

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.55 & 56 OF 2018

DISTRICT : KOLHAPUR

SUB.:- Absorption

ORIGINAL APPLICATION NO.55 OF 2018

Shri Anil Tukaram Mane.)
Age : 41 Yrs., Working as Copying Clerk)
[Unpaid Candidate] in the Office of)
Tahasildar, Tal. Shahawadi,)
District : Kolhapur and residing at)
A/P, Kolgaon, Tal.: Shahuwadi,)
District : Kolhapur.)...**Applicant**

Versus

1. The District Collector.)
Kolhapur and having Office at)
Nagala Park, Kolhapur.)
2. The Tahasildar.)
Tal.: Shahuwadi, Dist : Kolhapur)
and having office at A/P Shahuwadi,))
District : Kolhapur.)
3. The State of Maharashtra.)
Through Principal Secretary,)
[Revenue], Revenue & Forest Dept.,)
Mantralaya, Mumbai – 400 032.)...**Respondents**

AND

ORIGINAL APPLICATION NO.56 OF 2018

Shri Nitinkumar @ Popat Baburao Kamble.)
Age : 43 Yrs., Working as Copying Clerk)
[Unpaid Candidate] in the Office of)
Tahasildar, Tal. Shahawadi,)
District : Kolhapur and residing at)
A/P, Turukwadi, Post : Kotoli,)
Tal. : Shahuwadi, District : Kolhapur.)...**Applicant**

Versus

1. The District Collector & 2 Ors.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicants.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 19.04.2023

JUDGMENT

1. These two Original Applications were earlier decided by the Tribunal by order dated 01.03.2021 thereby setting aside the impugned communication and directions were issued to absorb the Applicants in terms of G.R. dated 10.03.2005. Review Application No.09 of 2021 filed by the Government was also dismissed by the Tribunal on 05.08.2021. Being aggrieved by it, the Respondents have filed Writ Petition Nos.8302 of 2021 and 8303 of 2021 before Hon'ble Court. At the time of hearing of Writ Petitions before Hon'ble High Court, the Additional Government Pleader tendered letters dated 13.02.2015 and 17.08.2015 sent by the Applicants for consideration of Hon'ble High Court stating that those could not be produced before the Tribunal, but have bearing over the matter. Hon'ble High Court, therefore, remitted the matter back to the

Tribunal for decision afresh with direction to the Respondents to produce the letters along with reply before the Tribunal for decision afresh and disposed of Writ Petitions by order dated 20.02.2023. It is on this background, these two O.As are again heard afresh.

2. In O.A, Applicants contend that they joined the post of Unpaid Copying Clerk on the establishment of Respondent No.2 – Tahasildar, Shahuwadi w.e.f.15.07.1994. At the relevant time, there was practice to appoint Unpaid Copying Clerks in Revenue Department for preparing Certified Copies of the record for issuance to the public and out of charges payable for the same, the Applicants used to get 70% amount as remuneration and remaining 30% was to be deposited with the Government. In 1996, the Government of Maharashtra had taken policy decision by G.R. dated 22.10.1996 to absorb those Unpaid Copying Clerks, subject to stipulation mentioned therein and one of the condition was completion of 10 years' service as Unpaid Copying Clerk. Since Applicants have joined the service in 1994, they are not entitled to benefit of G.R. dated 22.10.1996 but continued to work years together. They used to get 70% of the charges. Thereafter again, considering the difficulties faced by left out Unpaid Copying Clerks, the Government had taken another policy decision by G.R. dated 10.03.2005 whereby it was decided to absorb those Unpaid Copying Clerks who have completed 10 years' service on the date of issuance of G.R. i.e. on 10.03.2005.

3. The Applicants accordingly made representations on 17.02.2016 and 18.02.2016 to Collector, Kolhapur to absorb them along with Certificates issued by Tahasildar, Shahuwadi showing that they have completed 10 years' service on the date of issuance of G.R. dated 10.03.2005. The Collector called report of Tahasildar, Shahuwadi who by his letter dated 24.05.2016 informed to the Collector that Applicants have worked for more than 10 years and are eligible for absorption in terms of G.R. dated 10.03.2005 and recommended for their absorption.

