

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 719 / 2022 (S.B.)**

Mangesh S/o Mahadev Bedare,
Aged about 29 years, Occ. Service as Agriculture Assistant,
R/o Taluka Krushi Adhikari Karyalaya,
Deulgaon Raja, Dist. Buldhana.

Applicant.**Versus**

- 1) The State of Maharashtra,
Through it's Secretary,
Department of Agriculture,
Mantralaya, Mumbai- 400 032,
- 2) The Joint Director,
Agriculture Department,
Amravati Division, Amravati.
- 3) The Joint Director,
Agriculture Department,
Pune Division, Pune.

Respondents

**Shri Prateek Sabde holding for Shri K.R.Rodge, the Id. Advocate for
the applicant.**

Shri M.I.Khan, the Id. P.O. for the respondents.

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

JUDGMENT

Judgment is reserved on 07th September, 2022.

Judgment is pronounced on 15th September, 2022.

Heard Shri Prateek Sabde holding for Shri K.R.Rodge, Id. counsel for the applicant and Shri M.I.Khan, Id. P.O. for the Respondents.

2. Case of the applicant is as follows. He is working as Agriculture Assistant in the respondent department. On 08.11.2017 he submitted application (Exh. D) for interdivision transfer on request to Ahmednagar District on the ground of ill health of his mother. Thereafter, policy was laid down in respect of permanent absorption from the establishment of one appointing authority to the establishment of another appointing authority - on request, by G.R. dated 15.05.2019 (Exh. A). Respondent no. 1, by letter dated 24.05.2019 (Exh. E) issued the following instructions to all the concerned authorities-

“गट-क संवर्गातील कर्मचा-यांकरीता संबंधीत विभागीय कृषि सहसंचालक हे नियुक्ती प्राधिकारी आहेत. आंतरसंभागीय बदलीद्वारे कायमस्वरूपी समावेशन करण्याचे अधिकार संबंधित नियुक्ती प्राधिका-यांना देण्यात निर्णय सामान्य प्रशासन विभागाच्या क्रं. एसआरव्ही-२०१६/प्र.क्र. ५०९/कार्या./१२ दिनांक १५/०५/२०१९ च्या शासन निर्णयान्वये घेण्यात आलेला आहे. त्या अनुषंगाने या शासन आदेशात नमुद केलेल्या अटी व शर्तीच्या आधीन राहून सोबत जोडलेल्या परिशिष्ट-अ मधील कृषि सहाय्यकांच्या आंतरसंभागीय बदलीचे आदेश संबंधित विभागीय कृषि सहसंचालक यांनी निर्गमित करावेत. सोबतच्या परिशिष्ट - अ मधील कर्मचा-यांनी ज्या संभागात बदली मागणी केली आहे. त्या संबंधित विभागाच्या कृषि सहसंचालकांनी त्यांचे संभागातील रिक्त पदे संभागातील अन्य कर्मचा-यांच्या आंतरसंभागीय बदलीमुळे अथवा पदोन्नतीमुळे विवक्षित प्रवर्गात पद रिक्त होत असल्याची खात्री करून पदस्थापनेचे आदेश निर्गमित करावेत.”

Relying on the G.R. dated 15.05.2019 and letter dated 24.05.2019, the applicant submitted application dated 27.05.2019 (Exh. F) for his permanent transfer and absorption in Ahmednagar District. By communication dated 10.12.2020 (Exh. G) respondent no. 2 accorded approval in principle for absorption of the applicant in Ahmednagar District but specified that the applicant did not fulfill conditions 1, 2 & 3 in Clause 2 of the G.R. dated 15.05.2019. In this communication

addressed to respondent no. 3 it was further clarified that as per Clause 8 (6) of the G.R. dated 15.05.2019 it would be incumbent upon the applicant to clear post – appointment examination after his absorption. In response to the approval in principle accorded by respondent no. 2 as aforesaid, respondent no. 3, by letter dated 08.06.2021 (Exh. H) gave “No Objection” for absorption of the applicant and 8 others as per their request. However, respondent no. 2 also specified as follows:-

“उपरोक्त नमुद कर्मचारी शासन निर्णय सामान्य प्रशासन विभाग क.एसआरव्ही २०१६/प्र. क.५०९/कार्या १२, दिनांक १५/०५/२०१९ मधील अटी व शर्तीची पुर्तता करत असल्याची खात्री आपलेस्तरावर करून तसेच आवश्यक सर्व बाबींची पुर्तता व खात्री करून संबंधित कर्मचा-यांस आपले स्तरावरून कार्यमुक्त करण्यात यावे.

उपरोक्त नमुद कर्मचा-यांपैकी समावेशनासाठीच्या अटी व शर्तीची पुर्तता करित नसल्यास तसेही या कार्यालयास तात्काळ कळवावे जेणेकरून या कार्यालयाच्या आस्थापनेवर समावेशनाने येउ ईच्छुक असणा-या इतर कर्मचायांना ना हरकत प्रमाणपत्र देणे शक्य होईल.”

Since the respondent department was not taking further steps the applicant filed O.A. No. 981/2021 in this Tribunal. It was disposed of on 29.04.2022 by directing the respondents to consider the representations made by the applicant for his absorption in Ahmednagar District, as per the G.R. dated 15.05.2019. Thereafter, by the impugned communication dated 15.03.2022 (Exh. B) respondent no. 3 revoked the “No objection” given by letter dated 08.06.2021 for absorption of the applicant as sought by him on the ground that the applicant did not fulfil the requisite conditions stipulated in the G.R. dated 15.05.2019. Hence, this application.

