

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO. 1267 OF 2024
WITH
MISC APPLICATION NO. 652 OF 2024**

**DISTRICT : Sangli
SUB : Departmental Exam.**

Shri Sandip Sambhaji Yadav)
Age 49 Years, working as Deputy Chief)
Executive Officer (Child Development Project)
Officer), Zilla Parishad, Sangali.)
R/o. Jalswaraj Building, Zilla Parishad)
Officers Quarters, near Pudhari Bhavan,)
Sangali.).....**Applicant**

V/s

1. The State of Maharashtra, through)
the Principal Secretary, Women and)
Child Development Department, having)
Office at New Administrative Building,)
3rd floor, Mantralaya, Mumbai 400 032.)
2. The Commissioner, Women and Child)
Development, Commissionerate (M.S.))
Pune-1, having office at 28, Ranicha)
Bag, near Old Circuit House, Pune 1.)...**Respondents**

Shri B. A. Bandiwadekar, learned Advocate for the Applicant.

Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman.
Hon'ble Shri A. M. Kulkarni, Member (A)

Reserved on : 16.04.2025

Pronounced on : 28.04.2025

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

JUDGEMENT

Heard Shri B. A. Bandiwadekar, learned Advocate for the Applicant and Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. Case of the Applicant is as follows. After undergoing selection process conducted by M.P.S.C. the Applicant was appointed as Deputy Chief Executive Officer (Child Development Project Officer) by order dated 20-12-2013. The Applicant joined on 30-12-2013. His period of probation was of 2 years. As per Rule 5(a)(b) of Recruitment Rules dated 28-7-2006 the Applicant was appointed by nomination to the said post. Rule 7 of these Rules states -

“7. The persons appointed to any of the posts mentioned in rules 5 and 6 by nomination shall be on probation for a period of two years. Probation period may be extended for a period not exceeding one year. Person appointed to such posts shall be required to pass the Departmental Examinations as may be prescribed for the concerned post. If such person fails to complete the probation successfully within prescribed or extended period; or does not pass the Departmental Examination; or is not found suitable for the post, such person shall be liable for termination from the service without prior notice.”

As per Rule 4 of The Departmental Examination for being continued the appointments in the Department of Social Welfare Rules, 1975, the Applicant was required to pass the Departmental Examination within 2 years from the date of appointment. However, Rule 4 does not prescribe number of chances within which such examination is required to be passed. This examination was not held even once within the 2 Year probation period of the Applicant which began from 30-12-2013. For the first time such examination was held in the year 2017 for which the Applicant did

not appear. Subsequently this examination was held in the years 2019 and 2022 in which the Applicant appeared but failed. By representation dated 21-8-2024 made to Respondent No.2 the Applicant sought exemption from passing the examination as he had attained the age of 45 years on 12-4-2020 and further attained the age of 48 years on 12-4-2023. This prayer for granting exemption was founded on G.R. of G.A.D., Government of Maharashtra dated 01-11-1977 and Rule 5(iv) of Rules of 1975. Said Rule reads as under -

“5. The Officers mentioned below shall be exempted from passing the Departmental Examination:-

i) xx

ii) xx

iii) xx

iv) All officers who (a) would be holding the posts mentioned in Rule 3 and who would be 48 years of age and above on the date these rules come into force or (b) who have put in 12 years service in those posts on the date these rules come into force.

v) xx...”

Respondent No.2 called upon the Applicant (alongwith some others) to submit relevant documents to consider grant of additional chance to pass the examination. The Applicant had already exhausted 3 chances. Therefore, he apprehended that Respondent No.1 could invoke the relevant conditions incorporated in appointment order dated 20-12-2013 and proceed to terminate his services. Relevant conditions are as follows –

“२. सदर उमेदवारांची नेमणूक झाल्यानंतर ते ज्या दिवशी सदर पदावर हजर होतील त्या दिवसापासून त्यांचा दोन वर्षांचा परिविक्षा कालावधी राहील, प्रशिक्षणाचा कालावधी परिविक्षा कालावधीत अंतर्भूत राहील.

