

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 477 of 2015
WITH CIVIL APPLICATION No.571 of 2017 (D.B.)

Ku. Sneha Abhay Bhabutkar,
Aged about 22 years, Occ. Household,
R/o 45, Santa Tukdoji Nagar, Dighori,
Nagpur (M.S.).

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principle Secretary
Revenue & Forest Department,
Mantralaya, Mumbai-32.
- 2) The Collector,
Nagpur.
- 3) District Supply Officer,
Nagpur.
- 4) Ku. Nilima Sudhakar Urkude,
Aged Major, Occ. Service,
Office of Tahsil Office, Kamptee,
District Nagpur.
- 5) Ku. Ashwini Madhavrao Padole,
Aged Major, Occ. Service,
Office of Food grains Distribution Officer,
Nagpur.
- 6) Ku. Sonali Abhay Kathade,
Aged Major, Occ. Service,
Office of Tahsil Officer, Saoner,
District Nagpur.
- 7) Ku. Dwarka Shivaji Aagale,
Aged Major, Occ. Service,
Office of District Supply Officer,
Nagpur.

- 8) Ku. Anju Suresh Yerne,
Aged Major, Occ. Service,
Office of District Supply Office,
Nagpur.

Respondents.

Shri S.C. Deshmukh, Advocate for the applicant.

Shri H.K. Pande, learned P.O. for respondent nos. 1 to 3.

None for respondent nos. 4 to 7.

Shri N.A. Chawhan, Advocate for respondent no.8.

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

JUDGMENT

PER : V.C. (J).

(Delivered on this 13th day of July,2018)

Heard Shri S.C. Deshmukh, learned counsel for the applicant and Shri H.K. Pande, learned P.O. for respondent nos. 1 to 3. None for respondent nos. 4 to 8.

2. In response to the advertisement dated 04/06/2014 published by the respondent no.2, i.e., the Collector, Nagpur, the applicant applied for the post of Clerk-cum-Typist. The Respondent nos.4 to 8 also participated in the said recruitment process. The written examination was conducted on 06/07/2014 and the result of the written examination was declared on 11/07/2014. The applicant secured 136 marks out of 200. A notice was published along with merit list on the Board on 28/07/2014, whereby the candidates were

called for verification of documents on 02/08/2014. The applicant was at sr.no.5 in the in order of merit in the category of OBC (female). However, to the surprise of the applicant is that her name did not appear in the final select list which was published by Respondent no.2 on 14/08/2014. The Respondent no.2 appointed Respondent nos. 4 to 7 and subsequently the Respondent no.8 on the posts. It was stated that the Respondent nos.4 to 7 were shown in the Open (female) Category. According to the applicant, the order of appointment of Respondent nos. 4 to 7 is absolutely illegal.

3. During the pendency of the O.A., the Respondent no.8, Ku. Anju Suresh Yerne was appointed to the post of Clerk-cum-Typist and therefore the applicant amended the O.A. by adding her name as Respondent no.8. It is stated that the Respondent no.8, Ku. Anju Suresh Yerne was not at all qualified for being appointed to the post of Clerk-cum-Typist since she was not possessing essential qualification as required for the said post.

4. During the pendency of the O.A., the applicant also filed the C.A. No. 571/2017. It is stated that the Respondent no.8 who was appointed during the pendency of the O.A. had resigned from her post and therefore that post is lying vacant and therefore directions be issued to the respondent authorities to appoint the applicant on

the said post vacated by Respondent no.8. The O.A. as well as C.A. are being disposed of by this order.

5. The Respondent nos.2 and 3 resisted the claim and denied the applicant's claim. So far as appointment to Respondent no.8 is concerned, it is stated that the applicant and respondent no.8 secured equal marks in the written examination and as per Clause-6 of the G.R. dated 27/06/2008 it was found that Respondent no.8 was Science Graduate and her date of birth was 28/10/1983, whereas, the applicant has passed only 10th Standard examination and she was younger than the Respondent no.8 and therefore Respondent no.8 being elder as well as qualified than the applicant, a preference was given to Respondent no.8.

6. So far as the applicant's claim, the respondent nos. 2 and 3 submitted that the Certificate of passing Marathi or English typing was required to be issued by the Government Commercial Board, but the applicant has enclosed the Certificate issued by The Principal of Private Institute, i.e., the Pooja Typing and Shorthand Institute and which was not acceptable. The applicant was allowed to appear in the examination without scrutiny of documents, but when found ineligible, she was not considered.

7. So far as resignation of Respondent no.8 is concerned, the respondent nos. 2 and 3 admitted that she had resigned from the

post and the said post is lying vacant. But it is stated that since the selection list has lapsed, the new recruitment process is to be taken and the applicant cannot claim for recruitment on the said post. So far as the Respondent nos.4 to 7 are concerned, it is material to note that the all these candidates have secured more marks than the applicant and they were considered on merits and therefore the applicant's contention that their appointments are illegal has no legal force.

