

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.554/2016. (D.B.)

Sushil Diliprao Shinde,
Aged about 25 years,
Occ- Service,
R/o Plot No. 172-B, Kamgar Colony,
Subhash Nagar, Nagpur-22.

Applicant.

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Social Justice & Special Assistance,
Mantralaya, Mumbai-400 032.
- 2) The Commissioner of Social Welfare,
Having its office at 3, Church Road, Pune.
- 3) The Regional Deputy Commissioner,
Social Welfare Department,
Having its office at Administrative
Building No.2, Civil Lines, Nagpur.

Respondents

Shri S.P. Palshikar, the learned counsel for the applicant.
Shri S.A. Sainis, the learned P.O. for the respondents.

Coram:-Shri Shree Bhagwan, Vice-Chairman
and
Shri A.D. Karanjkar, Member (J)

Judgment is reserved on 3rd July 2019.

Judgment is pronounced on 9th July 2019.

JUDGMENT

Per: Vice-Chairman

(Delivered on this 9th day of July 2019)

1. Heard Shri S.P. Palshikar, the Ld. counsel for the applicant and Shri S.A. Sainis, the learned P.O. for the respondents.
2. The applicant's father viz. Diliprao Vitthalrao Shinde was working as Driver in the office of Social Welfare, Zilla Parishad, Wardha and he expired in an accident on 15.6.2005. The applicant's mother viz. Smt. Mandabai Diliprao Shinde made an application for appointment on compassionate ground on 2.8.2005.
3. However, on 9.1.2010, applicant's mother viz. Smt. Mandabai made an application that instead of her name, her son i.e. the applicant should be considered for appointment on compassionate ground, as she was not keeping good health and the applicant had attained the age of majority. The applicant was appointed vide order dated 18.3.2010 (A-2, P.21) as Peon in the pay scale of Rs. 4440-7440 plus grade pay of Rs. 1300/-. The Ld. counsel for the applicant has relied on the G.R. dated 23.8.1996 (R-1, P.39) in para 4, it is mentioned that-

“४. गट “क” मधील पदावर अनुकंपा तत्वावर नियुक्तीसाठी पात्र असणाऱ्या कर्मचाऱ्याला पदाच्या उपलब्धते अभावी गट “ड” मधील पदावर नियुक्ती दिल्यास पद उपलब्ध होताच गट “क” मधील

पदावर त्याला प्राधान्याने नियुक्ती देण्यात यावी. अशी नियुक्ती सरळसेवा नियुक्तीने भरण्यात येणाऱ्या पदांवरील समजण्यात यावी. मात्र गट "ड" मधील पदावर अनुकंपा योजने अन्वये नियुक्ती देण्याच्या आदेशात तसा स्पष्ट उल्लेख करण्यात यावा. तसे करण्यात आले असेल तर गट "क" मधील पदावर नियुक्ती देता येईल."

4. The Ld. counsel for the applicant has also relied on the G.R. dated 21.9.2017 (P.46) in view of this G.R. dated 23.8.1996, this Bench had requested the Ld. P.O. to submit vacancy position in Group-C category from 18.3.2010 to 27.4.2017. The respondent No.3 i.e. the Regional Deputy Commissioner, Social Welfare Department, Civil Lines, Nagpur has filed reply dated 12.2.2019 which is marked Exh.X and in this reply on internal page No.3, he has shown that there were 36 vacancies in 2010. We have perused the correspondence dated 13.9.2012 by respondent No.3 to the Assistant Commissioner, Social Welfare, Wardha dated 13.9.2012 (A.6, P.26) by which the respondent No.3 has directed that the applicant was eligible to be appointed in Jr. Clerk's cadre, Class-III post in 2010.

5. Subsequently, the respondents have appointed the applicant to Class-III post as Jr. Clerk by promotion vide their letter dated 27.4.2017 (Document No.1, page No.7). On perusal of

document, it appears that while appointing the applicant vide letter dated 18.3.2010 (A-2, P.21), the appointing authority i.e. the Special District Social Welfare Officer, Wardha has not followed the procedure prescribed in the G.R. dated 23.8.1996 (A-1, P.39) and avoided to appoint the applicant (para 4 page No.40) on the post of Clerk, though the post was vacant, in our view this was unfair exercise of jurisdiction. The applicant has requested for following reliefs:-

“(i) Quash and set aside the order/communication dated 18.7.2016 as illegal, bad in law and without jurisdiction.

(ii) Further be pleased to direct the respondent No.3 to consider the case of the applicant for re-appointment to the post of Jr. Clerk, Group-C and issue order in that regard in favour of the applicant forthwith.

(iii) Further be pleased to direct the respondent No.3 to grant deemed date of appointment to the applicant as of 18.3.2000 as Jr. Clerk, Group-C and to grant him all consequential and monetary benefits arising therefrom.”

6. In view of the above discussion, it appears that the appointing authority committed the breach of the G.R. dated 23.8.1996, by appointing the applicant on the post of the Peon, though 36 posts of the Clerk were vacant. The appointing authority was bound to mention in the order that whenever the vacant would

occur the applicant would be appointed as Clerk as the applicant was holding the qualification. Therefore, now the appointing authority cannot say that the fact was not mentioned in the appointment order, it was in fact fault of the appointing authority and not a fault of the applicant.

7. In view of discussion in foregoing paras, we hold that injustice is caused to the applicant and hence, we proceed to pass the following order:-

ORDER

- (i) O.A. stands allowed.
- (ii) The respondents are directed to grant deemed date of appointment to the applicant as on 18.3.2010 as Jr. Clerk, C category and grant him all consequential monetary benefits arising therefrom as per relief clause (iii).
- (iii) No order as to costs.

(A.D. Karanjkar)
Member (J)

(Shree Bhagwan)
Vice-Chairman

I affirm that the contents of the PDF file Order are word to word same as per original judgment.

Name of Steno : P. D. Girhale.

Court Name : Court of Hon'ble VC and Member (J)

Judgment signed on
and pronounced on
date : 9th July 2019

Uploaded on date : 10th July 2019.
