

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,**  
**BENCH AT AURANGABAD.**

**ORIGINAL APPLICATION NO. 142 OF 2023**

DIST. : BEED

**Deelipkumar Baburao Khedkar,** )  
 Age. 29 years, Occu. Service Superintendent,) )  
 R/o MHADA Colony, R-26, )  
 House No. 333, N-9, CIDCO, )  
 Aurangabad. )..

**APPLICANT**

**V E R S U S**

**1) The State of Maharashtra,** )  
 Through its Secretary, )  
 Higher & Technical Education )  
 Department, Mantralaya, )  
 Mumbai-32. )

**2) Director of Higher Education,** )  
 Maharashtra State, Pune, )  
 Central Building, Pune – 01. )

**3) Divisional Joint Director of Higher**  
**Education,** Aurangabad Region, )  
 Aurangabad, Padampura, )  
 Near Devgiri College, )  
 Railway Station Road, )  
 Aurangabad. )..

**RESPONDENTS**

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 APPEARANCE :- Shri A.N. Nagargoje, Advocate for the  
 applicant.

: Shri V.R. Bhumkar, learned Presenting  
 Officer for the respondent authorities.

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**CORAM** : **Hon'ble Shri Justice P.R. Bora,**  
**Vice Chairman**  
**and**  
**Hon'ble Shri Vinay Kargaonkar,**  
**Member (A)**

**DATE** : **10.07.2024**  
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**ORAL ORDER**

*[Per :- Justice P.R. Bora, V.C.]*

1. Heard Shri A.N. Nagargoje, learned counsel for the applicants and Shri V.R. Bhumkar, learned Presenting Officer for respondent authorities.

2. Aggrieved by the order dated 10.02.2023, whereby respondent no. 02 has reverted the applicant from the post of Superintendent, Grade-III to the post of Head Clerk and the consequential order passed by respondent no. 03 on 13.02.2023, the applicant has filed the present Original Application. It is the grievance of the applicant that respondent no. 02 has passed the impugned order in utter violation of the principles of natural justice and hence has to be held as an arbitrary action. Learned counsel for the applicant submitted that even otherwise the impugned order is liable to be set aside for many other reasons. Learned counsel submitted that the impugned order has been passed without considering the factual aspects, as well as, the legal provisions prevailing at the time when the applicant was promoted to the post of Superintendent Grade-III.

3. It is not in dispute that the applicant entered into Government services on 05.02.1999 on the post of Junior Clerk. In the year 2006, he passed the Sub-Service Departmental Examination (for short SSD Examination). He was promoted to the post of Sr. Clerk on 27.09.2010 and was further promoted to the post of Head Clerk w.e.f. 13.12.2012. Vide order dated 07.05.2016 the applicant was further promoted to the post of Superintendent Group-III in the pay scale of Rs. 9300-34800 with Grade Pay of Rs. 4300/-. While the applicant was working on the promotional post, vide order passed on 10.02.2023 by respondent no. 02 he has been reverted to the post of Head Clerk from which he was promoted.

4. It is the contention of the applicant that before passing the order of his reversion, he was not given any notice or opportunity of hearing. It is his further contention that as per the rules, the applicant has become eligible for appearing to the qualifying examination after completing the period of 05 years on the post of Head Clerk. It is his further contention that for passing the said examination, the period prescribed was of 07 years and 03 chances. It is his further contention that since he belongs to the reserved category i.e. NT-B category, he was entitled for one more year and one more chance for passing

the said examination. It is his contention that by ignoring all these provisions, the respondents have reverted the applicant for the wrong reasons. The said order is therefore sought to be quashed and set aside in the present Original Application with consequential reliefs.

5. The contentions raised in the Original Application and the prayers made therein have been opposed by the respondent authorities i.e. respondent nos. 1 to 3. In the affidavit in reply filed on behalf of the State authorities it is contended that the applicant since failed to pass the examination prescribed for supervisory post he has been reverted to the post from which he got the promotion. In the affidavit in reply the respondents have referred to the Government Resolutions dated 01.03.2018, as well as 31.03.2021. According to the respondents, the applicant is not covered under the exceptions provided in the G.R. dated 01.03.2018 and neither in the G.R. dated 31.03.2021. The respondents have further contended that as per the latest G.R. dated 01.03.2018 issued by the Government only such employee would get exemption from passing the examination, who has neither completed 15 years continuous service on the post in the feeder cadre or has attained the age of 50 years,

whichever is later. It is also contended that since the applicant was to complete the age of 50 years on 07.11.2023, he was not entitled for claiming any exemption from passing examination. It is the further contention of these respondents that for want of passing the examination for the post of supervisor the respondents have rightly reverted the applicant vide the impugned order. According to the respondents, no interference is, therefore, necessary.

