

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.540 OF 2016**

**(Subject :- Selection/Appointment)**

**DISTRICT : Jalgaon**

Raghunandan Damu Sapkale, )  
Age – 39 years, Occupation-Nil, )  
R/o.42/2, Gadge Baba Nagar, )  
Bhadgaon Road, Pachora, Tq. )  
Pachora, Dist. Jalgaon. )...Applicant

**V E R S U S**

1. The State of Maharashtra, )  
Through Secretary, Revenue and )  
Forest Department, Mantralaya, )  
Mumbai – 32. )
2. The Dy. Director of Land Record, )  
Nashik Region, Nashik. )
3. Office of Settlement )  
Commissioner & Director of Land )  
Records, Pune. )...Respondents

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**APPEARANCE :- Shri Ajay S. Deshpande, learned Advocate for the Applicant.**  
**Smt. Sanjivani K. Deshmukh-Ghate, the learned Presenting Officer for the Respondents.**  
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**CORAM :- JUSTICE A.H. JOSHI, CHAIRMAN  
AND  
ATUL RAJ CHADHA, MEMBER (A)**

**RESERVED ON :- 22 .02.2019.**

**PRONOUNCED ON :- 27.02.2019.**  
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**O R D E R**

**[Per : Justice A.H. Joshi, Chairman]**

1. Heard Shri Ajay S. Deshpande, learned Advocate for the Applicant and Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for the Respondents. Perused the Original Application, annexures, reply to Original Application and annexures thereto as well the rejoinder.

2. Applicant's grievance as represented in Original Application needs to be referred to by quoting the pleadings adverbatis as below:-

“4. (VIII) The applicant says and submits that, the selection process carried out by the respondent authorities is itself in the contravention into the Government Resolution dated 12/03/2013 which mandates that the selection process for the Class –D has to be carried out by means of written examination only and it is specifically mentioned that the earlier Government Resolution dated 7/6/2004 in which it was mentioned that there shall be 75 marks examination in written and 25 marks of interview. But by superseding the Government Resolution dated 7/6/2004 respondent no.1 had come with the new Government Resolution dated 12/3/2013 which shows that by keeping the same marks analogy which is mentioned in the Government Resolution dated 7/6/2004. It is clarified that, the selection list shall be prepared according to the written examination only and in failure to that the concern department would be held liable. Hereto annexed and marked the copy of Government Resolution dated 7/6/2004 and 12/3/2013 are at Annexure –“A-7” Collectively.”

(quoted from page nos.6 & 7 of the O.A.)

4. (IX) Being aggrieved and dissatisfied with the above impugned selection list, applicant is approaching before this Hon'ble Tribunal by challenging the legality, validity,

propriety and correctness of the same on following amongst other grounds.

**:: GROUNDS ::**

- (i) The impugned list pass by the respondent authority is unjust, improper and against the settled provisions of law, hence same is deserves to be quashed and set aside.
- (ii) That, the entire selection process is seems to be doubtful and nothing but colourable exercise of powers by the respondent authorities.
- (iii) That the selection process had been conducted against the Government Resolution dated 12/03/2013 which strictly prohibits the authorities to conduct interview for the Class-D selection process.
- (iv) That, the marks in the interview shows that the respondent authorities had shown pick and choose process.
- (v) That the selection process also raises doubt because the selected candidate from one another category i.e. Open Female shows the selected person as male when there is availability of 5 female candidates and when the selected candidates is not called for the interview even.
- (vi) That, the selection process has to be conducted and followed on the guidelines issued in the Government Resolution dated 12/3/2013 which was in existence at the time of issuing publication of advertisement for the post of "Peon" i.e. Class-D post. But it seems that, the respondent authorities had straight way applied the formula for selection by conducting interview to both the class i.e. Class – C and Class-D.
- (vii) That, the applicant is having last hope of getting employment in the service of Government of

Maharashtra as he is turning in the age of 40 years and the last stage for appearance is 38 years only.

- (viii) That, the applicant had secured highest mark i.e. 69 out of 75 marks in the written examination it is surprising and doubtful that he secured 10.25 marks out of 25 marks in the interview, which is highly impossible.

(quoted from page nos.7,8 & 9 of the O.A.)

3. Respondent Nos.1 to 3 have filed reply and denied Applicant's averments with pleadings as below:-

"11. With Regards to para 4(VIII), I Say and submit that the Land Records Departments wide there advertise dated 9.11.2014 published in news paper Gavkari and Divya Marathi & Also on the M.K.C.L. Website for the post of steno (lower Grade), Surveyor/Clerk kum Typist and Group -D Peon. In our advertisement published on MKCL Pune Website Dated 10.11.2014 Point no.19 (क)

गट ड शिपाई पदासाठी ७५ गुणांची लेखी परिक्षा असेल. लेखी परिक्षा ही पदासाठी आवश्यक असलेली किमान अर्हता, सामान्य ज्ञान, बुद्धीमत्ता चाचणी व पदसाठी आवश्यक असलेल्या ज्ञानावर आधारित राहिल. २५ गुणांची मौखिक(मुलाखत) परिक्षा घेवून गुणवत्तेनुसार उमेदवाराची निवड केली जाईल".

तसेच जाहिरातीतील २०(अ) नूसार निम्न श्रेणी लघुलेखक /गट ड शिपाई पदासाठी लेखी परिक्षा व व्यवसायिक परिक्षा/मुलाखतीद्वारे प्राप्त केलेल्या गुणांची एकत्रित बेरीज करून त्या आधारे पदासाठी गुणानुक्रमे प्रवर्ग निहाय निवड यादी जाहिर केली जाईल.

