

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 537/2019 (D.B.)

1. Manojkumar Madhukarrao Turile,
Aged about 44 years, Occ. Presently working
as a peon at Allapali in Gadchiroli Vanavrutta,
Gadchiroli.
2. Kishor Tulshiram Borkar, Aged about 40 years,
Occ.-Presently working as a Cleaner at Allapali in
Gadchiroli Vanavrutta, Gadchiroli.

Applicants.

Versus

- 1) State of Maharashtra,
through its Secretary for Revenue and Forest Department,
Mantralaya, Mumbai.
- 2) Chief Conservator of Forest,
(Regional), Van Prashaskiya Bhavan,
Potegaon Road, Gadchiroli.
- 3) Deputy Conservator of Forest,
(Regional), Allapali Division,
District Gadchiroli.

Respondents.

Shri S.A.Marathe, Id. Advocate for the applicants.
Shri A.M.Khadatkar, Id. P.O. for respondents.

**Coram :- Shri Shree Bhagwan, Vice-Chairman and
Shri M.A.Lovekar, Member (J).**

Dated :- 14/12/2021.

JUDGMENT

Per : Member (J).

Heard Shri S.A.Marathe, the Id. Counsel for the applicants
and Shri A.M.Khadatkar, the Id. P.O. for the Respondents.

2. The applicants have challenged the seniority list of Class-IV employees who are found eligible for being considered for Class-III post of Clerk by way of promotion. This list was published by Respondent no. 2 and communicated vide letter dated 06.07.2019 (Annexure-A) collectively.

3. CASE OF THE APPLICANTS:-

(i) Applicant no. 1 belongs to Other Backward Class category. He was appointed in the respondent department on 15.03.2008 as a Peon. Since, then he has been working as a Peon continuously. He acquired degree of B.A. in June, 2018. As per promotion Rules applicable to the respondent department he became due for promotion on completion of regular service of three years in Class-IV cadre.

(ii) Applicant no. 2 belongs to Scheduled Caste category. He was appointed as a Cleaner on 23.01.2010. Since, then he has been working as a Cleaner continuously. He acquired degree of B.A. in August, 2017. He, too, became due for promotion on completion of regular service of three years in Class-IV cadre.

(iii) The State Government has framed Rules for regularization of service conditions of Group-C employees working in the respondent department. These Rules which are dated 30.06.2011 have been

published in Gazette on 28.07.2011 (Annexure-2). Rule 8 of said Rules which is relevant reads as under:-

"8- ¼1½ ou foHkkxkrhy ^fyfi d fu Vady[kd* ; k i nkojhy ux.kpk [kryhy ekxkZus dj.; kr ; rhy%

¼v½ ou foHkkxkP; k xV M i nkoj 3 o"kkfu; fer I ok i wkZdsyY; k o ; k fu; ekryhy [kM ¼c½ e/khy mi [kM ¼nku½ o ¼rhu½ vUo; sukefunZ kukusue.kpHl kBh fofgr dsyhy vgrk /kkj.k djr vl yY; k 0; Drie/kou T; \$Brk v/khu i k=rk ; k fud"kkoy i nkburhusdj.; kr ; bZy-

¼c½ [kryhy vVh i wkZdj.kk&; k menokjke/kou ukefunZ kuknkjsdj.; kr ; bZy%

¼, d½ T; kps0; vBjk o"kkZ \$kk deh vkf.k rgrhl o"kkZgu tkLr ukgh%

¼nku½ T; kouh ek/; fed 'kkykr i æk.ki = i jhfkk mRrh.kZdsy vkg%vkf.k

¼rhu½ T; kouh 'kkI dh; XXXXXXX"

(iv) The aforesaid Rules of 2011 were amended by Rules dated 02.08.2018 (A-3). The Amended Rules were published in Gazette on 03.08.2018. By this amendment educational qualification, which was S.S.C. under 2011 Rules, was raised to Graduation in any stream. Relevant portion of Rule 8 of Amended Rules 2018 reads as under:-

