

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 1028/2021 (D.B.)

Rajashree W/o Prashant Yenurkar,
Aged about 44 years, Occ. Service,
R/o 236, Sahakar Nagar,
Khamla Road,
Nagpur-25.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Principal Secretary,
Department of Home (Transport),
Mantralaya, M.S.,
Mumbai-32.
- 2) The Transport Commissioner, M.S.,
5th Floor, Fountain,
Dursanchar Bhavan-2,
Mahatma Gandhi Marg,
Fort, Mumbai-32.
- 3) Regional Transport Officer, Nagpur (City),
In front of Giripeth Post Office,
Amravati Road, Nagpur.

Respondents

Shri Y.J.Maheshwari, Id. Advocate for the applicant.

Shri A.M.Khadatkar, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman &
Hon'ble Shri M.A.Lovekar, Member (J).**

JUDGMENT

Judgment is reserved on 01st March, 2023.

Judgment is pronounced on 13th March, 2023.

(Per:-Vice Chairman)

Heard Shri Y.J.Maheshwari, learned counsel for the applicant and Shri A.M.Khadatkar, learned P.O. for the Respondents.

2. The applicant joined service as per order dated 30th June, 2008 (A-3, P. 35). Subsequently, she was promoted as Senior Clerk in the pay scale of Rs. 5200-20,200/- (Grade Pay 2400).

3. With pursis dated 23.02.2023, service book record of Shri S.S.Siddiqui is filed by Id. P.O. at P. 169. As per this record Shri S.S.Siddiqui was promoted vide order dated 182 dated 03.08.2004 as an Accountant and was posted in Nagpur (Rural) in Transport Office on 16.08.2004 (afternoon). Thereafter he was promoted vide order dated 01.11.2010 to the post of Assistant Motor Vehicle Prosecutor (Pay scale 9300-34800/- G.P. 4400/-).

4. Shri S.S.Siddiqui, Assistant Motor Vehicle Prosecutor retired on superannuation on 30.06.2013.

5. The respondents have filed their reply on 18.04.2022 and as per para no. 4 of the reply respondent no. 3 i.e. Regional Transport Officer, Nagpur City handed over the additional charge of Assistant Motor Vehicle Prosecutor to the applicant w.e.f. 01.07.2013.

6. In earlier round of litigation i.e. O.A. No. 136/82017, M.A. 139/2017 & 210/2017 (A-12, P. 438) was filed before Aurangabad

Bench and due to non-availability of Division Bench matter was heard by a Single Bench and by said order direction was given to the respondent no. 1 to finalize the Recruitment Rules of the said post i.e. Assistant Motor Vehicle Prosecutor within four months from the date of the order and thereafter to issue advertisement, if required. It was also ordered that applicants/ Co-applicants shall not be dis-continued until further orders. Again Division Bench of M.A.T., Aurangabad Bench heard the matter on 09.01.2019 & 13.01.2019 and further many dates till 09.08.2019 but till that time recruitment rules were not framed. In reply the respondents have made following submission in paras 9 &10:-

“9. It is further submitted that, when the proposal for formulation of recruitment rules for the cadre of Assistant Motor Vehicle Prosecutor was again submitted for the opinion of the Law and Judiciary Department on 01.02.2020, the said opinion was reaffirmed. However, the Law and Judiciary Department further stated that, if the Transport Department differed from the above mentioned opinion, it may request for the opinion of the Advocate General, Maharashtra State. In view of the above, the Respondent no. 1 has requested the Advocate General, Maharashtra State to give opinion on this matter and the same is presently under the latter’s consideration.

