

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.777 OF 2015

DISTRICT : MUMBAI

Shri Ajit Babala Dongare.)
Working as Peon in the Returns S Branch,))
on the Establishment of the Respondent))
No.1 and residing at 1/91, Govt. Colony,))
Bandra (E). Mumbai 400 051.)...Applicant

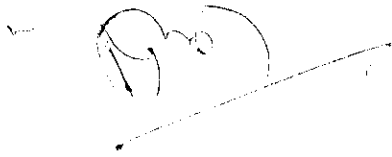
Versus

1. The Commissioner of Sales Tax.)
Maharashtra State, 8th Floor,)
Vikrikar Bhavan, Mazgaon,)
Mumbai 400 010.)
2. The Additional Commissioner of)
Sales Tax, Maharashtra State,)
Vikrikar Bhavan, Mazgaon,)
Mumbai 400 010.)...Respondents

Ms. S.P. Manchekar, Advocate for Applicant.

Shri K.B. Bhise, Presenting Officer for Respondents.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)



DATE : 04.02.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. The Applicant having been appointed on compassionate ground in Group 'C' post, but having been reverted to Group 'D' post for not clearing the required Typing Examination within the period of two years is up before us in this Original Application (OA).

2. We have perused the record and proceedings and heard Ms. S.P. Manchekar, the learned Advocate for the Applicant and Shri K.B. Bhise, the learned Presenting Officer for the Respondents.

3. The facts are not in dispute. The Applicant came to be appointed on compassionate ground as a Clerk-cum-Typist by the order dated 23.8.2007. He resumed duty on 3.9.2007. He should have cleared the Typing Examination conducted by the Government Commercial Examination Board within a period of two years from the said date of appointment and also to pass MS-CIT Examination also. The last mentioned examination was cleared by the Applicant within the prescribed time. He, however, failed to clear the Typing Examination within the period of two

years. A show cause notice came to be issued to him on 16.1.2010 for that reason. He submitted his explanation on 21.1.2010 informing that he had already appeared for the Marathi Typing Test in November, 2009 and it is clearly borne out by the record that he ultimately cleared the said Examination on 12.3.2010. But before that acting under a G.R. of 8.9.1997. he came to be reverted from Group 'C' post to Group 'D' post which per compulsion, he had to accept. He, however, is aggrieved by the said action and seeks a relief of quashing and setting aside of the order dated 9.2.2010 reverting him as mentioned above and to be re-appointed as Clerk-cum-Typist.

4. The Respondents by the Affidavit-in-reply have supported their action.

5. It is very clear from the above discussion that within a period of about a month or so from the prescribed last date, the Applicant cleared the Typing Examination also. A very detailed analysis of the relevant Rules may not be necessary now that this matter is fully governed by a judgment of a Division Bench of the Hon'ble Chief Justice of Bombay High Court at Aurangabad Bench being Writ Petition No.4872/2012 (Sachin V. Kshirsagar Vs. The State of Maharashtra and 2 Ors. and one another Writ



Petition dated 14.3.2013. This judgment was confirmed by the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No.20911/2013 (State of Maharashtra and others Vs. Gajanan K. Sahane).

6. The facts in Sachin's case and the present facts are quite clearly so similar as to make the ratio of Sachin's case squarely applicable hereto. In fact, in the OA itself, there is a reference to another judgment of this Tribunal rendered in the month of April, 2014 in the matter of Smt. J.R. Pathak in which the same course of action as mandated by Sachin (supra) was adopted. That being the settled position of law and the time distance between the last date by which the Typing Examination should have been cleared and was actually cleared being very short, we need not get detained by the academic aspect of whether the same course of action should be adopted, if the time distance was too large. In fact, there is no other go but to act in accordance with even the final order made in Sachin's case. The only difference is that in that matter, it was a case of termination while here the termination from the Group 'C' post was followed by the appointment to Group 'D' post. The final order will necessarily have to make this aspect clear and when we mention that the impugned orders are quashed and set aside, it must be so



understood as to mean that in the ultimate analysis, the Applicant will have to be restored to Group 'C' post.

7. The orders herein impugned are quashed and set aside. The Respondents are directed to restore to the Applicant the Group 'C' post from which he was ultimately reverted to Group 'D' post within four weeks from today with continuity of service with Group 'C' post and all service benefits. The Applicant shall, however, not be entitled to the difference of salary during the period he held the Group 'D' post and the date on which he is restored the Group 'C' post. The Original Application is accordingly disposed of in these terms with no order as to costs.

(R.B. Malik)
Member-J
04.02.2016

(Rajiv Agarwal)
Vice-Chairman
04.02.2016

Mumbai
Date : 04.02.2016
Dictation taken by :
S.K. Wamanse.