"8 ¼1½ ou foHkkxkrhy "fyfi d&fu&Vady[kd" ; k i nkojhy ue.kod , d rj)&

¼v½ ou foHkkxkrhy xV&^M* e/khy i n /kkj.k dj.kk&; k o xV&^M* e/khy i nkoj 3 o"kkZ \$kk deh ukgh brdh fu; fer I ok i wkZdsyY; k vkf.k [kM ¼c½ e/khy] mi [kM ¼nku½ o ¼rhu½ e/; s

uem dsyvh vgrk /kkj.k dj.kk&; k 0; Drhæ/kou] ; kx; rB; k v/khu jkgu] T; sBrB; k vk/kkjs
; kx; 0; Drhyk i nklurh nnu dj.; kr ; bÿ%fdok

¼c½ i qhy 0; Drhæ/kou ukefunž kuknkjsdj.; kr ; bÿ&

¼, d½ T; kps0; , dkskhl o"kkž s'kk deh ukgh vkf.k vMrhl o"kkž s'kk tkLr ukgh v'kk
0; Drh%

lkjarđ jk[kho ioxkžhy 0; DrhB; k ckrhr] mPre o; ke; kžk =pkGhl o"kkž ; ž
f'ffky dj.; kr ; bÿ%

lkjarđ vk.k[kh vl sdh] ; k mi [kmlke/; suem dsyvh mPre o; ke; kžk gh] vuoplā k
rRokj fdok i noh/kj vākdkyhu ; kl kj [; k i l arhdakP; k vk/kkjs fu; P; djko; kP; k
0; Drhuk r l p ekth l sud] fn0; kx 0; Drh] i dYi xLr 0; Drh] Hkclā xLr 0; Drh o [kGkMw
; kd kj [; k] l ekurj vkj{k.kkaxž jk[kho oxkžhy 0; Drhuk ykxwvl .kkj ukgh- v'kk oxkžhy
menokjauk] 'kkl ukus; kckrhr oGkoGh ?kkf"kr dsyV; k i pfyr /kkj.kkuđ kj vl syh mPp
o; ke; kžk ykxwvl sy-

¼nku½ T; kauh i noh /kkj .k dsyvh vkgsv'kk 0; Drh%vkf.k

¼rhu½ T; kauh ejkBh Vdys[kukpsfdeku 30 'kcn i fr fefuV oxse; kžpsfdok baxstH
Vdys[kukpsfdeku 40 'kcn i fr fefuV oxse; kžps'kkl dh; okf.kT; i æk.ki = fdok l æ.kd
Vdys[kukpsi æk.ki = /kkj .k dsysvkgš v'kk 0; Drh%fdok

¼d½ 'kkl ukus; kckrhr oGkoGh fuxžer dsyV; k vkns kkuđ kj] [kml ¼c½ P; k mi [kml
¼nku½ o ¼rhu½ e/; sfofunžV dsyvh vgrk /kkj.k djhr vl sy v'kk ; kx; 0; Drhph vuoplā k
rRokj fu; P; rh d: u dj.; kr ; bÿ%fdok XXXXXXX.

(V) The respondent no. 2 published the seniority list of employees in Group-D due for promotion to the post of Clerk-Cum-Typist which falls in Group-C. In the (Provisional) seniority list published on 30.11.2018, which was based on the date of appointment on Class-IV post, names of applicant nos. 1 & 2 featured at serial nos. 4 & 8 respectively (A-4).

(VI) Objections were called. After considering the same final seniority list was prepared in which names of the applicant nos. 1 & 2 featured at Sr. Nos. 52 & 50, respectively. While preparing this list (A-5) amended educational qualification i.e. Graduation stipulated in the Rules of 2018, was taken into account.

(VII) Applicant no. 1 objected to fixation of seniority as per A-5, by filing representation dated 07.12.2018, before R-2 (A-6). He asserted that the date of appointment in Class-IV ought to have been taken to be the basis of fixation of seniority. He reiterated this grievance by filing second representation dated 08.07.2019 before R-2 (A-7).

