

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 19 of 2022 (DB)

Vijay Sundersingh Chavhan,
Aged about 38 years, Occ. Service,
Resident of 95, Deepkamal Layout,
Shahu Nagar, Besa Road,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Department of Law and Judiciary,
Mantralaya, Mumbai-400 032.
- 2) The State of Maharashtra,
Through its Chief Secretary,
General Administrative Dept.,
Mantralaya, Mumbai-32.
- 3) Charity Commissioner,
3rd Floor, 83, Dr. Annie Besent Road,
Worli, Mumbai-400 018.
- 4) Joint Charity Commissioner,
Nagpur Division, Civil Lines,
Nagpur.

Respondents.

Shri R.V.Shiralkar, Ld. counsel for the applicant.
Shri H.K.Pande, ld. P.O. for the respondents.

Coram :- Shri Shree Bhagwan, Vice-Chairman and
Shri M.A. Lovekar, Member (J).

Date of Reserving for Judgment : 28th September, 2022.

Date of Pronouncement of Judgment: 20th October, 2022.

JUDGMENT

Per : Member (I).

(Delivered on this 20th day of October, 2022)

Heard Shri R.V.Shiralkar, ld. Counsel for the applicant and Shri H.K.Pande, ld. P.O. for the respondents.

2. Facts leading to this O.A. are as follows. The applicant is B.A., LL.M.. He was appointed as Inspector in the year 2011 and worked on the establishment of respondent no. 3. By order dated 20.05.2016 he was promoted as Superintendent. Presently he is working as a Superintendent on the establishment of respondent no. 4. In the year 2016 he passed departmental examination held in accordance with Rules of 2015 notified on 03.12.2015 (A-2). Rule 3 of these Rules provides that after passing such examination once, it is not necessary to pass it again for any of the posts in promotional chain mentioned in these Rules. It is the contention of the applicant that he is eligible for being considered for the promotional posts of Assistant Charity Commissioner as per the applicable Rules since he possesses requisite qualification and experience. His further contention is that since he passed the departmental examination in the year 2016 he need not appear for such examination and pass it again in view of Rule 3 of Rules of 2015 and hence, the stipulation in the relevant Rule to pass such examination will not come in his way. On these grounds the applicant is seeking following reliefs:-

“A. By way of appropriate direction, direct respondent no. 1 to consider the case of the applicant for promotion on the post of Assistant Charity Commissioner as per Section 5(1)(d) of the M.P.T. Act, 1951 having fulfilled the criteria and eligibility for the same to meet the ends of justice.

A-1. Hold and declare that the applicant has already passed the examination required for promotion on the post of Assistant Charity Commissioner and new Rules framed on 02.06.2022 are not applicable to the applicant.

A-2. Direct the respondent no. 1 to consider the case of the applicant for the promotion for the post of Assistant Charity Commissioner, as per the provisions of the Recruitment Rules prevalent at the time of appointment of the applicant.

B. Direct the respondent no. 1 not to make any appointment on deputation to the 50% quota for promotion to the post of Assistant Charity Commissioner throughout the Maharashtra during pendency of the present application.

B-1. The provisions of transfer on deputation should be removed from the Recruitment Rules as per G.R. dated 17.12.2016 and Information Book Rule no. 11.

C. Direct the respondent no. 1 to take immediate steps to consider the case of the applicant for promotion on the post of Assistant Charity Commissioner, by constituting the departmental promotion committee's meeting in this regard, in the interest of justice.

D. Grant any other relief in favour of the applicant which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

3. It is the case of the respondents that as per relevant Rules the applicant will have to pass the departmental examination to be conducted as per applicable Rules and he cannot claim exemption from passing such departmental examination on the ground of having cleared the departmental examination as per Rules of 2015 because said examination does not confer eligibility for the promotional/ higher post of Assistant Charity Commissioner.

