

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

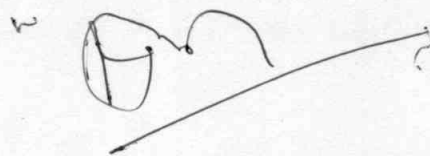
ORIGINAL APPLICATION NO.485 OF 2013

DISTRICT : MUMBAI

Shri Kishor B. Vanmali.)
Occ.: Nil (Retired as Assistant Director)
Non-Technical) with last posting in the)
Office of Vocational Education & Training,)
Regional Office, Nashik.)
Address of Service of Notice :)
Shri A.V. Bandiwadekar, Advocate,)
Having Office at 9, "Ram-Krishna",)
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)...**Applicant**

Versus

1. The Director of Vocational Education)
& Training (Through Jt. Director),)
Having Office at Vocational Education)
& Training Directorate, 3, Mahapalika)
Marg, Post Box No.10036, Mumbai-1.)
2. The State of Maharashtra.)
Through the Secretary,)
Higher & Technical Education Dept,)
Mantralaya, Mumbai - 400 032.)...**Respondents**



Shri A.V. Bandiwadekar, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 23.09.2016

JUDGMENT

1. This original Application (OA) is moved by a retired Assistant Director (Non-Technical) of Vocational Education and Training in relation to the relief of deemed date which came to be rejected by the impugned order of 6th April, 2013 (Exh. 'A', Page 10 of the Paper Book (P.B)).

2. I have perused the record and proceedings and heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

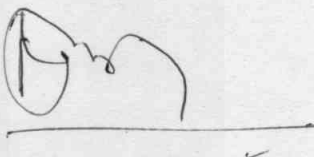
3. The Applicant belongs to Scheduled Caste category. He joined the Government service on 12.3.1975 as Junior Clerk and he came to be promoted as Senior Clerk, Head Clerk, Office Superintendent and Assistant Director (Non-Technical) on 7.3.1983, 5.6.1993, 22.6.1999 and 29.8.2008 respectively. He was promoted as Senior Clerk on 7.3.1983 subject to passing of the Post



Recruitment Examination which according to him he eventually did in July, 1983. He was, for the promotion to the post of Head Clerk required to pass the supervisory examination which the Applicant did in May, 1992. Now, as to whether he cleared the examination in 4th attempt or 5th attempt is the fact at issue. A Scheduled Caste employee is given one extra chance to clear the examination and unlike the Non-Scheduled Caste employees who have to clear the said examinations in 3 attempts, the Scheduled Caste employee can do it in 4 attempts. But then, if the Applicant did it in the 5th attempt, then he will not be entitled to any relief herein which fact is indisputable.

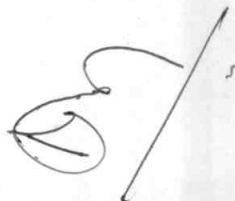
4. It is not doubt true that even in Government communications and the recommendatory letters, it has been mentioned that the Applicant cleared the examination in the 4th attempt. However, the learned P.O. Smt. Gaikwad invited my pointed reference to unimpeachable documentary evidence in the form of Exh. 'R-1' collectively from Pages 52 to 86. The same would show that in the examination held in July, 1985 of which the results were declared on 10th February, 1986, the Applicant failed (Page 56, Serial No.25). In the examination held in February, 1988 of which the results were declared on 8.4.1988 the

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Applicant failed (Page 60, Serial No.S-157). In the examination held on 9th and 10th December, 1989 of which the results were declared on 6.1.1990, the Applicant failed again (Page 66, Serial No.404). The 4th attempt was in the examination held on 9th and 10th March, 1991 of which the results were declared on 8.5.1991. There also, the Applicant failed (Page 72, Serial No.56). Then, in the examination held on 23rd and 24th May, 1992, the results of which were declared on 3.8.1992, the Applicant passed the examination in the 5th attempt (Page 77, Serial No.S-92/056). It is, therefore, very clear that the Applicant cleared that examination in 5th and not 4th attempt. This conclusion is based on concrete documentary evidence, and therefore, the effect thereof cannot be subordinated to the recitals in communications even if they are Government communications. In my opinion, in the present of such convincing evidence, I cannot work on the circumstances emanating from the correspondence, letters or orders.

5. Mr. Bandiwadekar, the learned Advocate for the Applicant told me that his claim was based on the documents of the Respondents themselves which show that the Applicant cleared the examination in 4th attempt and unless those documents were officially withdrawn, the



Applicant cannot be put to disadvantage even if he has not been able to rebut the circumstances emanating from the convincing evidence discussed above. Mr. Bandiwadekar told me that if need be, let the Applicant be compensated by imposing personal cost on the defaulting officials, but the Applicant cannot be made to suffer anyhow or anyway. I disagree with the submissions of the learned Advocate. When I am called upon to adjudicate the matter, I have the evidence before me and the circumstances emanating from the 5 results of the examination are such as not to depend upon formal cancellation or whatever of the correspondence and orders, etc. Rejecting the submissions of the learned Advocate Shri Bandiwadekar and finding no merit in this Original Application, the same stands hereby dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
23.09.2016

23.9.16

Mumbai

Date : 23.09.2016

Dictation taken by :

S.K. Wamanse.