(VIII) The applicants came to know that Revised/ Final seniority list was based on G.R. dated 15.04.1991 issued by G.A.D., Government of Maharashtra. Clause-III of this G.R. reads as under:-

"प्रतिष्ठापित कर्मचारियों, I - I-I ह फलक ररि e ijh{kk mrh.kz vl yv; k de pk& ; kR; k
 क्लरर T; k fno' kh R; kph rhu o"kl yx I ok i wkz gkby rksfnuka Tks Brpk fnuka I et.; kr

; kok o prfKJskhr fu; Qrh >KY; kuarj , I -, I -I h fdok rRI e ijh{kk mrh.kz >kyY; k
 depk&; kph rhu o"kl yx I ok >kyh vl Y; kl , I -, I -I hfdok rRI e ijh{kk mrh.kz>KY; kpk
 fnukd tsBrpkfnukd I et.; kr ; kok"

(IX) Respondent department did not decide representations made by applicant no. 1 nor was seniority list finalized on 06.12.2018 changed. The respondent department did not publish the number of vacancies in Class-III cadre of Clerk-Cum-Typist which were to be filled in.

4. CONTENTIONS OF THE APPLICANTS:-

(I) Rule 8 of Rules of 2011 and 2018, inter alia, stipulates educational qualification and further stipulates seniority as the basis for promotion from Class-IV to Class-III post. It would follow that the applicant became eligible for being considered for promotion on completing continuous service of 3 years in Class-IV Cadre. This, precisely, was the basis for preparation of seniority list dated 30.11.2018. It didn't call for modification on the basis of amended educational qualification i.e. Graduation.

(ii) Conjoint consideration of Rules of 2011 and 2018 would clearly lead to the conclusion that reliance on G.R. dated 15.04.1991 was mis-conceived and unwarranted since the Rules themselves were clear and unambiguous.

(iii) In any case G.R. dated 15.04.1991 could not have overridden the Rules framed by exercising powers under Article 309 of Constitution of India.

(IV) The (amended) Rules of 2018 provide for filling in vacancies of Clerk-Cum-Typist by promotion, nomination and change of Cadre, in the ratio of 40:50:10, respectively. Considering this aspect it was incumbent upon the respondent department to publish the number of vacancies for the post of Clerk-Cum-Typist in Gadchiroli Circle which were to be filled in.

(V) Under the circumstances holding Departmental Promotion Committee's meeting on 10.07.2019 would be patently illegal as it would result in promoting persons who are junior to the applicants.

5. On the basis of the case set up as above the applicants seek following substantive reliefs :-

- (i) Quash and set aside the Departmental Promotion Committee's recommendation in the meeting to be held on 10.07.2019 and of granting promotions to the employees in Gadchiroli Circle, as mentioned in the list annexed to the communication dated 06.07.2019 (A-1).

- (ii) Hold and declare that the applicants are entitled for promotion to the post of Clerk-Cum-Typist as per the Recruitment Rules of 2018 and accordingly direct respondents to promote them on the post of Clerk-Cum-Typist as per the seniority list published on 30.11.2018.
- (iii) Quash and set aside the seniority list of the Class-IV employees in Gadchiroli Circle published on 06.12.2018.

6. REPLY OF THE RESPONDENTS:-

- (I) The Rules of 2011 governing, inter alia, promotions were amended. The Amended rules stipulated that for promotion seniority shall be counted from the date of acquiring necessary qualification i.e. Graduation (The amended Rules are at A-3).
- (II) The G.R. of G.A.D. dated 15.04.1991 lays down that for promotion seniority is to be counted from the date of acquiring requisite educational qualification.
- (III) Seniority list dated 30.11.2018 was based on date of appointment of concerned Class-IV employees. Objections thereto were called. After considering these objections seniority list was published on 06.12.2018. It was based on the date of completing Graduation. This was perfectly in accordance with amended Rules of 2018 and G.R. dated 15.04.1991.

(IV) G.R. dated 15.04.1991 is being pressed into service since, prior to amendment of Rules of 2011, to take care of identical contingency.

