IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.1051 OF 2019

DISTRICT : Pune
SUB : Transfer

Shri. Paresh Shantaram Mane)
Age: 44 Years, Occ: Driver)
Add: C/o: Shri Anil Deshmukh)
B.T. Kavde Rd, Prakash Complex,)
Ghorpadi Village, Pune- 411 001.)**.....Applicant**

Versus

1) The State of Maharashtra through)
The Principal Secretary,)
Co-operative Department,)
Mantralaya, Mumbai- 400 032.)

2) The Commissioner for Cooperation)
and Registrar, Co-operative Societies,)
Co-operative Department,)
Central Building, Pune-411 001.)**....Respondents.**

Smt. P. H. Hendre, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman

Reserved on : 02.04.2025

Pronounced on : 03.04.2025

JUDGEMENT

Heard Smt. P. H. Hendre, learned Advocate for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

2. The Applicant joined the Respondent department as 'Driver' on 29.06.2012. He seeks declaration that he is eligible for the post of 'Clerk-cum-Typist' as per Recruitment Rules notified on 06.06.2017.

Relevant Para of these Recruitment Rules reads as under :-

"३. बृहन्मुंबईबाहेरील शासकीय कार्यालयातील लिपिक-टंकलेखक, गट-क या पदावरील नियुक्ती पुढील मार्गाने करण्यात येईल :-

(क) xxx

किंवा

(ख) xxx

किंवा

(ग) xxx

किंवा

(घ) गट-क मधील वाहनचालक या पदावर किमान तीन वर्षांपेक्षा कमी नाही इतकी नियमित सेवा पूर्ण केलेल्या व खंड (ख) च्या उप खंड (दोन) व (तीन) मध्ये विहित केलेली अर्हता धारण करणाऱ्या व लिपिक-टंकलेखक पदावर येण्यास इच्छुकता दिलेल्या व्यक्तींमधून, ज्येष्ठता अधिन पात्रता या निकषावर योग्य व्यक्तीच्या कायमस्वरुपी संवर्ग बदलीने नियुक्ती देता येईल. वाहनचालक या पदावरून नियुक्ती दिलेल्या व्यक्तींची लिपिक-टंकलेखक पदावरील सेवाज्येष्ठता लिपिक-टंकलेखक पदावरील नियुक्तीच्या दिनांकापासून निश्चित करण्यात येईल;

किंवा

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3. The Respondents do not dispute that as per criteria in Rule 3 of the Recruitment Rules, the Applicant is eligible for the post of 'Clerk-cum-Typist'. Their stand, however, is that though the Recruitment Rules provide for posting eligible 'Drivers' as 'Clerk-cum-Typist', as per G.R. dated 25.05.2017 issued by the Finance Department of Government of Maharashtra such conversion/ transfer is not permissible unless staffing pattern is finalised.

4. Relevant part of G.R. dated 25.05.2017 quoted in the impugned communication states –

> ".....जे प्रशासकीय विभाग आकृतीबंध अंतिम मंजूर करून घेणार नाहीत तोपर्यंत त्या विभागांना नवीन पदनिर्मिती तसेच पदभरती करता येणार नाही. तसेच तोपर्यंत पदे रूपांतरित करण्यासही अनुमती देण्यात येणार नाही.''

5. The Applicant is relying on orders dated 27.07.2017 and 08.10.2018 whereby Shri Kale and Shri Nale, respectively who were working as 'Driver' were given permanent appointment as 'Clerk-cum-Typist'. According to the Applicant, under such circumstances, denial of identical benefit of conversion/transfer to him would violate Article 14 of the Constitution of India.

6. In response to his application under RTI Act, the Respondent No.1 had informed the Applicant as under :-

> "आपण मा.राज्य माहिती आयोग यांचेकडे दि.२१.१.२०१३ रोजी दाखल केलेल्या द्वितीय अपिलावर आयोगाने दिनांक २५.५.२.२०२३ रोजी दिलेल्या आदेशाच्या अनुषंगाने आपणास कळविण्यात येते की, विभागीय सहनिबंधक, पुणे यांनी त्यांच्या आस्थापनेवरील वाहनचालक श्री.काळे व विभागीय सहनिबंधक सहकारी संस्था (लेखापरिक्षण) कोल्हापूर यांच्या आस्थापनेवरील वाहन चालक श्री.नाळे यांची अनुक्रमे दि.२७.७.२०१७ व दि.८.१०.२०१८ रोजी वाहनचालक या पदावरून लिपीक टंकलेखक पदी संवर्ग बाहय बदली केली असून सदर बदलीस शासनस्तरावरून कोणत्याही प्रकारची मान्यता घेण्यात आलेली नाही.''

7. Aforediscussed circumstances will show that the ground of parity raised by the Applicant is bound to fail in view of settled legal position that Article 14 does not envisage negative equality because if a wrong has been committed in an earlier case, it cannot be perpetuated.

8. Apart from the ground of parity which is found to be unsustainable, no other ground was raised. Thus, the Original Application is liable to be dismissed. It is accordingly dismissed with no order as to costs.

Sd/-
(M. A. Lovekar)
Vice-Chairman

Place: Mumbai
Date: 03.04.2025.
Dictation taken by: V. S. Mane
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