

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.446/2017.

- 1) Sushil Pandharinath Bansod,
Aged about 60 yrs.,
Occ-Education Extension Officer,
Panchayat Samiti, Seloo, Z.P., Wardha.
R/o Plot No.62, Near Bhadant School,
Nara Road, Amar Jyoti Nagar, Jaripatka, Nagpur-14.
- 2) Lalitkumar Rupchand Barsagade,
Aged about 41 yrs.,
Occ-Education Extension Officer,
Panchayat Samiti, Hinganghat, Z.P., Wardha.
R/o Plot No.48-D, %Ruprekha+,
Vaishnodevi Nagar, P.O. Uppalwadi,
Near Kalamna Rly. Quarters, Nagpur-26.
- 3) Arvind Lalsingh Rathod,
Aged about 38 yrs.,
Occ-Education Extension Officer,
Panchayat Samiti, Samudrapur, Z.P., Wardha.
R/o At and Post Shrirampur, Shivkrupa Niwas,
Dwarka Nagar, Near Hanuman Temple,
Shrirampur, Tq. Pusad, Distt. Yavatmal.
- 4) Rajendra Shamraoji Maske,
Aged about 39 yrs.,
Occ-Education Extension Officer,
Panchayat Samiti, Deoli, Z.P., Wardha.
R/o Ward No.6, Jagdamba Colony,
Karanja Ghadge, Tq. Karanja, Dist. Wardha.

Applicants

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Education & Sports
Madam Kama Road, Hutatma Rajguru Chowk,
Mantralaya Extension, Mumbai-440 032.

- 2) The Maharashtra Public Service Commission
Through its Chairman, 5th, 6th and 7th floor,
Cooperage Telephone Nigam Building,
Maharshi Karve Marg,
Cooperage, Mumbai-21.

Respondents

Shri M.M. Sudame, the Ld. Counsel for the applicants.
Shri S.A. Sainis, the learned P.O. for the respondents.

Coram:- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGMENT

(Delivered on this 9th day of August 2017.)

Heard Shri M.M. Sudame, learned counsel for the applicants and Shri S.A. Sainis, the learned P.O. for the respondents.

2. The applicants belong to the cadre of Extension Officer (Senior) which is a post of District Technical Services, Group-C. As per the Recruitment Rules for the post of Deputy Education Officer in Maharashtra Education Services, Group-B (Administrative Branch) (Gazetted), the appointment to the post of Deputy Education Officer shall be either by promotion on the basis of seniority subject to fitness from the persons holding the post of Maharashtra Education Services, Group-C and by promotion of a suitable person on the basis of seniority subject to fitness from the persons holding the post of District Technical Services, Group-C having not less than five years service or by selection of a suitable candidate on the basis of merit list prepared on the basis of limited departmental competitive examination

to be held by the Commission amongst the persons holding the post of Maharashtra Education Services, Group-C or District Technical Services, Group-C having not less than five yearsq regular service. The ratio for competitive examination from departmental and nomination is 30 : 20 : 50 respectively.

3. According to the applicants, Rule 4 of the Recruitment Rules provides that the appointment by promotion from Maharashtra Education Services, Group-C shall be made in the ratio of 7.5 : 22.5 respectively.

4. The applicants made representation to respondent No.1, stating that it is settled law that the eligibility criteria, qualification, experience and age etc. are to be accepted upto the last date of receiving of applications for the post advertised by M.P.S.C.

5. Respondent No.2 / M.P.S.C. has issued an advertisement for limited departmental examination as aforesaid on 17th May 2017. The said advertisement is at Annexure A-1. In the qualification clause-3, relevant clause 3.2 is as under:-

ॐर:- ढर कडडरररररर ड. १ डरनेवरर २०१७ रोजी सलग ५ वषर
वनाखंड डनडडत सेवा डूणरडडरलेलर असणे डरवडडक डरहे.”

