

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 325 / 2020 (S.B.)**

Shri Sukhdeo S/o Baliram Raut,
Aged about 60 years, Occ. Retired,
R/o Dawlipar, Tah. Goregaon,
Dist. Gondia.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai- 400 032,
- 2) The Collector,
Office of the Collector,
Civil Lines, Gondia.

Respondents

With**ORIGINAL APPLICATION NO. 326 / 2020 (S.B.)**

Shri Kailash S/o Mayaram Sakhare,
Aged about 59 years, Occ. Service,
R/o Goregaon, Tah. Goregaon, Dist. Gondia.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai- 400 032,
- 2) The Collector,
Office of the Collector,
Civil Lines, Gondia.

Respondents

With

ORIGINAL APPLICATION NO. 327 / 2020 (S.B.)

Shri Ramesh S/o Laxman Farkunde,
Aged about 57 years, Occ. Service,
R/o Salekasa Railway Station, Tah. Salekasa,
Dist. Gondia.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai- 400 032,
- 2) The Collector,
Office of the Collector,
Civil Lines, Gondia.

Respondents

Shri G.G.Bade, Id. Advocate for the applicant.

Shri S.A.Sainis, Id. P.O. for the respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 22nd August, 2022.

Judgment is pronounced on 24th August, 2022.

Heard Shri G.G.Bade, Id. counsel for the applicants and Shri S.A.Sainis, Id. P.O. for the Respondents.

2. In these three O.As. identical points arise for determination. Hence, the same are being decided by this common Judgment.

3. Facts leading to these applications are as follows. The applicants were appointed as Section Writer/ Copying Clerk. They

claimed benefit of regularization of service w.e.f. 22.10.1996 on the basis of G.Rs. dated 22.10.1996, 10.03.2005 and 02.09.2016 (A-2, A-3 & A-4, respectively). Question of their entitlement to benefits flowing from these G.Rs. was, however, unjustifiably deferred. By letter dated 11.05.2009 (A-5) respondent no. 2 had sought guidance from respondent no. 1 with regard to the extent of age relaxation as per aforesaid G.Rs. since the applicants belonged to the age group of 46 – 50 years. The letters stated:-

“As per Govt. order dated 10.03.2005, while accommodating such candidates in Govt. service, prescribed age limit has to be relaxed, but it is not mentioned as to for how many years it be relaxed. As per Govt. order dated 17.08.2004, the prescribed maximum age limit for Open Category is 33 years and for Scheduled Castes it is 38 years. The candidates from Gondia District are presently of 46 to 50 years. Section writers on no pay basis, who are to be accommodated in Govt. service, for relaxing the prescribed age limit upto 50 years Govt. sanction is necessary as per Rule.”

In this letter it was also stated:-

“As per the Govt. orders dated 22.10.1996 & 10.03.2005 documents were called from all the 4 candidates working on no pay basis, they were scrutinized and were found to fulfil all the terms and conditions of the said Govt. orders and their information is as follows:-

Sr. No.	Names of Section Writer on no pay basis	Documents called for and report of scrutinized documents			
		Edu. Qual.	Registra- tion Card	Appoint- ment Card	Certificate of Tahsildar
1	Shri R.L. Farkunde	10 th Pass	26.12.96	12.10.82	07.12.07
2	Shri K.M. Sakhare	12 th Pass, English, Marathi typing pass	29.01.81	03.09.82	No
3	Shri S.B. Raut	10 th Pass English Marathi typing pass	02.12.96	14.09.83	12.12.07

Because benefits of aforesaid G.Rs. were not extended to the applicants they filed O.A. Nos. 203, 204 and 205 of 2014 in this Tribunal. By common order dated 28.01.2019 (A-6), which reads as under, these O.As. were disposed of:-

“Shri G.G.Bade, ld. Counsel for the applicant and Shri M.I.Khan, ld. P.O. for the respondents.

