

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATIONS 390 & 482 OF 2015

DISTRICT : PUNE

1) ORIGINAL APPLICATION NO 390 OF 2015

Shri Sunil Vitthal Mane,)
Gahini Prasad Society,)
Near Vakilnagar, Erandawana,)
Pune 411 004.)...**Applicant**

Versus

Commissioner,)
Women & Child Welfare,)
Maharashtra State, 28 Queen Garden)
Near Old Circuit House, Pune 411 001.)...**Respondents**

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2) ORIGINAL APPLICATION NO 482 OF 2015

Shri Gangadhar Narayan Rajemod,)
Janardhan Nagar, Sharda Nagar Road,)
Nanded 431 605.)...**Applicant**

Versus

Commissioner,)
Women & Child Welfare,)
Maharashtra State, 28 Queen Garden)
Near Old Circuit House, Pune 411 001.)...**Respondents**

Smt Punam Mahajan, learned advocate for the Applicants.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 02.08.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Smt Punam Mahajan, learned advocate for the Applicants and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. These Original Applications have been filed by the Applicants who were reverted from the post of Senior Clerk by order dated 29.5.2015 to the post of Clerk, on the ground that the Applicants were not eligible to be promoted as Senior Clerk as they had not passed the Post Recruitment Departmental Examination and there were other candidates available, who had passed such examination and were eligible to be promoted.

3. Learned Counsel for the Applicants argued that the Applicants were on the establishment of Director of Social Welfare, Maharashtra State, Pune. The Commissionerate of Women and Child Welfare were carved out from that office and bifurcation of Ministerial cadre was done in 2005. Before 2005, the Post Recruitment Departmental Examination (hereinafter called 'the Examination') was conducted by the Social Welfare Department. Such examination was conducted in 1991, 1993, 1995, 1997, 1999 and 2005. However, after 2005, no examination was conducted by the Respondent. The Applicant in O.A no 390 of 2015 had joined service in Group 'D' and was promoted as Junior Clerk on 19.9.2006. After his promotion no 'examination' has been conducted till date. The Applicant in O.A no 482/2015 joined Government service as Junior Clerk on 22.6.1998. Recruitment Rules for Ministerial Staff in the Social Welfare Department were notified by G.R dated 11.1.1972. (Page 19 of the Paper Book in O.A 482/2015).

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Rule 4 provides that a person will be required to pass 'the Examination' within 4 years and in three chances. If for any reason, examination is not held in a particular year, that year shall be excluded in counting the years of service (Rule 6). Learned Counsel for the Applicants argued that after the Ministerial cadres of Social Welfare Directorate and the Commissionerate of Women & Child Development have been bifurcated in 2005, no examination has been held by the Respondent. As such, the Applicants were rightly promoted on the basis of seniority in the meeting of the Departmental Promotion Committee (D.P.C) held on 10.2.2014. Learned Counsel for the Applicants argued that a Junior Clerk is eligible to appear for 'the examination' only after completion of 5 years of service. The Applicant in O.A no 482/2015 belongs to NT(B) category and is allowed to have one more chance to pass the examination, i.e. a total of 4 chances. He has, therefore, not exhausted all his chances, and cannot be held to be ineligible for promotion.

4. Learned Presenting Officer (P.O) argued that the Applicant in O.A no 482/2015 is mixing the issues. There are two types of Examinations envisaged for Junior Clerks in the Social Welfare Department as per G.R dated 11.1.1972. The first is Post Recruitment Departmental Examination for the Ministerial Staff. A Junior Clerk appointed after the date on which the rules came into


force, i.e. after 11.1.1972, is required to pass 'the Examination' within 4 years of appointment and in three chances as per Rule 3. There is no provision in the rules for extra chances for backward class employees. There is another set of Rules called 'Qualifying Examination Rules for promotion to Supervisory Posts in Ministerial cadre'. As per Rule 3, a Junior Clerk can appear for this Qualifying Examination after completion of 5 years of continuous service. Qualifying Examination is required for promotion to the post of Head Clerk and equivalent posts. Learned Presenting Officer argued that the Applicant was appointed as Junior Clerk in Social Welfare Department on 22.6.1998. Social Welfare Department held post Recruitment Departmental Examinations in 1991, 1993, 1995, 1997, 1999, 2005 and 2006. This is mentioned in letter dated 27.11.2008 from the Director of Social Welfare to the Respondent (Exhibit R-2, page 65 of the Paper Book in O.A no 482/2015). Learned Presenting Officer argued that the examination for the Junior Clerks working in the Women and Child Welfare Commissionerate was held by Director of Social Welfare in 2006 also. The Applicant has exhausted his three chances in 1999, 2005 and 2006 and is not eligible to be promoted to the post of Junior Clerk. Accordingly he has been reverted.

5. As regards the Applicant in O.A no 390/2015, learned Presenting Officer argued that two Junior Clerks

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from VJ-A category, viz. Shri M.B Rathod and Shri Y.D Hajari had passed 'the Examination' in 1999 and 2005 respectively. As per G.R dated 18.10.1997, posts in DT/NT category are inter-transferable. As the Applicant has not passed the Examination, vacancy from NT-B category can be filled by promoting persons from VJ-A category, who have passed 'the Examination'.