(V) Both the representations of applicant no. 1 were decided by respondent no. 2 by order dated 29.07.2019 (A-R-1).

(VI) Rules of 2018, contrary to what the applicants have contended, not only provide for filling vacancies but also prescribe necessary qualification which is Graduation in the instant case.

(VII) As applicant nos. 1 & 2 had completed Graduation in 2018 and 2017, respectively, their seniority was fixed on that basis. The employees who had completed Graduation earlier were rightly placed above them. This was required to be done on account of amended Rule 8 of Rules of 2018.

(VIII) By order dated 22.07.2019 (A-R-2) candidates found to be eligible for promotion have been promoted.

(IX) Presently, no promotional posts are vacant to accommodate the applicants. In view of amendment of Rules of 2018 by Rules which have become applicable w.e.f. 25.10.2019, the applicants possess requisite educational qualification i.e. S.S.C. Respondents are ready to promote them when promotional vacancies occur.

7. REASONS AND CONCLUSION:-

It may be reiterated that Rules of 2011 stipulated educational qualification of SSC.. Rules of 2018 raised it to Graduation. Rules of 2019 have again gone back to requisite qualification being S.S.C for promotion to Group-C post from Group-D post.

We have quoted Rules of 2011 and 2018. Amended Rules of 2019 reads as under:-

"1- ¼1½ ; k fu; kelauk] ou foHkkxkrhy {ks= l o[kd] xV&c ¼vjkti f=r½] e[; ys[kki ky] l o[kd] ouiky] fyfi d&fu&Vdys[kd o ouj{k d xV d inkps ¼l ðki ðs k½ ¼l qkkj.kk½ fu; e] 2019] vl sEg.kkos

¼2½ gsfu; e fnukad 2 vkkLV 2018 i kl uu veykr vkysvl Y; kpsku.; kr ; ðy-

2 ou foHkkxkrhy {ks= l o[kd] xV&c ¼vjkti f=r½] e[; ys[kki ky] l o[kd] ouiky] fyfi d&fu&Vdys[kd o ouj{k d xV&d inkps¼l ðki ðs k½ fu; e] 2011 ; kP; k fu; e 8 e/khy i kV&fu; e ¼1½ e/; spkF; k i jndkurj i qhy i jnd tknk nk[ky dj.; kr ; ðy&

^i jnrql p] T; k 0; fDr xV&M e/khy in /kkj.k djhr vl rhy vkf.k gsfu; e egjk"Vª 'kkl u jkti =kr ifl) gks; kP; k fnukadki wtz ek/; fed 'kkykr i æk.ki = i jh{k mRrh.kz dsh vl sy vkf.k T; kauh [kM ¼c½ P; k mi [kM ¼rhu½ e/; suem dsysh vgrk /kkj.k dsh vl sy v'kk 0; Drhpk ns[khy ; k fu; ekP; k ifl) kP; k fnukadki kl uu

ಇಳಿಹಿ ಲಿಕ್ ಲಿಕ್ ; ಲಿ ಲಿಕ್ [ಲಿ ಲಿಕ್ ಲಿಕ್ ; ಸ ಲಿಕ್ ಲಿಕ್ ಲಿಕ್ ಲಿಕ್ ; ಲಿ ; ಲಿ-*

XXXXXXX

It may be noted that though Rules of 2019 were notified in gazette on 25.10.2019, they have been made applicable w.e.f. 02.08.2018. By this amendment to Rules of 2011, after fourth proviso, fifth proviso has been added. By this proviso educational qualification of graduation prescribed by amended Rules of 2018 has been brought down to S.S.C.. This prescription was there under the Rules of 2011. The above referred fifth proviso further stipulates that for a period of 5 years from the date of notification of Rules of 2019 in gazette i.e. 25.10.2019 educational qualification for promotion to Group-C post from Group-D post shall be S.S.C.. It would, therefore, follow that only future promotions i.e. promotions to be given after notification of Rules of 2019 to Group-C post from Group-D post shall be governed by these Rules and such promotions to be given during the period anterior to notification of Rules of 2019 shall be governed by Rules of 2018. Thus, in the instant case it will have to be held that when the matter of promotion to Group-C post from Group-D post was under consideration Rules of 2018 were in effect applicable.