The ld. Counsel for the applicant filed the Government Resolution No. [संकीर्ण-२०१५/प्र.क्र.९०/ई-७](#), दिनांक ०२.०९.२०१६ by which Government has given procedures regarding the grievances of the applicant.

Respondents are directed to follow the procedure and take necessary action within four months from the date of this order.

With above directions, O.As. are disposed of with no order as to costs."

By order dated 11.09.2019 (A-7), which reads as under, the applicants were given appointment:-

आदेश

मा. प्रशासकीय न्यायाधिकरण, खंडपीठ नागपूर यांचे उपरोक्त संदर्भीय आदेशान्वये खालील उमेदवारांनी तात्पुरत्या स्वरूपात शिपाई संवर्गात नियुक्ती व पदस्थापना देण्यात येत आहे. त्यांना सातव्या वेतन आयोगाच्या शिफारशीनुसार वेतन मेट्रिक्स (Pay Matrix) मध्ये स्तर (Level) क्रमांक S-1 मधील सेल (Cell) क्रमांक ०१ नुसार सुधारीत वेतन रु. १५०००/- ऐवढे निश्चित करण्यात येउन खालील अटी व शर्तीच्या अधिन राहून महसूल विभागात खालील रकाना क्रमांक ०४ प्रमाणे नेमणूक देण्यात येत आहे.

अ. क्र.	उमेदवाराचे नांव व पत्ता	प्रवर्ग	नियुक्तीनंतर पद स्थापनेचे ठिकाण व लेखाशिर्ष
१	कैलास मयाराम साखरे, जिल्हा परिषद, ज्युनिअर कॉलेजच्या मागे, रा. गोरेगांव, तह. गोरेगांव जिल्हा. गोंदिया	खुला	शिपाई, जिल्हाधिकारी कार्यालय, गोंदिया (लेखाशिर्ष - २०५३०२०६ (श्री रोशन कथलवार यांचे पदोन्नतीमुळे रिक्त पदावर)
२	श्री लक्ष्मण फरकुंडे, रेल्वे कॉलोनीजवळ, रा. सालेकसा, तह. सालेकसा, जिल्हा गोंदिया	खुला	चौकीदार, जिल्हाधिकारी कार्यालय, गोंदिया (लेखाशिर्ष - २०५३०२०६ (श्री रोशन कथलवार यांचे पदोन्नतीमुळे रिक्त पदावर))
३	सुखदेव बळीराम राउत, रा. दवडीपार, पो. सानी, तह. गोरेगांव, जिल्हा- गोंदिया	खुला	शिपाई, जिल्हाधिकारी कार्यालय, गोंदिया (लेखाशिर्ष - २०५३०२०६ (श्री मोतीराम हेमणे यांचे सेवानिवृत्तीमुळे रिक्त पदावर))

However, benefits of regularization of service w.e.f. 22.10.1996 viz difference in salary and pensionary benefits were not extended to them. Hence, these applications.

4. The applicants have relied on G.R. dated 22.10.1996 (A-2). It states the background as under:-

“Govt. Order:- There was a system existing for preparing waiting list for the post of clerks, in every district. The candidates of the said list were given work of section writers without pay, prior to accommodating them in service. After coming into force of Selection Boards, the system of preparing waiting list and giving them work of section writer till they are accommodated in service was stopped. In spite of this fact, in several offices of the Revenue Department, section writers were appointed on no pay basis. In spite of clear directions to the Divisional Commissioners and all Collectors, not to appoint such section writers, on no pay basis, still the directions were neglected and such appointments of section writers on no pay basis were made.”

It further states:-

“The candidates serving in Revenue Department for more than 10 years on 30th November, 1995, if had applied for the posts of clerks, typists, talathi etc. or equal posts or for the Class-IV posts and if they are having educational qualifications for the same and they have noted their names in Employment Exchange, they should be accommodated in such posts and for this purpose, age limit for such appointment be relaxed and condition of recruitment through selection board will not apply to them.”

