

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 468 / 2017 (S.B.)**

Premchand Mulchandji Shukla,
Aged about 59 years,
R/o Pensionpura,
Paratwada, District – Amravati (M.S.)

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Urban Development Cum Director,
Municipal Administration,
Having office at Directorate Nagar Parishad Administration,
Building of Govt. Transport Services,
3rd Floor, Sir Pochkhanwala Marg,
Warali, Mumbai- 30.
- 2) Divisional Commissioner Amravati Cum
Regional Director of Municipal Administration,
Amravati Division, Camp, Amravati.
- 3) Chief Officer, Municipal Council, Achalpur,
District- Amravati.

Respondents

Shri R.V.Shiralkar, Id. Advocate for the applicant.

Shri H.K.Pande, Id. P.O. for the Respondent nos. 1 & 2.

**Shri S.A.Puranik holding for Shri N.S.Khandewale, Id. Counsel for the
R-3.**

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 29th June, 2022.

Judgment is pronounced on 26th July, 2022.

Heard Shri R.V.Shiralkar, ld. counsel for the applicant, Shri H.K.Pande, ld. P.O. for the Respondent nos. 1 & 2 and Shri S.A.Puranik holding for Shri N.S.Khandewale, ld. Counsel for the respondent no. 3.

2. Case of the applicant is as follows. The applicant was appointed as 'Store Keeper' in Nagar Parishad, Achalpur and by order dated 30.07.1982 (A-1) he was made permanent. He was promoted as Accounts Officer by order dated 30.11.1992 (A-2). He gave option for his absorption in State Services as per Rule 5 (2) of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships State Services Absorption Recruitment and Conditions of Service Rules, 2006 (hereinafter 'The Rules'). The applicant made a representation dated 16.02.2008 (A-5) to respondent no. 2 that as per the Rules, on absorption, he be given pay scale of selection grade i.e. Rs. 8,000 - 13,500/- and not the pay scale of Rs. 6,500 - 10,500/-. Respondent no. 2 did not decide the representation. Thereafter, on 03.10.2008 order of absorption (A-4) was passed by which pay scale of the applicant was fixed at Rs. 6,500 - 10,500/- . Being aggrieved by this pay fixation the applicant made a representation dated 15.11.2008 (A-6) to respondent no. 1. Respondent no. 1 did not comply with the conditions attaching to order of absorption nor did he consider representations of the applicant. The applicant continued to work under Municipal Council, Achalpur on the post of Auditor and Accountant, Grade-A till his retirement. Similarly, placed employees of Engineering Wing were granted selection grade pay scale by order dated 15.03.2011 (A-7) as would become apparent from staffing pattern (A-8). On 18.04.2015 respondent no. 3 furnished information (A-9) to respondent no. 1 regarding Grade-A employees which was not considered by the latter. By representation dated 29.04.2015 (A-10) the applicant informed respondent no. 1 about no action having been taken to post him pursuant to order of absorption

dated 03.10.2008, and date of his retirement on superannuation i.e. 31.07.2016 being only 13 months away. He, therefore, requested that he be continued at Achalpur. However, by order dated 30.05.2015 (A-11) respondent no. 1 posted the applicant on the post of Accountant in Nagar Parishad, Yavatmal. This was contrary to the Rules. Being aggrieved by this posting the applicant filed W.P.No.3216/2015. It was disposed of 30.03.2016 (A-13) by observing thus-

“Having considered the submission that the order of absorption is of 03.10.2008 whereby, the petitioner’s option to join the government service in the post of Accountant was accepted by the Government and the petitioner was absorbed in Government service and even the petitioner joined and assigned the work at Municipal Council Achalpur, Dist-Amravati since October 2008, there shall be ad-interim relief in terms of prayer clause (D) of the petition until further orders.”

