

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.850 OF 2018**

DISTRICT : NASHIK

Shri Rohit Balu Bachhav,)
Age 26 years, occ. Nil, R/o At Wake, Post Mungse,)
Tal. Malegaon, District Nashik)..Applicant

Versus

1. Divisional Joint Director of Agriculture,)
Nashik Division, Near Ashwini Barraks,)
Opp. Divisional Commissioner Office,)
Nashik Road 422101)
2. The Commissioner of Agriculture,)
Maharashtra State, Central Building, Pune-1)..Respondents

Shri C.T. Chandratre – 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 : 6th February, 2019
PRONOUNCED ON : 14th February, 2019
PER : Shri P.N. Dixit, Member (A)

J U D G M E N T

1. Heard Shri C.T. Chandratre, learned Advocate for the Applicant and Miss S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

Brief facts:

2. In response to the advertisement for the post of Agriculture Assistant, Group C published on 28.12.2015 the Applicant applied online for the post reserved for persons having hearing impairment disability. He completed the entire process successfully. On 17.1.2017 the Government Medical College Hospital, Dhule issued to the Applicant a certificate (Exhibit A-5 page 28) stating that the Applicant is suffering from hearing impairment and the percentage of disability is 54%.

3. On 9.11.2017 he was directed by Respondent no.1 to remain present for verification of the certificates and documents. Accordingly, on 20.11.2017 he remained present and submitted copies of the certificates. On 6.3.2018 Respondent no.2, as per the instructions of Respondent no.1 published revised select list. The Applicant was declared as ineligible from the Open Physically Disabled Category but no reasons were stated.

4. On 20.4.2018 Respondent no.1 directed the Applicant to remain present before the Medical Board at J.J. Hospital, Mumbai. Accordingly, he remained present before the Medical Board at J.J. Hospital on 7.5.2018 and 9.5.2018. The J.J. Hospital also confirmed his physical disability. The Applicant brought the fact of examination by J.J. Hospital to the notice of Respondent no.1 on 23.5.2018, 21.8.2018 and 28.8.2018 and requested to issue the appointment order.

5. On 1.9.2018 Respondent no.1 cancelled provisional selection of the Applicant (Exhibit A-10 page 42), which reads as under:

“क्रषि आयुक्तालयाच्या अधिनस्त विभागीय कार्यालयांतर्गत क्रषि सेवेक सरळसेवा भरती परिक्षा-२०१५-१६ मध्ये दिनांक ०६ ऑगस्ट २०१६ रोजी घेतलेल्या लेखी परिक्षेमध्ये आपली निवडयादीतील खुला (कर्णबधीर) प्रवर्गामध्ये निवड करण्यात येवून त्याप्रमाणे आपल्या शैक्षणिक प्रमाणपत्रांची व त्या अनुषंगित प्रमाणपत्रांची पडताळणी करण्यात आलेली होती. सदरील पडताळणीत आपले अपंगत्वाचे प्रमाणपत्र हे अर्ज भरण्याच्या अंतिम दिनांकांनंतरचे व क्रषि सेवेक परिक्षेनंतरच्या दिनांकाचे आढळून आलेले आहे.

दिनांक २८.१२.२०१५ मध्ये क्रषि सेवेक म्हणून निक्षित वेतनावर सरळसेवेने भरावयाच्या पदाच्या जाहिरातीत नमूद केलेल्या अटी व शर्तीमधील अनुक्रमांक १२.५ व १३.६ वरील अटी व शर्ती पूर्ण करित नसल्याने आपण क्रषि सेवेक पात्र ठरत नाहीत. सबब आपली क्रषि सेवेक पदासाठी तात्पुरती केलेली निवड रद्द करण्यात येत आहे.”

