

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 361 of 2017 (D.B.)**

Ajay S/o Dalvirsingh Rathod,  
aged about 43 years, Junior Clerk,  
Office of District Treasury Officer,  
Chandrapur.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through the Secretary to Government,  
Finance Department, Mantralaya, Mumbai.
- 2) The Director of Accounts and Treasuries,  
New Government Kutir nos. 15 and 16,  
Plot no.176, Free Press Journal Marg,  
Mumbai-400 021.
- 3) The District Treasury Officer,  
Chandrapur.
- 4) The Maharashtra Public Service Commission,  
Department of Examination  
through its Secretary, Mumbai-400 021.

**Respondents.**

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**Shri M.R. Rajgure, Advocate for the applicant.**

**Shri M.I. Khan, learned P.O. for the respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J) and  
Hon'ble Shri Shree Bhagwan, Member(A).**

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**JUDGMENT**

**PER : V.C. (J).**

**(Delivered on this 8<sup>th</sup> day of October,2018)**

Heard Shri M.R. Rajgure, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The applicant in this case who is a Junior Clerk in the office of District Treasury Officer, Chandrapur has claimed following reliefs:-

*“(1) To allow this Original application and to direct the respondents to include the name of the applicant in the select list prepared for promotion to MFAS cadre Class-II at appropriate place, in the order of his merit, obtained by him in the MFAS examination of Class-II conducted by Public Service Commissioner from 27/05/2015 to 30/05/2015 after setting aside impugned select list published vide circular no.sanieko/12-2016/prasha arap/salea, nini/nano.2.2011/1252, dated 16/12/2016 marked Annexure-A-1.*

*(2) Also to declare that directions of Maharashtra Public Service Commission or by the Maharashtra Administrative Tribunal, are not necessary, as the applicant has duly passed MFAS examination, after clear orders from Hon. Tribunal and once applicant was allowed to appear examination, Public Service Commission cannot withheld result, in respect of applicant.*

*(3) and also to declare that reference made by Shri A.C. Kolhe, Joint Director (Prashasan) Accounts and Treasuries, Mumbai to Maharashtra Public Service Commission vide Annexure-A-3, dated 03/05/2017 is uncalled for.*

*(3A) Be pleased to declare that the applicant will be entitled to get deem date of promotion above his juniors who had secured less marks in MFAS examination of May,2015.”*

3. From the aforesaid reliefs, it will be clear that the applicant has claimed for a direction to include his name in the select list prepared for promotion to MFAS cadre, Class-III at appropriate place in order of his merit and has also requested to correct the list published on 16/12/2016. The applicant was allowed to appear for the examination in view of the order passed by this Tribunal in O.A.196/2015 and was declared successful. According to the applicant, as per the recruitment rules a candidate has to appear for the departmental examination before he crossed the age of 40 years. The applicant could not clear the examination before crossing the age of 40 years, though he was eligible.

4. A detailed order was passed on 11/07/2018 and in the said order the recruitment rules for appointment to the promotional post were considered. As per the rules, it was made obligatory on the part of the respondents to see that the departmental examination was conducted twice in a year and a candidate has to pass that examination within four chances. The applicant seems to have applied for the examination before crossing age of 40 years. However, no examination was conducted by the respondent authorities. The applicant therefore could not get chance to appear for the examination. In view of this, the applicant was directed to file short affidavit on the following points:-

*“(i) What is the date on which the applicant has crossed the age of 40 years.*

*(ii) The date of application filed by the applicant for the first time for appearing for such examination.*

*(iii) The date of passing of examination.”*

5. The State was also directed to file affidavit as to how many examinations were held during the period from 06/12/2012 till the applicant was declared successful subsequently on 15/10/2016 and to make it clear as to whether the examinations were conducted as per rules, i.e., twice in every year.

6. In response to the order passed on 11/07/2018 the applicant has filed affidavit which is at P.B. page nos. 181 & 182 (both inclusive). From the said affidavit it is clear that the applicant's date of birth is 01/01/1975 and he has crossed the age of 40 years on 31/12/2014. He submitted the application form for appearing in the MFAS examination conducted by the MPSC for the examination scheduled to be held in the month of April/ May,2014. Such application was made on 30/01/2014 and at that time his age was below 40 years. Earlier also the applicant applied for such examination in April/ May,2013 on 16/01/2013 and the said examination was to be held in April/May,2013. He then applied on 30/07/2013 for the examination to be held in the month of October/November,2013. However, no examinations were conducted either in April/May,2013 or

October/November,2013. Thus had this examination been conducted, the applicant should have been eligible for appearing for the examination since he was below age of 40 years.

7. The respondent nos.1 and 2 have also placed on record their short affidavit in pursuance to the order dated 11/07/2018 as already stated. The said affidavit is at P.B. page nos. 183 to 185 (both inclusive). In the said affidavit it is stated that during the period from 06/12/2012 to 15/10/2016 only two examinations were conducted by the respondent no.4 i.e. first to be conducted in April/May,2012 was conducted in February,2013 and the second which was to be conducted in October/November,2012 was conducted in the month of May,2015. It is admitted that the respondent no.4 has not conducted examinations as per the Maharashtra Finance and Accounts Services of Class-III rules i.e. twice in a year. It is admitted that one post for the applicant is kept vacant since the issue of crossing of age limit is under consideration in this O.A. It is admitted fact that the applicant has been declared successful in the qualifying examination on 15/10/2016 and he passed the examination in very first chance which he got. Admittedly before crossing the age of 40 years, the applicant could not get chance to appear for the qualifying examination since no examination

was conducted as per the rules and admittedly as per rules, the examination is to be conducted twice in a year.

8. The learned counsel for the applicant has also invited our attention to one communication addressed by the Joint Director (Administration), Accounts and Treasury, Mumbai dated 11/05/2017. The copy of which is at P.B. Page nos.149 & 150. In the said letter it has been stated that the applicant's application for appearing for qualifying examination was not accepted because he crossed the age of 40 years, but because of the order passed by this Tribunal in O.A.Nos. 196/2015 and 334/2015 he was allowed to appear and he was declared successful on 15/10/2016. The applicant's name has been now recommended for adding in the seniority list along with one Smt. Badwe and therefore sanction has been sought from the Government level. In such circumstances, there is absolutely no reason as to why the name of the applicant shall not be included in the select list prepared for promotion to MFAS cadre, Class-II at appropriate place in order of his merit, obtained by him in MFAS examination, Class-II conducted by the MPSC in between 27/05/2015 to 30/05/2015. There is absolutely no jurisdiction on the part of the applicant for not clearing the examination before crossing the age of 40 years since no examination was conducted by the respondents as

per the rules. We are therefore satisfied that the applicant has proved his claim on merits and therefore the following order :-

**ORDER**

- (i) The O.A. is partly allowed. The respondents are directed to include the name of the applicant in the select list prepared for promotion to the MFAS cadre, Class-II at appropriate place in the order of his merit obtained by him in the MFAS examination of Class-II, conducted by M.P.S.C. in between 27/05/2015 to 30/05/2015. Necessary steps shall be taken accordingly within three months from the date of this order.
- (ii) The respondents shall also consider the applicant's claim for deemed date of promotion about his juniors, if any, who has secured less marks in MFAS examination in May, 2015.
- (iii) No order as to costs.

**(Shree Bhagwan)**  
**Member(A).**

**(J.D. Kulkarni)**  
**Vice-Chairman (J).**

**Dated :- 08/10/2018.**