4. In the reply of respondent no. 1 following chronology is given:-

"i) Initially Section 5(2A)(c) of the said Act read as under:-

"who holds a degree in law of any university in India established by law or any other University recognised by the State Government in this behalf and has worked in the Charity Organisation after obtaining such degree for not

less than five years in an office not lower in rank of Superintendent or Legal Assistant.

ii) In the year 2017 section 5(2A) of the said Act came to be amended and in place of earlier clause (c) following clause (c) came to be substituted:

(c) who holds a degree in law of any University established by law or any other University recognised by the State Government in this behalf and has worked in the Charity Organization for not less than 5 years after obtaining such degree on a post not lower in rank than Senior Clerk or Steno-typist and has passed the competitive departmental examination to be conducted as per the rules prescribed by the Charity Commissioner.

iii) The department processed the file for promotion of the eligible candidates to the post of Assistant Charity Commissioner. At the relevant time, it came to the notice of the department that by virtue of amended Section 5(2A)(c) the Superintendent/PRO/Legal Assistant will not be eligible for promotion but they can be appointed by selection through a 'Limited Departmental Examination'. Hence, to resolve the issue of frustration among the candidates working in the feeder cadre

of the post of Assistant Charity Commissioner as their promotion channel was stopped, the Government came up with a proposal of amendment to Section 5(2A) by adding clause (d) to it.

Accordingly by Maharashtra Act No. XXVI of 2020 new clause (d) came to be introduced w.e.f. 05.10.2020. The said clause (d) reads as under:

(d) who, being a person not falling under clause (c), and who holds a degree of law of any University established by law or any other University recognised by the State Government in this behalf and has worked in the Charity Organization, for not less than 3 years, after obtaining such degree on a post of the Superintendent or the Public Relation Officer or the Legal Assistant and has passed the departmental examination to be conducted as per the rules prescribed by the Charity Commissioner.”

Aforequoted provisions are at annexures R-1 and R-2.

5. Respondent no. 1 has contended as follows:-

“In view of the provisions of Section 5(2A)(d) of the said Act, the draft rules of departmental examination were submitted by the office of the Charity Commissioner to the Law and Judiciary Department (L&JD) for the approval. The L&JD after

obtaining remarks of the General Administration Department revised the draft rules of Departmental Examination and communicated the same to the office of the Charity Commissioner by letter dated 06.10.2021 a copy of which is annexed herewith as Annexure-R-3.

Now as per the clause (d) of Section 5(2A) of the said Act, it is for the Charity Commissioner to prescribe the said rules and conduct the examination accordingly. After examination is conducted by the Charity Commissioner, the candidates who will be successful in the said examination and have completed 3 years of service in the feeder cadre after obtaining the degree in law will be eligible for being considered for promotion to the post of Assistant Charity Commissioner.”

6. Respondent no. 1 has further contended as follows:-

“It is the contention of the applicant that once the candidate has passed post recruitment examination (PRT) as per the ‘Post Recruitment Examination (to the posts of Superintendent, Public Relation Officer, Group-B (Non - Gazetted), Bench Clerk, Judicial Clerk, Inspector, Accountant, Senior Clerk, Record Keeper and Clerk-cum-typist), in the Charity Organization under the Law and Judiciary Department, Rules

2015' (hereinafter referred to as 'Rules of 2015'), then it is not necessary for the candidates in the feeder cadre to the post of Assistant Charity Commissioner to pass departmental examination provided under clause (d) of the Section 5(2A) of the said Act, is misconceived.

The PRT is an examination conducted after recruitment of a candidate to the posts mentioned in Rules of 2015. Rule 3 of the Rules of 2015 provides that a candidate is not required to pass examination again for promotion to the higher post in the hierarchy. Rule 4 of the Rules of 2015 enumerates the consequences of not clearing the examination in stipulated time viz. future increments will be withheld and seniority will be lost. Further Rule 5 of the Rules of 2015 provides for exemption from passing the said examination on attaining the age of 50 years.

