

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 02 of 2013 (D.B.)

Shri Arvind S/o Shriram Ugale,
Aged about 47 years, Occ. Service,
R/o C/o in the house of Shri G.B. Dalvi,
Santoshi Mata Nagar, Tq. & Distt. Washim.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Department of Water Supply & Sanitation,
Mantralaya, Mumbai-32.
- 2) Director, Office of the Directorate of
Ground Water Surveys & Development Agency,
Maharashtra State, Bhujal Bhavan, Wakdewadi,
Shivaji Nagar, Pune-5.
- 3) Regional Deputy Director,
Groundwater Surveys & Development Agency,
Paranjpe Colony, Camp Amravati, Tq. & Dist. Amravati.
- 4) Shri C.C. Koli,
The Geologist,
Ground Water Surveys & Development Agency,
Beed, Dist. Beed.
- 5) Shri K.T. Sapkal,
The Geologist,
Ground Water Surveys & Development Agency,
Beed, Dist. Beed.
- 6) Deleted.
- 7) Shri P.B. Hanwate,
The Senior Geologist,
Ground Water Surveys & Development Agency,
Pune-37.
- 8) Deleted.

Respondents.

Shri D.T. Shinde, Advocate for the applicant.
Shri S.A. Sainis, P.O. for respondent nos. 1 to 3.
None for remaining respondents.

WITH**ORIGINAL APPLICATION No. 03 of 2013 (D.B.)**

Shri Samadhan S/o Dagduji Gawai,
Aged about 45 years, Occ. Service,
R/o Shivshankar Nagar, Chikhali Road,
Near Shree Kirana Shop, Buldhana.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Department of Water Supply & Sanitation,
Mantralaya, Mumbai-32.
- 2) Director, Office of the Directorate of
Ground Water Surveys & Development Agency,
Maharashtra State, Bhujal Bhavan, Wakdewadi,
Shivaji Nagar, Pune-5.
- 3) Regional Deputy Director,
Groundwater Surveys & Development Agency,
Paranjpe Colony, Camp Amravati,
Tq. & Dist. Amravati.
- 4) Shri C.C. Koli,
The Geologist,
Ground Water Surveys & Development Agency,
Beed, Dist. Beed.
- 5) Shri K.T. Sapkal,
The Geologist,
Ground Water Surveys & Development Agency,
Beed, Dist. Beed.
- 6) Deleted.
- 7) Shri P.B. Hanwate,
The Senior Geologist,
Ground Water Surveys & Development Agency,
Pune-37.
- 8) Deleted.

Respondents.

**Shri D.T. Shinde, Advocate for the applicant.
Shri S.A. Sainis, P.O. for respondent nos. 1 to 3.
None for remaining respondents.**

**Coram :- Shri Shree Bhagwan,
Member (A) and
Shri A.D. Karanjkar, Member (J).**

COMMON JUDGMENT

Per : Member (J).

(Delivered on this 18th day of February,2019)

Heard Shri D.T. Shinde, learned counsel for the applicants and Shri S.A. Sainis, learned P.O. for respondent nos.1 to 3. None for remaining respondents.

2. Both the O.As. are involving identical issues and therein identical reliefs are claimed, therefore, they are decided by this common Judgment.

3. Both the applicants were appointed in service as Helper vide order dated 20/02/1989. In the due course of time as per the scheme of the Government to give time bound promotion the first relief was given to both the applicants. It is grievance of the applicants that the applicants should have been given the pay scale admissible to the post of Rigman, but the department did not comply the provision correctly and higher pay was given to the applicants in the pay scale which was admissible to the post of Helper.

4. It is contention of the applicant that the post of Rigman is a promotional post, though the applicants have served continuously for a period about 23 years, but they were not promoted. It is submitted that the applicants were holding licence to drive heavy duty motor vehicle (goods / passengers). The applicants were also possessing certificates of English and Marathi Typing 40 w.p.m. & had completed the computer course MS-CIT. It is submitted that as the qualification required for the post of Rigman was Matriculation and licence to drive heavy motor vehicle for goods / passengers and applicants were fulfilling this criteria, therefore the applicant were entitled for the promotion. It is submitted that the respondents have illegally not considered the applicants' claim for promotion and thus grave injustice is caused.

5. It is submission of the applicants that the respondents have promoted some Helpers on the post of Rigman and this was indicating that there was a promotional avenue to the post of Helper. It is specifically submitted that Shri C.C. Koli, Shri K.T. Sapkal and Shri C.M. Thakur who were serving as Helpers on the establishment of the respondents were promoted as Rigman. Similarly, Shri P.B. Hanwate and Shri D.R. Pardhe, were also promoted from the post of Helper to the post of Rigman. It is contended that refusal of promotion to the applicants is a grave discrimination, it is illegal and

therefore directions be given to the respondents to promote the applicants on the post of Rigman.

6. The applicants have amended the O.As. after perusing the reply submitted by the respondents they amended their applications and contended that the policy of the Government not promoting the Helpers to the post of Rigman though they are possessing the qualification is ultra virus, it is discriminatory and arbitrary, consequently the recruitment rules framed by the Government for the recruitment of the Rigman be quashed.

7. The respondents have submitted their reply and resisted the applications. It is submission of the respondents that the post of the Helper was not having promotional avenue, therefore, the applicants cannot claim the post of the Rigman by promotion as of right. It is submitted that though some Helpers were promoted as contended by the applicants, but when error was realised by the respondents, steps were taken to revert those Helpers. It is contention of the respondents that there are so many posts on the establishment of the Government to which there is no promotional avenue, but on the basis of it, it cannot be said that the recruitment rules should be declared ultra virus and quashed. It is submission of the respondents that when the applicants joined the service, they were aware that the posts of the Helper had no promotional avenue

and with this specific knowledge the applicants joined the duty. Consequently there is no substance in these O.As.