The applicant then made a representation dated 04.04.2016 (A-14) to respondent no. 1 and it was rejected by order dated 15.07.2016 (A-15) without giving opportunity of hearing to the applicant and barely 15 days before date of retirement of the applicant. By order dated 30.07.2016 (A-16) respondent no. 1 informed the applicant that since he had not worked on the post of Auditor and Accounts Officer, Grade-A and had not joined as per order dated 30.05.2015, there was no question of paying him pension accordingly. Certificates (A-17 and A-18) issued by respondent no. 3 show that the applicant had worked on the post of Auditor and Accounts Officer, Grade-A since 10.05.2005 till his retirement and he was qualified to hold the post. In seniority list (A-19) date of absorption of the applicant in State Service is recorded as 01.01.2008. Representations dated 12.05.2018 and 19.05.2017 (A- 20

collectively) made by the applicant to respondent no. 1 were never considered. On 17.12.2014 and 30.01.2014 orders absorbing Shri Sayyad Mushtaq Ali and Santosh M. Bang (A-21 collectively) were passed. By order dated 30.06.2017 (A-23) passed in W.P.No.4078/2017 liberty was given to the applicant to approach this Tribunal for redressal of his grievances. The Judgment dated 28.04.2016 (A-22) passed by the Hon'ble Bombay High Court in W.P.No.7865/2014 sought to be relied upon by the respondents is not applicable to the facts of this case. Hence, the applicant would be entitled to following reliefs –

“A. Quash and set aside orders dated 15.07.2016 and 30.07.2016 issued by the respondent no. 1 (A-15 and A-16) Principal Secretary, Urban Development and Director of Municipal Administration, being illegal and arbitrary.

B. Hold and declare that the applicant is entitled for pay scale of selection grade of Rs.8,000-13,500/- w.e.f. 01.01.2008 after being absorbed in State Cadre and consequently.

C. Direct the respondent no. 1 to grant pay scale of selection grade of Rs. 8,000 – 13,500/- to the applicant w.e.f. 01.01.2008 till his retirement and further direct the respondent no. 1 to pay arrears of salary after granting benefits of selection grade to the applicant w.e.f. 01.01.2008 and to pay arrears of pension and regular pension to the applicant, together with interest as per rules.

D. Direct the respondents to immediately release the pensionary benefits of the applicant like leave encashment, commutation of pension etc.”

3. Reply of the respondent no. 3 which is relevant, is at pages 147 to 151. It contains following averments:-

“1. The present applicant came to be absorbed in Audit and Accounts Services in Grade ‘A’ post within the pay scale of Rs. 6,500 – 10,500/- w.e.f. 01.01.2008 (A-4).

2. Vide an order dated 15.03.2011 passed by the respondent no. 1, name of the applicant came to be included in the list of employees who got finally absorbed in the respective services (A-7).

3. Process of absorption of the existing employees is governed by the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships State Services (Absorption, Recruitment and Conditions of Service) Rules, 2006 (hereinafter referred to as ‘Rules of 2006’) framed under Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965.

4. Appendix-II of the said Rules of 2006 prescribes the qualifications and experience of candidates for absorption in posts included in the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships State Services. Applicable rule for the present applicant for qualifications and experience is prescribed under Sr. No. 3 (b) of Appendix-II of the said Rules of 2006. One of the important criteria is given under Sr. No. 3(b)(iii) of Appendix-II of Rules of 2006 applicable for Maharashtra Municipal Audit and Accounts Service, Grade-A which prescribes that:-

(iii) be working on the post of Auditor/ Accountant and drawing a scale of pay equal to or higher than that prescribed for Municipal Auditor/ Accountant Grade-A for atleast 3 years experience from the date of regular appointment of the existing post.

5. *Since the applicant did not have experience of working on a Selection Grade Post, hence he is rightly and lawfully absorbed under Grade-A post.*

6. *Sr. No. 3 (b) of Appendix-II of Rules of 2006 is applicable in case of the applicant and not Sr. No. 3 (a) as averred by the applicant. Therefore, this applicant was rightly and lawfully absorbed in Maharashtra Municipal Audit and Accounts Service in Pay Scale of Rs. 6,500-10,500/- which is applicable to a Grade-A post as stated in Sr. No. 3 (b) of Appendix-I of Rules of 2006. Therefore the applicant's absorption is done as per the relevant rules and regulations and he is not eligible for getting absorbed in any other grade.*

7. *Rule 8 of the said Rules of 2006 prescribes provision with regard to fixation of pay of absorbed employee. Going by this Rule, pay scale of the post in the services on which the applicant was absorbed is proper and lawful and therefore the same is within the four corners of the applicable rules in this regard."*

