

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.707 OF 2018**

DISTRICT : PUNE

Shri Chandrashekar Ramchandra Pillay,)
Age 58 years, Police Sub Inspector/Dog Master,)
State CID, M.S., Pune)
R/o "Shree Madhur Sudarshan", Survey No.50/1,)
B.T. Kawade Road, Wathare Mala, Pune 411036)..Applicant

Versus

1. The State of Maharashtra,)
Through Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai)
2. The Director General of Police,)
Maharashtra State, Mumbai)
3. The Additional Director General of Police (Estt.),)
Maharashtra State, Mumbai)
4. The Additional Director General of Police,)
State CID, Maharashtra State, Pune)..Respondents

Smt. Vijaya Chandrashekhar – Advocate for the Applicant

Miss S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman
Shri P.N. Dixit, Member (A)
RESERVED ON : 17th January, 2019
PRONOUNCED ON : 23rd January, 2019
PER : Shri Justice A.H. Joshi, Chairman

J U D G M E N T

1. Heard Smt. Vijaya Chandrashekhar, learned Advocate for the Applicant and Miss S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

Brief facts:

2. The Applicant joined as Police Constable in the year 1979 and was promoted to the post of Head Constable on 31.3.2003. He joined as Guard-cum-Kennel Attendant in the Dog Squad, State C.I.D., M.S., Pune on 3.5.1982. He continued to work in the Dog Squad and was given temporary promotion as PSI/Dog Master in 2009.

3. According to the Applicant there is a clear vacancy of the post of PSI/Dog Master, but he has been denied the opportunity of promotion for want of approval of Recruitment Rules for the post of PSI/Dog Master in the Dog Squad. He has, therefore, prayed that he should be promoted and confirmed in the post of PSI/Dog Master from January, 2007 with necessary monetary benefits accruing from that date.

4. Home Department is arrayed as Respondent no.1 however, it did not reply the present O.A. The affidavits are filed on behalf of Respondents

no.2, 3 & 4. The affidavit filed on behalf of Respondents no.2 & 3, who are competent authorities, is relevant. The affidavit states as follows:

- “3.2 Initially there were 27 posts of PSI (Dog Instructors) created by the State Government for the Police Department. Then as per GR dated 17.2.2006, 13 posts and as per Government order dated 14.6.2007, 20 posts have been newly created. Thus, now there are 60 posts of PSI (Dog Instructors) are sanctioned in the State of Maharashtra. There are no rules available regulating the appointment on the aforesaid posts. This office had submitted draft Recruitment Rules to the State Government on 23.1.2001.*
- 3.3 Thereafter, this office vide proposal dated 25.11.2003 has communicated to the State Government that in view of exigencies of filling the 27 posts, the action for filling these posts from the post First Handler, (H.C.) purely on ad hoc basis action has been taken, assuming the approval of the State Government.*
- 3.4 The issue of giving final approval to the Recruitment Rules for the aforesaid posts is still under correspondence between this office and the State Government. This office, vide this office letter dated 26.12.2016 submitted modified draft of Recruitment Rules in English and Marathi version to the State Government. Latest reminder submitted to the State Government in this connection is dated 13.4.2018. However the approval from the State Government is still awaited.*
- 3.5 Because of non-finalization of the Recruitment Rules for the post of PSI (Dog Squad), this office is not in position to give a regular promotion to anybody and the promotions have been started giving purely on temporary and ad hoc basis for a period of 364 days from the year 2009. Hence, this office has started giving promotions to the posts of PSI Dog Squad, purely temporary and ad hoc basis.*
- 4.1 The ad hoc or temporary promotion or appointment cannot get any enforceable right for getting regular promotion and hence on this count the OA filed by the Applicant is devoid of merits.*
- 4.2 The OA is also not tenable on the law of “Acquiescence”, as the Applicant has accepted the aforementioned purely temporary and ad*

hoc promotions and now he cannot claim any regularization on the same and seek further benefits of promotion.

4.3 *The OA is also not maintainable on the basis of the Law of Estoppel, as the Applicant accepted the fruits of the aforesaid ad hoc or temporary promotion without any protest and now he cannot claim any regularity of the same.*

4.4 *The OA is also barred by limitation as the cause of action was arisen right in the year 2009 and 2010, but the Applicant had not filed any OA at the point of time and hence on this count also the OA is not maintainable.”*

(Quoted from pages 37-40 of OA)

5. The Respondents no.2 and 3 have filed additional affidavit which states as under:

“2.

Substituted para no.3.4:

The issue of giving final approval to the Recruitment Rules for the aforesaid posts is under correspondence between this office and State Government. The State Government has sought information on certain points vide its letter dated 17.4.2018 in this matter to this office. On which, this office has sought information from the ADG, CID, MS, Pune vide this office letter dated 24.5.2018.

