

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
REVIEW APPLICATION NO. 01/2020 IN
ORIGINAL APPLICATION NO. 147/2017 (S.B.)

Gajanan Wasudeo Moharil,
Aged about 39 years, Occ. Service,
R/o Ward No. 11, Old Chikhalli Road,
Buldhana.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Secretary,
Department of Finance & Accounts Services,
Mantralaya, Mumbai-32.
- 2) Director Accounts and Treasuries,
New Government Complex Nos. 15 & 16,
Plot No. 176, Free Press Journal Marg,
Mumbai-01.
- 3) Maharashtra Public Service Commission,
3rd Floor, Bank of India Building,
Mahatma Gandhi Marg,
Hutatma Chowk, Mumbai-01.

Respondents

Shri R.V.Shiralkar, Id. Advocate for the applicant.

Shri H.K.Pande, Id. P.O. for the Respondents.

Coram :- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.

Dated :- 28.08.2023.

JUDGEMENT

Heard Shri R.V.Shiralkar, Id. counsel for the applicant and
Shri H.K.Pande, Id. P.O. for the Respondents.

2. As per the submission of Id. Counsel for the applicant Rule 12 of Maharashtra Finance and Accounts Service, Examination meant for Class-III dated 01.02.1965 is not considered by the Tribunal and wrongly dismissed the O.A.. In support of his submission he has pointed out the decision in O.A.No.20/2023 of M.A.T., Nagpur Bench decided on 01.08.2023. Id. Counsel for the applicant has submitted that this judgment has not been considered. This cited judgment has been delivered on 01.08.2023 and the judgment in O.A. No. 147/2017 which is under review is dated 03.01.2020. Therefore, it cannot be said that while deciding the O.A. No. 147/2017 on 03.01.2020, the judgment in O.A. No. 20/2023 delivered on 01.08.2023 could not be considered. The Id. Counsel for the applicant has pointed out the judgment of this Tribunal in O.A. No. 63/2016 decided on 07.04.2017. Operative order of the judgment is as under:-

O.A. is partly allowed. The respondents are directed to take decision on the representations filed by the applicant on 01/03/2014 and 08/12/2014 as per Rule of 1977 and in view of the observation made in this order that the amendment of Rule 12 vide notification dated 02/01/2017 shall not be made applicable to the case of applicant. Necessary decision shall be taken within 2 Months from the date of this order and shall be communicated to the applicant in writing. No order as to cost.

3. The order does not show that O.A. was allowed. It was partly allowed and direction was given to consider the representations of the applicant dated 01.03.2014 and 08.12.2014. The respondents had specifically stated in the reply in affidavit that the applicant had appeared in paper no. 2 of part – I of examination and score 42 out of 100 and thus the deficit is less than 5% as the bar for clearing paper is set at 45 marks out of 100. According to the respondents exemption is available only when the candidate clears all paper in one sitting.

4. Rule 12 reads as under:-

“12(1) The standard of passing the examination shall be 45 percent in each paper.

(2) Condonation upto 5 percent of marks in any one paper shall be granted to a candidate who is thereby able to pass the examination.

(3) An unsuccessful candidate who had obtained 55 percent or more of the total number of marks obtainable under any subject shall be exempted from appearing again in that subject.

The exemption secured by a candidate in a previous examination should be claimed by applying for it in the

subsequent examination and that if it is not claimed, it will be presumed that the candidate does not wish to avail of it.

(4) A candidate who obtains atleast 75 percent of the aggregate marks obtainable shall be considered to have passed the examination with credit.

Provided that, a candidate who has been granted an extra chance under Rule 11 or has passed the Examination in instalments shall not be considered to have passed with credit.”

5. As per Rule 12 of Maharashtra Finance and Accounts Service, Examination Rules, 1965 states that “*if a candidate passes in all papers of part I or part II except one, his failure to pass in that paper shall be condoned provided the deficiency does not exceed 5% of the marks obtainable in that paper*”.

6. The stated judgment in O.A. No. 63/2016 is not applicable because in that Rule Maharashtra Prison Department (Executive Officers Qualifying Examination) Rules, 1977 was in question and Rule 12 was amended by notification dated 02.01.2017. In the present matter Rule 12 of Maharashtra Finance and Accounts Service, Examination Rule dated 01.02.1965 is not amended, it is also not a case of applicant. On perusal of the impugned judgment there is no *prima facie* error in the impugned

judgment. The applicant is/was at liberty to challenge the order before the higher forum. Hence, **Review Application is dismissed with no order as to costs.**

(Shri Justice M.G.Giratkar)
Vice Chairman

Dated :- 28/08/2023.
aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 28/08/2023.
and pronounced on