5. The applicants have further relied on G.R. dated 10.03.2005 (A-3) which *inter alia* refers to G.R. dated 22.10.1996 and lays down :-

“Govt. Decision

Those candidates of Revenue Department who had completed 10 or more than 10 years service as section writer on no pay basis continuously, if had applied for the post of clerks in Revenue Department and if they possess educational qualifications for the said posts and they are also enrolled in Employment Exchange, then they be accommodated in such vacant posts and Govt. had given sanction for the same and for such purpose the age limit be relaxed and they will not be governed by the condition of their recruitment through Selection Boards.”

6. The applicants have also relied on G.R. dated 02.09.2016 (A-4). It gives the chronology and states *inter alia* as follows:-

“शासन निर्णय-

‘विनावेतन प्रतिलिपिकांना शासन सेवेत नियुक्ती देण्याची योजना’ बंद करण्याबाबतचा संदर्भ क्रमांक ६ येथील दिनांक २३.०९.२०११ चा शासन निर्णय रद्द करून संदर्भ क्रमांक ३ वरील दिनांक १०.०३.२००५ च्या शासन निर्णयामधील सर्व अटी व शर्तीची पूर्तता करणा-या ज्या विनावेतन प्रतिलिपिकांच्या सेवा अद्याप नियमित करण्यात आल्या नाहीत त्यांच्या सेवा नियमित करण्यासंदर्भात संबंधित जिल्हाधिकारी यांनी पुढीलप्रमाणे कार्यवाही करण्याचे निर्देशित करण्यात येत आहे-

१. म्हसूल विभागातील जे विनावेतन प्रतिलिपिक दिनांक १०.०३.२००५ च्या संदर्भीय शासन निर्णयाच्या दिनांकास सलग १० वर्षे वा त्यापेक्षा जास्त काळ सलग कार्यरत होते त्यांना म्हसूल विभागात तृतीय श्रेणीतील उपलब्ध रिक्त पदांवर उक्त शासन निर्णयान्वये विहित अटीस व शर्तीस अधीन राहून सामावून घेणे अनुज्ञेय राहिल.
२. अशा प्रकरणांची संबंधित जिल्हाधिका-यांनी छाननी करावी. ज्या विनावेतन प्रतिलिपिकांकडे जिल्हाधिका-यांच्या नियुक्तीच्या आदेशांच्या प्रती उपलब्ध नसतील तथापि, त्यांची नियुक्ती उपजिल्हाधिकारी/ तहसिलदार दर्जाच्या अधिका-यांच्या आदेशान्वये झाली असेल आणि ते जिल्हाधिकारी/ उप-जिल्हाधिकारी/तहसिलदार

कार्यालयांमध्ये सलग १० वर्षे विनावेतन प्रतिलिपिक म्हणून ७०% मोबदला घेत असल्याच्या नोंदीबाबत सबळ पुरावा उपलब्ध असल्याची जिल्हाधिका-यांनी खात्री करून घ्यावी ”

7. In his reply respondent no. 2 has raised following contentions:-

1. As per order dated 28.01.2019 passed by this Tribunal the applicants were given appointment on Class-IV posts when they themselves applied for the same.
2. The applicants were initially appointed without following due procedure of selection.
3. By G.R. dated 29.03.2011 (A-R-2) the benefits created under G.Rs. dated 22.10.1996 and 10.03.2005 were withdrawn.

