applicant while filling the vacancies in Class-III cadre post. It is important to note that it is nowhere mentioned in the application when vacancies occurred to fill the post in Class-III cadre. Similarly, in O.A.No.75/2007 direction was given to absorb the applicant in the service mainly considering the fact that he was physically handicapped person and the direction was also specific to absorb the applicant in Class-III cadre post subject to vacancy. It is nowhere shown by the applicant when post became vacant and available for his absorption. In this regard, I would like to point out the observations made by the Hon'ble High Court while deciding the Writ Petition No.08/2011, vide order dated 12/01/2011. It is observed as under—

“There is nothing on record to show that at what point of time the vacancy occurred and in which month and year the petitioner was called for interview to fill up that post. In absence thereof, it is not possible for us to agree with the contention canvassed by the learned Assistant Government Pleader.”

9. Before the Hon'ble High Court it was contended by the State that the applicant had crossed the age of 54 years and therefore he could not be considered for grant of appointment. In this background, it came to the notice of the Hon'ble High Court that there was nothing on record suggesting at what point of time the vacancy occurred. In order to show that the respondents have violated the order, it was necessary for the applicant to establish that vacancies were available and in spite of it he was not appointed after the decision in the O.A.No. 75/2007. There is no dispute about the fact that as per the order dated 29/11/2013 the applicant joined the duty. The term no.1 of the appointment order is as under –

^1- foRr foHkx] 'kk-fu- dz vfu; ks 1005@126@l dk&4 fnukd 31 vMDVksj]2005 e/lhy rjrmhuq kj daz 'kkI ukP; k /krhbj uohu ^^ifjHkkf"kr vaknu fuoRrhoru ; kst uk** (Defined Contribution Pension Scheme) ykxw jkghy- rI p vLrRokr vl ysyh fuoRrhoru ; kst uk] Hkfo"; fuokgfu/kh ; kst uk ; kR; k rjrmh ykxwjkq.kkj ukgh.**

10. It is important to note that the applicant is claiming the pensionary benefits as per the pension scheme which was in force before 31/10/2005, but in the appointment order it was specifically mentioned that as the order was issued after 31/10/2005 the applicant would be governed by the G.R. dated 31/10/2005. In view of this specific condition, now the applicant is not entitled to turn round and claim that he is entitled for the benefit of the pension scheme which

was in force before 31/10/2005, particularly considering the fact that there is no contention in the application that before decision in O.A.Nos. 665 to 669/2001 vacancies were available. It is important to note that in O.A.No.75/2007 the communication dated 13/5/2003 was challenged by the applicant and others and vide that communication it was informed to the applicant that as he had crossed the age of 45 years, he was not entitled. It is important to note that in the Contempt Petition filed by the applicant, finding was recorded that no Contempt was committed by the respondents. Under these circumstances, in absence of strict evidence when the post became vacant and was available to absorb the applicant it is not possible to accept the case that the applicant is entitled for the deemed date appointment. As the applicant resumed the duty as per the appointment order after 31-10-2005, therefore, at this stage without challenging the condition in the appointment order, it is not permissible to give any relief to the applicant. In view of this discussion, I do not see any merit in the application. Hence, the application is dismissed. No order as to costs.

Dated :- 07/11/2019.

(Anand Karanjkar)
Member (J).

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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 Member (J).

Judgment pronounced : 07/11/2019.

on

Uploaded on : 07/11/2019.