4. In his rejoinder (at pages 152 to 154) the applicant has averred as follows-

"It is necessary to point of that the order of absorption was issued on 03.10.2008 but actual posting order was issued

on 30.05.2015. Under Municipal Council, Achalpur, there were two posts of Audit and Account Officer, Grade-A. The applicant was nearing retirement (31.07.2016 Date of Retirement) and therefore requested for continuing him at Achalpur on the post of Audit and Accounts Officer, Grade-A, by filing writ petition before Hon'ble High Court and order dated 30.05.2015 was stayed. The applicant was given charge of post of Audit and Accounts Officer, Grade-A till his retirement. The copies of communications dated 09.05.2019 and 14.05.2019 issued by Chief Officer, Municipal Council, Achalpur, showing that applicant has worked on the post of Audit and Accounts Officer, Grade-A are annexed here and marked as Annexure-A-24 and Annexure-A-25. Therefore the applicant was entitled for pay scale of selection grade i.e. Rs.8,000 – 13,500/- as per order of absorption and in view of the fact that applicant worked on this post till retirement. It is necessary to point out that as per Rule 5 (2) (e) the option once exercised by employee shall be final and applicant had given option at the time of making application. Till date order of absorption is not cancelled by the respondent no. 1 and there is no power to cancel the same.”

5. By representation dated 15.11.2008 (A-6) the applicant put forth the case before respondent no. 1 as follows:-

“न.प.अचलपूर आस्थापनेवरील पदांचा नविन आकृतीबंध शासनाने मंजूर केलेल्या दिनांका पासून (10 May 2005) सतत लेखाधिकारी पदाचेच काम करीत आहे. लेखाधिकारी चे काम ६५००-२००-१०५०० या वेतन श्रेणीत ३ वर्षापेक्षा जास्त कालावधी पासून करीत आहे. महाराष्ट्र शासनाने अधिसूचना क्र. MCO1203/1246/C.R.175/03/UD 14 DATED – 11/01/2007. अन्वये महाराष्ट्र परिषद, नगर पंचायती आणि औद्योगिक नगरी राज्यसेवा (समावेशन,

सेवाप्रवेश व सेवा शर्त) नियम २००६ नियमातील APPENDIX-I (3) (a) अन्वये 'अ' वर्ग नगर परिषद लेखाधिकारी पदाकरीता निवड श्रेणी साठी वेतन श्रेणी ८०००-२७५-१३५०० दर्शविण्यात आली आहे. अचलपूर नगर परिषद ही 'अ' वर्ग नगर परिषद आहे. सदर महाराष्ट्र शासन अधिसूचना दिनांक -११/०१/२००७ च्या APPENDIX-II (2) (a) अन्वये निवड श्रेणी लागू करण्या करीता खालील प्रमाणे शैक्षणिक पात्रता व अनुभव दर्शविण्या आले आहे.

- (i) Hold Degree in Master of Commerce.
- (ii) Have passed MSCIT Examination.
- (iii) Be working on the post of Auditor/Accountant and drawing a scale of pay equal or higher than that prescribed for Municipal Auditor/ Accountant Selection Grade for at least 3 years experience from the date of regular appointment of the existing post. माझी शैक्षणिक पात्रता खालील प्रमाणे आहे.

१. एम.कॉम.

२. एम.एस.सी.आय.टी., द्विनॉद लेखापध्दतीचे टॅली सॉफ्टवेअरचे प्रशिक्षण घेतल्याचे प्रमाणपत्र.

३. लेखाधिकारी चे काम ६५००-२००-१०५०० या वेतन श्रेणीत ३ वर्षांपेक्षा जास्त कालावधी पासून करीत आहे.

४. एल.एस.जी.डी.

५. द्विनॉदलेखापध्दतीचे व न.प.मधील अंकेक्षणाचे वेळोवेळी घेतलेले प्रशिक्षण.

६. न.प.अचलपूर येथील विविध पदावर काम केल्याचा २६ वर्षांचा कामाचा अनुभव.