३. परिविक्षा कालावधीत त्यांना शासन अधिसूचना समाज कल्याण सांस्कृतिक कार्य व पर्यटन विभाग क्र.बीसीई-२०६२/३६००/-४ २४.१.१९७५ अन्वये विहित करण्यात आलेली विभागीय परीक्षा उत्तीर्ण करावी लागेल. विहित मुदतीत विभागीय परीक्षा उत्तीर्ण न झाल्यास वर नमूद केलेल्या अधिनियमातील व त्यामध्ये वेळोवेळी केलेल्या सुधारणांच्या अनुषंगाने केलेल्या तरतूदीनुसार त्यांच्या सेवा समाप्त करण्यात येतील.

७. उपरोक्त प्रमाणे नियुक्ती देण्यात आलेल्या उमेदवारांनी सेवा प्रवेश नियमानुसार विभागामार्फत आयोजित केल्या जाणा-या विभागीय परीक्षा परिविक्षा कालावधीच्या दोन वर्षांच्या विहित मुदतीत उत्तीर्ण होणे आवश्यक राहील.”

On the basis of aforementioned pleading the Applicant prays that order of deemed exemption from passing the examination be passed as per Rule 5(iv) of Rules of 1975. Further prayer made by the Applicant reads as under –

“By a suitable order / direction, this Hon'ble Tribunal may be pleased to hold and declare that as per the provisions of Clauses 1[2], 1[3][c] and also due to failure of the Respondent No.1 to pass order under Clause 1[5] and Clause 7[b] of the G.R. dated 29.2.2016 the Petitioner must be deemed to have completed satisfactorily the probation period of 2 years and consequently deemed confirmed in the post of Deputy Chief Executive Officer (Child Development Project Officer) with effect from 30.12.2015 and accordingly the Petitioner be granted all the consequential service benefits.”

Hence, this Original Application.

3. After filing of the Original Application, Respondent No.1 issued a show cause notice dated 11-10-2024 to the applicant. This notice states -

“महाराष्ट्र लोकसेवा आयोगाने शिफारस केल्यानुसार श्री. संदीप यादव यांची उप मुख्य कार्यकारी अधिकारी (बा.क) जिल्हा परिषद रायगड या गट-अ संवर्गातील पदावर या विभागाच्या दि.२०.१२.२०१३ च्या शासन निर्णयान्वये सरळसेवेने त्या आदेशात नमूद अटीच्या अधिन राहून नियुक्ती करण्यात आली होती. सदर नियुक्तीच्या आदेशातील अटीतील क्र.३ मध्ये पुढीलप्रमाणे अट नमूद करण्यात आली होती.

सदर नियुक्तीस दोन वर्षांचा परिविक्षाधीन कालावधी असेल. तसेच परिविक्षा कालावधीत त्यांना शासन अधिसूचना समाज कल्याण सांस्कृतिक कार्य व पर्यटन विभाग क्र.बीसीई-२०६२/३६००/-४२४.१.१९७५ अन्वये विहित करण्यात आलेली विभागीय परीक्षा उत्तीर्ण करावी लागेल. विहित मुदतीत विभागीय परीक्षा उत्तीर्ण न झाल्यास अधिनियमातील व त्यामध्ये वेळोवेळी केलेल्या सुधारणांच्या अनुषंगाने केलेल्या तरतूदीनुसार त्यांच्या सेवा समाप्त करण्यात येतील.

श्री. संदीप यादव यांनी त्यांच्या सेवा समाप्त करण्यात येवू नये तसेच त्यांना वयाचे ४५ वर्ष पूर्ण झाल्याने त्यांना विभागीय परीक्षेतून सूट देण्याबाबत मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई येथे मूळ अर्ज क्र. १२६७/२०२४ दाखल केला होता. त्यामध्ये मा. न्यायाधिकरणाने दि.०४.१०.२०२४ च्या आदेशान्वये We direct that services of the applicant are not to be terminated unless show cause notice is given to him असे निर्देश दिले आहेत.