6. The applicant has filed rejoinder affidavit to the affidavit in reply submitted on behalf of respondents. In the rejoinder affidavit the applicant has elaborately explained how he was entitled for exemption from passing the examination and how the respondents have ignored the provisions of law. In his argument the learned counsel appearing for the applicant has emphasized the fact of arbitrary action on part of respondents in reverting the applicant without giving any opportunity of hearing to the applicant. Learned counsel submitted that without giving opportunity of hearing the respondents could not have passed such an order when the applicant had been working on the promotional post since last more than 07 years. Learned counsel further taking us through the relevant rules and G.Rs. issued by the Government in this regard submitted

that the applicant was entitled for grant of exemption from appearing in the examination since he attained the age of 45 years in the year 2018 itself. Learned counsel further submitted that after the applicant was promoted to the post of Head Clerk, he could not have appeared for the departmental examination for the said supervisory post in Group-III unless he completes 05 years on the said post. Learned counsel submitted that thus the applicant would have been eligible for appearing the said departmental examination sometimes in the year 2017. Learned counsel submitted that from the said date he was having the period of 07 years and 03 chances to pass the said examination. It is further submitted that since the applicant belongs to reserved category he is entitled for more one year and more one chance to pass the said examination and thus the applicant is having 08 years and 04 chances for clearing the said examination. Learned counsel submitted that before completing the said period, the respondents have hurriedly for wrong reasons have reverted the applicant vide impugned order.

7. Learned counsel for the applicant further submitted that though the Government is now relying on the subsequent G.R. issued on 01.03.2018, thereby prescribed upper age limit

50 years, which previously was of 45 years for seeking exemption for passing the said examination, the same may not be applicable in the case of the applicant for the reason that he has entered into the services in the year 1999 and by that he had served with the Government for the period of more than 20 years. By taking us through the preamble of G.R. dated 01.03.2018 learned counsel submitted that, by passage of time the upper age limit for entry in Government service has been time to time increased and presently even for Open/General candidate the upper age limit is 38 years, whereas for the reserved category candidate that is 43 years. If somebody enters at the age of 43 years, then he will get exemption from passing the departmental examination within 02 years from the entry in Government service and to avoid the said situation the age limit has been extended up to age of 50 years for seeking exemption from passing departmental exemption. So far as the applicant and the similarly situated other candidates are concerned, who joined the services before completing the age of 30 years were having 15 years at their disposal to pass the departmental examination and after completing the said period and on attaining the age of 45 years, the entitlement was provided to them for seeking the exemption from passing the departmental examination. Learned counsel further submitted

that the respondents have completely lost sight of the fact that after having been promoted to the post of Head Clerk in the year 2012, the applicant become eligible only in the year 2017 for appearing for the said departmental examination for the supervisory post in Group-C. Learned counsel pointed out that the said period has to be reckoned from 2017 and so far as the applicant is concerned, the period of 08 years, which was available for him was to expire in the year 2025. Learned counsel has brought to our notice that when the reversion order was passed, the applicant still was having 02 years to appear for the departmental examination and in the circumstances on that ground the order of reversion could not have been passed by the respondents.

8. After having considered the entire facts and circumstances it is apparently revealed that the respondents have committed haste in ordering the reversion of the applicant. The first ground, which has been raised on behalf of the applicant is a prominent as well sufficient ground for setting aside the impugned order. It is the minimum requirement of the 'principles of the natural justice' that person against whom some adverse action is to be taken, must be given an opportunity of hearing. In the present matter when the



applicant had already worked on the promotional post for 06 to 07 years, he could not have been abruptly reverted to the lower post without issuing him any show cause notice and without giving him an opportunity of hearing. There is no dispute that no such opportunity was given to the applicant. Had such notice been duly given, all the facts could have been brought to the notice of the respondents by the applicant. Merely because such opportunity has not been given that the applicant could not explain the circumstances and is required to approach this Tribunal.

9. When it is the contention of the respondents that the applicant did not pass the departmental examination, some particulars must have been provided as about the years and the chances availed by the applicant so as to reach to the conclusion that despite availing due chances and even after completing the period provided for passing examination the applicant has failed in that. All these issues required consideration by the authorities concerned. Since, those particulars are not available with us and hence cannot be examined, we may not make further comment on the said issues. It appears to us that unless such particulars are given by the applicant, the respondents could not have passed an

order of reversion. In the circumstances, instead of making any comment or giving our findings on the other issues, we deem it appropriate to set aside the order of reversion on that ground alone so that other grounds raised by the applicant may be raised before the authorities and authorities may give consideration to the said issues while passing the order on hearing the applicant. Hence, the following order:-

**ORDER**

- (i) The order dated 10.02.2023 is quashed and set aside. The applicant be restored to his promotional post within 04 weeks from the date of this order.
- (ii) The respondents are not precluded from issuing the notice to the applicant, if according to them the applicant is not liable to be promoted to the said post. If such notice is given, it would be open for the applicant to take all such grounds, which have been taken in the present matter for consideration of the authorities concerned.
- (iii) During the course of argument it was brought to our notice that the applicant was working on the promotional post at Aurangabad and the said post is presently lying vacant. Learned counsel has brought to our notice the

interim order passed by us to canvass that because of having differently abled child, such an arrangement was made. The respondents shall consider the request of the applicant even for promotional post at Aurangabad, if presently the said post is vacant.

- (iv) With the observations as above, the Original Application stands disposed of without any order as to costs.

**MEMBER (A)**

**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 10.07.2024**

ARJ O.A. NO. 142 OF 2023 (REVERSION)