6. Advertisement is issued on 17.5.2017 whereas the candidates who have completed qualified experience of five years as on 1.1.2017 are only treated as qualified. All the applicants fulfilled the criteria of qualification i.e. experience on 17.5.2017, that is the date on which advertisement has been issued. They apprehend that they may not be allowed to participate in the competitive examination, since they did not satisfy the criteria of five years experience on 1.1.2017 which is a cut off date. The said cut off date is arbitrary and artificial. The applicants have raised two important issues to be considered which are as under:-

1. Whether the Govt. Circular dated 17.5.2017 issued by Education and Sports Department, Govt. of Maharashtra, insofar as Clause 3.2 specifying 1st January 2017 to be the date upto which the experience is to be counted is concerned, is correct, legal and proper ?

2. Whether the applicants are entitled for consideration of the experience upto the last date of receipt of applications for the post of Dy. Education Officer, Group-B (Administrative Branch) i.e. 6.6.2017 mentioned in clause 8.2 of the Govt. Circular dated 17.5.2017 ?

7. Respondent No.1 tried to justify the cut off date i.e. 1.1.2017. In the affidavit in reply, it is stated that the General Administration Department (GAD) vide its Circular dated 21.4.1987 has stated that the seniority of the officers and employees shall be fixed as on 1st January of every year and, therefore, 1st January 2017 was taken

as cut off date and there is no reason for the applicants to be prejudiced. It is submitted that, any date if declared will be called %arbitrary+, as somebody is bound to be prejudiced because of any such date.

8. Shri M.M. Sudame, the learned counsel for the applicant has invited my attention to the judgment reported in case of **D.R. Nim V/s Union of India AIR 1967 SC 1301**. He placed reliance on para Nos.4 and 6 of the said judgment which read as under:-

%4. We may here notice Explanation 1 to Rule 3, because the Government of India also say that the appellant officiated continuously as a temporary or local arrangement. We will deal with this aspect later, but for the time being we assume that there is no force in the Government of India's contention and the Explanation does not apply to the facts of the present case. Therefore, according to the Rule the Central Government had to determine ad hoc the year of allotment after approving or not approving the period of officiation of the appellant before 1959. The Government of India say that they determined this by issuing the impugned order, the relevant part of which reads as follows:

The Government of India have now decided with the concurrence of the Commission that the State Civil Service Officers who were officiating prior to 19th May 1951, but have been appointed to the Indian Administrative Service after that date should for purposes of fixation of seniority, be allowed the benefit of their continuous officiation in senior posts with effect for the 19th May 1951. The same decision will also apply in the case of State Police Officers promoted to the Indian Police Service after the 19th May 1951.

6. It would be noticed that the date May 19, 1951, to being with, had nothing to do with the finalisation of the Gradation List of the Indian Police Services because it was a date which had reference to the finalisation of the Gradation List for the I.A.S. Further this date does not seem to have much relevance to the question of avoiding the anomalous position mentioned in Para 9 of the affidavit, reproduced above. This date was apparently chosen for the I.A.S. because on this date the Gradation List for all the earlier persons recruited to the service had been finalised and issued in a somewhat stable stage. But why should this date be applied to the Indian Police Service has not been adequately explained. Mr. B.R.L. Iyengar, the learned counsel for the appellant, strongly urges that selection of May 19, 1951, as a crucial date for classifying people is arbitrary and irrational. We agree with him in this respect. It further appears from the affidavit of Mr. D.K. Gupta, Deputy Secretary to the Govt. of India, Ministry of Home Affairs, dated December 9, 1966, that the Government of India have recently decided in consultation with the Ministry of Law that the Ministry of Home Affairs letter No. 2/32/51-AIS, dated the 25th August 1955, will not be applicable to those SCS/SPS officers, who were appointed to IAS/IPS prior to the promulgation of IAS/IPS (Regulation of Seniority) Rules, 1954, and the date of the issues for the above letter in their earlier continuous officiation was approved by the Ministry of Home Affairs and U.P.S.C.+ It further appears that, in the case of Shri C.S. Prasad Rao, an IPS senior posts and to revise his year of allotment accordingly.+ But it is stated that as Shri Nim was appointed to IPS on the 22nd October 1955, i.e. after the promulgation of IPS (Regulation of Seniority) Rules, 1954, and after the issue of letter, dated 25th August 1955, his case does not fall even under this category.+ The above statement of the case of the Government further shows that the date, May 19, 1951, was an artificial and arbitrary date having nothing to do with the application of the first and the second proviso to R. 3 (3). It appears to us that under the second proviso to