वर नमूद केल्याप्रमाणे आपणास परिविक्षाधीन कालावधीमधील विहित संधीमध्ये विभागीय परीक्षा उत्तीर्ण आवश्यक होते. तथापि, आपणास विभागीय परीक्षेच्या एकूण चार संधी देण्यात येवून ही आपण विहित संधी विभागीय परीक्षा उत्तीर्ण झाला नाहीत. यास्तव, आपण विहित संधी विभागीय परीक्षा उत्तीर्ण न झाल्याने आपली शासकीय सेवा का समाप्त करण्यात येवून नये, याबाबत हे ज्ञापन मिळाल्यापासून ८ दिवसांच्या आत खुलासा सादर करण्यात यावा. अन्यथा या प्रकरणी आपले काही एक म्हणणे नाही असे समजून आपल्या विरूद्ध एकतर्फी कार्यवाही करण्यात येईल.”

In the M.A. the Applicant has prayed as under -

“(a) By a suitable order / direction, this Hon'ble Tribunal may be pleased to direct the Respondent No. 1 not to take final decision on the show cause notice dated 11.10.2024 under which the Petitioner

is given the ultimatum of only 8 days to reply to the said show cause notice unless the documents sought by the Petitioner by way of the interim reply dated 18.10.2024 to the show cause notice is furnished to the Petitioner and on receipt thereof the Petitioner be given 15 days time to reply the same and further the Respondent No. 1 be directed not to take coercive action in the event the Petitioner is not granted exemption in accordance with the provisions of Rule 5[4] of the Departmental Examination Rules dated 24.9.1975 for a period of 3 weeks thereafter as per order dt. 19.12.2023 [Exhibit-I] in O.A. No.1548 of 2023.”

4. On 25-4-2025 certain queries were made to learned Advocate for the Applicant and learned C.P.O. Advocate for the Applicant maintained that reply given to the show cause notice was only interim and full, comprehensive reply could not be filed because the Respondents did not furnish necessary documents. He further stated that the Applicant needed copies of 7 documents and out of these only 4 were supplied in response to an application made under the R.T.I. Act. Correctness of these submissions is disputed by the respondents.

5. Stand of Respondent No.1 is as follows. Rule 7 of Recruitment Rules of 2006 specifically lays down that the persons appointed to any of the posts mentioned in rules 5 and 6 by nomination shall be on probation for a period of two years. Probation period maybe extended for a period not exceeding one year. Person appointed to such posts shall be required to pass the Departmental Examination as may be prescribed for the concerned post. If such person fails to complete the probation successfully within prescribed or extended period; or does not pass the Departmental Examination; or is not found suitable for the post, such person shall be liable for termination from the service without prior notice. As per G.R. dated 31-3-2021 issued by G.A.D.,

Government of Maharashtra there are 3 chances within which to pass the Departmental Examination within the stipulated period. The Applicant availed 3 chances namely the examinations for the years 2014,2015 and 2016 conducted in the years 2017,2019 and 2022, respectively but failed to pass the examination. As per clause 1(A)(2) of G.R. dated 1-3-2018 if Recruitment Rules provide for termination of service on account of failure to pass the Departmental Examination within the probation period, exemption from passing such examination cannot be granted on the ground of completion of 50 years of age. By letter dated 17-10-2024 the applicant was informed that he was not entitled to get exemption from passing the examination.

Rule 10 of Rules of 1975 reads as under -

“10. Two more chances shall be given to the officer who have failed to pass the Departmental Examination according to the rules hitherto in force.”

This Rule applied to those who were then in service and had failed to pass the Departmental Examination within the stipulated chances. Therefore, this Rule will not apply in the instant case.

