

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.562 OF 2019

DISTRICT : MUMBAI

Shri Dnyandev B. More.)
Age : 58 Yrs., Occu.: Retired Govt. Service)
Retired as Senior Clerk, Office of Executive)
Engineer, Central Mumbai (Public Works))
Division, Ganpat Jadhav Marg, Worli,)
Mumbai – 400 018 and residing at C/o.)
Shri I.B. More, Flat No.706, Wing 1-B,)
Morarjee Mill Employees CHS, Ashok)
Nagar, Kandivali (E), Mumbai – 400 101.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Public Works Department,)
Mantralaya, Mumbai – 400 032.)
2. The Superintending Engineer.)
Public Works Department, Murzban)
Road, Mumbai – 400 001.)
3. The Executive Engineer.)
Central Mumbai (Public Works))
Division, Public Works Department,)
Ganpat Jadhav Marg, Worli,)
Mumbai – 400 018.)...**Respondents**

Mr. U.V. Bhosale, Advocate for Applicant.

Mr. S.D. Dole, Presenting Officer for Respondents.

CORAM : **A.P. KURHEKAR, MEMBER-J**

DATE : **28.11.2019**

JUDGMENT

1. In the present Original Application, the Applicant who stands retired as Group 'C' employee on 31.12.2018 is deprived of retiral benefits, and therefore, sought direction to the Respondents to release his retiral dues.

2. The Applicant's retiral benefits are withheld because of non-passing of Marathi Typewriting Examination for promotion to the post of Junior Clerk given to him in 1994.

3. There is absolutely no controversy about the factual aspects, which are set out as follows :-

- (a) The Applicant is visually impaired having 75% visual disability.
- (b) He joined as Peon (Group 'D') under Physically Disabled Category in Public Works Department on 05.10.1987.
- (c) He was promoted to the post of Clerk-cum-Typist by order dated 21.03.1994.
- (d) As per condition mentioned in promotion order, he was to clear Marathi Typewriting Examination within six months.
- (e) Applicant had passed Departmental Lower Grade Examination for the post of Jr. Clerk in 1998.
- (f) He was granted 1st Time Bound Promotion (TBP) by order dated 07.09.2006.
- (g) He was promoted to the post of regular Senior Clerk by order dated 22.07.2016.

- (h) He worked on the post of Senior Clerk and stands retired on 31.12.2018 attaining age of superannuation of 58 years as Group 'C' employee.
- (i) Before retirement, by letter dated 26.03.2014 addressed to Respondent No.2 – Superintending Engineer, he had requested for exemption from passing Marathi Typewriting Examination on the ground that he had attained 50 years of age and visually impaired.
- (j) By letter dated 26.10.2017, he again requested for exemption from passing Marathi Typewriting Examination and pointed out that he is due to retire on 31.12.2018 and should not be held responsible for the same.
- (k) Surprisingly, in response to the letter of Applicant, referred to above, the Executive Engineer by his letter dated 19.06.2018 asked the Applicant to submit any such Government Resolution for grant of exemption.
- (l) The Applicant submitted his detailed explanation on 04.07.2018 again requested for exemption again reiterating that he being visually impaired to the extent of 75%, he could not pass Marathi Typewriting Examination. He further states that being visually impaired person, he is under belief that the condition of passing of Marathi Typewriting Examination is not applicable to him.
- (m) The Superintending Engineer by letter dated 22.11.2018 forwarded proposal to the Respondent No.1 – Principal Secretary, Public Works Department that considering the *bonafides* and genuineness of the claim of the Applicant, he be exempted from the Examination.