**The G.R. dated 12/3/2013** " गट ड मधील एखाद्या संवर्गातील पदभरती करतांना, मुलाखती न घेता केवळ लेखी परीक्षेच्या आधारे निवडयादी तयार करण्याबाबत मंत्रालयीन प्रशासकीय विभागाची खात्री असल्यास जाहिरात देण्यापुर्वी म्हणजेच भरती प्रक्रीया सुरू करण्यापुर्वी त्यांनी शासन मान्यतेने दिनांक ७/६/२००१४ च्या शासन निर्णयामधील गुण मर्यादेच्या अधिन राहून फक्त लेखी परीक्षेच्या आधारे निवडयादी तयार करून त्याआधारे भरती करण्याचा निर्णय संबंधीत मंत्रालयीन प्रशासकीय विभागास त्यांचा स्तरावर घेता येईल. मात्र . . . .

It shows that in G.R. dated 12/3/2013 was not mandatory for recruitment of Group D Peon post. So the procedure of interview is followed by G.R. dated 7/6/2004 & that was clearly mentioned in advertise.

The copy of G.R. dated **12/3/2013** is annexure here with **Exhibit R-5**.

The Government, General Administrative Department has taken decision not to conduct interview of Group D post for appointment on G.R. dated 5/10/2015. In this G.R. term 6 "ज्या प्रकरणी, हे आदेश निर्गमित होण्यापुर्वी जाहिरात प्रसिध्द करून निवड प्रक्रीया सुरू करण्यात आली आहे अशा प्रकरणे वगळता, हे आदेश तात्काळ अंमलात येतील."

The copy of G.R. dated 5/10/2015 is annexure here with **Exhibit R-6.**

The recruitment procedure of Group D post is begins on 9/11/2014, so according to above mentioned term this G.R. is not applicable for this recruitment. So the procedure of taking interview of recruitment Group D post is legal.

12. With Regards to para, IX Grounds i to x, I say & submits the fact as mentioned above. It further say & submit that interview for Group D post were scheduled during the period of dated 10.5.2016 to 12.5.2016. The Interview board is comprised of that following.

अ.क्र.	समिती	पदनाम
१	अध्यक्ष	उपसंचालक भूमि अभिलेख पुणे प्रदेश पुणे
२	सदस्य	गृह प्रमुख वर्ग २ समाज कल्याण विभाग
३	सदस्य	वरिष्ठ लिपीक रोजगार व स्वयंरोजगार मार्गदर्शन केंद्र नाशिक
४	सदस्य	कल्याण संघटक जिल्हा सैनिक कल्याण अधिकारी, नाशिक
५	सदस्य	परिविक्षा अधिकारी जिल्हा महिला व बालविकास अधिकारी नाशिक
६	सदस्य	जिल्हा अधीक्षक भूमि अभिलेख नाशिक
७	सदस्य	उप अधीक्षक भूमि अभिलेखक, अहमदनगर
८	सदस्य सचिव	कार्यालय अधीक्षक, उपसंचालक भूमि अभिलेख, नाशिक प्रदेश, नाशिक

According to the above said Interview Panel, each member has put their individual marking in prescribed format. Thereafter, the marks obtained in written test and the marks obtained in interview have been combined together. After that the final list was prepared according to G.R. dated 13/8/2014 and following one candidate was recommended on the SC post names are

1. Hiwale Tushar Ravindra total 85.00 marks

The applicant in aggregated received 79.75 marks in said exam and he does not find the place in the final merit list. Hence the question of his selection does not arise. Considering above fact there is no merit and substance in the present original application and hence deserves to be dismissed with cost.

4. Crux of reply quoted in foregoing paragraph is as follows:-

- (i) The policy decision of 7.6.2004 prescribed and provided for viva voce.
- (ii) Policy decision dated 12.3.2013 permitted the Administrative department of the recruiting office to "decide" at the level of department to dispense with viva voce.
- (iii) Advertisement subject matter is issued and was flashed on website of Government on 20.6.2014.
- (iv) Government changed the policy and by issue of Government decision dated 5.10.2015, made it mandatory to dispense with in totally the "viva voce". However, para no.6 of the Government decision dated 5.10.2015 contains a clause of exclusion which reads:-

"6. ज्या प्रकरणी, हे आदेश निर्गमित होण्यापूर्वी जाहिरात प्रसिध्द करून निवड प्रक्रिया सुरू करण्यात आली आहे अशी प्रकरणे वगळता, हे आदेश तात्काळ अंमलात येतील."

5. As regards ground IX (viii), about total want of probability of Applicant's securing 16.25 marks out of 25 in viva voce, reply of state contained in para no.12 (quoted hereinbefore in para no.3, and portion which is underlined) is eloquent.

6. Applicant has not disputed the factual matter contained in para no.12 of reply of the Respondents.

7. From foregoing discussion, it is evident and conclusive that:-

- (i) Viva voce for group-D posts was totally abolished only from 5.10.2015 that too prospectively.

- (ii) Applicant has failed to show any illegality in impugned selection.
- (iii) Allegation of impossibility of Applicant's securing very less marks is very well met by the Respondents by showing as to the manner in which the selection was made objective by eliminating subjective element.
- (iv) Malafides and favour etc. are not demonstrated muchless proved.
- (v) Affected private individuals are not arrayed as respondents.

8. In the result, Original Application has no merit and is dismissed with costs.

**Sd/-**  
**(ATUL RAJ CHADHA)**  
**MEMBER (A)**

**Sd/-**  
**(A.H. JOSHI)**  
**CHAIRMAN**

**Place:- Aurangabad**

**Date :- 27.02.2019**

SAS. O.A.No.540/2016.Selection/Appointment.D.B.