6. As per directions of this Tribunal Respondent No.1 has issued a notice to the Applicant calling upon him to show cause why his services should not be terminated for not passing the Departmental Examination within the stipulated number of chances, and completing probation period successfully.

7. In his Affidavit dated 21-3-2025 Respondent No.1 has expressed regret and tendered apology for inadvertently making a factually incorrect statement in his earlier Affidavit (dated 30-1-

2025) regarding 4 chances availed by the Applicant to pass the Departmental Examination.

8. The Applicant was appointed by order dated 20-12-2013. Condition No.7 in his appointment order mandated that the appointee had to pass the Departmental Examination within the probation period of 2 years. Period of probation of 2 years of the Applicant started on 30-12-2013 that being the date on which he joined. The Applicant availed 3 chances namely the examinations for the years 2014, 2015 and 2016 conducted in the years 2017, 2019 and 2022, respectively but could not pass the examination.

9. The Applicant seeks to rely on Rule 5(4) of Rules of 1975. This sub-rule was meant for those who were to complete 48 years of age or who had served for more than 12 years on the post on the date on which these Rules came into force. The Applicant obviously cannot claim benefit of the same since he was appointed in the year 2013.

10. Rule 10 of Rules of 1975 will also not be applicable since the same was meant for those who had failed to pass the Departmental Examination according to the Rules which were in force before Rules of 1975 became applicable.

10A. Clauses 1 and 2 of G.R. dated 1-3-2018 state-

“१. शासन सेवेत कायम करणे किंवा नियमित करण्यासाठी घेण्यात येणाऱ्या सेवाप्रवेशोत्तर प्रशिक्षण परीक्षा/विभागीय परीक्षा उत्तीर्ण होण्यासाठी शासकीय अधिकारी/कर्मचारी यांना वयाची ४५ वर्षे पूर्ण केल्यानंतर मिळणारी सूट यापूढे वयाची ५० वर्षे पूर्ण केल्यानंतर अनुज्ञेय राहिल.

(अ) मात्र, यास खालील अपवाद राहतील:-

(१) प्रशासकीय विभागांनी त्यांच्याकडील तांत्रिक स्वरूपाचे कामकाज हाताळणाऱ्या अधिकारी/कर्मचारी यांना शासन सेवेत नियमित किंवा कायम

करण्यासाठी घेण्यात येणाऱ्या सेवाप्रवेशोत्तर/विभागीय परीक्षा उत्तीर्ण होण्यापासून वयोमर्यादेची सूट न देण्याचा जाणिवपूर्वक निर्णय घेतला असेल तर त्यांचेसाठी उपरोक्त वयोमर्यादेची सूट लागू राहणार नाही.

(२) परिवीक्षाधीन कालावधीत सेवाप्रवेशोत्तर प्रशिक्षण परीक्षा उत्तीर्ण न केल्यास उमेदवाराची सेवा समाप्त करण्याची जर सेवाप्रवेश नियमामध्ये तरतूद असेल तर अशा परिवीक्षाधीन अधिकारी/कर्मचारी याने त्याच्या वयाची ५० वर्षे पूर्ण केली या कारणास्तव परीक्षा उत्तीर्ण होण्यातून सूट देता येणार नाही.

(ब) सेवाप्रवेशोत्तर/विभागीय परीक्षा अनुत्तीर्ण झाल्यामुळे रोखून ठेवण्यात आलेली वेतनवाढ ही उमेदवाराने परीक्षा उत्तीर्ण केल्याच्या दिनांकापासून किंवा उपरोक्तनुसार वयाची ५० वर्षे पूर्ण झाल्यामुळे परीक्षा उत्तीर्ण होण्यापासून सूट मिळाल्याच्या दिनांकापासून देय असेल:

