

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 78/2017(D.B.)

Bharti Haribhau Khapre,
Age-25 years, Occ-Nil,
R/o- Mhada Colony,
Behind Patrakar Colony,
Vilas Nagar Road, Amravati,
Tq. and Dist. Amravati.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary of Agricultural,
Animal Husbandry, Dairies and
Fisheries Department, Mantralaya Mumbai
- 2) Commissioner of Fisheries
Office at Taraporewala Matsyalaya
Netaji-Subhash Road, Charni-Road,
Mumbai-400002.
- 3) Assistant Commissioner of
Fisheries Ratnagiri,
Tq. and Dist. Ratnagiri.

Respondents

Shri P.S.Patil, Ld. Counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

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

Dated: - 14th July 2022.

JUDGMENT**Per :Member (I).****Judgment is reserved on 11th July, 2022.****Judgment is pronounced on 14th July, 2022.**

Heard Shri P.S.Patil, learned counsel for the applicant and Shri S.A.Sainis, learned P.O. for the respondents.

2. Case of the applicant is as follows.

In response to advertisement (Annexure A-1) issued by the respondent department the applicant submitted application (Annexure A-2) online for the post of Junior Clerk. She cleared written test. Select / wait list (Annexure A-3) of successful candidates was published. In wait list she stood at Sr.No.1. In response to communication (Annexure A-4) she produced original documents which were duly verified. She waited to receive appointment order. She came to know that in fact her appointment order, along with that of one Raghuwanshi, was already issued whereupon she submitted application (Annexure A-5) to respondent no.2 clarifying that she had not received appointment order and how she had come to know about said order having been issued by the office. She made representation (Annexure A-6) to respondent no.2 that she be allowed to join on the post of Junior Clerk. She did not get

any response. Then she applied (Annexure A-7) under the Right to Information Act. She received reply (Annexure A-8) that her appointment order dated 03.12.2015 was sent to her by ordinary post and hence, the office did not have receipt of acknowledgment. To this communication xerox copy of appointment order was attached. Respondent no.2, by letter dated 24.10.2016 (Annexure A-9) sought guidance from respondent no.1 whether the applicant could be allowed to join. This reference was answered in the negative by stating that period of validity of select / wait list could not be extended for want of enabling provisions in G.R. dated 19.10.2007. This was communicated by respondent no. 2 to the applicant vide the impugned letter dated 16.01.2017 (Annexure A-10). Hence, this application for following reliefs-

- 1. Direct respondent to allow the applicant to join the post of Junior Clerk in pursuance of the appointment order dated 03.12.2015 to the office of Assistant Commissioner of Fisheries at Ratnagiri in the interest of justice.**
- 2. Hold and declare that in the peculiar fact and circumstances of the case the applicant is entitled to join the post of Junior Clerk at the office of Deputy Commissioner Fisheries Ratnagiri though the validity of period of selection list is expired in the matter.**

3. Reply of the respondents is at pp. 32 to 36. They have resisted the application mainly on the ground of Clause 9 of G.R. dated 19.10.2007 (Annexure R-1) which reads as under-

९. निवडसूचीची कालमर्यादा :- निवड समितीने तयार केलेली निवडसूची १ वर्षासाठी किंवा नवीन सूची तयार करण्यासाठी सेवा भरतीची जाहिरात देण्यात येईल, त्या दिनांकापर्यंत यापैकी जो दिनांक आधी घडेल त्या दिनांकापर्यंत विधीग्राह्य ठरेल. त्यानंतर ही निवडसूची व्यपगत होईल.

4. It was submitted by Shri P.S.Patil, learned Advocate for the applicant that the applicant did not receive order of appointment, when she came to know that it was already issued she moved the authorities promptly and under such circumstance Clause 9 of G.R. dated 19.10.2007 should not be resorted to so as to defeat her legitimate claim. In support of this submission the applicant has relied on ***“Umesh s/o Mohan Kumawat Vs. State of Maharashtra and Others 2017 (7) ALL MR 615.*** In this case appointment letter was issued to the selected candidate eleven months after publication of select list. It was held that in these peculiar facts the petitioner could not be deprived of his crystalized right to get appointment. While arriving at this conclusion reliance was placed on ***“Udaysing Jalamsing Valvi Vs. The Secretary, District Selection Committee,***

Raigad and Another in Writ Petition No.4257/2013 decided on 22.01.2014. Para 9 of the ruling of “Udaysing” reads-

9. The Government Circular in question so referred and read, just cannot be read to mean and/or permit the Respondents to deny the claim and/or deny the appointment, though post is vacant in that period of one year. The Respondents themselves failed to take action by not appointing the Petitioner and they kept the post vacant for undisclosed reason and/or for the reason, which in our view is not sufficient to deny the crystalized rights of the Petitioner for the post in question, as the appointed candidate failed to join the post within the prescribed period.

5. By order dated 10.01.2022 this Tribunal had directed learned P.O. to take instructions from the respondents regarding vacant posts of Junior Clerk in response to which respondent no.2 has furnished information with covering letter dated 31.01.2022. As per this information 47 posts of Junior Clerk in Fisheries Department in the State of Maharashtra are vacant.

6. Considering peculiar facts of the case, guidelines contained in the above referred rulings and position of vacancies the application deserves to be allowed. Hence, the order.

ORDER

1) Application is allowed in terms of prayers 1 and 2.

2) No order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated – 14/07/2022

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

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman &
Court of Hon'ble Member (J) .
Judgment signed on : 14/07/2022.
and pronounced on
Uploaded on : 14/07/2022.