4. However, later, Collector, Kolhapur by communication dated 19.08.2016 rejected the claim of the Applicants stating that the Scheme of absorption of Unpaid Copying Clerks had come to an end in view of G.R. dated 23.09.2011 and the posts were to be filled-in by regular recruitment. The Applicants, therefore, made fresh representation on 10.10.2016 pointing out that they are eligible for absorption in terms of G.R. dated 10.10.2005 and 02.09.2016. Thereon, Collector, Kolhapur again called report of Tahasildar afresh. That time, the then Tahasildar, Shahuwadi by his letter dated 20.02.2017 communicated to the Collector that no record of payment of 70% remuneration to the Applicant and deposit of 30% charges to the Government is available. It is on the basis of report of Tahasildar dated 20.03.2017, the Collector by order dated 15.06.2017 rejected the claim of the Applicants for absorption.

5. Being aggrieved by communication dated 15.06.2017, the Applicants have filed O.A.No.55 and 56 of 2018. In O.As, Respondents have filed Affidavit-in-reply denying the entitlement of the Applicant for absorption. In O.A.No.55/2018, the Applicants also produced Certificates issued by Tahsildar dated 04.08.1998, 12.05.2001, 25.03.2003, 24.04.2006 and 31.07.2007 which are at Page Nos.32 and 34 of Paper Book to corroborate report of Tahasildar dated 21.05.2016. Whereas in O.A.No.56/2018 also, the Applicant has produced Certificates issued by Tahasildar dated 04.05.1998 and 02.03.2009 which are at Page Nos.30 and 31 of P.B. in support of letter to Tahasildar dated 24.05.2016. Thus, it is because of subsequent letter of Tahasildar, Shahuwadi dated 20.03.2017, the claim of Applicants was rejected though earlier, the then Tahasildar, Shahuwadi by his letter dated 24.05.2016 accepted the claim of the Applicants for absorption for having worked for more than 10 years on the date of issuance of G.R. dated 10.03.2005 and also recommended for their absorption. The Tribunal accepted the Applicants' contention and allowed the O.As. Review Application was also dismissed. But now these O.As are again required to be decided afresh in view of direction given by Hon'ble High Court in Writ Petition

No.8302/2021 and 8303/2021 decided on 20.02.2023. In Para Nos.4, 5 & 6 of the Order, Hon'ble High Court observed as under :-

“4. *The learned counsel for the respondents submits that a report of the Tahsildar has been relied upon by the Tribunal. The report of the Tahsildar specifically stated that these respondents have completed 10 years of service and comply with the requirements of the Government Resolution dated 10th March, 2005. No error has been committed by the Tribunal.*

5. *It would appear that the letters dated 13th February, 2015 and 17th August, 2015 were not before the Tribunal when the Tribunal decided the matter. Two contrary reports were submitted by the Tahsildar. However, the State did not produce these letters. These letters may have certain bearing. Of course, opportunity should be given to the respondents to explain the same.*

6. *In light of the fact that the letters would be relevant for consideration, we set aside the judgment/order passed by the Tribunal and remit the matter back to the Tribunal for a decision afresh. The petitioner (State) may produce the said letters and reply by the State to the said letters before the Tribunal and the Tribunal shall decide the proceedings on merits in accordance with law after giving opportunity to the respondents/original applicants to give explanation about the said letters.”*

6. Accordingly, Respondents have tendered letters dated 13.02.2015 and 17.08.2015 along with additional Affidavit-in-reply which is at Page Nos.96 and 83 of P.B. respectively. The Applicants have also filed Rejoinder explaining the contents of letters. The contents of letters are material which are as under :-

“दिनांक : १३.२.२०१५

प्रति,

मा. जिल्हाधिकारीसो, कोल्हापूर
कार्यासन - १

अर्जदार : श्री. अनिल तुकाराम माने
रा. कोळगाव, ता. शाहुवाडी, जि. कोल्हापूर

विषय : वर्ग ३ या लिपिक पदावर नेमणूक करणेबाबत ...

महोदय,

मी सध्या सुशिक्षित बेकार असून मी सन १२.०५.१९९८ पासून २८.०२.२००९ अखेर तहसीलदार कार्यालय शाहुवाडी येथे विनावेतन प्रतिलिपिक म्हणून काम केलेले आहे. त्यासंबंधीची तत्कालीन तहसीलदार यांची प्रमाणपत्रे सोबत जोडली आहेत.