8. G.R. dated 29.03.2011 states :-

“शासन निर्णय-

शासकीय सेवेतील रिक्त पदे भरतांना सेवायोजन कार्यालयाकडून यादी मागवून व सर्व प्रसार माध्यमांतून प्रसिद्धि देउन अर्ज मागविण्यात यावेत व वरील दोन्ही प्रकारे प्राप्त होणा-या याद्यांमधून/ अर्जांमधून पात्र उमेदवारांची विहित पध्दतीनुसार निवड करण्यात यावी. असे मा. सर्वोच्च न्यायालयाचे आदेश आहेत. सदर आदेश सामान्य प्रशासन विभागाने दिनांक १९.११.२००३ च्या परिपत्रकान्वये सर्व प्रशासकीय विभागांच्या निर्देशनास आणले आहेत. विहित कार्यपध्दतीने न केलेल्या नियुक्त्या अनियमित ठरतात व त्या नियुक्त्या नियमित न करण्याबाबत ए. उमरानी विरुद्ध रजिस्टार, कॉ. ऑ. सोसायटीज, तामिळनाडू व इतर या प्रकरणी मा. सर्वोच्च न्यायालयाने निर्णय दिला असून सदर बाब दिनांक २५.०८.२००५ च्या शासन परिपत्रकान्वये सर्व प्रशासकीय विभागांच्या निर्देशनास आणली आहे. सदर आदेश शासन सेवेतील सर्व संवर्गातील पदांवर नियुक्तीसाठी आहेत. त्यामुळे सदर आदेश विनावेतन प्रतिलिपिकांना नियुक्ती देतानाही लागू होतील.

वरील विवेचनाअंती, मा सर्वोच्च न्यायालयाने उमादेवी तसेच उमराणी यांच्या प्रकरणी व इतर प्रकरणी अनियमित नियुक्त्यांसंदर्भात दिलेले सर्व आदेश व त्यानुषंगाने सामान्य प्रशासन विभागाने वेळोवेळी दिलेले निर्देश विचारात घेउन 'विनावेतन प्रतिलिपिकांना शासन सेवेत नियुक्ती देण्याची योजना' ही सरळ सेवा भरतीच्या तरतुदीशी (जाहिरातीद्वारे सामान संधी, स्पर्धात्मक परिक्षा) सुसंगत नसल्याने बंद करण्यात येत आहे. सदर आदेश तात्काळ लागू होतील."

9. To counter the contentions of respondent no. 2 the applicants have filed a rejoinder. According to them:-

"The respondent submitted wrongly before this Hon'ble Tribunal, that in view of G.R. dated 23.09.2011 the scheme of regularization came to be stopped and therefore the benefits as prayed by the applicants cannot be extended. It is pertinent to note here that the applicants are claiming the benefits arising on account of G.R. dated 22.10.1996 and therefore the provisions of the said G.R. dated 23.09.2011 cannot be extended as the same is prospective and not retrospective. Further the respondent department published the G.R. dated 02.09.2016, by virtue of which the G.R. dated 23.09.2011, as relied upon by the respondents in the present case came to be quashed, therefore in the present set of circumstances department by relying on the G.R. dated 23.09.2011, as advanced in the reply, is the misleading factor and therefore heavy cost needs to be levied upon the respondents."

10. The applicants have further contended as follows:-

The applicants ought to have been regularized, in accordance to G.R. dated 22.10.1996 at earlier point of time, as applicants were fulfilling all terms and conditions as

incorporated in the G.R. dated 22.10.1996 and therefore respondent no. 1 issued letter dated 17.11.2000 to the respondent no. 2 in respect of the regularization of the applicants, the copy of the letter dated 17.11.2000 is annexed as Annexure-A-8.”

11. A-8 states:-

“ विषय - विनावेतन प्रतिलिपिकांना शासन सेवेत सामावून घेणेबाबत.

श्री ए.जी.नांदगाये , श्री टि.एच.राऊत, श्री एस.एस.नागदेवे,

श्री के.एम.साखरे, श्री आर.ए.फरकंडे, श्री एस.बी.राऊत

संदर्भ- १) जिल्हाधिकारी भंडारा यांचे पत्र क्रमांक कार्या-२/आस्था-२/कावि-१३५६/९९, दिनांक १३.०८.१९९९

संदर्भ-२) जिल्हाधिकारी गोंदिया यांचे पत्र क्रमांक अको/आस्था-२/कावि-९५६/२०००, दिनांक १०.०३.२०००