Rule 3 of the Rules of 2015 is substituted by amendment vide Notification dated 02.07.2021. The relevant portion of amendment reads as under:-

3. Period and number of chances:-Subject to the provisions of these Rules, the persons appointed to the post of Superintendent, Public Relation Officer, Group-B (Non-Gazetted), Bench Clerk, Judicial Clerk, Inspector,

Accountant, Senior Clerk, Record Keeper and Clerk-cum-Typist, in the Charity Organization, shall be required to pass the examination within four years from the date of their appointments and in three chances. After passing such examination once, it is not necessary to pass such examination again for promotional channel of any of the above referred posts.

Thus, it can be seen from the provisions of the Rules of 2015 that the said rules are applicable only to the posts from clerk-cum-typist to superintendent and by no stretch of imagination it can be construed that the said Rules are applicable to the post of Assistant Charity Commissioner.”

7. Copy of the Rules of 2015 is at Annexure-R-4. Copy of notification dated 02.07.2021 is at R-5.
8. Respondent no. 1 has placed on record its reply dated 22.03.2022 (A-R-6) to the representation made by the applicant and one Sanjay Joshi. Said reply reads as under:-

“उपरोक्त विषयांकित प्रकरणी संदर्भाधीन अर्जाच्या अनुषंगाने दिलेल्या निर्देशानुसार आपणांस कळविण्यात येते की, सहायक धर्मादाय आयुक्त या पदावर पदोन्नती देताना विहित केलेली विभागीय परीक्षेची सांगड विधि व न्याय विभागांतर्गत धर्मादाय संघटनेतील अधिक्षक, जनसंपर्क अधिकारी (गट-ब अराजपत्रित), लेखापाल, निरीक्षक, न्याय लिपिक, शिस्तदार, वरिष्ठ लिपिक, अभिलेखापाल, लिपिक-टंकलेखक पदांकरीता सामायिक विभागीय प्रवेशोत्तर

परीक्षा नियम, २०१५ च्या नियमातील सामायिक विभागीय परीक्षेशी करणे योग्य नसून, तसे सदर नियमामध्ये अभिप्रेत देखील नाही. त्यामुळे महाराष्ट्र सार्वजनिक विश्वस्त व्यवस्था अधिनियम, १९५० च्या कलम ५ (२अ) मधील खंड (ड) मध्ये नमूद तरतुदीनुसार पात्र उमेदवारच सहायक धर्मादाय आयुक्त या पदावर पदोन्नतीकरीता पात्र राहतील.”

9. The applicant has also contended as follows:-

“It is a matter of record that draft rules of departmental examination were submitted by the office of the charity commissioner to the Law and Judiciary Department for approval. Law and Judiciary after obtaining the remarks of G.A.D. revised the draft rules of departmental examination and communicated the same to the office of charity commissioner. If the remarks of the G.A.D. are perused, the G.A.D. has in clear terms stated that examination is to be taken with books looking at the difficult syllabus of examination. Further the G.A.D. has stated that how many marks for subjective and objective questions is to be made clear. The respondent charity commissioner has acted in contravention of suggestions of G.A.D. and intentionally framed rules of departmental examination wherein examination is kept without books. There is no clarity on point of subjective and objective questions. This is done to deprive the cadre of Superintendent or legal Assistant from getting appointment as Assistant Charity Commissioner and making rule 5 (2) of the act

redundant. Further, the general administration department has also advised that the employees of the feeder cadre who have crossed the age of 50 years or who have to their credit 15 years of service in the feeder cadre must be considered to be exempted from passing the departmental examination. However, the respondent no. 2 has acted in contravention, malafide and ignored such condition in order to deprive the feeder cadre from getting promotion on the post of Assistant Charity Commissioner.

”

10. By relying on various rulings of the Hon'ble Supreme Court (mentioned on pages 87 & 88) Id. C.P.O. has put forth following propositions of law:-

“1. Recruitment process, as is well known, must be commensurate with the statute or the statutory rules operating in the field.