(Quoted from page 42 of OA)

6. Aggrieved by the above impugned order the Applicant has made following prayers:

“9(a) *The Hon. Tribunal be pleased to call for the record and proceedings of the letter dated 1.9.2018 (Exhibit A-10) and after examining its legality and validity the Hon. Tribunal be pleased to hold and declare that the selection of the Applicant to the post of Agriculture Assistant has been cancelled illegally. The Hon. Tribunal further be pleased to quash and set aside the impugned letter dated 1.9.2018.*

(b) *The Hon. Tribunal further be pleased to direct the Respondents to accept the medical certificate issued on 17.1.2017 by relaxing the condition, in view of the facts stated in paragraph no.6.19 and issue the appointment order in favour of the Applicant.”*

(Quoted from page 9 of OA)

7. In support of the above prayer the Applicant has furnished following grounds in para 6.20. The relevant portion is as under:

“(b) *Applicant states that in clause No.4 of the notification dated 23.2.2018 (letter dated 6.3.2018) it is stated that unless examined*

by medical board the candidates claiming from disable category would not appointed. Therefore necessity of having such certificate in hand prior to filling the application form (without admitting that such condition was there) is meaningless and appointment cannot denied on this ground. What was essential is that he must disable on that date and Applicant was disabled as seen from the certificates. Applicant therefore entitled for the relief claimed.

- (c)
On 13.2.2015 (advertisement Dec. 2015) and on 9.9.2016 the consultant informed the Applicant that he is suffering from hearing impairment. In such circumstances and after getting information he appeared before medical authorities and the competent authority certified on 17.1.2017 that his hearing impairment is more than 40%. On the date of verification of document i.e. on 20.11.2017 he was in possession of valid disability certificate. The final select list was declared on 6.3.2018. Therefore he cannot be declared as ineligible for this reason and the order of appointment cannot be withhold for this reason.
- (c) *Applicant states that, on 20.11.2017 he had produced the documents. On 23.2.2018 (letter dated 6.3.2018) he was declared as ineligible for appointment. Thereafter on 20.4.2018 he was asked to remain present before medical board of J.J. Hospital, Mumbai. He remained present before the board on 7.5.2018 and 9.5.2018. The certificate issued by J.J. Hospital was received by Respondent no.1 on 14.6.2018. If one considers this sequence then, it is clear that, the Respondent no.1 was realized that his action declaring Applicant as ineligible was wrong and therefore he had taken the recourse to send the Applicant to J.J. Hospital to cover up his arbitrary act of declaring the Applicant as ineligible. On this ground that part of the select list declaring Applicant ineligible for appointment is required to be quashed and set aside.*
- (d) *Applicant further submits that there was no mandate in the advertisement that the candidate must be in possession of certificates and specifically in respect of disability certificate. The disability of the Applicant was and is a fact. Applicant submitted the certificates including disability certificate from competent authority on the date fixed for verification of certificates. By considering facts and facts stated in para (a) and (b) of the ground, it is necessary to accept the certificate by relaxing the customary Rule of holding of certificate*

on the date of filing of application. Such relaxation is required specifically in the light of the letter and spirit of the Act, 1995 and the Judicial Pronouncement in that regard.

(Quoted from page 7-8 of OA)

8. The Respondent no.1 was directed by order dated 24.9.2018 to file short affidavit stating the following:

“8. Respondent no. 1 is called to state on short affidavit, stating the following.

(i) Whether any reply to communication at p. 34 was sought by sending reminder, etc. and whether any reply is received?.

(ii) What is the foundation or the reason assigned in impugned communication in last sentence of first para of letter dated 1.9.2018, Exh. A-10, page 42, which reads:-

“सदरील पडताळणीत आपले अपंगत्वाचे प्रमाणपत्र हे अर्ज भरण्याच्या अंतिम दिनांकांनंतरचे व कृषि सेवक परिशेनंतरच्या दिनांकाचे आढळून आलेले आहे.”

(Quoted from order dated 24.9.2018)

9. In response to the same Respondent no.1 has stated in his affidavit as under:

“3. With reference to para No.8(i) of the order dated 24.9.2018 passed by this Tribunal, I say and submit that communication at page 34 of original application is to publish the select list and waiting list on website of Agriculture Department of the candidates who passed the examination dated 6.8.2016. I say that as per the communication, the select list and waiting list has been published on the website of Agriculture Department. It is submitted that no further communication was sought thereafter.