२. पदोन्नतीसाठीची विभागीय परीक्षा उत्तीर्ण होण्यापासून सूट मिळण्याकरीता कर्मचार्याने त्या पदावर किमान १५ वर्षे सेवा पूर्ण करणे अनिवार्य राहिल. त्यामुळे संबंधित पदावर कर्मचार्याची १५ वर्षे सेवा पूर्ण झाल्याचा दिनांक किंवा त्याच्या वयाची ५० वर्षे पूर्ण झाल्याचा दिनांक यापैकी जे नंतर घडेल त्यानंतर लगतचा दिनांक हा कर्मचार्यास पदोन्नतीसाठी विहित केलेली विभागीय परीक्षा उत्तीर्ण होण्यापासून सूट देण्याचा दिनांक समजण्यात येईल.”

The aforequoted provision shows that exemption from passing the Departmental Examination cannot be granted to the Applicant.

11. Admittedly, in this case period of probation of 2 years began on 30-12-2013. So far as this aspect of the matter is concerned, the Applicant has relied on Clause 5 of G.R. dated 29-2-2016. It reads as under -

“५) आदेश निर्गमित करण्याबाबतची कालमर्यादा -

परिवीक्षा कालावधि वाढविणे / परिवीक्षा कालावधि समाप्त करणे किंवा परिवीक्षाधीन अधिकारी/कर्मचारी यांना सेवेतून काढून टाकणे याबाबतचे आदेश संबंधित

परिवीक्षाधीन अधिकाऱ्यांचा/कर्मचाऱ्यांचा विहित परिवीक्षा कालावधि संपल्याच्या दिनांकापासून तीन महिन्यांच्या आत निर्गमित करण्यात यावेत. या आदेशाचे काटेकोरपणे पालन करण्याची जबाबदारी संबंधित आस्थापना अधिकाऱ्याची राहिल. (शासन परिपत्रक, दिनांक २८ मार्च, १९९५)”.

12. Admittedly, in this case the above time frame was not adhered to. Services of the Applicant were, however, continued. In respect of probation period no order was passed within the stipulated period - either of satisfactory/successful completion or extension.

13. The Applicant has relied on the judgment of this Tribunal dated 16-3-2017 in **O.A.No.705 of 2016 (Smt. Meena Sonawane V/s. The State of Maharashtra and one another)**.

In this case this Tribunal adverted to the facts and relevant G.R.s and concluded as follows. The Applicant was appointed as Professor. Her probation was for a period of 2 years. As per para 2(A) of G.R. dated 21-01-2013 probation could not be extended beyond 3 years. As per para 1(3)(c) of G.R. dated 29-2-2016 the maximum period for which probation could be extended was 1 year. As per para 1(5) of said G.R. there were only two alternatives i.e. either to complete the probation period successfully or to discharge/ terminate services of the probationer for unsatisfactory performance and such order was required to be passed within 3 months after expiry of period of probation. The Tribunal observed -

“The Applicant has cited judgment of this Tribunal dated 30.04.1998 in O.A.No.545/1995 and other judgments. It is quite clear that in the present case, probation of the Applicant has not been extended. No order has been issued in that regard. The Applicant has completed four years as Professor. The G.R.s provide that maximum period of probation cannot exceed 3 years. The

Applicant has not been informed any reason for extending her probation period, in fact no order has been issued. Considering all these facts, it has to be held that the probation period of the Applicant has deemed to have ended after 2 years from 21.01.2013. At the most, it can be extended to include the leave period which the Applicant has availed of during that period. However, no opinion about misconduct, if any, of the Applicant during the period from 21.1.2013 to 20.1.2015 is expressed. This O.A. is allowed accordingly with no order as to costs”.

