

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 622 of 2022 (D.B.)

Prashant Ramdas Madavi,
Age 38 years, Occ;Nil,
r/o Duplex No.9, Biyami Nagar,
Tukumb, Chandrapur-442401.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Principal Secretary,
Department of Agriculture, Mantralaya, Mumbai-440 032
- 2) Commissioner of Agriculture,
Maharashtra State, Pune, Central Building, Pune.
- 3) District Superintendent Agriculture Officer, Civil Lines, Chandrapur.

Respondents.

S/Shri A.C. and N.A. Dharmadhikari, Advs. for the applicant.
Shri A.M.Ghogre, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 03/10/2023.

J U D G M E N T

Heard Shri A.C. Dharmadhikari, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The regular Division Bench is not available. The Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai issued Circular No.MAT/MUM/JUD/469/2023,dated 24/04/2023. As per the direction of Hon'ble Chairperson, if both the parties have consented for final disposal, then regular matter pending before the Division Bench can

be disposed of finally. The matter is heard and decided finally with the consent of learned counsel for parties.

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

The applicant was appointed in the year 2008 after passing the examination conducted by the M.P.S.C. on the post of Agricultural Officer, Class-II (Group-B). The applicant joined the said post on 20/08/2009. The applicant could not pass the departmental examination. The respondents without issuing any notice to the applicant, terminated his services as per order dated 13/05/2022 on the ground that he has not completed probation period. It is submitted by the applicant that his probation was not completed by the respondents, but it is deemed to be completed after completion of two years of service. The applicant was appointed in the year 2009 and his services are terminated in the year 2022, i.e., after the completion of 13 years of service. Hence, the applicant has challenged the order dated 13/05/2022 for the following reliefs –

“(9) (1) quash and set aside the order dated 13th May 2022 at Annexure-A1, terminating the services of the applicant and after quashing and setting aside the same further be pleased to grant all consequential benefits to the applicant including continued of service for all the purposes of service benefits as well as backwages along with interest,

2) grant any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

(10) (i) *stay the effect operation and execution of order dated 13/05/2022, passed by the respondent no.1 at Annexure-A1 and allow the applicant to continue to remain in service on the post which he was holding at the time of his illegal termination,*

(ii) *grant ex-parte ad interim relief in terms of prayer clause (i)."*

4. The O.A. is strongly opposed by the respondents. It is submitted that the applicant has not passed the departmental examination and therefore his services are terminated. Hence, the O.A. is liable to be dismissed.

5. During the course of submission, the learned counsel for the applicant has pointed out the Judgment of the M.A.T., Principal Bench, Mumbai in O.A.No.114/2022, decided on 06/02/2022 and the Judgment of this Tribunal in O.A.No.427/2022, decided on 13/07/2023. The learned Counsel for applicant has pointed out the Judgment of Hon'ble Supreme Court in the case of ***Karnataka State Road Transport Corporation and Another Vs. S. Manjunath***. The Hon'ble Supreme Court has held that "if the employee is continued for more than two years and his probation is not completed, then the probation of that employee is deemed to be completed after completion of two years of service."

6. In the present O.A., the applicant is continued for a period of 13 years from the date of his initial appointment, therefore, his

probation is deemed to be continued in view of the Judgment of the Hon'ble Supreme Court.

7. The services of the applicant are terminated without issuing any show cause notice or without giving any opportunity of hearing. The M.A.T., Principal Bench, Mumbai in O.A.No.114/2022 in para-4 has observed as under –

“4. Learned counsel for the applicant points out to G.R dated 1.11.1977, which states that a Government employee is exempted from passing the departmental examination after attaining the age of 45 years. He further relies on the G.R dated 1.3.2018 by which the policy decision was taken to exempt a Government employee from passing the departmental examination after completion of age of 50 years.”

8. In view of the G.R. dated 01/03/2018 the policy decision was taken by the Government of Maharashtra to exempt the employee from passing the departmental examination after completion of age of 50 years. As per G.R. dated 01/11/1977, there is also policy decision taken by the Government of Maharashtra to exempt the employee from passing the departmental examination after completion of age of 45 years.

9. The M.A.T., Principal Bench, Mumbai in O.A.No.114/2022 in para-7 has observed as under –

“(7) We are surprised to know the fact that the Respondent-State terminated the services of the applicant without giving notice to the Applicant which is violative of Article 311 (1) of the Constitution of India. We

do not accept the submissions made by the learned P.O and so also the averments made in the affidavit in reply dated 3.6.2022. We make it clear that the principle of 'No Work No Pay' will not come in the way of the applicant as the applicant was illegally terminated by the Respondent-State."

10. In the present O.A., no any opportunity was given to the applicant. The ground on which his services are terminated is not legal and proper. The applicant's services are terminated on the ground that he has not completed probation period. The applicant was continued in service for about 13 years. In view of the Judgment of Hon'ble Supreme Court in the case of ***Karnataka State Road Transport Corporation and Another Vs. S. Manjunath*** if the employee is continued for more than two years, then the probation is deemed to be completed.

11. This Tribunal has also observed that without giving any opportunity if the services of the employee are terminated on the ground that probation is not completed after more than two years of services, then such termination is illegal. This finding is recorded by this Tribunal in O.A.427/2022, decided on 13/07/2023.

12. The Hon'ble Punjab and Haryana High Court in the case of ***Anil Kumar Chauhan Versus State of Haryana and Another*** has held that "*Completion of maximum period of probation - Employee allowed to continue in the post on completion of maximum period of*

probation is deemed to have been confirmed by implication - Such employee cannot be thrown out of employment after 5 years as if he is a probationer.

13. The Hon'ble Supreme Court in the case of ***Karnataka State Road Transport Corporation and Another Vs. S. Manjunath*** has held that "termination of services of probationer-- extension of automatic extension of probation period--maximum period of probation is as prescribed in the rules or in the appointment order including the extendable period--mere non-extension of probation where it can be extended does not imply automatic confirmation. Rather the presumption is of automatic extension of probation in the absence of any confirmation order. However, on expiry of maximum period prescribed for probation, if the employee is allowed to continue it carries presumption of automatic confirmation and after that the employee cannot be discharged as probationer for his unsatisfactory work and conduct-- For that purpose, he will have to be given a proper charge-sheet and opportunity to rebut the same--"

14. In the present O.A., the applicant was terminated without giving any opportunity of hearing to him on the ground that he has not completed probation.

15. In view of the Judgment of the Hon'ble Supreme Court in the case of ***Karnataka State Road Transport Corporation and***

Another Vs. S. Manjunath and the Judgment of the Hon'ble Punjab and Hariyana High Court in the case of ***Anil Kumar Chauhan Versus State of Haryana and Another***, it is clear that when the employee is continued for more than two years, then his services cannot be terminated on the ground that he has not completed probation within a period of two years. Hence, the termination of services of the applicant on the ground that he has not completed probation, such termination after 13 years of service is nothing, but illegal. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned order dated 13/05/2022 is hereby quashed and set aside.
- (iii) The respondents are directed to reinstate the applicant with continuity of service and other admissible benefits, as per the rules.
- (iv) No order as to costs.

Dated :- 03/10/2023.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

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 Vice Chairman.

Judgment signed on : 03/10/2023.