

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.533/2012

DISTRICT – BEED

Smt. Siminta wd/o. Harishchandra Phad,
Age : 46, Occ : Service,
R/o. Parli Vaijinath,
Tq. Parli Vaijinath, Dist. Beed.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
through Secretary,
Agriculture & Co-operation Department
Copy to be served on the
Presenting Officer, M.A.T.,
Aurangabad.
2. The District Superintending
Agriculture Officer, Beed,
Tq. & Dist. Beed.
3. The Taluka Agriculture Officer,
Parli Vaijinath, Tq. Parli Vaijinath,
Dist. Beed.
4. The Divisional Agriculture
Joint Director, Aurangabad.

...RESPONDENTS

APPEARANCE :Shri H.K.Munde, learned Advocate for the
applicant.

Shri M.S.Mahajan, learned Chief
Presenting Officer for the respondents.

CORAM: Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)
A N D
Hon'ble Shri J.D.Kulkarni, Member (J)

DATE: 20th October, 2016.

ORDER

[PER: MEMBER (J)]

Applicant Smt. Siminta wd/o. Harishchandra Phad was appointed on compassionate ground in the office of respondents vide order dated 21-03-2007. She was appointed as a Peon in view of death of her husband who died in 1995. There is no dispute that the applicant applied for appointment on compassionate ground after death of her husband within limitation as per rules. On due scrutiny and formalities, she was given appointment. Vide letter dated 30-04-2012/03-05-2012, she was served with the impugned order by District Superintendent Agriculture Officer, Beed (Respondent no.2) whereby her appointment was cancelled. Said impugned order reads as under (page 19):

“vkns’k

Okjhy lanHkhZ; vkns’k dz-3 vUo;s
 Jherh flehrk gfjpanz QM] ;kauk f’kikbZ ;k
 inkoj rkyqdk d’f’k vf/kdkjh] oMo.kh ;kaps
 vf/kuLr fu;qDrh ns.;kr vkyh gksrh-

Okjhy lanHkZ dz-1 o 2 P;k vuq" kaxkus
 th fu;qDrh fnysyh vkgs] R;ke/;s fu;qDrh
 ns.ks ckcrps lanHkZ dz- 1 l 4 e/khy 'kklu
 fu.kZ;kr uewn dsysY;k vVh o 'krhZps ikyu
 >kysys ulY;kus rlsp lanHkZ dz-a5 uqlkj fu;e
 ckg; fnysyh fu;qDrh jì dj.;kaps vkns'k
 vIY;kus] o lanHkZ dz-6 uqlkj 'kkGk
 lksMY;kps [kksVs izek.ki= lknj dsys vIY;kps
 fu"iUu >kY;kus] lanHkZ dz-3 vUo;s ;k
 dk;kZy;kus ns.;kar vkysys fu;qDrh vkns'k ;k
 vkns'kkUo;s jì dj.;kr ;sr vkgsr-

Jherh flehrk gfjpanz QM ;kaP;k Isok gs
 vkns'k fuxZfer dsysY;k rkj[ksiklwu laiq"Vkr
 vk.k.;kr ;sr vkgsr-

dfjrk R;kauk Isosrwu deh dsY;k ckcrps
 lnjhy vkns'k ctkowu R;kaph fnukafdr iksp
 ikorh ;k dk;kZy;kl foukfoyac lknj dj.;kr ;koh-
 ;k vkns'kkUo;s lacaf/krkl R;kaP;k Isosckcr
 dqBykgh gDd lkaxrk ;s.kkj ukgh-

2. According to the applicant, she was dismissed without conducting an enquiry, and therefore, the impugned order of her dismissal is bad in law. At the time of appointment, her documents were verified. She has served with the respondents for 5 years. Respondents have collected wrong information, and therefore, her termination on the basis of such wrong information without following the principles of

natural justice, is illegal. The applicant has prayed that the impugned communication dated 30-04-2012/03-05-2012 issued by respondent no.2, be quashed and set aside and she be treated as continuous in service.

3. Respondent nos.1, 2 and 4 have filed affidavit in reply. While resisting the claim the respondents submitted that family members of the deceased employee cannot claim appointment on compassionate ground as a legal right. Condition no.2(2) of the G.R. dated 22nd August, 2005 mentions as under (page 28):

“2- -----

¼2½ ;kiq<s o;kP;k 40 o”kkZai;ZarP;kp
mesnokjkauk vuqdaik fu;qDrh vuqKs; vlsy-
R;keqGs izfr{kklwphr uO;kus lekfo”V
gks.kk&;k mesnokjkauk o;kP;k 40
o”kkZai;Zar fu;qDrh u feGkY;kl R;kaph ukos
o;kph 40 o”ksZ iw.kZ gksrpk vko’;d rh uksan
?ksowu lwphrwu dk<wu Vkd.;kr ;kahr-”

In view of this G.R. appointment can be given to those legal heirs only who have not completed age of 40 years.