8. The respondents have submitted additional affidavit and submitted that the notices were issued to the Helpers who were promoted as Rigman for their reversion to the post of Helper for the reason that the promotions were not legal. It is further submitted that there is no legal injury caused to the applicants to file the O.As. and therefore both the applications be dismissed.

9. We have perused the documents which are filed on record and we have also brought oral submissions canvass on behalf of the applicants and on behalf of the respondents. There is no dispute about the fact that both the applicants were appointed in the year 1989 on the post of Helper, the applicants are matriculate, they possessed licence to drive heavy duty motor vehicle for goods / passengers. Both the applicants have passed English and Marathi typing examination with speed 40 w.p.m. The applicants are also possessing MS-CIT certificate.

10. The material question is whether the posts of the Rigman can be filled by promotion. The learned P.O. submitted that the post of Rigman can be filled only by nomination, the post cannot be filled by promotion. In this regard, the applicants have placed reliance at Annex-A-6 & A-7 in O.A.03/2013, the promotion orders of Shri C.C.

Koli, K.T. Sapkal, C.M. Thakur, P.B. Hanwate and D.R. Paradhe. So far as this promotions are concerned, the learned P.O. has submitted that the department initiated the action in November,2014 for revocation of the promotions of these Helpers on the ground that the posts of the Rigman cannot be filled by promotion. The learned P.O. has invited our attention to Annex-R-2 which is at page no.109 in O.A.03/2013, it seems that notices were issued to Shri C.C. Koli, K.T. Sapkal and C.M. Thakur to show cause why their promotion orders should not be revoked. Similar notices were issued to Shri P.B. Hanwate, Shri D.R. Barathe. At page nos.110&112 in O.A.03/2013 discloses that there was a provision to fill the post of Rigman only by nomination and Deputy Director, GSDA was directed to inform whether the Rigmen appointed on his establishment were appointed as per the service rules. The page no.115 in O.A. 03/2013 is the order by which the Chief Executive Officer, Zilla Parishad, Pune was directed to revert Shri P.B. Hanwate to the post of Helper. Similarly vide order dated 28/01/2015 Shri D.R. Barathe was also reverted. The applicants have filed the letter dated 4th October, 2007 at Annex-A-8, P-56 in O.A.03/2013 which is written by the Deputy Director of GSDA, Aurangabad it was addressed to the Director, GSDA, Pune and in this letter request was made that the service rules for filling the post of Rigman on the post of Jack Hammer Driller be amended so as to fill those posts by promoting the Helpers.

11. The letter at Annex-A-9,P-57 in O.A.03/2013 was written in the year 2008 by the Deputy Director of GSDA, Aurangabad to the Director of GSDA, Pune. In this letter also the request was made for amending the service rules to fill the post of Rigman and Jack Hammer Driller by incorporating provision to promote the Helpers. Along with this letter at Annex-A-10 was annexed, it was dated 01/01/2008 and it was informed that total 10 Helpers were in service. After reading this correspondence which is place on record by the applicants and the orders of the reversion of the Helpers who were promoted earlier we are bound to accept that there is no substance in the contention of the applicants that the posts of the Rigman can be filled by promoting the Helpers. After perusing the service rules dated 26/02/1982 at Annex-A-22, it seems that the post of the Rigman can be filled only by nomination. It is not case of the applicants that after they joined duty as Helpers there was process to fill the post of Rigman and they had submitted the applications and were not considered. Once it is shown and demonstrated by the respondents that there is no promotional avenue to the post of Helper there remains no substance in the claim that illegality is committed by the respondents by not promoting the applicants as Rigman.

12. The learned counsel for the applicants submitted that some of the Helpers on the establishment of Zilla Parishad were promoted as Rigman and this is in discrimination. In this regard we

would like to point out that the Zilla Parishad Department is totally different than the GSDA. The applicants with full knowledge of the future prospect of the post of the Helper joined the service, therefore, the applicants cannot say that injustice is caused to them. No one can dispute a proposition that on the establishment of the Government there are so many posts to which promotional avenue is not made available, therefore, on the basis that the post has no promotional avenue, it is not possible to accept that the recruitment rules are ultra virus and required to be quashed.

13. It is submission of the applicants that the Government of Maharashtra issued G.R. dated 15/04/1991 which is at Annex-A-12 in O.A.02/2013. After reading this G.R., it appears that the decision was taken by the Government of Maharashtra to fill 25% posts of the Clerks by appointing/promoting the Class-IV employees who had completed three years of service, who had passed SSC examination and had knowledge of typing to discharge the duty as Clerk. We are unable to understand how the respondents have committed breach of this G.R. dated 15/04/1991. It is not a case of the applicants that when they completed three years of service as Helpers, though they were possessing the educational qualification and passed the English and Marathi Typing examination, but were not considered for the post of Clerk. The applicants should have given a clear data how many advertisements were published by the department to fill the post of

the Clerks, the applicants had submitted the applications for their selection on the post of Clerk and they were not considered. In the absence of this substantial pleadings straight way inference cannot be drawn that the respondents have committed breach of G.R. dated 15/04/1991. In the above situation, we would like to point out that the applicants cannot secure promotion as Rigman because as per the recruitment Rules the post can be filled only by nomination and concession given by the G.R. was only to fill the posts of Clerk by selecting the Class-IV employees to fill 25% of the available posts. In view of this discussion, we say that no relief can be granted to the applicants in these applications. Therefore, we pass the following order:-

ORDER

Both the O.As. stand dismissed with no order as to costs.

(A.D. Karanjkar)
Member(J).

(Shree Bhagwan)
Member (A).

Dated :- 18/02/2019.

*dnk.