3. Reply of respondents 1 to 3 is at pages 114 to 121. They have raised the following contentions:-

“1. For such absorption the necessary terms and conditions are also mentioned in the said G.R.. One such condition is that the employee must be confirmed in the service. For confirmation in the service the employee must have passed the Post Recruitment Examination. The applicant has not yet passed the post recruitment examination and therefore is not confirmed on that post. Hence, he does not fulfil the criteria as laid down in the G.R. dated 15.05.2019.

2. The respondent no. 3 is ready to absorb the applicant, subject to clear vacancy, if he fulfils all the criteria as laid down in the G.R. dated 15.05.219 and if the fresh proposal is moved by him. But as the applicant does not fulfil criteria as laid down in the G.R. dated 15.05.2019 his proposal is not yet moved to the respondent no. 3 from respondent no. 2.”

4. For absorption the G.R. dated 15.05.2019 (Exh. A) lays down the following criteria:-

१	कायमस्वरूपी समावेशनासाठी पात्र शासकीय कर्मचारी:- राज्य शासकीय सेवेतील केवळ गट 'क' मधील कर्मचा-यांना हे धोरण लागू होईल.
२	कायमस्वरूपी समावेशनासाठी सेवा कालावधी व इतर बाबी:-
१	संबंधित कर्मचा-याची संबंधित संवर्गात किमान ५ वर्षे सलग सेवा पूर्ण झाली असणे आवश्यक राहिल.
२	कर्मचारी ज्या संवर्गात कार्यरत आहे त्या संवर्गाच्या सेवा प्रवेश नियमात नमूद केलेल्या सर्व अर्हतांची (उदा. विविध परीक्षा इ.) पूर्तता करणे आवश्यक राहिल.

३	सदर कालावधीत कर्मचा-यास स्थायित्व लाभ प्रमाणपत्र मिळालेले असणे आवश्यक राहिल.
४	मूळ संवर्गात त्यांची कामगिरी किमान 'ब' दर्जाची असली पाहिजे. म्हणजेच त्याच्या मूळ संवर्गातील सेवाकालावधीत प्रतिवर्षीच्या कार्यमूल्यमापन अहवालातील संख्यात्मक गुणांकन किमान ४ असले पाहिजे.
९	संबंधित कर्मचा-याविरुद्ध कोणतीही विभागीय चौकशी/न्यायालयीन प्रकरणे चालू/प्रस्तावित नसावे.

5. It was submitted by Shri Prateek Sabde, Id. Counsel for the applicant that the applicant fulfills conditions 1, 4 & 5 in Clause 2 and so far as conditions 2 & 3 in the said Clause are concerned, they need not come in the way of considering his case for absorption favourably. Heading of Clause 2 reads as under:-

“कायमस्वरूपी समावेशनासाठी सेवा कालावधी व इतर बाबी.”

In support of this submission reliance is placed on Clause 8(6) of this G.R. Heading of Clause 8 is as follows:-

“कायमस्वरूपी समावेशनासाठी अटी व शर्ती”

Clause 8 (6) reads as under:-

“ज्या पदावर समावेशन करण्यात येईल, त्या पदाच्या सेवा प्रवेश नियमानुसार वा विभागीय परिक्षा नियमानुसार ज्या परिक्षा उत्तीर्ण होणे आवश्यक आहे त्या परिक्षा कायमस्वरूपी समावेशन झाल्यानंतर, उत्तीर्ण होणे आवश्यक राहिल. ”

6. The applicant has placed on record papers at pages 48 to 87 regarding absorption of 9 similarly placed employees to support his contention that his case for absorption deserves to be considered favourably. All the 9 employees mentioned above had completed 5 years on the post as required under Clause 2 (1) of the G.R. and all of them

were holding certificate of permanency as required under Clause 2 (3) of the G.R.. However, like the applicant, they had not passed the post appointment examination but their proposals for absorption were cleared by stipulating that they were required to clear this examination after their absorption. On two counts case of the applicant differs from the cases of above referred 9 employees. At the relevant point of time the applicant had not completed 5 years on the post and he was not having certificate of permanency as required under sub clauses 1 & 3, respectively of Clause 2 of the G.R. dated 15.05.2019.

7. According to the respondents, unless the applicant clears the departmental examination certificate of permanency cannot be issued to him and hence, passing of this examination is a condition precedent for absorption as per the G.R. dated 15.05.2019. This submission is not supported by the papers at pages 48 to 87 pertaining to the absorption of 9 similarly placed employees. None of these employees had passed the departmental examination yet all of them were holding certificate of permanency. Thus, it appears that passing of the departmental examination is not a condition precedent for issue of certificate of permanency.

8. So far as case of the applicant is concerned, he had not completed 5 years on the post when he applied for absorption nor did he hold the certificate of permanency. Owing to these lacunae the impugned order revoking "No objection" given for his absorption cannot be faulted.

9. During the pendency of this O.A. the applicant has completed 5 years on the post since this period would start to run from 20.03.2017 as per the table on page 41(A). So Clause 2 (1) of the G.R. dated 15.05.2019 would not now come in his way. In case he is entitled to get

the certificate of permanency, on getting the same, Clause 2 (3) of the G.R. would also get complied with. It is clear that Clause 2 (2) of the G.R. cannot be allowed to override Clause 8 (6) thereof in view of heading of Clauses 2 & 8. Thus, in the instant case the only hurdle in the way of the applicant is want of certificate of permanency. As and when he gets the same he can apply afresh for absorption. However, this deficiency will come in the way of allowing instant application. **The O.A. is accordingly dismissed with no order as to costs.**

Member (J)

Dated :- 15/09/2022.

aps

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 : 15/09/2022.
and pronounced on

Uploaded on : 16/09/2022.