8. The learned counsel for the applicant submits that the Respondent no.8, Ku. Anju Suresh Yerne was not qualified to be appointed. He invited our attention to the advertisement at P.B. page nos. 24 to 33 (both inclusive). Clause-3 (2) regarding educational qualification required for the post of Clerk-cum-Typist, it has been stated as under :-

*^%2½ ejkBh Vcdys[ku ejkBh 30 'k-i zfe- fdok baxzh 40 'k-i zfe- ; k x r h p h 'k l d h ;
okf.kT; eMGkph i ek.ki = i fj {kk mRrh.kzv l .ksvko'; d v kgs***

9. Clause 9.1 of the advertisement states as under :-

*^%9-1½ v k l l y k b z u i / n r h u s v t z H k j r k a u k m e n o k j k a u k d k s k r h g h d l x n i = s l k n j
d j k o ; k p h v k o ' ; d r k u k g h - r F k k i h m e n o k j k a u h l a w l z t k f g j k r o k p u r s v t z d j . ; k l k B h
i k = v l r h y r j p v t z l k n j d j k o k - ***

10. From the aforesaid clauses of the advertisement, it will be crystal clear that the candidates who want to apply for the post of

Clerk-cum-Typist must possess the requisite qualification, i.e., he/she must have passed Marathi Typing 30 w.p.m. or English Typing 40 w.p.m. and the Certificate must be of the Government Commercial Board. The learned counsel for the applicant has invited our attention to the application form of Respondent no.8 which is at P.B. Page nos.55B. It is material to note that in the said application form the qualification clause regarding Marathi and English Typing, i.e., sub column nos.8 and 9 of the Clause no.22 are left blank by respondent no.8. This application form is filled in on 24/06/2014. Thus, on 24/06/2014 the respondent no.8 did not mention about her qualification having passed Marathi and English Typing Examination. The learned counsel for the applicant also placed our reliance to the Certificate submitted by the applicant as regards possessing of Marathi Typing. The said Certificate is at P.B. Page no.87 (Annex-A-B1) from which it seems that the applicant appeared for Marathi Typing Examination of 30 w.p.m. in the month of May,2014 and she was declared passed successfully as per Certificate dated 27/8/2014. This therefore makes it clear that the respondent no.8 was not qualified for the post since she had not passed examination of Marathi Typing 30 w.p.m. or English Typing 40 w.p.m. on the date of filing of application. As already stated the advertisement clearly states that those who are not qualified, shall not apply and therefore

the respondent no.8 should not have applied for the post, however she was appointed. Now since the respondent no.8 has already resigned from the post, there is no question of quashing or setting aside her selection and appointment and the question is only whether the applicant will be entitled to claim the post vacated by the respondent no.8.

11. The learned counsel for the applicant submits that the applicant's name should have appeared in the Wait list of the candidates of OBC (female) since she has secured 136 marks which is equivalent to respondent no.8, who has resigned. We have perused the selection list as well as the Wait list of O.B.C. category candidates which is at P.B. Page no.12. From the said list, it seems that in all 17 candidates were selected on merits and the last rank 9 candidates were kept on Wait list. It seems that the respondent no.8 Anju Suresh Yerne was at Sr.no.4 under O.B.C. (female) Category, whereas, one Bharti Anilrao Jadhao is at Sr.no.5 from O.B.C. (female) Category and one Pallavi Narayanrao Ambadkar is at Sr.no.6 from O.B.C. (female) Category. The name of the applicant was not even in the Wait list. Since the respondent no.8 has resigned or even if it is held that the appointment of respondent no.8 was illegal, still the next candidates on Wait list will be entitled to be considered for the said post and the next candidate to respondent

no.8 is Bharti Anilrao Jadhao. Even the candidate Pallavi Narayanrao Ambadkar can also be considered since Anju Suresh Yerne as well as Pallavi Narayanrao Ambadkar got equal marks, i.e., 136 each and the applicant cannot be considered since her name was not even in the Wait list. Even for the sake of argument, it is expected that the name of the applicant should have been in the Wait list in that case also and the claim of Bharti Anilrao Jadhao and Pallavi Narayanrao Ambadkar along with the applicant will have to be considered.

12. From the reply-affidavit, it seems that the name of the applicant was not considered even for Wait list, since the Certificate produced by her was not as required and this fact came to the knowledge of the respondent authorities at the time of scrutiny. This fact seems to be supported by documentary evidence on record. As already stated, the Certificate of Marathi or English Typing is required to be issued by the Government Commercial Board, Pune ('kkl dh; okf.kT; eMG] iqk). The applicant has produced on record the Certificate of passing English Typing 40 w.p.m. and Marathi Typing 30 w.p.m. at P.B. page nos.42 & 43 respectively. Both these Certificates have been issued by the Maharashtra State Typing-Shorthand, Government Recognised Institutes' Association, Mumbai and in any case said Certificate is not issued by the Government

Commercial Board, Pune and therefore the respondents might have not considered the applicant's selection or her name to be considered for Wait list since no requisite Certificate was produced by her. The recruitment is of the year 2014 and it is stated that the list has been lapsed. At the most we can say that the aggrieved person by non selection due to illegal appointment of respondent no.8 or due to resignation by her can be said to be Bharti Anilrao Jadhao and Pallavi Narayanrao Ambadkar, but they did not challenge the selection. Considering these aspects, we do not find any merits in the O.A. Hence, the following order :-

ORDER

- (i) The O.A. stands dismissed with no order as to costs.
- (ii) The C.A. stands disposed of accordingly.

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

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

Dated :- 13/07/2018.

dnk.