10. *It means that even after order of M.A.T., Aurangabad Bench recruitment rules have not been framed till now.*

11. *It is submitted that, the answering respondent no. 3 handed over the additional charge of Assistant Motor Vehicle Prosecutor to the applicant, as the said post has been lying vacant for want of promulgation of the recruitment rules for the cadre of Assistant Motor Vehicle Prosecutor. The fact remains that, the applicant is holding the substantive charge of Senior Grade Clerk in the office of respondent no. 3 and drawing salary commensurate to her posting. Further, she is entitled to additional pay by virtue of the additional charge of the post of Assistant Motor Vehicle Prosecutor admissible vide Rule 56 (B) of the M.C.S.R. (Pay) Rules, 1981."*

7. The applicant has sought following reliefs:-

- A. *Direct the respondent no. 1 to grant Ad-hoc promotion to the applicant to the post of Assistant Motor Vehicle Prosecutor w.e.f. 01.07.2013.*
- B. *Direct the respondent no. 1 to grant the applicant, the pay scale attached to the post of Assistant Motor Vehicle Prosecutor w.e.f. 01.07.2013 along with interest and all other consequential benefits.*

C. Direct the respondent no. 1 to finalize the recruitment rules in respect of promotion to the post of Assistant Motor Vehicle Prosecutor, within the time limit as may be specified by this Tribunal.

8. As directed by this Tribunal, Id. P.O. has filed pursis on 23.02.2023 (PP. 163 & 164) and on P. 163 along with this pursis he has listed certain documents. As per order, on P. 165 Shri S.S.Siddiqui who was Senior Clerk was promoted to the post of Assistant Motor Vehicle Prosecutor on following condition:-

A. Temporarily promoted for 11 months/ Finalization of recruitment rules for Assistant Motor Vehicle Prosecutor whichever happens earlier.

9. In documents at PP. 182 to 184, it is mentioned that Shri S.S.Siddiqui retired on 30.06.2013 on superannuation. After superannuation of Shri S.S.Siddiqui, the applicant was handed over his Additional Charge as Assistant Motor Vehicle Prosecutor from 01.07.2013 and she is holding it till date (Approx 10 years).

10. The applicant was promoted from Junior Clerk to Senior Clerk by order dated 25.06.2020 (X-1, P. 170) in open category. Now the

applicant's claim is that Shri S.S.Siddiqui was promoted from Senior Clerk to Assistant Motor Vehicle Prosecutor and he has since retired.

11. On perusal of record it appears that respondent no. 3 has recommended the applicant for promotion vide his letter dated 07.02.2017 (PP. 174 to 176). Similarly, respondent no. 2 has also recommended to respondent no. 1 vide his letter dated 01.07.2016 (P. 179).

12. Shri S.S.Siddiqui (Sr. Clerk) was temporarily promoted as Assistant Motor Vehicle Prosecutor vide order dated 01.11.2010 (P. 165 of pursis of ld. P.O.) on following two conditions:-

A. For 11 months/Recruitment Rules is finalized, whichever is earlier.

There was no hurdle in promoting the applicant on the same terms. Hence the order:-

ORDER

1. Respondent no. 1 is directed to issue necessary orders to pay 10% of basic as admissible vide Rule 56 (B) of M.C.S.R. (Pay) Rules, 1981 from 01.07.2013 when the applicant took over additional charge of Assistant Motor Vehicle Prosecutor, i.e. higher responsibility till 24.06.2020.

2. Applicant was promoted as Sr. Clerk vide order dated 25.06.2020 so, respondent no. 1 is directed to promote applicant temporarily as per rules and regulations and if otherwise eligible from 25.06.2020 as per precedent of Shri S.S.Siddiqui on same terms and conditions i.e. temporary promotion for 11 months or finalization of recruitment rules whichever happens earlier.
3. As per Prayer Clause 'C' respondent no. 1 is directed to finalize the recruitment rules in respect of promotion to the post of Assistant Motor Vehicle Prosecutor within six months from the date of receipt of this order.
4. No order as to costs.

(M.A.Lovekar)
Member(J)
aps
Dated - 13/03/2023

(Shree Bhagwan)
Vice Chairman

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

Name of Steno : Akhilesh Parasnath Srivastava.

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

Judgment signed : 13/03/2023.
on and pronounced on

Uploaded on : 14/03/2023.