4. According to the respondents, applicant submitted School Leaving Certificate of Zilla Parishad School, Parli

Vaijinath, District Beed to prove her date of birth and it was found that her name was not admitted in the school in the year 1976-77. According to the respondents, as per School Leaving Certificate, name of the applicant before marriage was Siminta Shankarrao Munde. Headmaster of the School, however, informed vide letter dated 19-10-2012 that name of Ku. Siminta Shankarrao Munde is not in the School records and the said School Leaving Certificate has not been issued by the school and as such, the said School Leaving Certificate is invalid. In view thereof, applicant has been removed from service.

5. Heard Shri H.K.Munde, learned Advocate for the applicant and Shri M.S.Mahajan, learned Chief Presenting Officer for the respondents. We have also perused affidavit, affidavit in reply and various documents placed on record by the parties.

6. There is no dispute of the fact that the applicant was appointed on the post of Peon vide order dated 21-03-2007, which is at Exhibit B (page 14 & 15). Said appointment order was subject to certain conditions and the first condition in the said order is that the candidate has to

provide evidence regarding date of birth. It is stated that the applicant has accordingly supplied proof of date of birth issued by the Headmaster, Zilla Parishad School, Parli Vaijinath, Tq. Ambajogai, District Beed. A copy of the said certificate is at paper book page 16. Said certificate shows that date of birth of the applicant is 07-04-1966 and she was admitted in the said School w.e.f. 20-06-1976 till 28-08-1977.

7. Impugned order of cancellation of appointment order dated 30-04-2012/03-05-2012 which is at page 19 refers to order dated 21-03-2007 and also refers to some letters dated 22-08-2005 and 01-12-2006. Reason for cancellation of appointment order is that the applicant has not complied with the condition nos.1 to 4 mentioned in her appointment order. Appointment was not done as per terms and conditions in the reference letter dated 14-10-2011 and that she has given a false School Leaving Certificate in view of letter received from Zilla Parishad School dated 23-04-2012.

8. Only material question to be decided is whether letter cancelling appointment order has been issued without

giving due opportunity to the applicant, and therefore, whether the same is illegal ?

9. Learned P.O. submits that applicant's appointment has been cancelled on 2 grounds; (1) that she has not complied with the conditions in the appointment order, and (2) she has crossed age of 40 years, which was the ultimate limit for appointing a candidate on compassionate ground. Learned P.O. further invited our attention to one letter dated 14-10-2011 issued by the District Superintending Agriculture Officer, Beed, Tq. & Dist. Beed. Vide said letter, respondent no.4 informed to respondent no.2 that as per G.R. dated 22-08-2005 [clause 2(2)], as already referred above, the applicant was appointed on the post of Peon in 2007 even though she had crossed age of 40 years, and therefore, it was necessary to cancel her appointment. The respondent no.2 was, therefore, directed to take action cancelling appointment of the applicant. It seems that only because such directions were issued, the respondents must have initiated action against the applicant cancelling her appointment. In our opinion, respondents are not justified in cancelling order of appointment of the applicant vide order dated 30-04-2012/03-05-2015 in the year 2012 on

the basis of G.R. dated 22-08-2005 only on the ground that she has crossed age of 40 years at the time of her appointment. It is because, subsequently, respondents have issued another G.R. dated 06-12-2010 extending age limit from 40 years to 45 years in case of appointment of the candidates on compassionate ground. Since applicant did not complete 45 years on the date of her appointment, she was very much entitled to the benefit of G.R. dated 06-12-2010. Hon'ble Bombay High Court Bench at Aurangabad in **Writ Petition No.8516/2010** in the case of **Smt. Kalpana w/o. Govindrao Umap V/s. The State of Maharashtra & Others decided on 08-05-2014.** In another Writ Petition No.5444/2012 Hon'ble High Court has observed as under:

“3. It is not disputed that, today the petitioner has not crossed the age of 45 years. The Division Bench of this Court consistently in various judgments referred above has considered the said aspect and had held that as the petitioners therein had not completed 45 years of age, the said G.R. would be applicable, though they had crossed age of 40 years prior to 06-10-2010. The judgment of Division Bench of

this Court in Writ Petition No.7664 of 2011 was also considered in Writ Petition No. 8516/2010. Even the judgment in Writ Petition No. 1609 of 2011 is confirmed by the Apex Court even on merits.