७. न.प.मधील द्विनॉदलेखापध्दतीचेकामाचे नियंत्रक म्हणून नेमणूक

महाराष्ट्र शासन अधिसूचना दिनांक ११/०१/२००७ च्या APPENDIX-I (3)

(a) अन्वये निवड श्रेणी लागू करण्या बाबतच्या नियमानुसार सर्व बाबींची पुर्तता मी पूर्ण करीत असल्यामुळे मला, लेखाधिकारी पदांची निवड श्रेणी मंजूर करून वेतन श्रेणी ८०००-२७५-१३५०० लागू करण्याची कृपा करावी. ही विनंती."

6. In subsequent representations stand of the applicant was identical.

7. By order dated 15.07.2016 (A-15) the applicant was informed as follows:-

“०४. या संचालनालयाने दिनांक ०३.१०.२००८ च्या आदेशाने दिनांक ०१ जानेवारी २००८ पासून समावेशन सूची तैयार करण्यात आलेली आहे. त्यामध्ये श्री प्रेमचंद शुक्ला संवर्ग लेखापाल व लेखापरिक्षक सेवा (श्रेणी-अ) (गट-क) मध्ये रु. ८५००-१०५००/- या वेतनमध्ये समावेशन सूचीत नाव घेण्यात आले. सदरचे समावेशन महाराष्ट्र नगरपरिषद, नगरपंचायती आणि औद्योगिक नगरे अधिनियम राज्यसेवा (समावेशन, सेवा प्रवेश व सेवा शर्ती) नियम २००६ मधील परिशिष्ट - २ मध्ये महाराष्ट्र नगरपरिषद लेखापाल व लेखापरिक्षक सेवा श्रेणी अ मध्ये समावेशनासाठी ३ (b)(iii) मध्ये नमूद समावेशनासाठी पात्रता व अनुभव धारण करत असल्याने व विभागीय आयुक्त तथा समावेशन अधिकारी यांची शिफारस विचारात घेवून करण्यात आले आहे.

०५. महाराष्ट्र नगरपरिषद, नगरपंचायती आणि औद्योगिक नगरे अधिनियम राज्यसेवा (समावेशन, सेवा प्रवेश व सेवा शर्ती) नियम २००६ मधील परिशिष्ट-२ मध्ये महाराष्ट्र नगरपरिषद लेखापाल व लेखापरिक्षक सेवा निवडश्रेणी मध्ये समावेशनासाठी ३ (a)(iii) मध्ये नमूद अनुभव धारण करत नसल्याने म्हणजेच आपण रु. ८०००-१३५००/- या वेतनश्रेणीमध्ये ३ वर्ष काम करत नसल्याने लेखापाल व लेखापरिक्षक सेवा निवडश्रेणी मध्ये समावेशन करणेबाबत व रु.८०००-१३५००/- वेतनश्रेणी मिळणेबाबत आपली विनंती अमान्य करण्यात येत आहे.”

8. By order dated 30.07.2016 (A-16) the applicant was informed as follows:-

“श्री पी.एम.शुक्ला लेखापाल श्रेणी-अ, अचलपूर नगरपरिषद, जि.अमरावती हे दिनांक ३१.०७.२०१६ रोजी नियतवयोमानानुसार सेवानिवृत्त होणार आहेत. श्री.पी.एम. शुक्ला यांचे या संचालनालयाच्या दिनांक १५ मार्च २०११ च्या आदेशाने संवर्ग समावेशन सूचित नांव घेण्यात आलेले होत. तसेच त्यांना या संचलनालयाने दिनांक ३१.०५.२०१३ व दिनांक ३१.०५.२०१५ च्या आदेशाने पदस्थापनाही देण्यात आलेली होती. परंतु श्री पी.एम. शुक्ला हे पदस्थापनेचे ठिकाणी हजर झाले नाहीत.

ज्या संवर्ग कर्मचा-यांनी संवर्गातील पदावर पदस्थापना घेतली नाही. अशा कर्मचा-यांना शासनाने निवृत्तीवेतन देण्याचा प्रश्न उद्भवत नाही. असा निर्णय मा.उच्च न्यायालय औरंगाबाद खंडपीठ यांनी याचिका क्र. ७८६५/२०१४ मध्ये दिला आहे (क्रं७८६५/२०१४ चा आदेश संकेत स्थळावर उपलब्ध आहे) श्री शुक्ला यांनी संवर्गात एकही दिवस काम केले नसलेने त्यांचे सेवा निवृत्त वेतन, सेवा उपदान, रजा रोखीकरण, भविष्य निर्वाह निधी इत्यादी लाभ देण्याची कार्यवाही आपल्या स्तरावरून करावी. तसेच विभागीय चौकशी व शासकीय देणे बाकी आहे किंवा कसे यांच्या अधिन राहून दिनांक ३१.०७.२०१६ रोजी नियमवयोमानानुसार सेवानिवृत्तीचे आदेश आपलेस्तरावर निर्गमित करावेत. सोबत श्री शुक्ला यांचे सेवापुस्तक जोडलेले आहे.”

