

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.55 & 56 OF 2018

DISTRICT : KOLHAPUR

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 : 01.03.2021

JUDGMENT

1. The Applicants have invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 challenging the legality of order dated 15.06.2017 passed by Respondent No.1 – Collector, Kolhapur thereby rejecting their claim for absorption in terms of G.R. dated 10.03.2005. Since both the O.As are arising from common facts, those are decided by common order.

2. Shortly stated facts giving rise to this application are as under :-

The Applicants joined the post of Unpaid Copying Clerks on the establishment of Respondent No.2 – Tahasildar, Shahuwadi w.e.f.15.07.1994. That time, the appointment was provided to the

candidate for preparing certified copies of the record to the public and out of the said charges, they used to get 70% amount as their remuneration and remaining 30% was to be deposited with the Government. It was practice to appoint such Unpaid Copying Clerk for a long time. In 1996, the Government of Maharashtra had taken policy decision by G.R. dated 22.10.1996 to absorb those Unpaid Copying Clerk subject to stipulations mentioned therein and one of the condition was that the candidate should have completed 10 years as Unpaid Copying Clerk. Since in 1996, the Applicants have not completed criteria of 10 years of work, obviously they were not absorbed in Group 'C' post in terms of said G.R. dated 22.10.1996. However, the Applicants amongst others continued to work for years together. Their services were utilized by the Government for issuance of Certified Copies. However, they are not paid by the Government and for that they use to get 70% of the charges. Therefore, considering the difficulties faced by those remaining Unpaid Copying Clerks, the Government of Maharashtra had taken another policy decision in terms of G.R. dated 10.03.2005 whereby it was decided to absorb those Unpaid Copying Clerks who have completed at least 10 years' service on the date of issuance of G.R. i.e. on 10.03.2005. The material conditions of G.R. dated 10.03.2005 are as follows :-

१. महसूल विभागात जे विनावेतन प्रतिलिपिक या शासन निर्णयाच्या दिनांकाला किमान १० वर्षे वा त्यापेक्षा जास्त काळ कार्यरत होते त्यांनी महसूल विभागात तृतीय श्रेणीतील पदांवर अर्ज केल्यास व अशा पदांसाठी विहित केलेली शैक्षणिक पात्रता धारण करित असल्यास, तसेच त्यांनी तेव्हा योजना केंद्रात नाव नोंदवले असल्यास त्यांना उपलब्ध असलेल्या रिक्त पदांवर सामावून घेण्यास शासनाने मान्यता दिली असून त्यांना सामावून घेण्यासाठी नियमानुसार विहित केलेली वयोमर्यादा शिथिल करण्यात यावी. तसेच त्यांना निवड मंडळ/ निवड समितीमार्फत नियुक्तीची अट लागू राहणार नाही.
३. विनावेतन प्रतिलिपिकास शासकीय सेवेत घेतल्यानंतर विनावेतन प्रतिलिपिक म्हणून या अवधीसाठी त्यांनी काम केले असेल तो अवधी रजा व निवृत्ती वेतनाचे फायदे किंवा अन्य कोणत्याही सेवाविषयक शासकीय प्रयोजनासाठी विचारात घेतला जाणार नाही.
४. सदर शासन निर्णय या शासन निर्णयाच्या दिनांकापासून लागू होईल.
५. विनावेतन प्रतिलिपिकांच्या बाबतीत जिल्हाधिकारी व अन्य स्थानिक महसूल अधिका-यांनी खालीलप्रमाणे कार्यवाही करावी :-

महसूल विभागातील जे विनावेतन प्रतिलिपिक या शासन निर्णयाच्या दिनांकास सलग १० वर्षे वा त्यापेक्षा जास्त काळ कार्यरत होते त्यांना महसूल विभागात तृतीय श्रेणीतील उपलब्ध रिक्त पदांवर विहित अटीस व शर्तीस अधीन राहून सामावून घेण्यात यावे. तसेच अशा प्रकरणांची संबंधित जिल्हाधिका-यांनी छाननी करावी व अशा प्रत्येक लिपिकास कोणत्या पदावर सामावून घेण्याची इच्छा आहे हे त्यांच्याकडून जाणून घ्यावे. त्या पदांसाठी विहित केलेली शैक्षणिक पात्रता त्यांच्याकडे असेल व सेवा योजना केंद्रात त्यांचे नाव नोंदवले असेल अशा प्रतिलिपिकांची ज्येष्ठतेनुसार प्रतिक्षा यादी तयार करण्यात यावी व वरील योजनेनुसार त्यास नेमणूक द्यावी. त्याचप्रमाणे प्रतिलिपिकांची ज्येष्ठतेनुसार प्रतिक्षा यादी तयार करून त्याची प्रत संबंधित कर्मचा-यास द्यावी व एक प्रत नोटीस

