

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.757 OF 2020**

**DISTRICT : KOLHAPUR**

Chandrakant Maruti Kabade, )  
R/o Plot No.29, Opp. Ganesh Temple Colony, )  
Nearby Yadav Colony Road, Sane Guruji Colony, )  
Peth Vadgaon, Tal. Hatkanangale, Kolhapur 416112 )..Applicant

Versus

1. Maharashtra Public Service Commission, )  
Through Secretary, 5<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Floor, )  
Cooperage Telephone Exchange Building, )  
M.K. Road, Mumbai 400021 )
2. The State of Maharashtra, )  
Through Secretary, )  
General Administration Department, )  
Mantralaya, Mumbai 400032 )
3. Suresh Dilip Patil, )  
R/at 32, R-5/06/04 Ganesh Chowk, )  
CIDCO, Nashik 422009 )..Respondents

Shri P.B. Kulkarni – Advocate for the Applicant

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

CORAM : Smt. Justice Mridula Bhatkar, Chairperson  
Smt. Medha Gadgil, Member (A)  
DATE : 29<sup>th</sup> March, 2023

### **J U D G M E N T**

1. The applicant who is working in Central Government with Ministry of Chemical Fertilizer, Department of Fertilizer, Govt. of India as Supervisor has applied for the post of Assistant Director (Information) / Information Officer / Examiner of Books and Publication, GAD, Group-B pursuant to advertisement No.59/2017 dated 1<sup>st</sup> August, 2017 and prays that the merit list dated 10.12.2020 published after conducting the examination be declared void and be quashed and set aside. He also prays that a fresh list be published by declaring the marks of the applicant who has appeared for interview on 14.9.2020. He also prays for injunction restraining respondent no.3 from joining the post as per result dated 10.12.2020.

2. Ld. Advocate for the applicant submitted that age limit for the said recruitment was 38 years and the applicant was 39 years, 5 months and 3 days old at the time of application i.e. 1.12.2017. Ld. Advocate for the applicant relied on para 1.8.9 of the instructions of MPSC dated 11.7.2016 which reads as under:

“१.८.९. महाराष्ट्र सेवेतील कर्मचा-यांना जाहिरात/अधिसूचनेतील तरतुदीनुसार वयोमर्यादा शिथिलक्षम राहिल. शासकीय कर्मचारी याचा अर्थ महाराष्ट्र राज्याच्या कामकाजासंबंधातील कोणत्याही सेवेत किंवा पदावर नियुक्त केलेली कोणतीही व्यक्ती असा आहे आणि त्यामध्ये ज्याची सेवा कंपनीकडे, महामंडळाकडे, संघटनेच्या स्थानिक प्राधिकरणाकडे किंवा अन्य कोणत्याही शासनाकडे सोपविलेली असेल, मग त्याचे वेतन राज्याच्या एकत्रित निधिव्यतिरिक्त अन्य मार्गाने काढले जात असेल तरीही अशा शासकीय कर्मचा-याचा समावेश होतो.”

3. Ld. Advocate for the applicant submitted that applicant had worked in Zilla Parishad, Kolhapur from 6.8.2005 to 31.8.2016 i.e. for 11 years and in Ministry of Chemical Fertilizers Department, GOI from 28.9.2016 to 10.6.2017. Ld. Advocate for the applicant relied on para 3.8 of the affidavit in reply dated 1.12.2022 filed by Bhalchandra Pandurang Mali, Under Secretary, MPSC, Mumbai regarding definition of 'Government servant' mentioned in Rule 2(g) of the MCS (Discipline & Appeal) Rules, 1979.

4. Ld. CPO relied on the Director (Information), Deputy Director (Information) etc. etc. under the Directorate General of Information and Public Relations (Recruitment) Rules, 2015 published vide notification dated 18.12.2015. Rule 2(d) of the said Rules reads as under:

*"2(d) "Government" means the Government of Maharashtra."*

Proviso to Rule 6(b)(i) of the said Rules reads as under:

*"6(b) by nomination from amongst the persons who,-*

*(i) are not more than thirty three years of age:*

*Provided that, the upper age limit shall be relaxed up to five years in case of candidates already in the service of the Government."*

5. We have considered the submissions of the Ld. Advocate for the applicant and Ld. PO. We have gone through the recruitment rules, definition and general definition that who can be considered as Government servant. However, when we deal with the issue of recruitment of particular post then recruitment rules or notification pertaining to that particular post shall operate and to be relied. Thus, in view of definition clause of Government in Rule 2(d) for the purpose of the

post of Assistant Director (Information), wherever it is mentioned as Government, we have to restrain only to State of Maharashtra and thus by taking into account only State of Maharashtra, we have to read the advertisement or the guidelines issued by MPSC on 11.7.2016. As the applicant is working in Central Government that cannot be considered and further service in Zilla Parishad also cannot be taken into account in view of the definition of Government servant in Recruitment Rules which is accepted and applicable in the legislative intent of notification. In support of the submissions that ZP is out of the definition of Government servant, we refer to and rely on the judgment of the Hon'ble Supreme Court in **Union Public Service Commission Vs. Jamuna Kurup & Ors., AIR 2008 SC 2463** wherein in para 14 it is observed as under:

*“14. .... But a Municipal Corporation is not ‘government’, and municipal employees are not government servants governed by Article 309 to 311. Though permanent employees of municipal corporation or other statutory bodies may be governed by statutory rules, they do not enjoy the status of government servants.”*

6. For the aforesaid reasons, we do not find any substance in the OA and the same deserves to be dismissed.

7. Original Application is dismissed. No order as to costs.

Sd/-

**(Medha Gadgil)**  
**Member (A)**  
**29.3.2023**

Sd/-

**(Mridula Bhatkar, J.)**  
**Chairperson**  
**29.3.2023**

Dictation taken by: S.G. Jawalkar.