

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.598 OF 2020

DISTRICT : PUNE

Mr. Pratik Ramesh Shinde,)
Aged : 21 years, Occ. Nil, Ex. Junior Clerk)
In the office of belownamed Respondent,)
R/o. C/o. S.P. Mandge, House No.1346,)
Teachers Colony, Shirur, Dist. Pune) **...Applicant**

Versus

The Deputy Director of Sports)
and Youth Services, Pune Division, Pune,)
Having office at Divisional Sports Campus,)
Opp. Moze College, M.H.B. Yerwada, Pune 6) **...Respondent**

Mr. Bhushan A. Bandiwadekar, learned Advocate for Applicant.

Mr. A.J. Chougule, learned Presenting Officer for Respondent.

CORAM : **Justice Ms. Mridula Bhatkar, Chairperson**
Ms. Medha Gadgil, Member(A)

DATE : **14.12.2021**

PER : **Justice Ms. Mridula Bhatkar, Chairperson**

J U D G M E N T

1. The Applicant who was working as Junior Clerk in the office of Deputy Director of Sports and Youth Services, Pune Division, Pune had challenged the order dated 11.09.2020 terminating his service on the ground that he was under age and was not eligible for appointment to the post of Clerk.

2. Brief facts of the case are as follows :-

The Respondent had issued advertisement on 29.12.2017 for the post of Clerk, wherein it was mentioned that on 31.05.2016 the candidate should have completed 18 years of his / her age. The last date of the submission of the application form was 12.01.2017. The date of birth of the Applicant is 12.01.1999. He applied for the said post on 07.01.2017. Pursuant to the said advertisement for the said post he had mentioned his date of birth as 12.01.1999. The Applicant was selected for the post and he was given appointment letter on 25.04.2017 and he joined the service on 07.08.2017. After completion of three years service on that post on 11.09.2020, he was served with the order of termination dated 22.09.2020. Hence, the Applicant filed the present Original Application, challenging the said termination order.

3. The learned Advocate Mr. Bandiwadekar appearing for the Applicant has submitted that the no fact is suppressed by the Applicant from the Respondent and had mentioned his date of birth as 12.01.1999

in his application which he had submitted physically. The learned Advocate has further submitted that the order of termination was illegal and the services of the Applicant ought not to have been terminated in such a manner i.e. without issuing show cause notice. He submitted that the basic rule of natural justice and so also constitutional protection which is guaranteed to the Government servant under Article 311 of the Constitution is not honored by the Respondent. He has further pointed out that in the order of termination the reason for termination is recorded that the Applicant was not eligible for appointment when he submitted application pursuant to the said advertisement, is incorrect and false.

4. The learned P.O. for the Respondent while opposing the submission of learned Advocate for the Applicant relied on the affidavit-in-reply dated 30.09.2021, filed by Ms. Pramodini Arun Amrutwad, Deputy Director, Sports and Youth Services, Pune Division, Pune. The learned P.O. denied all the allegations made and the contentions raised in the Original Application and has submitted that the case of the Applicant does not stand on true and legal ground. The Applicant was not 18 years of age when he applied for the said post. He pointed out the advertisement wherein the Respondent-State has specifically mentioned that on 31.05.2016 the candidate should be of 18 years of age. The Applicant has submitted application on 07.01.2017 and on that date also he was not 18 years of age. The learned P.O. has pointed out that the Respondent has received complaint from one Mr. Sonybapu

Genu Bachkar challenging the eligibility of the Applicant on the ground of his age. The learned P.O. further argued that the Applicant did not disclose his correct age at the time of filling of the application form and therefore his service was rightly terminated, as he was not made permanent.