उपरोक्त विषयामध्ये नमूद केलेल्या प्रतिलिपिकांना शासन सेवेत सामावून घेणाबाबत जिल्हाधिकारी गोंदिया यांनी त्यांचे जिल्हाधिकारी गोंदिया यांचे पत्र क्रमांक अको/आस्था-२/कावि-९५६/२०००, दिनांक १०.०३.२००० अन्वये विषयांकित ६ प्रतिलिपिकांना शासन सेवेत समावून घेणेबाबत शासनाची मंजूरी मागविलेली आहे

शासन निर्णय, महसूल व वनविभाग क्रमांक एस-३०९६/प्र.क्र.६१/ई-७, दिनांक २२.१०.९६ व दिनांक ०१.११.२००० अन्वये ज्या प्रतिलिपिकांनी दिनांक ३०.११.१९९५ पर्यंत प्रतिलिपिक म्हणून काम केलेले आहे त्यांना शासन सेवेत सामावून घेणेबाबत आदेश दिलेले आहेत. असे असतांना सदर प्रतिलिपिकांना आतापर्यंत उपलब्ध रिक्त पदावर शासन सेवेत सामावून न घेण्याची कोणती कारणे आहेत. ती स्पष्टपणे नमूद करून त्यांच्या अर्जासह त्यांना कोणत्या पदावर कोणत्या जिल्हात सामावून घेणे शक्य आहे. याबाबतच्या स्वयंस्पष्ट प्रस्ताव शासनास सर्व कागदपत्रांसह सादर करावा, ही विनंती.”

12. The applicants have relied on the judgment of the Hon'ble Bombay High Court dated 22.08.2013 in W.P. No. 4000/2002. In this case it was observed:-

“The entitlement of the petitioner for being absorbed in the Government Service as per the policy incorporated in the Government Resolution dated 22.10.1996 was the subject matter of the Original Application No. 412/1999 which was allowed by the Maharashtra Administrative Tribunal.”

It was then held:-

“In view of the above, the impugned communication dated 25.01.2002 is quashed. The respondents are directed to treat the petitioner in Class-III cadre with effect from 01.11.1996 as per the Government Resolution dated 22.10.1996. The petitioner will be entitled for the benefit of continuous service with effect from 01.11.1996. However, the petitioner has not actually worked in the post. It is on record that the petitioner had not been gainfully employed anywhere else and has been working as a copyist in the Tahsil office, Gondia pursuant to the order dated 26.11.1981 issued by the Sub-Divisional Officer, Gondia and the petitioner has been paid honourarium at the rate of 70% of the copying fees recovered from the public.

In these facts, we are of the view that the interests of justice would be subserved by directing the respondents to pay 25% of the arrears of salary to the petitioner calculating it from 01.11.1996 till August-2013."

13. Facts of the above referred ruling and the cases in hand are identical. It is apparent that the respondents cannot be allowed to rely on G.R. dated 29.03.2011 since it was set at naught by G.R. dated 02.09.2016 which restored the position which prevailed prior to 29.03.2011 by virtue of currency of G.Rs. dated 22.10.1996 and 10.03.2005.

14. I have referred to what is held in the binding precedent of the Hon'ble High Court.

15. For all these reasons **the respondents are directed to treat the applicants as belonging to Class-III cadre w.e.f. 01.11.1996 as per G.R. dated 22.10.1996. They will be entitled to benefits of continuous service w.e.f. 01.11.1996. The applicants in O.A. Nos. 325/2020 and 326/2020 have retired. Since they have not actually worked on the post, the respondents are further directed to pay them 25% of arrears of salary w.e.f. 01.11.1996 till the date of their retirement. The applicant in O.A. No. 327/2020 is yet to retire. The respondents are directed to pay him 25% of arrears of salary w.e.f. 01.11.1996 till 31.08.2022. Applicant no. 3 is entitled for regular salary from 01st September, 2022 in Class-III post in which he has to be absorbed.**

16. **O.As. are allowed in the aforesaid terms with no order as to costs.**

Member (J)

Dated :- 24/08/2022.

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 Member (J).

Judgment signed on : 24/08/2022.
and pronounced on

Uploaded on : 25/08/2022.