6. We have carefully perused the Rules for the Departmental Examinations for Ministerial Staff in the Social Welfare Department notified by G.R dated 11.1.1972. There are two set of rules, one Post Recruitment Departmental Examination for Junior Clerks for promotion to the post of Senior Clerk (which we have called 'the Examination'). There is a separate set of rules for 'Qualifying Examinations' for promotion to higher posts like Head Clerk. Rule 3 of the Qualifying Examination Rules require that a Junior Clerk must complete 5 years of service before he can be allowed to appear for the Qualifying Examinations. The Applicant in O.A no 482/2015 was not required to wait for 5 years before appearing in Post Recruitment Departmental Examination. As he joined service on 22.6.1998, he could have appeared in the Examinations held in 1999, 2005 and 2006. This is clear from the letter dated 27.11.2008 from the Director of Social Welfare. The claim of the Applicant that he was not informed about the examinations in 2005 (or in 2006) is not acceptable, as



the result for the year 2005 (Exhibit R-3) clearly indicate that he remained absent for the examinations. It was the duty of the Applicant to appear for the Examination, whenever, it was held. Generally, sufficient publicity is given whenever such examinations are held. The Respondent has specifically claimed that the Examination of 2006 conducted by Director of Social Welfare was open to employees in the Commissionerate of Women and Child Development. The Applicant in O.A no 482/2015 has not filed any rejoinder to rebut this claim. The Applicant in O.A no 482/2015 has exhausted his three chances in 1999, 2005 and 2006. However, the letter dated 27.11.2008 from the Director of Social Welfare mentions that:-

“उपरोक्त संदर्भीय पत्रान्वये कळविण्यात येत आहे की वरिष्ठ लिपिक या संवर्गातील (पदोन्नतीने आलेले) कर्मचा-यांना अर्हताकारी परीक्षा सात (७) वर्षात तीन (३) संधीत (मागासवर्गीयांच्या बाबतीत अधिक एक संधी) परीक्षा उत्तीर्ण होणे आवश्यक आहे.”

From this, it is clear that the Applicant, who belongs to NT(B) category is eligible to get one more chance to pass ‘the Examination’.

In O.A no 390/2015, the Applicant was promoted as Junior Clerk on 19.9.2006. As no examination has been held by the Respondent, thereafter


there was no way the Applicant could have passed 'the examination'. Rule 6 of the Rules reads:-

"6. If for any reason, the examination is not held in a particular year, that year shall be excluded in counting the year of service under these Rules."

Rule 15 reads:-


"15. Failure in the first and second attempt shall not result in stoppage of increment or loss of seniority. A person who has not passed the examination shall not be promoted to any higher post till he passes the examination. If a person fails to in all the three chances and is allowed a fourth or subsequent chance, then he shall not be allowed to draw the increment after his failure in the third attempt until he passes the examination or is exempted from passing it."

It is clear that failure in the first or second attempt to pass 'the examination' shall not result in stoppage of increments or loss of seniority. We have found that the Applicant in O.A no 390/2015, did not make even first attempt as no examinations have been held by the Respondent. He, therefore, cannot lose his seniority. Even the Applicant in O.A no 482/2015 cannot lose seniority, as he has not exhausted his fourth attempt, which is admissible to Backward Class employees. Both



the Applicants belong to NT-B category. The vacancies in which they were promoted were from NT-B category. When the Applicants have not lost their seniority, there is no question of promoting other persons from VJ-A category in the post reserved for NT-B category. That will be unjust and arbitrary. If no examinations are held by the Respondent after 2005 (or 2006), it is not the fault of the Applicants and they cannot be punished for no fault of theirs. In the absence of result of examination, only criterion for promotion, would be length of service. It is, however, clarified that the Respondent, as and when he holds the Examination, will be within his rights to apply the rules, as in existence (Rules are evidently yet to be framed) at that point of time. Till then, the promotion of the Applicant may be ad hoc till they pass or fail to pass necessary examinations as per rules as and when framed or till they attain the age of 45 years.

7. Learned Presenting Officer has relied on the judgment of this Tribunal dated 17.6.2015 in O.A no 463/2015 and 464/2015. In those Original Applications, the fact that no opportunity was given to the Applicants to pass the Examination was not pleaded. May be the Applicants in those O.As had already exhausted all their chances to pass the examination. Here the Applicants were not given opportunity to pass the Examinations as per Rules and they have not lost their seniority. These cases are distinguishable.



8. Having regard to the aforesaid facts and circumstances of the case, order dated 29.5.2015 reverting the Applicants is quashed and set aside. The Applicants will be allowed to work as Senior Clerks, till, after the relevant rules are framed, if any. Then their case will be governed by the new rules as and when framed. These Original Applications are allowed accordingly with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 02.08.2016
Dictation taken by : A.K. Nair.