शासन निर्णय क्र.एस - ३०/२००२/प्र.क्र.२२०/ई -७ दिनांक १० मार्च २००५ ची निर्णयाप्रमाणे महसूल विभागात विनावेतन प्रतिलिपिकांना शासन सेवेत सामावून घेणेबाबत निर्णय झाला आहे. मी सलग १० वर्षे विना वेतन प्रतिलिपिक

म्हणून काम केलेने सदर शासन निर्णयाचे आधारे मी वर्ग ३ (लिपिक) या पदाच्या नेमणुकीस पात्र असलेले माझी नेमणूक लिपिक या पदावर होण्यास विनंती आहे. मी इतर मागास प्रवर्गात येत आहे त्याचे प्रमाणपत्र मी यासोबत सादर केले आहे.

तरी माझ्या अर्जाचा सहानुभूतीपूर्वक विचार करून माझी लिपिक या पदावर नेमणूक करण्यात यावी ही विनंती आहे”

आपला विश्वासू,
सही/-
(श्री. अनिल तुकाराम माने)”

“दिनांक : १७/८/२०१५

मा. जिल्हाधिकारीसो,
जिल्हा कार्यालय कोल्हापूर
कार्यासन - १

अर्जदार : श्री. नितीन कुमार बाबुराव कांबळे
रा. तुरुकवाडी (भिमनगर) पो. कोतोली वारणा
ता.शाहूवाडी जिल्हा कोल्हापूर

विषय : वर्ग ३ या लिपिक पदावर नेमणूक करणे बाबत ...

महोदय,

वरील विषयास अनुसरून मी सध्या सुशिक्षित बेकार असून दि.२०/११/१९९७ ते ०२/०३/२००९ अखेर तहसील कार्यालय शाहूवाडी येथे विनावेतन प्रतिलिपिक म्हणून काम केलेले आहे. त्या संबंधीची तात्कालीन तहसीलदार यांचे प्रमाणपत्र सोबत जोडत आहे.

शासन निर्णय क्र.एस - ३०/२००२/प्र.क्र.२२०/ई -७ दिनांक १० मार्च २००५ ची निर्णयाप्रमाणे महसूल विभागात विनावेतन प्रतिलिपिकांना शासन सेवेत सामावून घेणेबाबत निर्णय झाला आहे. मी सलग १२ वर्षे प्रतिलिपिक म्हणून काम केले आहे. सदर शासन निर्णयाचे आधारे मी वर्ग ३ (लिपिक) या पदाच्या नेमणुकीस पात्र असलेले माझी नेमणूक लिपिक या पदावर होणेस विनंती आहे.

मी मागासवर्गीय हिंदू महार या जातीचा असून मी प्रकल्पग्रस्त आहे. सदर माझी घरची परिस्थिती अत्यंत गरिबीची आहे.

तरी माझ्या अर्जाचा सहानुभूतीपूर्वक विचार करून माझी लिपिक या पदावर नेमणूक करण्यात यावी ही विनंती.

आपला विश्वासू,
सही/-
(श्री. नितीन कुमार बाबुराव कांबळे)”

7. Before dealing with the letters dated 13.02.2015 and 17.08.2015 which are now produced before me after remand of the matter, let us see the contents of report of Tahasildar dated 25.05.2016 wherein he recommended for absorption of the Applicants in terms of G.R. dated 10.03.2005 as well as corroborating Certificates issued by the then Tahasildars from time to time. Indeed, this aspect is already dealt with by the Tribunal. The Tribunal in order dated 01.03.2021 concluded that once Tahasildar, Shahuwadi by his letter dated 24.05.2016 verified the record and satisfied that the Applicants have worked for more than 10

years and found them eligible as well as recommended for their absorption, the claim of the Applicant for absorption could not have been rejected mechanically on the basis of subsequent report of Tahasildar dated 20.03.2017. Notably, in report dated 20.03.2017 which was the only reason for rejecting the claim of the Applicant, all that, Tahasildar stated that the record of payment of 70% remuneration to the Applicants is not available. Suffice to say, the claim of the Applicant was rejected solely on the ground of non-availability of the record. Notably, in report dated 24.05.2016 issued by Tahasildar, there is specific mention that he examined the record and also forwarded relevant documents to the Collector in support of his report, as seen from the contents of the report dated 24.05.2016.

