

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 577 of 2017 (SB)

Shaikh Maihfuj S/o Shaik Basir,
Aged about 62 years,
Occ. Retired Driver,
R/o Sane Guruji Nagar,
Arvi Naka, Wardha, Dist. Wardha.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Jalsampada Department,
Mantralaya, Mumbai-32.
- 2) The Superintending Engineer,
Chandarpur Irrigation Project
Board Chandrapur, Dist. Chandrapur.
- 3) The Executive Engineer,
Wardha Irrigation Division,
Wardha, Distt. Wardha.
- 4) The Sub Divisional Engineer,
Dham Unnai, Dam Sub Division (Pimpri), Dist. Wardha.
- 5) The Sub Divisional Engineer,
Irrigation Sub Division (Sinchan),
Wardha, Dist. Wardha.
- 6) Sectional Engineer,
Mechanical Workshop, Pimpri,
Dist. Wardha.

Respondents.

Shri D.M. Surjuse, Advocate for the applicant.
Shri A.M. Khadatkhar, P.O. for respondent no.1.
S/Shri V.G. & N.A. Palshikhar, learned counsel for resp. Nos.2 to 6.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Member (J).**

Date of Reserving for Judgment : 21st February, 2022.

Date of Pronouncement of Judgment : 24th February, 2022.

JUDGMENT

(Delivered on this 24th day of February, 2022)

Heard Shri D.M. Surjuse, learned counsel for the applicant, Shri A.M. Khadatkhar, learned P.O. for respondent no.1 and Smt. J. Alkari, learned counsel holding for Shri V.G. Palshikar, learned counsel for respondent nos.2 to 6.

2. The case of the applicant in short is as under –

3. The applicant was appointed on regular post as a Cleaner vide order dated 7/2/1983 w.e.f. 22/5/1981. He was posted at Mahakali Dam Project and continued there till 1999. In 1995, the applicant worked as a Driver and entry was taken in log book. On 29/5/2014, the applicant was transferred and posted to the office of Sub Divisional Engineer, Sub Division, Pimpri. On 12/9/2006, Deputy Executive Engineer sent requisition to the respondent no.2 for appointment of applicant as a Driver. He was given work of Driver. On 16/11/2010, the Sub Divisional Engineer, Arvi requested the Government to convert the post of applicant from Cleaner to Driver. On 7/6/2010, the respondent no.2 submitted proposal to the

respondent no.1 for bringing the applicant on the post of Driver w.e.f. 1/11/2007.

4. It is submitted that the applicant is working as a Driver from 1995 till his retirement, but he is not given the posting of Driver. He was not paid the salary of the post of Driver. There is a Govt. G.R. dated 29/9/2003 in respect of 'designation as per work and pay as per designation'. The applicant made representation to the respondent nos.2&3. The proposal of respondents was submitted, but it is not decided by the Government. Therefore, prayed for direction to give designation to the applicant of the post of Driver and pay the salary of the post of Driver.

5. The application is opposed by the respondent nos.2&3 by filing reply. It is submitted that the applicant is now retired from the post of Cleaner. He has enjoyed two more years. The age of retirement of the post of Driver is 58 years, whereas, the retirement age of the post of Cleaner is 60 years. Now the applicant is retired. It is submitted that the applicant has not worked continuously on the post of Driver. From the certificate filed by the applicant, it is apparent that only in case of administrative exigency from 1995 to 2006 he was asked to drive vehicle intermittently. But the said work was never continuous. The applicant worked as a Driver continuously from 1/11/2007. The applicant was granted second time bound

promotional benefit of higher pay scale and therefore there will not be any difference of salary of the post of Driver. Hence, the O.A. is liable to be dismissed.

6. Heard Shri D.M. Surjuse, learned counsel for the applicant. He has pointed out the Certificate issued by the Sectional Engineer / Officer which shows that the applicant was working as a Driver from 1995 to 1999. Other Certificate shows that he was working as a Driver from 2002 to 2006. From the Certificates, it appear that it was not a continuous work of Driver, but according to need he was directed to drive the Vehicle.

7. The reply of respondent nos.2 to 6 clearly shows that the applicant was working as a Driver continuously from 1/11/2007. Accordingly, the proposal was sent by Assistant Superintending Engineer, Chandrapur on 7/10-6-2010. In this proposal, the applicant's designation was shown as a Cleaner and he was to be brought on CRTE as a Driver. This proposal appears to be correct. In the letter dated 6/9/2011, the applicant has stated that he is working as a Driver from 1/11/2007 on the Vehicle (Jeep) No. MH-32A-4023. Hence the correct position is that the applicant was working as a Driver from 1/11/2007 till his retirement. The respondents have not followed the Govt. G.R. dated 29/9/2003 ^{^^}dkekuqlkj gqnnk o gqnn;kuqlkj osru**

8. Similarly situated employee namely one Shri Jivan Shaligram Kariya who was working as a Cleaner filed the Complaint case before the Industrial Court, Yavatmal. As per the direction of Industrial Court, Yavatmal, the respondents have brought the said employee Shri Jivan Shaligram Kariya on CRTE on the post of Driver from the post of Cleaner and he was given the payment of the post of Driver.

9. The applicant was also posted as a Cleaner, but he was working as a Driver, therefore, it was for the Government to accept the proposal of respondent / Assistant Superintending Engineer dated 7/10-6-2010. The Assistant Superintending Engineer, Irrigation Department, Chandrapur moved the proposal for brining the applicant on the post of Driver on CRTE, but this proposal is not considered by the respondent no.1. There is no dispute that the applicant was working as a Driver from 1/11/2007, therefore, the applicant was entitled to covert his post from Cleaner to Driver.

10. The learned counsel for the respondents strongly objected the application. The learned counsel for the applicant Shri D.M. Surjuse pointed out decision of M.A.T., Bench at Aurangabad in O.A.No. 615/2016 with connected matters, the decision of this Tribunal and decision of Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.4750/2008.

11. In the cited decision, it is held that as per the Govt. G.R. dated 29/9/2003, the employee who worked on the higher post, is entitled for conversion of the said post as per G.R. of 2003 [^]dkekuqlkj gqnnk o gqnn;kuqlkj osru**. In the present O.A., the applicant was designated as a Cleaner, but he was working as a Driver from 1/11/2007 and therefore in view of the G.R. dated 29/9/2003, the applicant is entitled for designation of the post of Driver and also the pay as per designation.

12. Now the applicant is retired, therefore, he is entitled for arrears of pay, if any, of the post of Driver from 1/11/2007 till the date of his retirement. It is contention of the respondents that the applicant has enjoyed two more years. He is retired from the post of Cleaner after the age of 60 years. If he would have been on the post of Driver, then his retirement would have been at the age 58 years. This difficulty is caused by the respondents by not following the G.R. of 2003 and not accepting the proposal of Assistant Superintending Engineer, Chandrapur dated 7/10-6-2010. There is no dispute that the applicant has worked on the post of Driver from 1/11/2007 till his retirement. Hence, he is entitled for the benefit of the G.R. dated 29/9/2003 in respect of 'designation as per work and pay as per designation'.

13. In that view of the matter, I pass the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to convert the designation of the applicant from the post of Cleaner to the post of Driver from 1/11/2007 and pay the arrears of salary of the post of Driver from 1/11/2007 till his retirement within a period of three months from the date of receipt of this order.

(iii) No order as to costs.

Dated :- 24/02/2022

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(Justice M.G. Giratkar)
Member (J).

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 24/02/2022

Uploaded on : 24/02/2022**