

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH AT NAGPUR.**

ORIGINAL APPLICATION NO. 645 of 2012

Janardan s/o Sampat Meshram,
Aged about 52 years, Occ. Service,
r/o P.N. 59, Revatkar Lay-Out,
Umred, Distt. Nagpur.

APPLICANT

1. State of Maharashtra through its
Secretary, Public Health Department,
Mantralaya, Mumbai 32.
2. The Joint Director, Health Services
(Malaria & Filariasis),
Pune -6.
3. District Malaria Officer,
Nagpur.
4. Shri Dipak Haribhauji Gotmare,
Aged- Adult, Occ. Health Worker,
R/O Ward No.4,
Kalmeshwar,
Distt. Nagpur.

RESPONDENTS

Shri P V Thakre, Counsel for Applicant
Shri A P Sadavarte, PO for Respondents

CORAM: B. Majumdar: Vice Chairman
S S Hingne, Member (Judicial)

DATE: 10th March, 2016

The applicant is a Health Worker. He has filed the present OA seeking reliefs as follow:

- a) Quash and set aside the impugned order dated 19.01.2012 being arbitrary and mala fide
- b) Direct the respondents to give the deemed date of appointment to the applicant w.e.f. 09.07.1999 vis-a-vis that of respondent no. 4 on the post of Health worker with all the consequential benefits.

The applicant's date of birth is 1.1.1960. On 28.8.1998 the District Malaria Officer (R/3) forwarded the applicant's application for appointment as a Health Worker from the quota for Project Affected Persons to the Joint Director of Health Services (R/2). On 9.7.1999 Shri Dipak Haribhauji Gotmare (R/4) was appointed. The applicant's application was rejected on the ground that he was overage. The applicant filed OA 563 of 1999 challenging his non-selection. On 23.8.2002 the Tribunal rejected the OA. He filed a writ petition before the High Court which was dismissed. Thereafter he approached hon'ble the Supreme Court by filing Civil Appeal no. 1204 of 2004. The Supreme Court allowed of the CA vides its order dated 16.2.2010 which reads as follows:

"The short controversy in this case is whether the appellant was over-age when he applied for the post of Health Worker in the service of the State Government. Admittedly, the appellant was born on 1.1.1960. The maximum age specified by the State Government ordinarily was 35 years. But for the project affected persons an extra benefit of 3 years was given, which means, that the maximum age limit for the project affected persons was 38 years. Admittedly, the appellant was not over-age on the date of application. The Tribunal, however, in its order has held that when the recommendation was made on 28.10.1998, the appellant was over-age. In our opinion, this reasoning of the Tribunal is wrong because

the age of an applicant is to be considered on the date of application and not on the date of recommendation. Thus, it is the age on the date of application which is relevant and not the age on recommendation. Hence, we allow this appeal and set aside the impugned judgment and order of the High Court as well as that of the Maharashtra Administrative Tribunal. The State Government shall now consider the application of the appellant expeditiously in accordance with law treating him to be within the age limit."

The applicant was appointed as a Health worker on 21.8.2010. He represented for treating his date of appointment as from the date of his original application. On 19.1.12 R/2 informed R/3 that the applicant's request is rejected, as there is no mention in the Supreme Court's order for grant of deemed date to the applicant. The applicant has challenged this communication in the OA.

The applicant submits that the Apex Court had ruled that his age for qualifying for applying for the post of Health Worker should count from the date of his application. In view of this, the action of the respondents to initially reject his application has become bad in law and he is required to be deemed to be within age limit when he had applied.

Respondent no. 2, the Joint Director and respondent no. 3, District Malaria Officer, Nagpur, have filed their reply. They do not dispute that the applicant was within the age limit when he had applied for the post of Health Worker. At that time there was no notification or any advertisement given in any newspaper. Hence, when the actual process was carried out by the Selection Committee, the applicant was found to be average and as such he was not entitled for appointment. Moreover, in the Government Resolution issued by the GAD dated 06.06.2002 there is no provision for granting deemed date to any Government Servant who is appointed on the basis of a Court order.

Shri P V Thakre, Ld Counsel for the applicant and Shri A P Sadavarte, Ld PO for the respondents reiterated the submissions of the respective sides.

None appeared for R/4, nor was any return filed on his behalf.

We find that the applicant's submission is that by virtue of the Supreme Court's order, his age on the date of submission of his application should be considered. As he was within age-limit on that date, his application was wrongly rejected as age-barred in 1999. Thus he was not at all responsible for his belated appointment in 2010.

The respondents, *per contra*, maintain that the date on which he had applied for the post irrespective of any notification or advertisement for filling up the post is irrelevant. What mattered was the date from which the process of recruitment had taken place, and he was granted appointment after the Supreme Court allowed the SLP. There are no directions of the Apex Court with regard to grant of deemed date.

It is undisputed that the only reason why the applicant's application was rejected in 1999 is that when the selection committee carried out the recruitment process he was found to be overage. He was later appointed on the basis of the Supreme Court's order. Hence the issue that requires to be adjudicated into is whether the applicant was an eligible candidate on 9.7.1999, that is, within age limit, when R/4 was appointed. Vide the judgment of hon'ble the Supreme Court, which we have already reproduced *supra*, the age of the applicant was required to be considered on the date he had applied and not on the date when the process of recruitment was started and he was required to be treated to be within age limit. R/2 and R/3 admit that the applicant was within age limit when he had applied for appointment on compassionate grounds. Hence we hold that the applicant's application was wrongly rejected when the case of R/4 was decided favourably by considering that the latter was within age when recruitment took place. Thus the

applicant was discriminated against vis-à-vis R/4 for appointment, which was clearly illegal.

The respondents have relied on the GR dated 6.6.2002, a copy of which was produced before us by the Ld PO. On perusal of the GR we find that it deals with the subject of verification of cases of deemed dates of Govt employees on their promotion. It does not concern itself with direct recruitment through nomination, as in the present case. Hence the respondents' reliance on this GR is misplaced.

We therefore find considerable merit in the OA and the same is allowed in terms of the following directions.

- a) The OA is partly allowed.
- a) The impugned communication dated 19.1.12 is quashed and set aside.
- b) It is held that the applicant was eligible for appointment when R/4 was appointed on 9.7.1999.
- c) Respondents will grant deemed date to the applicant as Health Worker which will be same as that of R/4. This will count for seniority and other service benefits like promotion and increments subject to his fulfilling all other conditions. The applicant will however not be entitled to arrears of wages on this count.
- d) The respondents will issue necessary orders in this behalf within eight weeks of receipt of this order.
- e) No order as to costs.

(S S Hingne)

B Majumdar

Member (J)
Skt.

Vice Chairman