

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 882/2019 (D.B.)

Shri Sagar S/o Rammurti Butoliya,
Age about 31 years, Occ. Service,
R/o Plot No. 46, Shashikant Society, Utthan
Nagar, Gorewada Road, Nagpur-440 030.

Applicant.

Versus

- 1) The State of Maharashtra
Through the Secretary, Department of Home,
Mantralaya, Mumbai-32.
- 2) Director, Directorate of Forensic Science Laboratories,
Department of Home,
M.S. Vidya Nagari, Hanas-Bhugra Marg,
Santacruz (East), Mumbai-400 098.
- 3) Deputy Director of Regional Forensic Science Laboratories,
Nagpur Region, Rahate Colony Square, Wardha Road,
Dhantoli, Nagpur-440 012.
- 4) R.V.Ghati,
Aged Major, Occu. Service.
- 5) S.S.Solkar,
Aged Major, Occu. Service.
- 6) Ku.N.I.Rai,
Aged Major, Occu. Service.
- 7) N.R.Salve,
Aged Major, Occu. Service.
- 8) A.V.Nagtilak,
Aged Major, Occu. Service,
Nos. 4 to 8 working as Clerk-cum-Typist,
In the office of Director, Directorate of
Forensic Science Laboratories, Home
Department, M.S.Vidya Nagari, Hanas-
Bhugra Marg, Santacruz (East),
Mumbai-400 098.

Respondents.

**Shri A.P.Sadavarte, Id. counsel for the applicant.
Shri S.A.Deo, Id. C.P.O. for the respondents.**

**Coram :- Shri Shree Bhagwan, Vice-Chairman and
Shri Justice M.G.Giratkar, Member (J).**

Dated :- 25/04/2022.

JUDGMENT

Per : Vice Chairman.

Heard Shri A.P.Sadavarte, Id. Counsel for the applicant and
Shri S.A.Deo, Id. C.P.O. for the Respondents.

2. Applicant was appointed as 'Laboratory Attendant' in Group-D post on compassionate ground. The applicant is possessing B.A. Degree, Typing and M.S.C.I.T. Certificates, so he made representation and request to appoint him in Class-III post, since he was qualified for Class-III posts. However, the respondents did not consider his request because there was no vacancy at that relevant time. The Id. counsel for the applicant has relied on G.R. dated 23.08.1996 (A-8, Pg. No. 53). As per this G.R. people who are to be appointed on compassionate ground they are to be given appointment as per their qualification. Para no. 4 of the said G.R. on page no. 54 reads as under:-

“४. गट 'क' मधील पदांवर अनुकंपा तत्वावर नियुक्तीसाठी पात्र असणा-या कर्मचा-याला पदाच्या उपलब्धते अभावी गट 'ड' मधील पदांवर नियुक्ती दिल्यास पद उपलब्ध होताच गट 'क' मधील पदांवर त्याला प्राधान्याने नियुक्ती देण्यात यावी. अशी नियुक्ती सरळसेवा नियुक्तीने भरण्यात येणा-या

पदांवरील समजण्यात यावी. मात्र गट 'ड' मधील पदावर अनुकंपा योजनेअन्वये नियुक्ती देण्याच्या आदेशात तसा स्पष्ट उल्लेख करण्यात यावा, तसे करण्यात आले असेल तरच गट 'क' मधील पदावर नियुक्ती देता येईल."

3. In earlier round of litigation applicant approached to this Tribunal vide O.A. No. 305/2015 and in that O.A. on page no. 6 relief clause in para no. 7 reads as under:-

"(i) Direct the respondent no. 2 to make an appointment of the applicant to the class-III post.

(ii) Direct the respondent no. 2 to decide the representation of the applicant dated 11.07.2014 (A-7).

(iii) Grant any other relief which this Hon'ble Tribunal may find deem fit and proper in the facts and circumstances of the case and

(iv) Saddle the cost on the respondents."

4. Interim relief demanded in para no. 7 of the same O.A. was not fully granted. The order in O.A. No. 305/2015 was passed on 31.03.2017. The same order is at page nos. 1 to 8 and on page no. 8 operative order is as under:-

"The O.A. is partly allowed. The respondents are directed to consider applicant's claim for Class-III post in view of his representation dated 11.07.2014. Such appointment shall be issued within 2 months from the

date of this order. It is needless to state that the applicant will not be entitled to any arrears of pay for the up-gradation post retrospectively. No order as to costs."