9. In A-16 there is reference to Judgment and order passed in W.P.No.7865/2014. It is at A-22. In this ruling it is held:-

“In the said Rules, 2006, Rule 2, clauses (a) and (b) define ‘Absorbed Employee’ and ‘Absorption Authority’ respectively. Clauses (a) and (b) of Rule 2 of the said Rules, 2006, read thus:

(a)“Absorbed Employee” means an Existing Employee in the service of any Municipal Council absorbed in any Grade of any Service in accordance with these Rules;

(b)“Absorption Authority” means an authority constituted under Rule 6;

The scheme of Rule 5 of the said Rules, 2006, provides for absorption of existing employees of Municipal Council. Rule 5 (1) lays down the eligibility criteria of the existing employees of the Municipal Council, who can be considered for absorption in the State Services. Sub-rule (2) of Rule 5 of

the said Rules, 2006, gives option to the employee to be absorbed in the State Services. Sub rule (3) of Rule 5 of the said Rules, 2006, states that, the Absorption Authority shall examine the eligibility of each Existing Employee as per the criteria laid down in sub rule (1) and (2) and if such employee is found eligible, his/her name should be forwarded to the Director for inclusion in the list of eligible Existing Employees. The list of such eligible existing employees, who have opted for absorption shall be prepared by the Director, in view of sub-rule (4) of Rule 5 of the said Rules, 2006. Sub rule (5) of Rule 5 of the said Rules, 2006, reads thus:

(5) The inter se seniority of eligible Existing Employees in each Grade of each Service in which they are to be absorbed shall be determined on the basis of the period of continuous service rendered by them in the scale of pay equivalent to or higher than the scale of pay of the Grade on which they are to be absorbed.

Sub rule (6) of Rule 5 of the said Rules, 2006, reads thus:

(6) The vacancies in the Service, as and when they occur, shall be filled by appointment of an Existing employee whose name appear in the list prepared as per sub rule (4)

above. The appointment shall be strictly based on the seniority in the above list, will continue till the above list is exhausted.

8] Rule 6 of the said Rules, 2006, provides for constitution of Absorption Authority.

9] In the present case, subrule (6) of Rule 5 of the said Rules, 2006, is relevant. Admittedly, in case of the petitioners, they were not appointed on any post in the State services by invoking sub rule (6) of the said Rules, 2006. According to the learned AGP appearing for the respondent – State, there were no vacancies in the State Services to appoint / absorb the petitioners. Therefore, unless employee from the list of eligible existing employees is absorbed by invoking Rule 6 in the Services, he cannot seek benefit of sub-rule (10) of the said Rules. It is only when the employee from the eligible existing employees is actually appointed on any vacant post in the State Service, he is entitled to draw pension under Rule 10 of the said Rules, 2006. As already observed, admittedly, the petitioners were not appointed in the service on particular posts for want of vacancies. Therefore, they cannot seek the benefit of Rule 10 of the said Rules, 2006.” (Emphasis Supplied)

It is the contention of the applicant that the aforesaid ruling will not be applicable to the facts of the case. Almost all the facts which I have narrated above clearly show that the ruling relied upon by the

respondents to resist prayers made in the application clearly applies to the facts of the case.

10. Aforesaid details would show that the impugned orders dated 15.07.2016 and 30.07.2016 (A-15 and A-16, respectively) do not suffer from any infirmity.

11. For all these reasons the application deserves to be dismissed. Hence, the order:-

ORDER

1. Application is dismissed.
2. No order as to costs.

(Shri M.A.Lovekar)
Member (J)

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 Member (J).

Judgment signed on : 26/07/2022.
and pronounced on

Uploaded on : 27/07/2022.