NAGPUR BENCH, NAGPUR.
Review application No.10/2015
in
ORIGINAL APPLICATION NO.423/2013.

1. The Secretary, Animal Husbandry, Dairy Development and Fisheries Department, Mantralaya, Mumbai-32.

2. The Commissioner, Animal Husbandry, Mah. State, Pune.

3. The Regional Joint Commissioner , Animal Husbandry, Nagpur Region, Nagpur. ----------**Applicants (Original Respondents).**

-Versus-.

Smt. Lata wd of Dhanraj Kawale,
R/o Ramayan Nagri, Rani Laxmibai Ward,
Bhandara,
Distt. Bhandara. -------**Respondent(Original applicant).**

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1. Shri A.M. Ghogre, Ld. P.O for the Applicant(Original Respondents.
2. Shri S.M. Khan, Advocate for the respondent(Original applicant)

Coram:- B. Majumdar, Vice-Chairman and
S.S. Hingne, Member (J).
Dated:- 20th June,2016.
---------30th----------

Order Per Vice-Chairman.

The application is for seeking a review of the Tribunal's order dtd. 6/8/2014. The applicants are respondents in the O.A. The Tribunal had disposed of the O.A. in terms of its order, which is reproduced below :-

> "***Heard N.B. Bargat, ld. Counsel for the applicant and Shri A.P. Sadavarte, ld. P.O. for the respondents.***
> ***The respondent No.2 in para No. 6 of his reply stated thus -:***
> ***" The appointment will be given to the Applicant as per seniority. In the letter dated 26/8/2009 Respondent No. 1 not mentioned any period for appointment."***
> ***In view of the categorical admission given by the Respondent No. 2, it is expected that as per the seniority maintained in the office of R/2 as and when the applicant's turn comes, she will be appointed. In the reply it is stated that the applicant is at Sr. No.29. We therefore direct that the Respondent No. 2 shall communicate the applicant about her position in the***

respondent No. 2 shall keep informing the applicant about her position in the seniority list as and when the change occurs.

With the above directions, the O.A. stands disposed of."

2. The applicants submit that the respondent (applicant in O.A.) has reached the age of 45 years in terms of the G.R. dtd. 6/12/2010 and hence cannot be appointed. They rely on para 3 of affidavit-in-reply of R/2 to the O.A. wherein it is stated as follows :-

" As per govt. Resolution dated 6/12/2010 the maximum age of candidates has been fixed 45 year for appointment on compensation ground. The same is enclosed herewith as Annexure-R-3. The birth date of Applicant is 3/6/1967 and she has completed 45 years on dated 3/6/2012. Therefore applicant is not liable for appointment on compensation ground. The same is enclosed herewith as ANNEXURE R-4. The applicant is not eligible for appointment on compensation ground due to over age.

applicant."

3. They further submit that after receipt of the order dtd. 26/8/2009 the Department had informed the Govt. that it was not feasible and possible to appoint the applicant in the O.A. as there were other candidates in the waiting list. However, this fact has not been considered by the Tribunal while deciding the O.A. Thereafter they submit as follow :-

Para 5: ***" It is submitted that, the present applicant no. 2 is a competent authority to appoint the Class-III candidates and the State Government is not an appointing authority of this candidate. The order dtd. 26/8/2009 was issued by the State Government by passing the authority of present applicant no. 2 for appointment of Class-III candidates. The Hon'ble Tribunal had not considered the other pleading made by the present applicant no. 2 in his affidavit and disposed of the original application solely on the basis of averments made in the Para No. 6 of the affidavit. It is categorically stated in para***

no. 3 of the affidavit that the present

Respondent is not entitled for appointment on compassionate ground as she become the over aged as per G.R. dtd. 6/12/2010 and scheme of the compassionate appointment. This categorical submission and G.R. dtd. 6/12/2010 is not taken into consideration by the Hon'ble Tribunal vide disposing of the Original Application vide order dtd. 6/8/2014. On these facts also the order dtd. 6/8/2014 is required to be reviewed, modified or altered."

4. Thus, according to these applicants (Original Respondents) the Tribunal's order is required to be reviewed as the applicant no. 2 in his reply to the O.A. had categorically submitted that there are other candidates above the present Respondent in the wait list and also that she had crossed the age of 45 years and was not eligible for the appointment.

5. Shri A.M. Ghogare, ld. P.O. for the applicants (Original respondents) reiterated the above submissions of the applicants. He also submitted that the order

dtd. 26/8/2009, based on which the Tribunal had issued its order was cancelled by the Govt. vide G.R. dtd. 15/4/2015. Hence the question of granting appointment to the respondent (Original Applicant) did not arise.

6. Shri S.M. Khan, ld. Counsel for the respondent (Original Applicant) submitted that the Tribunal had issued its order dtd. 6/8/2014 after taking into consideration and examining the various averments made by the applicants in their reply to the O.A. The Tribunal had observed that the order dtd. 26/8/2009 specifically stated that it was by way of granting an exemption to the respondent from the application of the condition of 45 years. Hence no grounds exist for reviewing the Tribunal's order.

7. We have already cited the Tribunal's order dtd. 6/8/2014 disposing of the O.A. No.423/2013. The Respondent (Original Applicant) had filed an application for contempt of the above order of the Tribunal in C.A. No.37/2015. On 10/7/2015, the C.A. was disposed of by the

Tribunal. The relevant part of the Tribunal's order in this regard is reproduced below :-

Para 5 : ***" ----------Fact remains that the O.A. No. 423/2013was disposed of in terms of concession given by the respondent No. 2 therein. Thus, for one or the other reason, the respondents cannot be allowed to reopen the issue under the guise of the said G.Rs. We, therefore, direct the respondents to reincorporate the name of the applicant in the waiting list and abide by the directions issued by this Tribunal in O.A. No. 423/2013.***

Para 6 : ***It needs to be clarified that, if the respondents consider that legally it is not possible for them to keep the name of the applicant alive despite she attaining the age of 45 years, the remedy for them shall be to seek review of the decision passed in O.A. No.423/2013 or taken up appropriate proceeding, according to law. So long as the order passed in O.A. No.423/2013 remains in force, the***

respondents cannot avoid to obey the

same."

On the above basis the present review application has been filed by the respondents in the O.A.

8. In his affidavit-in-reply in O.A. No.423/2013 in para 3, the applicant no. 2 (R/2 in the O.A.) had stated that the applicant was not eligible for appointment as she was over age. However, in subsequent paras, 4 and 6 he had categorically stated that the applicant will be given appointment as per her seniority. The Tribunal had passed its order after perusing all the above averments.

9. The ld. P.O. has relied on the communications dtd. 11/2/2001 and 23/5/2001 (Annnexures-A-R-1 and A-R-2) to state that the applicant no. 2 had informed the applicant no. 1 as to why the communication dtd. 26/8/2009 cannot be maintained. These communications, however deal with the issue of seniority of the applicant on her entry in the wait list vis-a-vis those to be ~~as to those who~~ appointed on a compassionate basis. They

do not state anywhere that the applicant cannot be appointed as she has reached the age of 45 years.

10. As regard the G.R. dtd. 15/4/2015 cancelling the communication dtd. 26/8/2009, we find that it was issued after the Tribunal had disposed of the O.A. Hence this can in no way be a basis for seeking a review of the Tribunal's order.

The Review Application is without any merit and hence stands rejected.

sd / -

(S.S. Hingne)
Member (J)

sd / -

(B. Majumdar)
Vice-Chairman.

Skt.