Grievances of the applicants are that as per seniority list published on 30.11.2018 their seniority was rightly fixed on the basis of

date of their initial appointment, subsequent/ final fixation of seniority on the basis of date of acquiring qualification i.e. Graduation was arbitrary and illegal, reliance placed for this purpose on G.R. of G.A.D. dated 15.04.1991 was misconceived and uncalled for, placing such reliance was also unwarranted because Rules themselves were crystal clear, the Rules were principally Recruitment Rules and for these reasons D.P.C. ought not to have relied on seniority list dated 06.12.2018 compiled on the basis of date on which the employees had completed Graduation to recommend names for promotion prejudicially affecting seniority and chances of promotion of the applicants. For redressal of these grievances the applicants have sought aforequoted reliefs.

Thus, seniority list dated 30.11.2018 (A-4) as well as seniority list published/ finalized after considering objections on 06.12.2018 were prepared when Rules of 2018 were effectively in place and hence applicable. As per these Rules the educational qualification required for promotion from Group-D post to Group-C post was Graduation. Consequently, only on acquiring this qualification the employees could become eligible for being considered for promotional post. Thus, the date of acquisition of necessary educational qualification as prescribed under the Rules in place at the time of consideration of

question of promotion was bound to be decisive for fixation of seniority for the purpose.

As mentioned above, when the process of filling Group-C posts, inter alia, by promoting eligible Group-D employees started Rules of 2018 were in place which mandated that the employees, in order to be eligible, must possess qualification of Graduation. Thus, for fixing seniority for promotion the date on which Graduation was completed became crucial. In this light seniority came to be fixed/ finalized on 06.12.2018, after considering objections, on the basis of date on which Graduation was completed. The employees who had completed Graduation prior to acquisition of the same by the applicants were placed above them in the list of seniority. This was perfectly in accordance with law. In support of this conclusion reliance may be placed on **the judgment of the Hon'ble Supreme Court "Union of India Vs. Krishna Kumar in Civil Appeal No. 672 of 2019 (Arising out of SLP (C) No. 26451 of 2014) delivered on 14.01.2019)".** In this case it is held:-

"It is well settled that there is no vested right to promotion, but a right to be considered for promotion in accordance with the Rules which prevail on the date on which consideration for promotion takes place. This court has held that there is no rule of universal application to the effect that vacancies must necessarily be filled in on the basis of the law which existed on the date when they arose.

In this case following observations of the Hon'ble Supreme Court in "**Deepak Agrawal and Another Vs. State of Uttar Pradesh Judgment in Civil Appeal No. 6587 of 2003 delivered on 31.03.2011**" have been quoted:-

"It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the "rules in force" on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right considered for promotion accrues on the date of consideration of the eligible candidates."

Reliance may also be placed on a ruling of Hon'ble Supreme Court "**Palure Bhaskar Rao Etc. Vs. P. Ramaseshaiah & Ors. Judgment delivered on 12.04.2017 in Appeal Nos. 6795-6798 of 2014**". In this case following observations in the case of **R. Prabha Devi and Ors. Vs. Government of India 1988 SCR (3) 147 through Secretary, Ministry of Personnel and Training, Administrative Reforms and Ors. have been quoted :-**

"The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit

who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority”.

“When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post.”

In view of facts of the case and the legal position stated above we hold that seniority was rightly fixed as per Annexure-A-5 and further process undertaken pursuant thereto cannot be faulted.

For all these reasons, the O.A. deserves to be dismissed.

Hence, the order-

ORDER

The O.A. is dismissed. No order as to costs.

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

(Shree Bhagwan)
Vice-Chairman.

Dated :- 14/12/2021.

*aps.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : A.P.Srivastava

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 14/12/2021.

Uploaded on : 15/12/2021.