2. A person does not acquire a legal right to be appointed only because his name appears in the select list.

3. The State as an employer has a right to fill up all the posts or not to fill them up. Unless a discrimination is made in regard to the filling up of the vacancies or an arbitrariness is committed,

the candidate concerned will have no legal right for obtaining a writ of or in the nature of mandamus.

4. *The Government has no constraint to make appointments either because there are vacancies or because a list of candidates has been prepared and is in existence.*

5. *Mere inclusion of a name in the select list for appointment does not create a right to appointment even against existing vacancies and the State has no legal duty to fill up all or any of the vacancies.”*

11. According to the applicant, none of these rulings is applicable to the facts of the case. The applicant, on the other hand, has relied on the following ruling:-

1. *P.Mehendran Vs. State of Karnataka, AIR 1990 SC 405. In this case it is held:-*

“Construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who had no control over the subject matter. Every statute or statutory Rule is prospective unless it is expressly or by necessary implication has retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the Rules must be held to

be prospective. If a Rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure.

In the instant case, the amending Rule of 1987 does not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment in enforcing the Rule with retrospective effect. The amended Rule, therefore, could not be applied to invalidate the selection made by the Commission.”

The aforesaid ruling arose out of the Judgment dated 05.12.1989 in P.Mahendran Vs. State of Karnataka delivered by Karnataka High Court. In this Judgment, Judgment dated 30.09.1987 of Karnataka Administrative Tribunal delivered in O.A. No. 1716 of 1987 was challenged.

12. One of the principal contentions of the applicant is that now he need not again appear for the departmental examination since he has passed the examination held as per Rules of 2015. Title clause of this notification dated 03.12.2015 reads as under:-

“Short title:-These rules may be called the Post Recruitment Examination (to the posts of Superintendent, Public Relation Officer, Group-B (Non Gazetted), Bench Clerk, Judicial Clerk, Inspector, Accountant, Senior Clerk, Record Keeper, Clerk-Cum-Typist), in the Charity Organisation, Maharashtra State, under the Law and Judiciary Department, Rules, 2015.”

Thus, it is apparent that the departmental examination provided by Rules of 2015 was for filling posts of Superintendent, Public Relation Officer, Group-B (Non-Gazetted), Bench Clerk, Judicial Clerk, Inspector, Accountant, Senior Clerk, Record Keeper, Clerk-Cum-Typist, in the Charity Organization. Here, the applicant is aspiring for the post of Assistant Charity Commissioner. Departmental examination to be held for the said post which is higher and requires knowledge of law cannot be equated with the examination conducted as per Rules of 2015. Consequently, the applicant will not derive any assistance from the ruling sought to be relied upon by him. Once this conclusion is reached it would follow that the applicant shall not acquire eligibility for the post of Assistant Charity Commissioner unless he passes the examination prescribed by applicable Rules.

13. One more contention raised by the applicant is as follows:-

“According to recruitment rules made by the law and judiciary department for charity organization in the year 1986 the provision of transfer on deputation of suitable judicial officer quota of 15% should be amended in one year from the date of the G.R.. The last date for making amendment in recruitment rules was 16.12.2017. Hence the 15% quota of deputation has no legal validity now. A copy of the recruitment rules 1986 is annexed here and marked as Annexure-A-8. A copy of the information book with G.R. dated 17.12.2016 is annexed here and marked as Annexure-A-9. According to Government Resolution dated 28.01.1975 all promotions upto the first promotion to the post should be on the basis of seniority. A copy of the G.R. is annexed here and marked as Annexure-A-10. The recruitment rule should be amended, quota of appointment 50% by direct recruitment and 50% by the promotion as per the G.A.D. G.R. dated 26.03.1970. A copy of the G.A.D. G.R. dated 26.03.1970 is annexed here and marked Annexure-A-11. The respondents are not following their own resolutions scrupulously and in order to appoint/depute judicial officers the applicant is deprived of promotion. The examination rules are framed in such fashion

that nobody from cadre of Superintendent/ Public Relation Officer/ Legal Assistant will be able to pass such examination."