4. With reference to Para No.8(ii) of the order dated 24.9.2018 passed by the Hon’ble Tribunal I say and submit that the instruction given in the point no.8 of the advertisement dated 28.12.2015 makes it clear that the candidate who is handicapped to not less than 40% has to submit the

certificate with prescribed form as per the GR dated 6.10.2012. I say that on the date of filling application 2015-16, Application No.13196 (page no.24 of original application), the Applicant mentioned the personal information in:

Column No.22	Whether candidate is handicapped	:	YES
Column No.22.1	Candidate's Handicap Type	:	HEARING
Column No.22.2	Percentage of handicapped	:	More than 40%

5. *It is submitted that the online application form enclosed to OA and in the record of Respondent no.1 are not one and same.*

6. *I say that the disability certificate furnished by the Applicant is dated 17.1.2017. It means at the time of filling in the application the Applicant was not having disability certificate. I further say that as per the point no.12.5 and 13.2 of advertisement dated 28.12.2015, the Applicant filed incorrect information in the application form, when he was not in possession of disability certificate at the time of submission of application in the year 2015-16. I say that this is the foundation or the reason in the last sentence of first para of letter dated 1.9.2018 the impugned communication i.e. Exhibit A-10 Page 42 of Original Application."*

(Quoted from page 52-54 of OA)

10. **Issues for consideration:**

(i) *Whether the advertisement for the said post mentioned about the date before which the certificate for disability needed to be furnished?*

(ii) *Whether the Applicant has following the same?*

Discussion and findings:

11. We have examined the advertisement published by the Respondents available at Exhibit A-2 page 14. The relevant portion is at para 12.5 and 13.6 which reads as under:

“१२.५ निवड करण्यात आलेल्या उमेदवारांना नियुक्तीपूर्वी आवश्यक मुळ कागदपत्रांची तपासणी संबंधित विभागीय कृषि सहसंचालक कार्यालयाकडून करूनच नियुक्ती देण्यात येईल. पडताळणीत चुकीची अथवा खोटी माहिती आढळून आल्यास त्या टप्प्यावर उमेदवारांची निवड रद्द करण्यात येईल.

१३.६ उमेदवाराने उर्जामध्ये नमूद केलेली माहिती कोणत्याही टप्प्यावर चुकीची अथवा खोटी आढळून आल्यास उमेदवाराची संबंधित पदासाठीची उमेदवारी रद्द करण्यात येईल व संबंधित उमेदवार कायदेशीर कारवाईस पात्र राहिल. चुकीच्या माहितीच्या आधारे नियुक्ती झाल्यास कोणतीही पूर्व सुचना / नोटीस अथवा कारण न देता उमेदवार तात्काळ सेवेतून काढून टाकण्यास पात्र राहिल. त्यामुळे होणा-या सर्व परिणामास उमेदवार स्वतः जबाबदार राहिल.”

(Quoted from page 20-21 of OA)

12. The advertisement as well as online form does not mention at any place any specific date before which the Applicant should have procured the disability certificate. The online form only asks whether the Applicant is having disability. The advertisement only states as mentioned above that the appointment would be subject to verification of original certificates before appointment. The Applicant was in possession of the disability certificate dated 17.1.2017 issued by the competent government medical authority. The same was verified by the Respondents on 20.11.2017. The Applicant was again asked to undergo medical examination by the medical board at J.J. Hospital on 20.4.2018 and he complied with the same. The J.J. Hospital Board confirmed his disability even then the Respondents have denied the appointment to the Applicant on 1.9.2018 stating that the certificate of his disability is subsequent to the last date of filling in application form. When there is no mention that the Applicant should have the disability certificate of prior date, denying him appointment on this ground has resulted in injustice to the Applicant. The impugned order is, therefore, illegal and needs to be set aside. The prayer clause 9(a) and (b) is conceded.

13. Original Application is allowed. The Respondents are directed to consider his certificate as valid and provide him the necessary appointment within a period of one month. No order as to costs.

(P.N. Dixit)
Member (A)
14.2.2019

(A.H. Joshi, J.)
Chairman
14.2.2019

Dictation taken by: S.G. Jawalkar.

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