Then, the State Government has also sought information vide its letter dated 27.11.2018 in connection with the same from this office.

This office is yet to send information on the aforesaid two letters of the State Government.”

(Quoted from page 60 of OA)

6. Issue for consideration is as under:

Whether the Applicant is entitled for relief by way of mandamus for direction to promote the applicant to the post of PSI/Dog Master?

Discussion and findings:

7. The Applicant who has been working in the Dog Squad from 1982 appears to have done his job properly since he was promoted as Head Constable and as PSI/Dog Master in an ad hoc manner from 2007. He is also a recipient of Commendations, Certificates and Rewards from time to time. The Respondent no.2 admits that the draft recruitment rules were sent to the Government from the year 2001 followed with protracted correspondence. As the rules have not been approved, Respondents no.2 and 3 started providing ad hoc promotions for a period of 364 days from the year 2009 in view of the exigencies of services. The Respondent no.2 has enclosed copy of the communication dated 1.2.2017 from Home Department which are Respondent no.1. The same reads as under:

“प्रति,
पोलिस महासंचालक,
महाराष्ट्र राज्य,
मुंबई.

विषय :- पोलिस दलातील श्वान पथकातील पोलिस निरीक्षक (श्वान अध्यापक) या पदाचे सेवाप्रवेश नियम सुधारित करणेबाबत.

संदर्भ :- आपल्या कार्यालयाचे पत्र क्र.पोमसं/५/१०/श्वान अध्यापक /१६९/२००९, दि०६.०९.२००६ चे पत्र.

महोदय,

उपरोक्त विषयांकित प्रकरणी सदर सेवाप्रवेश नियम सुधारित करणेबाबत सामान्य प्रशासन विभागास सादर केले असता, सामान्य प्रशासन विभागाने सदर प्रस्तावात काही मुद्दे उपस्थित केले आहेत, ते पुढीलप्रमाणे आहेत;

१. पोलिस दलातील श्वान पथकातील भरती करण्यात येणा-या पोलिस निरीक्षक (श्वान अध्यापक) या पदाचे सेवाप्रवेश नियम संपुर्णतः नव्याने तयार करावयाचे आहे, असे नमून केले आहे. यापूर्वी सदर पदावर नियुक्ती कोणत्या नियमान्वये / अधिनियमान्वये / तरतूदीन्वये करण्यात येते, हे नमूद करून, त्याची प्रत उपलब्ध करून द्यावी.
२. तसेच सदर पदाचे पदनाम पोलिस निरीक्षक (श्वान अध्यापक) आहे की पोलिस निरीक्षक (ज्येष्ठ श्वान अध्यापक) याबाबत तपासणी करून, उचित पदनाम सेवाप्रवेश नियम प्रारुपात नमूद करावे.
३. सेवाप्रवेश नियम प्रारुपात वारंवार येणा-या संदर्भ वा संज्ञा यांचा अर्थ नमूद केला जातो. त्यामुळे प्रस्तावित सेवाप्रवेश नियम प्रारुपातील नियम २(ई) व (फ) येथे नमूद केलेल्या व्याख्या वगळण्यात याव्यात.
४. सेवाप्रवेश नियम प्रारुपातील नियम २ खाली नमूद केलेल्या इंग्रजी प्रारुपातील व्याख्या **alphabetically** विचारात घेऊन, त्यानुसार मराठी प्रारुपामध्ये सुधारणा करणे आवश्यक आहे.
५. प्रस्तावित सेवाप्रवेश नियमात मराठी व हिंदी भाषा परीक्षा उ-तीर्णतेची व संगणक प्रमाणपत्राची तरतूद विहित करण्यात आलेली दिसून येत नाही. ती खालीलप्रमाणे स्वतंत्र नियमान्वये सेवाप्रवेश नियम प्रारुपात विहित करण्यात यावी.

मराठी व हिंदी परीक्षा :-

“नियम ३ मध्ये नमूद केलेल्या पदावर नियुक्त झालेल्या व्यक्तीने, मराठी आणि हिंदी भाषा परीक्षा अगोदरच उत्तीर्ण केले नसेल किंवा सदर परीक्षा उत्तीर्ण होण्यापासून तिला सूट मिळालेली नसेल, तर त्याने / तिने, या संबधत करण्यात आलेल्या नियमानुसार सदर परीक्षा उत्तीर्ण होणे आवश्यक राहिल.”

“A person appointed to the post mentioned in rules shall be required to pass examinations in Marathi and Hindi language, according to the rules made in that behalf, unless he/ she has already passed or has been exempted from passing those examinations.”

संगणक अर्हता परीक्षा

“नियम ३ मध्ये नमूद केलेल्या पदावर नियुक्त झालेल्या व्यक्तीने, महाराष्ट्र शासनाच्या माहिती व तंत्रज्ञान संचालनालयाने वेळोवेळी विहित केलेले संगणक हाताळणीबाबतचे प्रमाणपत्र धारण करणे आवश्यक राहिल.”

