

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.57/2025 (D.B.)

Yogiraj S/o Sheshrao Jumde,)
 Aged 58 years, Occ. Service,)
 R/o Plot No.119, Jawahar Nagar,)
 4th Lane, Near Tukdoji Square,)
 Manewada Road, Nagpur 440024.)
 ... **APPLICANT**

// V E R S U S //

1] **The State of Maharashtra,**)
 Through it's Principal Secretary,)
 Agricultural, Animal Husbandry and)
 Dairy and Fishery Development,)
 Mantralaya Mumbai -32.)

2] **The Commissioner (Agricultural),**)
 Having its office at Central Building,)
 Near Railway Station, Pune 01.)

3] **The Divisional Joint Director**)
of Agriculture, Nagpur Division,)
 Having its Office at Administrative)
 Building No.2, Civil Lines, Nagpur.)
 ... **RESPONDENTS**

Shri S.P. Palshikar, Learned Counsel for the Applicant.

Shri M.I. Khan, Id. P.O. for the Respondents.

**Coram :- Hon'ble Shri Justice Vinay Joshi,
Member (J) and
Hon'ble Shri Nitin Gadre,
Member (A).**

Dated :- 26/03/2025.

J U D G M E N T

Judgment is reserved on 20/03/2025.

Judgment is pronounced on 26/03/2025.

Per : Member (J)

Heard Shri S.P. Palshikar, learned counsel for the Applicant and Shri M.I. Khan, learned P.O. for the Respondents.

1. The applicant has called in question the condition of reinstatement about clearing Departmental Examination vide communication dated 20/09/2024.

2. The facts in brief are that:-

The applicant was appointed as an 'Agricultural Officer' through the Maharashtra Public Service Commission (M.P.S.C.). He has joined the said post on 20/06/1994. His probation period was of two years, within which he was required to clear the Departmental Account Examination for getting

confirmation. The applicant has not cleared the said examination within the stipulated period, rather not passed till date, but continued in service. Vide order dated 04/07/2009, he was promoted as 'Campaign Officer' and posted at Zilla Parishad, Bhandara. The applicant continued to work on the promotional post for the period of more than one decade. '

3. On 12/10/2021, applicant was abruptly terminated from his service due to his failure to clear the Departmental Examination. The applicant has challenged the said order before Tribunal in O.A. No.949/2021. In the said O.A., the Tribunal has set aside the impugned order of termination and granted liberty to the Department to proceed as per Rules. In turn, the applicant was reinstated vide impugned order dated 20/09/2024, however, on condition of clearing the Departmental Examination, which is currently under challenge.

4. The learned Counsel for the applicant would submit that the Department has *malafidely* inserted condition of clearing the Departmental Examination. The applicant has crossed 50 years of age and thus he is exempted from clearing the Departmental Examination. Though, Rule provides to clear the

Departmental Examination within the period of two years, however, Department did not took action till termination of the Year 2021. Moreover, the applicant was promoted in the year 2009 and worked on the said post. The applicant was about to retire on 31/05/2025, by way of superannuation and thus it is quite harsh to direct him to clear the Departmental Examination.

5. The applicant's learned counsel would submit that three employees, namely, Shri Sandip Babu Kamble, Shri Ankush Nana Dhonde and Mr. Uttam Balu Sagbhor were similarly terminated for non-clearance of Departmental Examination, however, those orders have been struck down by the Tribunal. The relevant orders of Tribunal passed in O.A. No.1009/2021 (*Shri Sandip Babu Kamble VS Government of Maharashtra & Ors.*) decided on 01/08/2002, O.A. No.114/2022 (*Shri Ankush Nana Dhonde VS The State of Maharashtra*) decided on 06/02/2023 and O.A. No.934/2022 (*Mr. Uttam Balu Sagbhor VS The State of Maharashtra & Ano.*) decided on 20/02/2023, have been placed on record. On examining these decisions, it is evident that those three employees were terminated for similar reason of non-clearing the Departmental Examination. However,

those belated actions were held to be unsustainable in the eyes of law. The applicant's learned counsel, particularly produced reinstatement order of Ankush Dhonde and Uttam Sagbhor, showing that no such condition was imposed at the time of their reinstatement. In the circumstances, applicant seeks for setting aside the condition of clearing Departmental Examination.

6. The respondents resisted this application by filing Reply-in-Affidavit. It is stated that despite giving opportunity, applicant has not appeared and cleared the examination. As per Clauses 3 to 5 of the Accounts Examination Rules, 1981, it is incumbent on the applicant to pass the examination within two years from the date of appointment, failing which he could be discharged. It is stated that since applicant did not cleared the Departmental Examination, the condition imposed for reinstatement is well justified.

7. It is apparent that the applicant and three other similarly situated employees were terminated after a long span of service for non-compliance of the provisions of the Accounts Examination Rules, 1981. Undoubtedly, the applicant was required to pass Departmental Accounts Examination within two

years from the date of appointment. The applicant did not clear the Departmental Examination, however, he was allowed to continue services on initial post and from the year 2009 on the promotional post. The Department never exercised their right to terminate at the point when the applicant failed to comply with the rules. The order of termination of the Year 2021 was abruptly issued. In the earlier round of litigation, the Tribunal has set aside the said order on the premise that the principles of natural justice have not been followed. Since, the Tribunal has set aside the termination order, the Department had no option, but to reinstate the applicant. However, a condition was imposed, requiring the applicant to clear the Departmental Examination.

8. In the case of Sandip Kamble (*supra*), the employee was terminated after retirement for non-clearing the Departmental Examination within the initial two years. The Tribunal has considered the said aspect and held that, even if there is no deemed confirmation, the employee is still entitled to pensionary benefits after rendering qualifying service. In other words, the Tribunal has set aside the order of termination. The case of Ankush Dhonde (*supra*) lies on the same footing. This time, the

Tribunal has set aside the order of termination, holding that it is not permissible after the employee had served for 30 years and also been promoted. Similar is the view expressed in case of Uttam Sagbhor (*supra*). Pertinent to note that, in the case of Ankush Dhonde, when the Tribunal has set aside the order of termination, at the time of reinstatement, no such onerous condition of clearing examination was imposed. However, strangely applicant was discriminated by imposing such a condition at the time of reinstatement. We fail to understand, as to how after putting 30 years of service and enjoying a promotional post for 10 years, the Department can insist an employee to clear examination, when the employee is due for retirement. Thus, the impugned action of inserting a condition to clear Departmental Examination is unsustainable and requires to be set aside. In view of above, the following order:-

O R D E R

- (i) Original Application is allowed;
- (ii) Condition imposed in reinstatement order dated 20/09/2024 about clearing Departmental Examination is held to be illegal, void and hereby quashed and set aside;

- (iii) The applicant's services shall be treated as continuous from the year 1992. The applicant is entitled for all consequential service benefits as per rules;
- (iv) No order as to costs.

Member (A).

Member (J).

Dated :- 26/03/2025.

PRM

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

Name of Steno : Piyush R. Mahajan.

Court Name : Court of Hon'ble Member (A)
& Member (J).

Judgment signed on : 26/03/2025