5. Respondents complied the order as per A-8, Page no. 37 vide order dated 27.01.2015 and as per relief clause applicant was granted relief. Now after two years, applicant has filed O.A. No. 882/2019 on 05.11.2019 with following relief which is as under:-

"(i) Quash and set aside the impugned order dated 16.09.2019 passed by respondent no. 2 and thereby rejecting the objection of the applicant thereby denied the placement of applicant in common seniority list for the year 01.01.2019 (A-6).

(ii) Held and declare that the applicant be given deemed dated of appointment on the group-c post w.e.f. 03/12.06.2014 and further be directed the respondent to fix the proper seniority of the applicant above the respondent nos. 4 to 8.

(iii) Held and declare that the applicant is not claiming any arrears of pay for his upgradation of post retrospectively (i.e. Group-C cadre, Clerk-Cum-Typist w.e.f. 03.06.2014) and further be declared that there is no any violation of order dated 31.03.2017 passed by

Hon'ble MAT, Nagpur in O.A. No. 305/2015 (Sagar-Vs. State).

(iv) Grant any other reliefs, which will be deemed fit and proper in the facts and circumstances of the case.

(v) Allow this original application with costs. ”

6. We have examined the relief clauses after compliance of the order in O.A. No. 305/2015, applicant joined the post but now by the O.A. No. 882/2019; he is claiming deemed date of seniority.

7. The relief clause of O.A. 882/2019 covers the provisions of *Res Judicata* since his grievances have been finally Judicially decided on its merit in O.A. No. 305/2015. Now, he cannot litigate extending the same issue.

8. Respondents have filed the reply on 16.02.2021. In the reply respondents have explained about not paying of wages for not working in para nos. 12 and 13 which are reproduced below:-

“12. The fact remains that the applicant has never worked in Group-C category from 12.06.2014 to 22.09.2017 and as such by no stretch of imagination the said seniority list can be granted to the applicant by including his name in the seniority list of Group-C employees w.e.f. 12.06.2014.

13. It is a well settled position of law that, if an employee did not work on the post he will not get the pay of the said post and the same logic is applicable for an employee who did not work in a particular cadre will not get the seniority of that cadre for the period of which he is not working in that cadre.”

9. But that was not issue in the order of MAT also and same has been reflected in order of the respondent dated 27.01.2015 (A-8, Pg. No. 37). As far as seniority is concerned; since applicant had filed O.A. No.305/2015 and in the same O.A. he should have asked relief for deemed date of seniority, but he did not prefer to claim for that. Even after that by way of amendment he should have claim that relief but he did not claim that seniority. It means he has accepted. In view of these facts, relief clause in O.A. No. 882/2019 cannot be entertained at this stage, since applicant himself had accepted the relief in O.A. No. 305/2015. The relief granted in O.A. No. 305/2015 and in its compliance report it is mentioned that applicant’s grievances were taken care of as per his desire.

10. If chronology of event is examined in O.A. No. 305/2015 which was filed on 18.06.2015. The judgment was delivered on 31.03.2017 (page nos. 1 to 8) and compliance of MAT order was done by respondent on 11.07.2014 (A-7, Pg. No. 36). The O.A. No.

882/2019 was filed on 05.11.2019. The applicant was aware about deemed date of seniority when he filed O.A. No. 305/2015 and now he is filing O.A. No. 882/2019 on 05.11.2019 without filing any condonation of delay application. Hence, relief is barred by delay also.

11. Order II Rule 2 of the CPC prescribes that **every suit must include the whole claim that a party is entitled to and when a part of a claim is relinquished, the same cannot be sued for thereafter.**

12. Applicant has claimed deemed date of appointment. If it is granted, he will claim seniority from the date of appointment. Other employee will affect by the seniority of applicant. They are not made party. Hence, relief cannot be granted.

When applicant filed the O.A.No.305/2015 on 18.06.2015. He was well aware about his relief clause claimed in O.A.No.882/2019 which is filed on 05.11.2019. But he did not prefer to claim it. Hence, in view of CPC Rule quoted above he cannot claim now.

If at this stage the applicant is given deemed date of seniority, there will be many employees whose seniority will get adversely affected and they will agitate against this Chaos.

13. Hence, present O.A. does not survive:-

O R D E R

1. O.A. is dismissed.
2. No order as to costs.

(M.G.Giratkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 25/04/2022.

*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 V.C. and Member (J).

Judgment signed on : 25/04/2022.

Uploaded on : 26/04/2022.