8. The Applicants also tried to obtain the copies of record availing provisions of Right to Information Act. However, by letter dated 02.11.2017, they were informed that the record is not available. Suffice to say, it is because of non-availability of record which might have lost due to lapse of time, the claim of the Applicant was rejected. Whereas earlier, Tahasildar by his detailed report dated 24.05.2016 certified eligibility of the Applicant for absorption. That report dated 24.05.2016 is completely over-looked by the Collector, Kolhapur. That apart, the report dated 24.05.2016 is also corroborated by various Certificates issued by the then Tahasildars from time to time. In O.A.No.55/2018, the Applicant has produced the Certificates dated 04.08.1998, 12.05.2001, 25.03.2003, 24.04.2006 and 31.07.2007 which is at Page Nos.30 to 34 of P.B. Whereas, in O.A.No.56/2018 also, Applicant produced the Certificates issued by the then Tahasildars dated 04.05.1998 and 02.03.2009 which is at Page Nos.30 and 31 of P.B. It is incomprehensible to say that Applicant has managed all these reports and letters which were issued not by one person, but by the authority in chair from time to time. The Respondents have not explained about all these documentary evidence. These documents were issued by the authority from time to time in discharge of official duties cannot be

doubted unless Respondents produced the same material to doubt its veracity or correctness.

9. As stated above, detailed report dated 24.05.2016 which is identical in both these O.As is the crucial document to tilt the matter in favour of the Applicant. The report is self-explanatory and contents are as under :-

“प्रति,
माननीय जिल्हाधिकारीसो
कोल्हापूर.

विषय - महसूल विभागातील तृतीय श्रेणी लिपिक पदावर सामावून घेणेबाबत.

संदर्भ - आपल्याकडील क्र.महा आस्था कार्या १३१/आरआर/१२२/२०१६ दि. ०५/०४/२०१६ झा रोजीचे पत्र.

महोदय,

उपरोक्त संदर्भीय विषयानुसार श्री. अनिल तुकाराम माने, रा. कोळगाव, ता. शाहुवाडी यांनी तहसील कार्यालय शाहुवाडी येथे महसूल व वनविभाग निर्णय क्र.एस ३०/२००२/प्र.क्र.२२० ई ७ दिनांक १०/०३/२००५ च्या निर्णयानुसार महसूल विभागातील १० वर्षे काम केलेल्या कर्मचा-यांना या विभागांमध्ये कायम स्वरूपी तृतीय श्रेणी पदावरती रुजू करून घ्यावे. या निर्णयानुसार विनावेतन प्रतिलिपी म्हणून दिनांक १५/०७/१९७४ ते ०२/०३/२००९ अखेर १४ वर्षे ३ महिने शाहुवाडी तालुका येथे/कार्यालयामध्ये विनावेतन प्रतिलिपिक म्हणून दिनांक १५/०७/१९९४ ते ०२/०३/२००९ अखेर १४ वर्षे ३ महिने शाहुवाडी तालुका येथे कार्यालयामध्ये विनावेतन प्रतिलिपिक म्हणून सेवा केली आहे. सलग १० वर्षांपेक्षा जास्त कालावधीमध्ये तहसीलदार कार्यालयामध्ये काम केले आहे. सन २००९ नंतरही मंडळ अधिकारी भाग मलकापूर यांचेकडे प्रामाणिकपणे आजअखेर सेवा करीत आहे. तरी शासन निर्णयानुसार तृतीय श्रेणी लिपिक पदावर कायमस्वरूपी शासकीय कर्मचारी म्हणून नियुक्तीच पात्र आहे. सदर अर्जास अनुसरून आपल्याकडील संदर्भ क्र.२ अन्वये सदर कर्मचारी यांनी सादर केलेली कागदपत्रे शासन निर्णय दिनांक १०/०३/२००५ नुसार तपासणी करून शहानिशा करून अहवाल सादर करणेबाबत सूचना प्राप्त असून श्री. अनिल तुकाराम माने यांनी सादर केलेली कागदपत्रे पाहता ते लिपिक पदाच्या नियुक्तीत पात्र होत आहे. सरकारी नोकरीत नियुक्ती करण्याचे शासन अटीप्रमाणे त्यांचे पदव्युत्तर पदवीपर्यंत शिक्षण झालेले आहे. त्याबाबतचे त्यांनी प्रमाणपत्र सादर केलेले आहे. त्यांनी सेवायोजन कार्यालयात नोंदणी केलेली असलेचे देखील प्रमाणपत्र सादर केलेले आहे. ते मागासवर्गीय हिंदू न्हावी जातीचे असून त्यांनी समक्ष अधिका-यांचे प्रमाणपत्र सादर केलेले आहे. त्यांना संगणकीय ज्ञान असून त्यांनी शासनाचे एम.एस.सी.आय.टी कोर्स पूर्ण केला असून त्याचे प्रमाणपत्र हजर केलेले आहे. तसेच त्यांनी मराठी टंकलेखनाची स्पीड ३० व इंग्रजी टंकलेखनाची परीक्षा स्पीड ४० महाराष्ट्र शासनाची परीक्षा पास असलेबाबतचे प्रमाणपत्र जोडलेले असून त्यांना मराठी व इंग्रजी टंकलेखनाचे ज्ञान अवगत आहे.