- (n) The Government by its letter dated 20.10.2018 informed to the Superintending Engineer, P.W.D. that there is irregularity in giving promotion to the Applicant because of non passing of Marathi Typewriting Examination, and therefore, asked him to take appropriate action against concerned officials who are responsible for the same.
- (o) The Government by its letter dated 19.12.2018 informed the Superintending Engineer that despite Government's directions in letter dated 20.10.2018, appropriate action is not taken against concerned for such irregularities and by the same letter rejected the proposal sent by Superintending Engineer for grant of exemption from passing Marathi Typewriting Examination.
- (p) In turn, the Superintending Engineer by his letter dated 14.01.2019 asked Executive Engineer to take suitable action against concerned officials responsible for irregularities in the matter of promotion to the Applicant and to submit the report.
- (q) Executive Engineer in response to letter dated 14.01.2019 informed to the Superintending Engineer that for want of any specific direction or guidelines, he is unable to take any action in the matter and again solicited specific direction.
- (r) Superintending Engineer again by his letter dated 25.04.2019 asked Executive Engineer to seek guidelines or directions from the Government and to take appropriate action.

4. On this background, the Applicant has filed this O.A. seeking direction to the Respondents to release his retiral benefits as he is deprived of his legitimate dues for the period of 11 months.

5. Respondents resisted the application by filing Affidavit-in-Reply inter-alia admitting the factual background as set out earlier. The Respondents contend that as per term and condition of promotion order dated 21.03.1994, the Applicant was required to pass Marathi Typewriting Examination within six months but he failed to do so. Therefore, Pay Verification Unit by his letter dated 05.11.2011 raised objections when the service book was sent for verification. The Respondents further contend that the proposal for grant of exemption was rejected by the Government vide letter dated 19.12.2018, and therefore, the Applicant needs to be reverted to Class-IV post and after re-fixation of pay, the matter will be processed for grant of retiral dues.

6. In so far as the stand taken by Respondent is concerned, it is explicit that the department is passing buck to each other without taking any decision, leaving the Applicant in lurch and thereby depriving him of retiral benefits for the period of 11 months. The Respondents seem to be oblivious of the fact that the Applicant is 75% visually disabled person and the department has already extracted the work of Clerk-cum-Typist from him for 24 years. Indeed, the Respondent No.1 ought to have been sensitive to grant exemption having regard to the peculiar facts of the case. Regret to note that the Respondents' approach is very hyper-technical and callous to say the least.

7. Be that as it may, now the material question is whether the action of withholding of retiral benefits is sustainable, reasonable and fair. In other words, this is not a case to see the legality but one need to examine the matter from the point of fairness, equity and sustainability.

8. Shri U. V. Bhosale, learned Counsel for the Applicant submit that the proposed action of the Respondents to revert the Applicant to

the post of Peon is totally and illegal as no such reversion is permissible after retirement of the employee. He placed reliance on the decision of this Tribunal passed in **O.A.No.306/2018 (Smt. Vijaya H. Kelkar V/s. District Collector, Mumbai)**, decided on 11.07.2019 wherein the employee was terminated from the service on the ground of failure to pass Typewriting Examination. She was appointed in 1994 and was terminated in 2018. She was appointed on compassionate ground. The Tribunal set aside the order of termination and also granted 50% back wages on the ground that action of termination is quite belated, unfair and unreasonable.

9. Whereas, Shri S.D. Dole, learned P.O. sought to justify the stand taken by the Respondents but could not satisfy the Tribunal as to why timely action was not taken against the Applicant for non-passing of Marathi Typewriting Examination so that this eventuality would not have occurred.

10. Undisputedly, the Applicant is 75% visually impaired person appointed on the post of Peon- Group-D under the Handicapped category. True, in promotion order dated 21.03.1994, there was condition that the Applicant will have to pass Marathi Typewriting Examination within six months. However, the department failed to take timely action of reversion of the Applicant. Not only that, on the contrary, the Applicant was given benefits of Time Bound Promotions and was also promoted to the post of Sr. Clerk in 2016. Surprisingly, despite the objections of Pay Verification Unit raised by letter dated 05.11.2011, the department remained tightlipped and failed to take any action.