4. In the light of the above, the respondents shall keep the petitioner in the seniority list of the persons being considered for appointment on compassionate ground as was appearing then as per the rules and the scheme applicable. The writ petition accordingly disposed of. No costs.”

10. From the aforesaid circumstances, it is clear that only on the ground that the applicant has crossed age of 40 years on the date of her appointment, her appointment cannot be cancelled. Respondents must have known this fact well, and therefore, they have found out another cause for cancellation of her appointment.

11. It is stated that applicant has not complied with condition nos.1 to 4 of the said appointment order. Condition nos.1 to 4 of the appointment order dated 21-03-2007 are as under (page 14 & 15):

“ 1½ mesnokjkyk o;kse;kZnspk iqjkok nk[ky
djkok ykxsy-

2½ izLrqr fu;qDrh gh fuOoG rkRiqjR;k
Lo:ikph vlqu R;kauk iqoZ lqpuK u nsrk Isok
leklr dj.;kr ;sbZy-

3½ egkjk”V^a ukxjh Isok ¼IsosP;k lk/kj.k
‘krhZ½ fu;e 1981 e/khy fu;e dz-11 uqlkj
fu;qDrhps fBdk.kh ‘kkfjjhd lqn’<rk ik=rsp
izek.k i= ftYgk ‘kY; fpfdRld ;kauh fnsys lknj
djkos ykxsy-

4½ lnjph use.kwd pkfj™; iMrkG.khP;k
vf/ku jkgw.k dj.;kr ;sr vkgs- ;k izdj.kh ofj”B
dMqu fuxZehr gks.kkjs vkns’k R;kaP;koj
ca/ku dkjd vlrhy-”

12. Learned P.O. submits that the applicant’s appointment was subject to production of age proof (certificate), and therefore, said appointment was terminated without giving any notice. It is not known as to whether the applicant has given medical certificate from the Civil Surgeon and Character Certificate as mentioned in condition nos.3 and 4. It seems that the respondents are claiming that applicant has not submitted proof of age as required under condition no.1.

13. From the documents on record, however, it seems that the applicant has produced School Leaving Certificate of the Zilla Parishad School, Parli Vaijnath showing her date of birth as 07-04-1966. Respondents have submitted on record one letter which was issued by the respondent no.2 to Headmaster, Zilla Parishad School, Parli Vaijnath, which is dated 18-10-2012 whereby the Headmaster was requested to state as to whether the applicant's school leaving certificate is genuine or not. It is not known as to why the respondents were required to send such letter to the Headmaster. However, from the said letter, it seems that some age proof was submitted by the applicant before the competent authority prior to her appointment.

14. Learned P.O. thereafter, placed reliance on the communication received from the Headmaster, Zilla Parishad School, Parli Vaijnath dated 19-10-2012. As per said communication, the Headmaster informed respondent no.2 that certificate does not belong to his school and also it is not issued by the school.

15. Learned P.O. invited our attention to one G.R. dated 12th October, 1993 (page 38) which states procedure to be

adopted in case it is found that the employee is not eligible for appointment and action to be taken in such cases. It is stated that since the School Leaving Certificate submitted by the applicant was found false, action was taken against the applicant. Relevant paragraph of the said G.R. dated 12-10-1993 reads as under (page 38) :

“ R;kuqlkj vkrk vls Bjfo.;kr vkys vkgs dh] T;k izdj.kkr vls vk<Gwu ;sbZy dh] ,[kknk ‘kkldh; deZpkjh ‘kklu Isosrhy ewG use.kqdhlkBh lacaf/kr inkP;k Isokizos’k fu;ekrhy rjrqn hizek.ks ik= uOgrk fdaok fofgr vkgZrkizklr uOgrk- fdaok R;kus use.kwd feG.;klkBh [kksVh ekfgrh fnyh gksrh fdaok [kksVs izeki.ki= lknj dsys gksrs- R;k deZpk&;kyk Isosr Bso.;kr ;sÅ u;s- tj rks ifjoh{kk/khu fdaok vLFkk;h ‘kkldh; deZpkjh vly;kl] R;kyk IsokeqDr dj.;kr ;kos vFkok R;kP;k Isok leklr dj.;kr ;kO;kr- tj rks LFkk;h ‘kkldh; deZpkjh vlsy rj R;kP;kfo:/n egkjk”V^a ukxjh Isok ¼f’kLr o vfiy½ fu;e] 1979 e/khy fu;e 8 e/s fofgr dsY;kizek.ks foHkkxh; pkSd’kh dj.;kr ;koh vkf.k vkjksi fl/n >kY;kl R;k ‘kkldh; deZpk&;kl Isosrwu dk<wu Vdkkos fdaok cMrQZ djkos] ijarq dks.kR;kgh ifjLFkrhr ;kis{kk dks.krhgh osxGh f’k{kk yknw u;s-

