

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 849 of 2009 (D.B.)**

Pramod s/o Keshavrao Kawale,
Aged about 47 years,
Occupation : Service, resident of
New Somwaripeth, near Tukadoji Statue,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Public Works Development (Road),
Mantralaya, Mumbai-32.
- 2) The Executive Engineer,
Division No.1, Public Works Department,
P.W.D. Compound Residency Road, Sadar,
Nagpur.
- 3) The Superintendent Engineer,
Public Works Department,
Civil Lines, Nagpur.

Respondents.

S/Shri G.G. Bade, P.P. Khaparde, Advocates for the applicant.

Shri A.M. Khadatkhar, learned P.O. for the respondents.

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

I

JUDGMENT

PER : V.C. (J).

(Delivered on this 24th day of July,2018)

Heard Shri G.G. Bade, learned counsel for the applicant and Shri A.M. Khadatkar, learned P.O. for the respondents.

2. The applicant is working as Telephone Operator with respondent nos. 2 and 3 since 25/06/1997. Initially he was appointed as Labour w.e.f. 01/05/1982.

3. The Shaskiya Karmachari Sanghatana, Nagpur filed Writ Petition No.2232/1992 before the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur against the retrenchment of its employees. During pendency of the petition a compromise arrived between Sanghatana and Government and a joint pursis was filed whereby it was agreed that in accordance with the terms and conditions of Kalelkar Award and the Government Resolution issued by the Public Works Department, dated 24/04/2001 the members of the Union will be entitled to be taken with retrospective effect on converted regular temporary establishment after completion of five years' continuous service from the date of first appointment. As per the Government Resolution dated 24/01/2001, the workers are entitled for the benefits with retrospective effect. Since the proposal for such benefit was not sent to the Government, a Contempt Petition No.71/2004 was filed and in the said Contempt Petition the Government has filed pursis and submitted that decision in respect of petitioner would be taken within four weeks.

4. During pendency of the Contempt Petition, the respondent nos. 1 and 2 filed their reply on 25/03/2009 and submitted that the Government had taken decision on 24/03/2009, but the applicant was held not qualified for the post. It is stated that he was educationally disqualified and therefore was not entitled to the benefit of the G.R. dated 24/04/2001. In Contempt Petition No.135/2008 in Contempt Petition No.71/2004 arising out of Writ Petition No.2232/1992, the Hon'ble High Court was pleased to pass an order on 03/04/2009 and the applicant was given liberty to approach appropriate forum for ventilating his grievance. The applicant has therefore preferred this application and has claimed following reliefs :-

“ 7 (a) quash and set aside the Government Resolution dated 24/03/2009 issued by respondent no.1, Executive Engineer, Public Works Department since same is against the import and principles of Government Resolution dated 24/04/2001 and 31/08/2001 by issuing appropriate writ, direction or order;

(aa) quash and set aside the order dated 19/07/2009 served on the applicant on 6/1/2010 thereby reverting the applicant from the post of Telephone Operator to Labour by transferring applicant from EPBX Section M.L.A. Hostel to High Court Branch, Nagpur.

(b) pending hearing on the present petition grant stay to the effect and operation of the Government Resolution dated 24/03/2009 issued by the respondent no.1, Executive

Engineer, Public Works Department by issuing appropriate writ, order or direction and allow the applicant to continue to work as Telephone Operator.”

5. Para no.7 (aa) was added since the applicant was reverted vide order dated 19/07/2009 from the post of Telephone Operator to Labour and was transferred from EPBX Section M.L.A. Hostel to High Court Branch, Nagpur.

6. The respondents have filed reply-affidavit and submitted that as per the G.R. dated 24/04/2001 the Government has taken a decision in view of the compromise before the High Court in Contempt Petition No.135/2008. Accordingly, a proposal of 74 employees was submitted. 12 employees mentioned in Appendix-B were found to be eligible as per the principle “Designation according to work and salary according to designation” and therefore approval was accorded to change their designation. The employees who were not included in Appendix- A and B are working on higher post after 31/12/1997, but not fulfilling educational qualification. Therefore, they were not eligible for the benefit of change of designation as per G.Rs. dated 24/04/2001 and 29/09/2003.

7. So far as the applicant is concerned, it is stated that he has acquired the educational qualification of Telephone Operator in the year,1998 and his name was forwarded for up-gradation of higher

post, i.e. Telephone Operator. However, the respondent no.1 did not approve his name to be brought on C.R.T.E. and up-gradation as Telephone Operator on the basis of G.R. dated 29/09/2003. Since he was not holding necessary qualification for the post of Telephone Operator and therefore his name was not included as per G.R. dated 24/3/2009.

8. The respondents further submitted that in para-3 as under:-

“ (3) It is respectfully submitted that the applicant has been appointed on 1/1/1982 as a Labourer. He has discharged the work in the Department of Labourer. He has not possessed qualification to be appointed as Telephone Operator. It is pertinent to note that in the Government Resolution dated 31/8/2008 it has been mentioned that the post of those employees who are working on officiating / daily wage establishment are to be converted into regular establishment as per provisions of Kalelkar Settlement, may be given relaxation of certain age limit. The said Government Resolution has not given relaxation so far as basis qualification applicable to the employees holding concerned post. If the employees are not possessing requisite qualification, they are not entitled for holding upgraded post. In fact, in Government Resolution dated 24/4/2001 it is specifically mentioned that the Government has taken decision to absorb employees of Public Works Department, Irrigation Department, Village Development

and Water Conservation Department who were working as daily wage / officiating employee after considerable service should be converted into regular establishment. As per Justice Kalelkar Award on certain conditions i.e. if the said employees working on the post of Mazdoor and want up-gradation on the higher post or equivalent post on CRTE, then it should be subject to that he should have possessed required and necessary qualification for the concerned higher post. He should be senior to other concerned eligible employees or daily wage or officiating employees. He should have performed 240 days continuous service for higher post on the date of completion of his 5 years service.”