बोर्डावर प्रसिद्ध करावी. ज्या विनावेतन प्रतिलिपीकांकडे जिल्हाधिका-यांच्या नियुक्तीच्या आदेशाच्या प्रती उपलब्ध नसतील तथापि, त्यांची नियुक्ती उपजिल्हाधिकारी/तहसीलदार दर्जाच्या अधिका-यांच्या आदेशांच्या आदेशान्वये झाली असेल आणि ते जिल्हाधिकारी/उप-जिल्हाधिकारी/तहसीलदार कार्यालयांमध्ये सलग १० वर्षे विनावेतन प्रतिलिपी म्हणून ७०% मोबदला घेत असल्याच्या नोंदीबाबत सबळ पुरावा उपलब्ध असल्याची जिल्हाधिका-याची खात्री झाली असेल तर वरील प्रमाणे कार्यवाही करावी. वरील कार्यपद्धतीचे काटेकोरपणे पालन करण्याची जबाबदारी जिल्हाधिकारी यांच्यावर सोपविण्यात येत असून त्यांची कार्यवाही त्वरित करण्यात यावी. त्याप्रमाणे केलेल्या कार्यवाहीचा अनुपालन अहवाल शासनास सादर करण्यात यावा.’’

3. Accordingly, the Applicants in terms of aforesaid G.R. dated 10.03.2005 made applications dated 17.02.2016 and 18.02.2016 to Collector, Kolhapur to absorb them along with Certificates issued by Tahasildar, Shahuwadi that they have completed 10 years' work. The Collector in turn called the report of Tahasildar, Shahuwadi who by his letter dated 24.05.2016 informed the Collector that the 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 absorption.

4. However, the Collector by communication dated 19.08.2016 rejected the applications stating that the claim of absorption of Unpaid Copying Clerk had come to an end in terms of G.R. dated 23.09.2011 and the posts should not be filled-in except by regular recruitment in accordance to law.

5. The Applicants, therefore, made again representation on 10.10.2016 pointing out that they are eligible for absorption in terms of G.R. dated 10.03.2005 and 02.09.2016. It appears that in the meantime, there were directions from the Government to Collector, Kolhapur to consider the claim of the Applicants for absorption in terms of G.R. dated 10.03.2005. Therefore, the Collector, Kolhapur called report of Tahasildar afresh. However, that time, Tahasildar, Shahuwadi by his letter dated 20.03.2017 communicated to the Applicants that no record of payment of 70% remuneration to the Applicants and 30% deposit with the Government is available. It is on the basis of report of Tahasildar, the Collector by order dated 15.06.2017 rejected the claim of Applicants, which is challenged in the present O.A.

6. Shri A.V. Bandiwadekar, learned Advocate for the Applicants has pointed out that Tahasildar, Shahuwadi has issued Certificates from time to time about their employment in Unpaid Copying Clerk for more than 10 years and further placed reliance on the letter issued by Tahasildar, Shahuwadi dated 24.05.2016 wherein on verifying record, recommended for absorption of Applicants in terms of G.R. dated 10.03.2005 having satisfied that they have worked for more than 10 years and also fulfilled other eligibility criteria of educational qualification and enrolment with employment office. He, therefore, submits that rejection of the claim by Collector on the ground of non-availability of record as intimated by Tahasildar in his subsequent report is totally untenable. Thus, according to him, once the Tahasildar, Shahuwadi by first communication dated 24.05.2016 found Applicants eligible for absorption in terms of G.R. dated 10.03.2005, there was no reason for Collector to call for report again and Collector should have accepted the report of Tahasildar dated 24.05.2016.

7. Per contra, the learned P.O. supported the impugned communication stating that in absence of record showing 70% payment of remuneration to the Applicants and 30% deposit with the Government, the Applicants are not eligible for absorption in terms of G.R. dated 10.03.2005.

8. In so far as earlier communication of Collector dated 19.08.2016 is concerned, the claim of Applicants rejected on the ground that the claim of absorption of Unpaid Copying Clerk had come to an end by G.R. dated 23.09.2011. However, the Collector has forgotten to see that, in fact, G.R. dated 23.09.2011 was already cancelled by the Government by issuing G.R. dated 02.09.2016 and G.R. dated 10.03.2005 was restored for its implementation. The G.R. dated 2nd September, 2016 is at Page No.45 of P.B. which clearly demonstrates that though earlier Scheme was scrapped by issuance of G.R. dated 23.09.2011, the Government

reconsidered its decision and again restored the claim in terms of G.R. dated 10.03.2005.

