

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 662 OF 2017

DIST. : AURANGABAD

Rohit s/o Dilip Pandit,
Age. 22 years, Occ. Education,
R/o B-1193, Aasegaon Road,
Phule Nagar, Basmat, Tq. Basmat,
Dist. Hingoli.

-- APPLICANT

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Minorities Development Department,
Maharashtra State, Mantralaya,
Mumbai – 400 032.
2. The District Collector, Aurangabad /
(Chairman, District Selection Committee
Maharashtra Wakf Tribunal Recruitment,
Aurangabad).
3. Vijay s/o Nana Thorat,
Age. Major, Occ. Service as Peon,
C/o At present working at
High Court at Bombay.

-- RESPONDENTS

APPEARANCE : Shri S.R. Roundale, learned Advocate for
the applicant.

: Shri I.S. Thorat, learned Presenting Officer
for respondent nos. 1 & 2.

: Shri V.B. Wagh, learned Advocate for
respondent no. 3.

**CORAM : JUSTICE M.T. JOSHI, VICE CHAIRMAN
AND
ATUL RAJ CHADHA, MEMBER (A)**

DATE : 25th April, 2018

J U D G E M E N T

(Per : Justice M.T. Joshi, Vice Chairman)

Heard Shri S.R. Roundale, learned Advocate for the applicant, Shri I.S. Thorat, learned Presenting Officer for respondent nos. 1 & 2 and Shri V.B. Wagh, learned Advocate for respondent no. 3.

2. By the present O.A. the applicant is seeking quashment of appointment order dtd. 7.9.2017 issued in favour of res. no. 3 – Shri Vijay Nana Thorat - by the res. no. 2 to the post of Stenographer (Lower Grade). Admitted facts on record show that the applicant has secured highest marks in the written as well as in proficiency examinations than the res. no. 3. However in the oral interview the res. no. 3 jumped ahead by 11 marks as can be seen from page 167 and thus the applicant lagged behind back by 2 marks.

In the above state of affairs the learned Advocate for the applicant submits that holding of oral interview and using of discretion in granting marks in oral interview is against the G.R. dtd. 5.6.2014 (Annex. A. 7 page 31). The said G.R. would show that, earlier G.R. dtd. 19.10.2007 was replaced, which earlier had given discretion to the Head of the Department in this regard and

in its place it is declared in the recent G.R. dtd. 5.6.2014 that, oral interview shall not be held for Class-C post. More particularly, in para 2.3 thereof it is directed that, in case where written and proficiency tests are required to be taken, then those tests would be of 120 and 80 marks respectively and only on the basis of the marks obtained therein, the selection should be made.

3. In the advertisement dtd. 3.5.2017 for the post, however, the res. no. 2 (Annex. A. 2 page 17 and more particularly at page 21) had published the selection process, which inter alia provides 20 marks for oral interview and thus the selection process has caused the res. no. 3 to obtain selection from res. no. 2.

4. Learned Advocate for the applicant relies on the ratio laid down by Hon'ble Supreme Court in the case of **Raj Kumar and Ors. Vs. Shakti Raj and Ors. [AIR 1997 SC 2110]**, which would show that in case the recruitment process is vitiated and certain glaring illegalities are found, the principal of estoppel by conduct or acquiescence would not be applicable, which had been highlighted by the Hon'ble Supreme Court in the case of **Ashok Kumar and Ors. Vs. State of Bihar and Ors. [AIR 2016 SC 5069]**.

5. Learned P.O. submits that the res. no. 2 had correspondence with the Principal District Judge at Aurangabad. The res. no. 2 had secured the procedure adopted by the District Court for selection. When it was made known to res. no. 2 that as per the Civil Manual, the process of selection is to be started, the same process has been applied in the selection process in the present matter. On the other hand, learned Advocate for the applicant draws our attention towards G.R., dtd. 3.8.2016 (Exh. R. 4 page 110) issued by the Minorities Development Department, wherein inter alia vide para 5 (page 113) it is provided that sanctioned posts including the present post shall be filled in as per the Recruitment Rules of the State Government.

6. In these state of affairs, Shri Wagh, learned Advocate for res. no. 3 submits that, the applicant has undergone through the selection process without raising any objection to the same. He further submits that, only when the applicant found that he was not successful in the said selection process, then only belatedly he challenged the said selection process by filing the present O.A., which is not permissible in view of the ratio laid down by Hon'ble Supreme Court in the case of **Ashok Kumar and Ors. Vs. State of Bihar and Ors.** (supra).

7. Upon hearing both the sides, in our considered view, the present O.A. deserves to be dismissed without any order as to costs for the following reasons :-

- (i) It is no doubt true that the Selection Committee i.e. the res. no. 2 though acted on the line of guidelines received from the District Court, but against the G.R. issued by the Minorities Development Department on 3.8.2016 (Exh. R. 4 page 110) under which the very post is created.
- (ii) In the circumstances, Rules of the State Government would be applicable in the present case.
- (iii) The res. no. 2 could not have conducted the oral interview or provide marks for the said oral test.

8. The issue, however, remains as to whether the selection process adopted by the res. no. 2 was merely a illegality in which the applicant has acquiesced or whether there is glaring illegality, vitiating the said selection process.

9. Learned Advocate for the applicant submits that, it was a glaring illegality. He relied on the ratio laid down by the Hon'ble Supreme Court in the case of **Raj Kumar and Ors. Vs. Shakti Raj and Ors.** (supra). Reading of the said judgment would show that for filling in the post of canal Patwari of State of Haryana a Selection Board was established, however, examinations were

conducted by the State Government and not by the Board. After the results were announced, a Notification was published, wherein the posts were taken away from the purview of Board and the entire selection process was thereafter conducted. In the circumstances, the Hon'ble Supreme Court held that the entire selection process was obviously illegal and glaring illegality is committed. In the circumstances, it was found that the principal of estoppel by conduct or acquiescence would not be applicable.

10. In the present matter, what we find is that the res. no. 2 – the Selection Committee – was competent to hold the selection process. It has even adhered to the rules of the written as well as proficiency tests. Thus, it cannot be said that there is glaring illegality, but it can be said that by conducting oral interview mistake is committed by the res. no. 2 within its own jurisdiction. In those circumstances, as the present applicant has opted to participate in the selection process but did not object for the same at the initial stage, the principal of estoppel attracts as per the ratio laid down by Hon'ble Supreme Court in the case of **Ashok Kumar and Ors. Vs. State of Bihar and Ors.** (supra).

11. In the circumstances, the present O.A. is dismissed without any order as to costs.

12. Shri Roundale, learned Advocate for the applicant prays for continuation of interim relief for a reasonable period. Shri Thorat, learned P.O. for res. nos. 1 & 2 and Shri Wagh, learned Advocate for res. no. 3 opposed for continuation of interim relief for further period of 6 weeks from the date of passing of this order on the ground that the said interim relief is continued since long.

13. However, in the interest of justice, we hereby direct that the interim relief granted by the Tribunal earlier in the present matter to continue for a further period of 6 weeks only from the date of passing of this order.

14. Steno copy allowed for the use of all the sides.

(ATUL RAJ CHADHA)
MEMBER (A)

(M.T. JOSHI)
VICE CHAIRMAN

Place : Aurangabad

Date : 25.4.2018