5. In reply learned Advocate for the Applicant has relied on the application which was submitted by the applicant on 07.01.2017 and has submitted that the date of birth mentioned by the applicant is 12.01.1999 and he has not suppressed any fact from the Respondent. He further pointed out in clause 3(b)(i) of the Recruitment Rules for the post of Clerk-typist, which were issued on 03.09.1993, it is stated that the candidates who have applied by nomination should not be less than eighteen years of age and not more than thirty years of age. He submitted that in fact the Respondent had earlier considered the objection raised by Mr. Sonybapu Genu Bachkar, and it was filed.

6. We have gone through the relevant documents. Admittedly the date of birth of the applicant is 12.01.1999. His service was terminated only on the ground that he was not eligible i.e. was underage, as he has not completed 18 years of age. In the advertisement dated 29.12.2017 the cut-off date for the age was 18 years as on 31.05.2016. However, we failed to understand why this particular date 31.05.2016 is declared as cut-off date for the purpose of age which puts bar on age of 6 months prior to the impugned advertisement. As per the Recruitment Rules

dated 03.09.1993 the candidate is required to complete his 18 years of age at the time of his appointment. Thus, keeping Rule 3(b)(i) of the Recruitment Rules on the background we scrutinized the application form submitted by the applicant which is the crux of the matter. In the Clause 6 of the said application the applicant has mentioned his age as 18 years and 1 day. The said application is a printed proforma issued by the Respondent and the candidates were expected to fill up the blanks in the said proforma. Clause (6) in the application in fact is the answer to this issue. In clause 6, the date is printed as 12.01.2017 which is the last date for the submission of the application for the said post. The advertisement was issued on 29.12.2017 wherein cut-off date for completion of 18 years of age was mentioned as 31.05.2016. However, neither 29.12.2017 nor 31.05.2016 are mentioned in Clause 6 of the said proforma issued by the Respondent. Undoubtedly, the Respondent wanted age of the candidate as on 12.01.2017 i.e. on the last date of the submission of the applications otherwise it would not have appeared in the proforma. We are also in the agreement with the Respondent that the cut-off date is considered as the last date of the submission of the application and i.e. the correct procedure as per the Recruitment Rules of 1993. The applicant has mentioned his date of birth in Clause (5) as 12.01.1999 and in the next Clause (6) he has mentioned his age as on 12.01.2017 i.e. 18 years, zero month and one day. Thus at the time of submission of the application the applicant was 18 years and one day only Thus as per the requirement of the rules the age of the applicant cannot be challenged as he has fulfilled the criterion of the age.

7. The learned Advocate has also pointed out that the Respondent has issued certificate in respect of giving him permanent status on 18.09.2020 i.e. after completion of 3 years of service. He pointed out that the order of termination dated 11.09.2020 signed by the officer was on 19.12.2020 and thereafter was served on him without giving any show cause notice. Technically speaking the applicant was made permanent by order dated 18.09.2020 and thereafter by order dated 19.09.2020 was signed on 19.02.2020 and was served one day later. Thus, it was also necessary for the Respondent to issue show cause notice to the applicant before terminating his service in view of *audi alteram partem*, the principles in view of the natural justice should have been followed by the Respondent-State. Hence we are of the view that the order of termination of service of the applicant is illegal and required to be quashed and set aside.

8. Applicant has prayed for back-wages. The learned P.O. Mr. Chougule has opposed this prayer on the ground that the principle of no work no pay is applicable. We clarify that if the applicant himself by choice takes leave or does not go on work, this principle of no work, no pay is to be followed, however, when the Government servant is compelled to stay at home for the reason which is subsequently found illegal and it is not the fault of the Government servant, then he is entitled to back-wages. Thus, under such circumstances we allow the application with the following order :-

ORDER

- (A) The order of termination dated 22.09.2020 is hereby quashed and set aside. Applicant is entitled to back-wages, from the date of termination i.e. 11.09.2020.
- (B) Respondent is directed to issue order of reinstating the Applicant by Tuesday, 21.12.2021 and the applicant to join duty on Tuesday i.e. 21.12.2021.

Sd/-

Sd/-

(Medha Gadgil)
Member(A)

(Mridula Bhatkar J.)
Chairperson

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