11. Suffice to say, it is only at the time of retirement of the Applicant, the correspondence was made with the Government that too on the request made by the Applicant for grant of exemption having crossed the age of 50 years. Suffice to say, there are serious

lapses and negligence on the part of concerned officials to take timely action. On the contrary, the Applicant was allowed to continue the work and he was promoted twice. He has also passed departmental lower standard examination. The Respondents have also extracted the work of Clerk-cum-Typist and Sr. Clerk from the Applicant till his retirement. Pertinent to note that it is nowhere the case of the Respondents that because of non passing of examination, there were any deficiencies or short coming in the service rendered by the Applicant. There is absolutely nothing even to suggest that the work of the Applicant is not satisfactory. Indeed, the department has given the benefit of Time Bound Promotion as well as regular promotion to the Applicant. It is on this background, one need to see the fairness, sustainability and equity in the impugned action of withholding retiral benefits of an employee who is 75% visually impaired.

12. In my considered opinion, having regard to the peculiar facts and circumstances of the present case, it would be highly unjust, unreasonable and arbitrary to deny or withheld the retiral benefits of the Applicant only on the ground of non-passing of Marathi Typewriting Examination. It is more so, where the employee is 75% visually impaired. Inaction on the part of Respondents for taking suitable action timely and silence on the part of Respondents for 24 years is suggestive of the inference that the Respondents acquiesced, and therefore, now they cannot be allowed to take action of reversion after retirement. Indeed, the Respondent No.1 ought to have considered the proposal forwarded by the Superintending Engineer for grant of exemption to the Applicant, in the peculiar fact and circumstances of the case, in view of the Rule 10 of Maharashtra Civil Services (Compulsory Marathi Shorthand and Marathi Typing Examination for English Stenographers and English Typists) Rules, 1991. Rule No.3 provides for passing of Marathi Typing Examination of the Ad-hoc Board with the speed of 30 w.p.m. for Typist and Clerk-cum-Typist. Rule 8 provides for exemption from passing the

examination where the candidate attained the age of 50 years. Here Rule 10 is relevant which is as follows:-

“10. Notwithstanding anything contained in these rules, Government may relax provisions of these rules, under special circumstances in such manner as shall appear to it to be just and reasonable, and shall record the reasons for any such relaxations.”

13. As such, Rule 10 provides for exemption in special circumstance. The present case invariably falls under the category of special circumstance in view of 75% visual disability of the Applicant and fact of his retirement vis-à-vis inaction on the part of the department to take any such suitable steps of reversion or as the case may be, at appropriate time. It may be noted that it is because of 75% visual disability, the Applicant seems could not pass Marathi Typewriting Examination. This being the position, it would be amounting to denial of promotion to a person with disability, which is impermissible in view of Section 20(3) of Rights of Persons with Disabilities Act, 2016. As such, viewed from this angle also, the Applicant cannot be denied of retiral benefits of the promotional post.

14. Undisputedly, the Applicant possesses all other required eligibility criteria and qualification for promotion in Group-C cadre from Group-D. Accordingly, he was promoted in 1994. He rendered service to the satisfaction of the department till retirement on 31.12.2018. In such situation withholding of retiral benefits of pension is unjust, unfair, unreasonable and arbitrary. Needless to mention that pension is not charity or bounty and it is crystalized as right to property as per Article 300-A of Constitution of India, which cannot be taken away without due process of law. The employee earns benefit of pension and gratuity by dint of his long, continuous service and it is governed by the Rules and not discretion.

15. The necessary corollary of the aforesaid reason leads me to conclude that in the peculiar facts and circumstances of the case, the

Applicant is entitled to the relief claimed and O.A. deserves to be allowed. This O.A., however, may not be treated as precedent as each case is required to be decided on its own merit. Hence, the following order.

ORDER

- (A) Original Application is allowed.
- (B) The Respondents are directed to release retiral benefits to the Applicant as per his entitlement within six weeks from today, failing which the Applicant will be entitled to interest as contemplated u/s 129(A) and 129(B) of Maharashtra Civil Services (Pension) Rules, 1982.
- (C) No order as to cost.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 28.11.2019
Dictation taken by :
S.K. Wamanse.