

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO. 1032 OF 2015

DISTRICT : SANGLI

Shri Aniket Pradeep Muthe.)
Kupwad Phata, Sanmati Park,)
Vishrambaug, Dist : Sangli.)...**Applicant**

Versus

1. The Chief Secretary.)
State of Maharashtra,)
Mantralaya, Mumbai - 400 032.)
2. The Principal Secretary.)
Water Resources Department,)
Mantralaya, Mumbai 400 032.)
3. The Principal Secretary.)
General Administration Department,))
Mantralaya, Mumbai 400 032.)
4. The Superintending Engineer.)
Koyna Construction Circle,)
Kolhapur Zone, Satara.)
5. The Executive Engineer.)
Mhaisal Pump House Division No.1,)
Sangli.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.



CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)

DATE : 19.01.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. The Applicant having been appointed on compassionate ground to a Group 'C' post on account of his failure to clear English and Marathi Typing Examinations as per the relevant Rules came to be reverted to the post of Peon, although by the time, he came to be reverted, he had cleared both the examinations albeit after the required period and chances questions the said order.

2. The Applicant came to be appointed as mentioned above by an order of 15.3.2008 and he reported for duty on 3rd April, 2008. As per Rules, he was obliged to clear 30 wpm Typing Examination in Marathi and 40 wpm in English. Those examinations ought to have been cleared by 3rd April, 2010. He could not do so. Increments of the Applicant came to be withheld and so also was his salary for December, 2010. The Applicant went on making representations and request for extension



of time inter-alia citing family circumstances, etc. as an excuse for having failed to clear the said examinations.

3. It is, however, very clear from the record that the Applicant ultimately cleared the English Typing examination held in the month of May, 2010, the results of which were declared on 2nd September, 2010. He cleared his Marathi Typing test held in November, 2011 on 31st January, 2012 (See page 36 of the paper book). He cleared 40 wpm English Typing Examination held in November, 2011 on 31st January, 2010 (See Page 37 of the P.B.)

4. The impugned order was made on 29th December, 2012 (Annexure 'A-4', Page 39 of the paper book). Thereby as already mentioned above, the Applicant came to be reverted to the post of Peon on account of he having failed to clear the Typing examinations. This order is being impugned in this OA.

5. We have perused the record and proceedings and heard Mrs. Punam Mahajan, the learned Advocate for the Applicant and Shri A.J. Chougule, the learned Presenting Officer for the Respondents.

6. The issue, therefore, is as to whether in this set of facts though he cleared the examinations outside the time limit prescribed for the same, he should still have



made to suffer the consequences that he is being made to face by way of the impugned order. We must make it clear that when he did not take an inordinately long time to clear the examinations, the academics and theories of whether the stipulation of clearance should be made open ended and even inordinately long time should also be condoned need not detain us at all.

7. Having said all that, now nothing more need to be said or done by us because this controversy is already fully concluded by binding judgments. The Division Bench of the Hon'ble Chief Justice of the Bombay High Court at Aurangabad in **Writ Petition No.4872/2012 (Sachin V. Kshirsagar Vs. The State of Maharashtra & 2 others and Writ Petition No.6676/2012 (Gajanan Khandu Sahane Vs. The State of Maharashtra & 4 others, the common judgment dated 14.3.2013.** There also, both the petitioners came to be appointed subject to the same conditions of clearing the Typing examinations. They did not clear it within the stipulated time, but did so later on. In fact, by the time, they were asked to show cause as to why they should not be terminated, they had already appeared for the examinations and were awaiting for the results. Their Lordships were pleased to take particular note of the fact that the Petitioners were appointed on compassionate ground which is the state of affairs here



also. But it was ultimately held that they were entitled to the relief sought. This judgment of the Hon'ble Bombay High Court was confirmed by the Hon'ble Supreme Court in **Special Leave to Appeal (Civil) No.20911/2013 (The State of Maharashtra and others Vs. Gajajan K. Sahane)**.

8. Another Division Bench of the Hon'ble Bombay High Court at Aurangabad Bench in **Writ Petition No.8444/2011 (Sandeep H. Birajdar Vs. The State of Maharashtra & 3 ors., dated 2nd December, 2011)** by setting aside the order of this Tribunal in its Aurangabad Bench granted relief to the Petitioner who was so similarly placed as the present Applicant.

9. Relying on the Rule of **Sachin V. Kshirsagar** (supra), we in this very Bench as well as some other Benches of this Tribunal in dealing with the same issue granted relief in **OA 1203/2013 (Smt. Jayashri R. Bhavari Vs. The State of Maharashtra and 2 ors, dated 26.8.2014)**, **OA 1081/2012 (Shri Abhijit S. Kale Vs. The State of Maharashtra and 4 ors., dated 20.6.2014)**, **OA 669/2013 (Smt. Vaishali C. Mundhe Vs. The State of Maharashtra and 2 ors., dated 14.10.2013)**, **OA 911/2013 (Shri Ravindra N. Limbore Vs. The State of Maharashtra & 3 ors., dated 4.12.2014)** and **OA**

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922/2014 (Shri Ram D. Bhavar Vs. The State of Maharashtra & 3 ors., dated 10.9.2015). In fact, in Para 11 of **Jayshri Bhavari** (supra), we mentioned quite clearly that when exactly the same issue is governed by binding precedents, there is no reason why the authorities should not act on their own and drive the Applicants to unnecessary litigation.

10. In view of the foregoing, the Applicant must be held entitled to the relief sought. The order herein impugned stands quashed and set aside and the Respondents are directed to restore the Group 'C' post which the Applicant earlier held to him within a period of four weeks from today. He shall be entitled to all service benefits from the date of his reversion till restoration of his position in every respect except the difference of salary. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
19.01.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
19.01.2016

Mumbai

Date : 19.01.2016

Dictation taken by :

S.K. Wamanse.

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