

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR
ORIGINAL APPLICATION NO. 762/2021 (D.B.)

1. Ashish Narayan Hemke,
Aged about 31 years, Occ. Service,
R/o Municipal Council, Kalmeshwar,
District – Nagpur.
2. Swapnil Ramesh Pawar,
Aged 29 years, Occ. Service,
R/o Sankalpa Niwas, Banjara Colony,
Pusad.
3. Somnath Kashinath Naralkar,
Aged 31 years, Occ. Service,
R/o Kamgaon, Taluka Newasa,
District Ahmednagar.
4. Ashok Balasaheb Jadhav,
Aged 38 years, Occ. Service,
R/o Kanchanpuram, D-502, Bayaf Road
Wagholi, Pune.
5. Prashant Chokoba Sarode,
Aged 36 years, Occ. Service,
R/o 11, Riddisiddhi Vihar, Janata Colony,
Daund, Pune.
6. Prasad Balbhim Jagtap,
Aged 38 years, Occ. Service,
R/o A-4/7, Indraprasatha Society,
Saghavi, Pune.

Applicants.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Urban Development,
Mantralaya, Mumbai-32.
- 2) Director of Municipal Administration,
Having office at Directorate Nagar,
Parishad Administration, Building of

Govt. Transport Services, 3rd Floor,
Sir Pochkhanwala Marg, Warali, Mumbai-30.

- 3) Maharashtra Public Service Commission,
Through its Secretary, having office at Bank of India Building,
3rd Floor, Mahatma Gandhi Road,
Hutatma Chowk, Mumbai-01.

Respondents.

Shri R.V.Shiralkar, Id. Advocate for the applicant.

Shri A.P.Potnis, Id. P.O. for the respondents.

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

Dated :- 23/12/2021.

JUDGMENT

Per : Member (J).

Heard Shri R.V.Shiralkar, Id. Counsel for the applicants and
Shri A.P.Potnis, Id. P.O. for the Respondents.

2. Case of the applicants is as follows. All the applicants are presently working with Municipal Councils. All of them are entitled to appear for Departmental Examination to be held to fill posts of Chief Officer. Under notification dated 06.03.2019 Urban Development Department of Government of Maharashtra has framed "Maharashtra State Municipal Council Chief Officer (Recruitment and conditions of service) Rules (A-2)". As per these Rules the competent authority for conducting examination for the post of Chief Officer is M.P.S.C. as this is Class-II post. Till M.P.S.C. takes responsibility to conduct such examination, it can be conducted by a committee duly constituted under

the Rules of 2019. A committee has been constituted to conduct competitive examination and prepare a select list of eligible candidates for the post of Chief Officer, Class-II. Respondent no. 2, by communication dated 04.11.2019 (A-3) stipulated that only those employees in the cadre who had experience of 5 years and who had not completed 53 years as on 30.11.2019 would be eligible to appear in the examination. The applicants and some other employees of the cadre whose experience fell short by few months only submitted a representation dated 06.11.2019 (A-4) to respondent no. 2 that by relaxing the condition of experience of 5 years they be permitted to appear for the competitive examination. Representation (A-4) was rejected by respondent no. 2 vide order dated 20.11.2019 (A-5). The respondents have unilaterally formed a committee to conduct the examination without informing M.P.S.C. which they ought not to have done. Departmental competitive examination is yet to be held. In the meantime, the applicants and some others have acquired requisite experience of 5 years. By submitting representation (A-6) dated 12.07.2021 before respondent no. 2 the applicants and some others prayed that they be allowed to appear for the examination and the examination be directed to be conducted by M.P.S.C. in view of G.R. dated 22.09.2020 issued by G.A.D.. On 08.07.2021 respondent no. 2 had issued a communication (A-8) informing all Chief Officers of Municipal Council

that examination of those who had qualified for the examination of 2019 would be held on 15.08.2021 or any convenient date, and examination of those becoming eligible as on 30.11.2020 would be (tentatively) conducted on 01.12.2021. No examination has been held so far pursuant to communication dated 08.07.2021. By letter (A-9) M.P.S.C. furnished information under the R.T.I. Act that it had not received any communication from the respondent department to conduct the examination in question.

3. The applicants have claimed following final reliefs:-

"(A) Hold and declare that action of respondents no. 2 of conducting departmental competitive examination for filling posts of Chief Officer, Class-II, through committee constituted under notification dated 06.03.2019 and not through respondent no. 3 is illegal and consequently;

(B) Direct the respondent no. 2 to conduct departmental competitive examination for filling posts of Chief Officer, Class-II by promotion through M.P.S.C. strictly."

They have claimed following interim relief :-

"(C) During the pendency of this petition and without prejudice to the rights of applicants, direct the respondent no. 2 to accept the forms of the applicants for the post of Chief Officer, Class-II and further they may be permitted to appear for departmental competitive examination for filling posts of Chief Officer, Class-II by promotion."

4. Reply of respondent no. 2 is at page nos. 27 to 31. According to the respondent no. 2, since the applicants and some others were not

possessing experience of 5 years on the cut off date i.e. 30.11.2019 there was no question of treating them as eligible for 2019 examination.