9. Thus, the controversy is about the absorption of Applicants in terms of G.R. dated 10.03.2005. Material to note that Collector, Kolhapur rejected the claim of the Applicants solely on the report of Tahasildar dated 20.03.2017 whereby Tahasildar all that informed to the Collector that record showing 70% remuneration to the Applicants is not available. What is material to note that earlier, the Tahasildar, Shahuwadi by his detailed report dated 24.05.2016 has categorically informed to the Collector that the Applicants have worked for more than 10 years and are eligible for absorption in terms of G.R. dated 10.03.2005. However, the Collector at the time of passing impugned order dated 15.06.2017 completely forgotten and neglected the report of Tahasildar dated 24.05.2016. Once Tahasildar, Shahuwadi by letter dated 24.05.2016 certified on the basis of available report that Applicants have worked for more than 10 years and are eligible for absorption, there was no reason to reject the claim of Applicants on the basis of subsequent short report of Tahasildar dated 20.03.2017 which was only to the effect that report was not available. Indeed, the Collector, Kolhapur ought to have referred the matter back to Tahasildar, Shahuwadi inviting his attention to its earlier report dated 24.05.2016.

10. It is nowhere the case of the Respondents that the report of Tahasildar dated 24.05.2016 was false. As such, once Tahasildar, Shahuwadi by letter dated 24.05.2016 verified the record and satisfied that the Applicants have worked for more than 10 years and accordingly, recommended for their absorption. Unless said report is doubted by the Respondents, the claim of the Applicants for absorption could not have been rejected mechanically on the basis of subsequent report of Tahasildar, Shahuwadi dated 20.03.2017. .

11. Apart significant to note that what is stated in report dated 20.03.2017 is that the record of payment of 70% remuneration is not available. Thus, the claim of Applicants has been rejected mechanically, solely on the ground of non-availability of record. It is very likely that during the course of time, the record was lost. Indeed, in view of report of Tahasildar dated 24.05.2016, at the time of issuance of second report dated 20.03.2017, the then Tahasildar should have clarified about the veracity of the report dated 24.05.2016.

12. Indeed, the Applicant tried to obtain the copies of record availing the provisions of Right to Information Act. However, by letter dated 02.11.2017 (Page No.52 of P.B.) they were informed that the record itself is not available. As such, it is not the case of Respondents that the Applicants have never worked as Unpaid Copying Clerks. Their claim is rejected only on the ground of non-availability of record. Whereas, earlier Tahasildar, Shahuwadi by his detailed report dated 24.05.2016 certified the eligibility of the Applicants for absorption in terms of Circular dated 10.03.2005. In absence of any pleadings or allegations on behalf of Respondents about the non-reliability of report dated 24.05.2016, I see no reason to discard report dated 24.05.2016 which was issued by Tahasildar on the basis of the then available record. Indeed, there is reference at the end of letter dated 24.-05.2016 about annexing necessary documents about the entitlement of the Applicants in terms of G.R. dated 10.03.2005. Thus, the report of Tahasildar dated 24.05.2016 was based upon the documents which were forwarded to Collector along with his report dated 24.05.2016. However, this aspect has been also again over-looked by Collector, Kolhapur.

13. The claim of the Applicant apart from letter dated 24.05.2016 is also corroborated by Certificates issued by Tahasildar 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 at Page Nos.30 to 34 of P.B. He has also filed Identity Card issued by

Employment Exchange to show his registration with Employment Exchange Office, which was one of the requirement of G.R. dated 10.03.2005. Whereas in O.A.No.56/2018 also, the Applicant has produced the Certificates issued by Tahasildar dated 04.05.1998 and 02.03.2009, which are at Page Nos.30 and 31 of P.B. Indisputably, the Applicants were possessing educational qualification for the post of Clerk for absorption in terms of G.R. dated 10.03.2005.

14. The totality of aforesaid discussion leads me to sum-up that there is enough material on record in the form of report of Tahasildar fulfilling the eligibility criteria of the Applicants for absorption in terms of G.R. dated 10.03.2005. However, the Collector rejected their claim mechanically without examining the record. This being the position, the impugned orders are not at all sustainable and deserve to be quashed. Hence, the following order.

ORDER

- (A) Both these Original Applications are allowed.
- (B) The impugned communication dated 15.06.2017 is quashed and set aside.
- (C) The Applicants are held entitled for absorption in terms of G.R. dated 10.03.2005.
- (D) The Respondent No.1 – Collector, Kolhapur is directed to take necessary action accordingly within two months from today.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 01.02.2021

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2021\February, 2021\O.As.55 & 56.2018.w.2.2021.Absorption.doc

Uploaded on