“A person appointed to the post mentioned in rules 3 should possess certificate in computer Operation, prescribed by the Directorate of information Technology, Government of Maharashtra, from time to time.”

६. प्रस्तावित सेवाप्रवेश नियम प्रारुपात नियम - ४ मध्ये बदलीच्या तरतूदीमध्ये पोलिस निरीक्षक (श्वान अध्यापक) राजपत्रित, गट-अ यांच्या विहित कालावधीनंतर नियमानुसार महाराष्ट्रातील कोणत्याही श्वान पथकात बदल्या करण्यात येतील, असे नमूद केले आहे. यासंदर्भात नमूद करण्यात येते की, सर्वसाधारणपणे ज्या स्तरावर (राज्य / विभागीय / मंडळ / परिमंडळ) ज्येष्ठतासूची ठेवण्यात येते त्याच स्तरावर ते पद बदलीस पात्र ठरते. पोलिस निरीक्षक (श्वान अध्यापक) या पदाची ज्येष्ठतासूची राज्य स्तरावर ठेवण्यात येते, अशी या विभागाची धारणा आहे. सदर धारणा पक्की करण्यात यावी. तसेच बदलीबाबतची तरतूद खालीलप्रमाणे सुधारित करण्यात यावी :-

“नियम क्र.३ मध्ये नमूद केलेल्या पदावर नियुक्त केलेला उमेदवार महाराष्ट्र राज्यातील कोणत्याही श्वान पथकात बदलीस पात्र राहिल.”

७. मराठी व इंग्रजी सेवाप्रवेश नियम प्रारुपात एकवाक्यता राहिल, याची दक्षता घ्यावी.

उपरोक्त मुद्यांची माहिती आवश्यक त्या कागदपत्रांच्या प्रतीसह तात्काळ शासनास सादर करण्यात यावी, हि विनंती.

आपला,

सही/-

(सोमनाथ पोटरे)

अवर सचिव, गृह विभाग”

(Quoted from page 53-55 of OA)

8. The same communication has been replied by Respondent no.2 on 13.4.2018 (page 58 of OA). Again, certain queries have been raised and

they are still to be replied, as per the additional affidavit, by respondents no.2 & 3.

9. Present is a case where vacancy exists, temporary promotion is given but the Applicant has been deprived of regular promotion due to bureaucratic lethargy and casualness in finalizing recruitment rules for the post for which applicant's services are already extracted/used in larger public interest. The conduct of executive in being extremely negligent in finalizing the Recruitment Rules yet extracting services amounts to leaving an employee in suspended animation for no fault on his part.

10. Therefore, present would be a fit case where Government ought apply mind to the position of factum valet, and be gracious in issuing appropriate orders by making a residuary clause in Recruitment Rules in opting to grant due and fair protection and justice to applicant for reckoning services actually rendered by him, by providing for condonation of artificially created breaks in his service on higher post.

11. We are aware of the fact that framing of Recruitment Rules is a function of exercise of residuary legislation until law is made for governing service conditions by competent legislature and a mandamus would not be issued for such purpose. However in present case it is evident that post is created, applicant is promoted, however, due to bureaucratic delays the task of framing Recruitment Rules is stuck up in sluggish and marshy ground grown by bureaucracy. Present is a case where having extracted services from the applicant, now it is not open for the State to claim the defence of a legislative function being immune from the issue of mandamus. State has already walked ahead and is estopped from retracting and in all fairness is under equitable obligation to complete its legislative leap. Applicant by virtue of his ad-hoc promotion is made and led to believe and expect that he is the sole choice and contender of

promotional post. As and when the applicant was promoted, said promotion was not fortuitous and rather it was due since applicant was sole contender.

12. Government has to act fairly and in case of present nature fairly means punctually and without delay and without crushing applicant's fair and modest expectations based on promissory and equitable estoppel.

13. Hence, we are satisfied that the applicant has made out a case of warrant for issue of mandamus as an exceptional case.

14. Therefore, we are of the considered view that to meet ends of justice, it is necessary to direct the Respondent No.2 to consider the prayer made by the Applicant and take a decision about regularizing his promotion as PSI/Dog Master from the date of his first ad-hoc promotion.

15. Respondents no.2 and 3 shall complete the exercise of Rule making process within 3 months and take decision on the point of regularizing applicant's services on promotional post from his first promotion, by ignoring artificial breaks and communicate the decision to the Applicant within further three months from the date of this order.

16. OA is disposed off accordingly with no order as to costs.

Sd/-
(P.N. Dixit)
Member (A)
23.1.2019

Sd/-
(A.H. Joshi, J.)
Chairman
23.1.2019

Dictation taken by: S.G. Jawalkar.