Further case of respondent no. 2 is as follows:-

"The whole procedure of conducting examination is completed and the exam is scheduled on 19.12.2021 for the candidates eligible as on 30.11.2019 and the letter dated 11.11.2021 is issued in this regard by the respondent. The copy of the letter dated 11.11.2021 which is annexed herewith as Annexure-R-1. The answering respondent cannot give relaxation of eligibility criteria to the present applicants, as it will result into contravention of the decision taken by the committee based on the notification dated 06.03.2019 issued by Government of Maharashtra.

Earlier also, the representation of applicant nos. 2 – 5 was rejected vide letter dated 20.11.2019 on the eligibility of completion of five years in service as on 30.11.2019. The copy of the letter dated 20.11.2019 which is annexed herewith as Annexure-R-2.

The G.R. dated 22.09.2020 issued by the General Administration Department is clear regarding the subject issue covered, viz, the concerned department can conduct the examination as per their rules, so the committee formed as per notification dated 06.03.2019 issued by Government of Maharashtra, that the committee is authorised to conduct this limited competitive examination till Maharashtra public service commission takes decision for conducting such exams. "

We have considered rival submissions.

Rule 2 of notification dated 06.03.2019 is as under :-

"2- egkj k"V" jkT; uxji fj"kn eq; kf/kdkjh l dk ¼l dk Hkj rh o l dB; k 'krh½ fu; e] 1983 ¼T; kl ; ki qseG fu; e Eg.ku l cksk.; kr ; b½ e/khy fu; e 2 [kkyhy [kM ¼vk; ½ urj [kkyhy [kM l ekfo"V dj.; kr ; b½&

¼vk; &1½ e; kñr foHkxh; Li /kkz i jh{kk Eg.kts 'kk l ukus l oñ k/kj.k vFkok fo'ksk vkns kkuq kj egkj k"V" uxji fj"kn uxji pk; rh o vks] ksd uxjsj kT; l dk ¼l ekosku ue.kpl o l dB; k 'krh½ ¼l qkkj.kk½ fu; e 2006 e/khy fu; e 2 [kM ¼, u½ e/; s

uem l oke/khy depl&; ke/ku oGloGh eq; kf/kdkjh Jskh 2 ; k i nkoj i nklurhl kBh
vkf.k egkjk"V" ykdI ok vk; kx v'kh tckcnkjh ; bñ ; r fu; e 7 ok ud kj xfbR
dyy; k l ferh) kjs?ks; kr ; skjh i jh{kk gks -"

5. Respondent no. 2 has placed on record letter dated 18.06.2021 (at pg. no. 40). Subject of this letter is :-"fo"k; & jkT; Lrjh; l dxl depl&; k; k eq; kf/kdkjh xV&Ck ; k i nkoj fu; r h fo"k; h e; k n r foHkxh; Li /kZi jh{kk ?ks ; kckr".

Para no. 3 of the said letter is reproduced below:-

"3- mi f'k{k.k.f/kdkjh ; k l dxl rhy dkgh i nkojhy Hkjr h l qnk e; k n r foHkxh;
Li /kZi jh{k) kjsdj .; kph rjrn dj .; kr vkyl gkrh- l nj i nkdjhrk l u 2017 e/; s
e; k n r foHkxh; Li /kZi jh{kk ?ks ; kr vkyl vkgs rFkfi] ; k i jh{kpk vkysk vuqko
gk Qkjp vl ek/kudkj d vkgs l nj i jh{k) kBh vtZ dyy; k vucl menokj k) dh
dskrs menokj dskR; k l dxl rhy vkgs o rs i jh{k) cl .; k l ik= vkgs ; kckrpk
l ok ri 'khy f'k{k.k vk; r k d Msmi yC/k ul Y; kus i jh{k) i dsk fny; k menokj k) dh
dskrs menokj i k=rB; k vVhph i r r k djrkr gs f'k{k.k foHkx x; k l gk efgl; kr
i ekf.kr d: 'kdyyk ukh- R; keG l nj i jh{k) fudky x; k l gk efgl; ki kl u
yxxu 'kdY; k usR; k; k egk[krh i yfcr vkgs -"

In this letter certain other difficulties faced and experienced by M.P.S.C. to hold such examinations have been elaborately set out.

These details will show that the respondent department had formed the committee for conducting examination in accordance with Rule 2 of notification dated 06.03.2019.

6. Correspondence placed on record by respondent no. 2 also shows that examination of 2019 had to be postponed because of Covid-19 Pandemic.

7. Question of holding the applicants eligible for 2019 examination would not arise since on the relevant cut off date they did not possess experience of 5 years. In their reply (A-R-1) respondent department has stated:-

"However, this is not the last chance remaining at the hands of the present applicants, they will be entitled into the future rounds of such examination, which will be held as and when the vacancies arise."

These details show that in the examination to be held subsequently persons like the applicants having acquired experience of 5 years after 30.11.2019 can appear and compare.

8. For all these reasons we have given to the conclusion that the application 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 :- 23/12/2021.

*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 : 23/12/2021.

Uploaded on : 24/12/2021.