9. The learned counsel for the applicant submits that admittedly the applicant's name was initially proposed for up-gradation as per proposal at P.B. page no.48, but on scrutiny it was found that the applicant was not eligible for the post of Telephone Operator. The respondents were therefore directed to place on record the Recruitment Rules for the recruitment of Telephone Operator. The learned P.O. has placed on record the Recruitment Rules known as “the Telephone Operator in the offices of the Government of Maharashtra (Recruitment) Rules,1985”. Same is at P.B. page no.128. The Rule-3 of the Rules of 1985 provides for qualification for the appointment to the post of Telephone Operator and same reads as under :-

“(3) Appointment to the post of Telephone Operator shall be made by nomination from amongst candidates who –

(i) Unless already in the service of Government, are not more than 28 years of age.

(ii) have passed the Secondary School Certificates Examination, and

(iii) have knowledge of Marathi, English and Hindi with a fluency in speaking.

Provided that, preference may be given to a candidate possessing training and experience in Telephone Operating,

Provided further that preference may be given to a candidate who, in the opinion of the Selecting Authority, possesses pleasing manners and agreeable voice :

Provided also that the age limit may be relaxed by Government on the recommendation of the Selecting Authority in favour of candidates having exceptional qualifications or experience or both.”

10. The applicant admittedly in the present case has passed the Secondary School certificate examination and there is no dispute that he has knowledge of Marathi, Hindi and English and has passed the requisite examination. In the reply-affidavit in para-6 it has been specifically admitted that the applicant was working as Labour and thereafter since 1997 he was assigned work of operating Telephone in PBX. In para-10 of the reply-affidavit stated that it is not disputed

that the name of the applicant was initially forwarded for change of designation to the post of Telephone Operator. Admittedly, the applicant has also passed the examination of Telephone Operator. In para-2 of the reply-affidavit it is stated that it is not disputed that the applicant has acquired educational qualification of Telephone Operator in the year 1998, though the name of applicant is forwarded for up-gradation of higher post i.e. Telephone Operator. Thus from the admitted facts on record, it seems that the applicant has passed the requisite qualifying SSC examination and was having sufficient experience of Telephone Operator since he was working as Telephone Operator since 25/06/1997 till he was reverted. As per the G.R., the applicant has completed continuous service of 240 days on higher post and therefore his name seems to have been earlier forwarded for change of designation to the post of Telephone Operator. The respondents could not place on record any convincing evidence to show that the applicant was not holding requisite qualification. As already stated, as per the Rules of 1985 the person to be appointed to the post of Telephone Operator must have passed Secondary School certificate examination and have knowledge of Maharathi, Hindi and English. The proviso makes it crystal clear that preference may be given to a candidate possessing training and experience in Telephone Operating. Admittedly, the applicant has

passed SSC examination. There is no dispute that he does not understand Marathi, Hindi and English. Even for argument sake it is accepted that he has not passed the Hindi and Marathi examinations according to the rules, but he could have been given opportunity to pass such examination. Admittedly, the applicant has vast experience as a Telephone Operator from 1997 onwards. All these factors clearly show that there was absolutely no reason to discard the applicant's claim from the names of the candidates who were recommended for up-gradation of their posts as Telephone Operator. In such circumstances, the impugned order regarding denying the benefit to the applicant is not legal and proper. Before the Hon'ble High Court at Nagpur Bench in Contempt Petition No.71/2004 a detailed Chart was filed as per Annex-A-16 at P.B. page nos. 100 to 104 (both inclusive). In this Chart the applicant's name appears at sr.no.14, wherein his post was shown as Labour. But he was shown to be holding the post of Telephone Operator. It is also mentioned that he has passed SSC examination in 1989 and has also obtained certificate of Telephone Operator and he was eligible to be considered for the post of Telephone Operator and therefore his designation shall be changed to Telephone Operator. It is not known as to how the Government has taken a summersault and deleted the applicant's name on the ground that he was not holding requisite

educational qualification. As discussed earlier, the recruitment rules clearly shows that a person to be appointed as Telephone Operator must have passed SSC examination and must have knowledge of Marathi, Hindi and English and a person having experience as Telephone Operator were to be preferred. In such circumstances, having worked as a Telephone Operator from 1997 till today and having acquired requisite qualification, there was absolutely no reason to deny up-gradation to the applicant. The order reverting the applicant from the post of Telephone Operator to Labour dated 19/7/2009, which was served on the applicant on 6/1/2010 is thus illegal and therefore the same required to be quashed and set aside. We, therefore, pass the following order :-

ORDER

The Government Resolution dated 24/3/2009 issued by respondent no.1, so far as it relates to non inclusion of the applicant's name for up-gradation to the post of Telephone Operator stands quashed and set aside. The respondents are directed to continue the applicant on the post of Telephone Operator as he was working prior to his reversion. The respondents are directed to issue necessary orders upgrading the post of the applicant as Telephone Operator as per the G.R. dated 24/4/2001. The respondents shall grant all financial benefits to the applicant that may be admissible due to up-

gradation of the applicant's post as Telephone Operator since admittedly he has worked on that post prior to reversion. No order as to costs.

(Shree Bhagwan)
Member(A).

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

Dated :- 24/07/2018.

dnk.