14. The relevant part of G.R. dated 17.12.2016 reads thus:-

“एखाद्या संवर्गात अधिक प्रमाणात प्रतिनियुक्तीने नियुक्त्या दिल्यास मूळ संवर्गातील पदोन्नत्या प्रभावित होतात व मूळ संवर्गातील कर्मचा-यांवर अन्याय होतो. असे होवू नये म्हणून ज्या संवर्गात प्रतिनियुक्तीने नियुक्ती करावयाची आहे, त्या संवर्गाच्या प्रतिनियुक्तीसाठी विनिर्दिष्ट केलेल्या १५ टक्केच्या मर्यादेपर्यंतच पदे प्रतिनियुक्तीने भरता येतील. ज्या संवर्गासाठी सेवाप्रवेश नियमात प्रतिनियुक्तीने पद भरण्यासंदर्भात तरतूद अद्याप करण्यात आली नसेल तेथे संवर्गसंख्येच्या जास्तीत जास्त १५% पदे प्रतिनियुक्तीने भरता येतील, तथापि, या आदेशापासून एक वर्षात सेवाप्रवेश नियमामध्ये तशी तरतूद विभागाने करून घ्यावी.”

The relevant instructions in the Book of Instructions at page

no. 43-CK are as follows:-

“ज्या पदावर प्रतिनियुक्तीने नियुक्ती केली जाते अशा पदाच्या सेवाप्रवेश नियमात सरळसेवा, पदोन्नती यानंतर बदलीने प्रतिनियुक्तीवर (by transfer on deputation) नियुक्तीचा प्रकार समाविष्ट करावा व जास्तीत जास्त १५% पदे प्रतिनियुक्तीने भरता येतील अशी सुधारणा सेवाप्रवेश नियमात दिनांक १६.१२.२०१७ पर्यंत अधिसूचित करावी (या अगोदरच सेवा प्रवेश नियमामध्ये संवर्ग संख्येच्या १५% पेक्षा जास्त पदे प्रतिनियुक्तीने भरण्याची तरतूद केली असेल अशाप्रकरणीही जास्तीत जास्त १५% पदे प्रतिनियुक्तीने भरण्याबाबतची सुधारणा करण्यात यावी). अशी सुधारणा अधिसूचित करण्यासाठी दिनांक १६.१२.२०१७ हा अंतिम दिनांक असल्यामुळे त्या तारखेपर्यंत एकूण संवर्गसंख्येच्या १५% च्या मर्यादेत त्या संवर्गातील पदे प्रतिनियुक्तीने भरता येतील. अंतिम तारखेपर्यंत सुधारणा अधिसूचना निर्गमित न केल्यास दिनांक १६.१२.२०१७ नंतर त्या संवर्गामध्ये प्रतिनियुक्तीने पदे भरता येणार नाहीत.

उदाहरणादाखल मंत्रालयीन सहसचिव संवर्गासाठी अधिसूचित केलेल्या सेवा प्रवेश नियमाची प्रत सोबत जोडली आहे.”

No provision as contemplated by the aforesaid guidelines has been made so far in the Recruitment Rules. It would be open to the

respondent department to take steps for incorporating such provision in the Recruitment Rules.

15. It is the grievances of the applicant that new rules framed on 02.06.2022 are such that nobody from the cadre of Superintendent/Public Relation Officer/ Legal Assistant will be able to pass the examination. We find no merit in this submission. It is apparent that the post of Assistant Charity Commissioner requires knowledge of Law and hence calling upon the aspirants to clear the examination which is devised to test such knowledge cannot be faulted.

16. For the reasons discussed hereinabove the O.A. is dismissed. The respondent department shall be at liberty to take necessary steps for amendment to Recruitment Rules so as to bring them in line with the guidelines contained in G.R. dated 17.12.2016/ instructions contained in the Book of Instructions. No order as to costs.

(M.A.Lovekar)
Member(J)

aps

Dated – 20/10/2022

(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&Member(J).

Judgment signed on : 20/10/2022.
and pronounced on

Uploaded on : 21/10/2022.

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