3- v'kk izdkjph IsokeqDrh] IsoklelRh] Isosrwu dk<.kph dkjokbZ vFkok cMrQhZph dkjokbZ dsY;kewGs Injgw 'kkldh; deZpk&;kafo:/n U;k;ky;kr [kVyk Hkj.;kP;k vf/kdkjkl ck/kk ;s.kkj ukgh-”

16. Perusal of the aforesaid letter itself clearly shows that in case, it is noticed that the certificate on the basis of which the employee obtained appointment, found to be false, action has to be taken as per Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. If in such departmental enquiry, charges are proved, then only such employee can be terminated/removed or dismissed from the service.

17. In the present case, it seems that the respondents have conducted some enquiry as regards genuineness of the School leaving certificate submitted by the applicant and the said enquiry relates only to the correspondence with the Headmaster of the School to which the applicant allegedly belonged.

18. As already stated, there is no reason as to why the respondents were required to make enquiry as regards

genuineness of the School Leaving Certificate submitted by the applicant. Respondents should have enquired into the matter at the time of giving appointment to the applicant. Only reason for such verification at the belated stage seems to have come in picture when respondent no.4 issued a letter to respondent no.2 noticing that the applicant has crossed age of 40 years on the date of appointment in 2007.

19. It is material to note that there is no dispute that the applicant's husband died on 22-11-1994 and immediately thereafter, she filed application for appointment on compassionate ground on 11-04-1995 i.e. within one year but she was appointed in the year 2007. Prior to that, she had also filed one application on 31-05-2005 to the Collector, Beed making grievance for not getting appointment. She had made allegations therein that her juniors were appointed on compassionate ground and also threatened to proceed on hunger strike till death with her children. Ultimately, she was appointed on 21-03-2007.

20. Learned P.O. submits that it is a fact that the applicant submitted a false School Leaving Certificate, and therefore, she is not entitled to appointment. We are

unable to accept this contention for the simple reason that the respondent authorities ought to have verified the School Leaving Certificate and the age of the applicant prior to issuing order of appointment and then only she should have been appointed. The applicant has already served for more than 5 years on the post Peon and cancellation of her appointment without giving an opportunity is, thus, illegal. However, respondents are at liberty to initiate departmental enquiry as regards alleged false School Leaving Certificate submitted by the applicant. However, for that purpose, due opportunity has to be given to the applicant and regular enquiry may also be necessary in the matter. In view of this fact, applicant will not be entitled to backwages. She may file appropriate representation in this regard depending upon the result of the departmental enquiry that may be initiated in future.

21. In our opinion, had it been a fact that the applicant submitted false School Leaving Certificate, it was necessary for the respondents to initiate departmental enquiry in that regard as per Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. In the present case,

respondents have not issued even show cause notice to the applicant before cancellation of her appointment/termination of service. They have not even conducted departmental enquiry and did not give any opportunity to the applicant for participating in any enquiry. In such circumstances, we are satisfied that the principles of natural justice have not been followed and all of a sudden appointment order has been cancelled resulting in termination of her services.

22. It is seen that a novel procedure has been adopted against the applicant, may be with an intention to cover lacuna of appointing the applicant who was overage as per relevant G.R. at the time of her appointment on compassionate ground. Action of cancellation of service of the applicant is, therefore, not legal and proper. It is not known as to why the applicant was appointed without verifying her School Leaving Certificate or date of birth at the time of appointment. Admittedly, applicant has served as a Peon for almost 5 years and all of a sudden her appointment has been cancelled. Such action on the part of the respondents is absolutely illegal and against the

principles of natural justice. Hence, we pass following order:

ORDER

- (A) Impugned order of cancellation of appointment of the applicant dated 30-04-2012/03-05-2012 is quashed and set aside.
- (B) Respondents are directed to reinstate the applicant in service, however, she will not be entitled to backwages at present.
- (C) Respondents will be at liberty to take appropriate departmental action against the applicant as per rules, if necessary.
- (D) This order be complied with within 2 months.
- (E) There shall be no order as to costs.

(J. D. Kulkarni)
MEMBER (J)

(Rajiv Agarwal)
Vice-Chairman

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