R. 3 (3) the period of officiation of a particular officer has to be considered and approved or disapproved by the Central Government in consultation with the Commission considering all the relevant facts.+

9. The learned P.O. also placed reliance on the judgment reported in **(2009) 3 SCC 35 in the case of Council for Scientific and Industrial Research and others V/ Ramesh Chandra Agrawal and others**. In the said judgment, it has been held by the Honble Apex Court as under:-

The State is entitled to fix a cut-off date. Such a decision can be struck down only when it is arbitrary. Its invalidation may also depend upon the question as to whether it has a rational nexus with the object sought to be achieved. By choosing 2.5.1997 as the cut-off date, no illegality was committed. *Ex facie*, it cannot be said to be arbitrary. The employer has a choice. Its discretion can be held to be arbitrary, but the High Court, only with a view to show sympathy to some of the candidates, could not have fixed another date, only because according to it, another date was more suitable. In law, it was not necessary. The Court's power of judicial review in this behalf although exists but is limited in the sense that the impugned act can be struck down only when it is found to be arbitrary. It is possible that by reason of such a cut-off date an employee misses his chance very narrowly. Such hazards would be there in all the services. Only because it causes hardship to a few persons or a section of the employees may not by itself be a good ground for directing fixation of another cut-off date. The Scheme was a one-time measure. Cut-off date has been fixed for those who are eligible as per the criteria laid down by the Scheme.+

10. The learned P.O. also placed reliance on a judgment reported in **1990 (3) SCC 368 in the case of State of Bihar and others V/s Ramji Prasad and others**. In the said case, the Hon'ble Apex Court has held as under:-

The choice of date cannot be dubbed as arbitrary even if no particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the reasonable mark. The choice of the date for advertising the posts had to depend on several factors, e.g. the number of vacancies in different disciplines, the need to fill up the posts, the availability of candidates, etc. It was not the case of anyone that experienced candidates were not available in sufficient numbers on the cut off date. Merely because the respondents and some others would qualify for appointment if the last date for receipt of applications was shifted from January 31, 1988 to June 30, 1988 is not reason for dubbing the earlier date as arbitrary or irrational.+

11. In the present case, the cut off date has been fixed as 1.1.2017 so as to consider the experience of the candidates who are to participate in the competitive examination. In the reply affidavit; as already stated, respondent No.1 has tried to justify the said date on the basis of G.R. issued by the G.A.D. on 21.4.1987, a copy of the said G.R. is at Page No.72 of the O.A. Perusal of the said G.R. shows that the Government has taken a policy decision to consider the seniority of employees / officers on the basis of fixed date i.e. 1st January of

every year. That seems to be the reason as to why the seniority lists for all the posts of employees are notified every year as on 1st January of the said year. Considering this aspect, respondent No.1 seems to have fixed the cut off date as 1.1.2017 for considering the experience of the candidates who are to participate in the competitive examination. I absolutely find no reason to doubt the intention of respondent No.1 in fixing the said cut off date. Merely because the applicants could not be taken into consideration, since they have not completed five yearsq experience on the cut off date, that itself will not mean that the cut off date is arbitrary or illegal. If any date is taken into consideration as a cut off date, somebody is bound to be prejudiced. I, therefore, do not find any merit in this O.A. There seems to be some rationale thought behind fixing the cut off date as 1.1.2017 i.e. in view of the seniority to be fixed on the first date of every year. Hence, I pass the following order:-

ORDER

The O.A. is dismissed with no order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)