तरी वरील कागदपत्रांचे अवलोकन करून श्री. नितीश कुमार बाबुराव कांबळे यांची लिपिक श्रेणीतील पदावर नियुक्ती होणेस या कार्यालयाची काहीही हरकत नाही. तरी सदरचा अहवाल पुढील आदेशार्थ सविनय सादर करीत आहे.”

10. Now coming to the letters dated 13.02.2015 and 17.08.2015. On the basis of these letters as reproduced above, the learned P.O. sought to contend that as per the contents of letters itself, the Applicant in O.A. No.55/2018 stated that he worked as Unpaid Copying Clerks from 12.05.1998 to 28.02.2009 and Applicant in O.A.No.56/2018 stated that he worked as Unpaid Copying Clerk from 20.11.1997 to 02.03.2009 and it falsify their contention that they were in the employment from 1994 so as to complete 10 years on the date of issuance of G.R. dated 10.03.2005. The Applicants have filed Rejoinder after remand and

explained that there is typographical mistake in the letter while mentioning the period, but in fact, they were in service from 1994. Thus, Applicants sought to explain the contents of letter dated 13.02.2015 and 17.08.2015. The Respondents appears want to take the benefit of these letters which were for the first time produced before Hon'ble High Court. Be that as it may, notably, Respondents themselves with their counter Affidavit have filed applications made by Applicants on 18.02.2016 addressed to Collector in which they reiterated that they worked as Unpaid Copying Clerks from 15.07.1994 to 02.03.2009 for 14 years and 3 months. These letters are at Page Nos.107 and 119 of P.B. respectively. As such, there appears to be inadvertent mistake in the letters dated 13.02.2015 and 17.08.2015 about the period of employment and they corrected it in fresh representation made on 18.02.2016. That apart, the claim of the Applicants that they worked for 10 years w.e.f.15.07.1994 is corroborated by the detailed and speaking report of Tahasildar dated 24.05.2016 as well as various Certificates issued by Tahasildars from time to time as referred to above. If Respondents have not maintained the record properly, it is their fault and Applicants cannot be penalized or blamed for it. Suffice to say, the letters dated 13.02.2015 and 17.08.2015 will not outweigh the aforesaid documentary evidence.

11. Even assuming for the sake of argument that there was some short deficit of period so as to strictly comply the G.R. dated 10.03.2005, in that situation also, Applicants are entitled to absorption on the ground of parity. In this behalf, learned Advocate for the Applicants rightly referred for the decision rendered by Hon'ble High Court delivered in Writ Petition No.7072/1999 decided with connected Writ Petitions on 27.01.2000 in which Hon'ble High Court granted the benefit to the Petitioners though they are not fully and strictly covered under relevant G.R, having found that on the date of decision by Hon'ble High Court, they have rendered 13 years of service. Similar view was taken by this Tribunal while deciding **O.A.No.1018/2004 (Vijay Pardhi V/s. Collector, Kolhapur)**

decided on 19.07.2005. In that case also, Applicant had not completed required service of 10 years and there was short deficiency. The Tribunal gave direction to the Government to consider the claim of absorption. Accordingly, those orders were complied. As such, in the present case also, the Applicant is entitled to same treatment.

12. The totality of aforesaid discussion leads me to sum-up that impugned communication dated 15.06.2017 is totally unsustainable in law and liable to be quashed. In the facts and circumstances of the case, the Respondents ought to have absorbed the Applicants in terms of G.R. dated 10.03.2005 by treating it as a special case, if there was short deficiency for not completing 10 years' service in terms of G.R. dated 10.03.2005. Hence, the following order.

ORDER

- (A) Both the Original Applications are allowed.
- (B) Impugned communication dated 15.06.2017 is quashed and set aside.
- (C) Applicants are held entitled for absorption in terms of G.R. dated 10.03.2005.
- (D) Respondents are directed to take necessary action and to pass necessary orders within two months from today.
- (E) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 19.04.2023

Dictation taken by :

S.K. Wamanse.

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