14. The Applicant has also relied on the judgment of this Tribunal dated 22-11-2022 in **O. A. No.373/2021 with M.A. No.104/2022 (Arunkumar Kashiram Jadhav V/s The State of Maharashtra and one another)**. In this case, it is held -

“2. The applicant was appointed on 10.4.2006 as Project Officer, Tribal Development Department. Thus, he was supposed to have completed his probation period on 10.4.2008. If at all it is not completed and no order is passed in respect of extension of the period of probation of 2 years, then as per clause 5 of the G.R dated 29.2.2016, within 3 months the Government should take decision and issue the orders either of completion of the probation period or to extend the probation period. We note that there is no such deeming provision mentioned in the G.R, though it is contended by the learned counsel for the applicant about the deeming provision. The Respondent-State was thus supposed to pass the order either of extension of the probation period or satisfactory completion of the probation period on or before 10.7.2008. However, the said order was not passed. Learned counsel for the applicant submits that one of his colleague Mr Hariram Madhavi, who was also Project Officer was facing the criminal offence under the Prevention of Corruption Act and his probation was not completed for many years. However, after he superannuated on 28.2.2017, the probation period was terminated by order dated 27.1.2020. Learned counsel for the applicant prays for parity.

5. We are of the view that the State has power to pass order regarding completion, rejection or extension of the probation period. However, as per clause 5 of the G.R dated 29.2.2016, a specific period is laid down to take decision either completion of the probation period or extension of the probation period. Thus, the two years' probation period of the applicant was over on 10.4.2008. Hence, three months thereafter on or before 10.7.2008 the applicant should have been informed in writing whether his period of probation was extended or not. On our query it was informed that the Respondent-State did not communicate in writing to the applicant that his period of probation is extended for whatever reasons available. If such a communication has taken place from the Respondent-State, the copy of the said letter should have been produced before the Tribunal. However, such communication is not produced before us. Hence, we infer and conclude that the provision of clause 5 of the G.R dated 29.2.2016 is not followed by the Respondent-State. Admittedly, two criminal cases of serious nature are pending against the applicant. However, so far as the probation period is concerned the Respondent-State has not terminated the services of the applicant after two years on account of unsatisfactory service and allowed him to work for more than 17 years, i.e., till today. In view of the above, we pass the following order:-

ORDER

(a) The Original Application is allowed.

(b) As the applicant has availed leave of 31 days during his probation period, we direct the Respondent-State to issue the order of completion of his probation period by counting the period of 31 days which may extend the period of probation by 31 days.

(c) The order of satisfactory completion of the probation period should be issued by the Respondent-State within a week.

(c) In view of the order passed in the Original Application, Misc Application No.104/2022 does not survive and is disposed of.”

15. We have noticed that in the above referred 2 cases this Tribunal relied on G.R.s and regard being also had to the facts, proceeded to grant relief that probation of the applicants could be deemed to have been completed. Instant case would be governed by Rule 7 of Rules of 2006. The Rule states that the persons appointed to any of the posts mentioned in rules 5 and 6 by nomination shall be on probation for a period of two years. Probation period may be extended for a period not exceeding one year. Persons appointed to such posts shall be required to pass the Departmental Examinations as may be prescribed for the concerned post. If such person fails to complete the probation successfully within prescribed or extended period; or does not pass the Departmental Examination; or is not found suitable for the post, such person shall be liable for termination from the service without prior notice. This Rule contemplates 3 contingencies viz. successful completion of probation, passing the Departmental Examination and suitability for the post. Between these distinct 3 limbs of the Rule word 'or' is used and hence these limbs must be read disjunctively. Failure to satisfy any one or more of these criteria could lead to termination of service without prior notice. In the instant case the applicant admittedly did not clear the Departmental Examination within the stipulated 3 chances. As a consequence, he faced the prospect of termination of his service. He then approached this Tribunal. As per directions of this Tribunal Respondent No.1 issued to him a show cause notice dated 11.10.2024. The Applicant then filed the M.A.

16. Neither Rule 5(iv) nor Rule 10 of Rules of 1975 applies to the case of the Applicant. Therefore, under these no exemption could have been granted to him from passing the Departmental Examination.

17. Rule 9 of Rules of 2006 reads as under -

“9. A person appointed to any of the posts mentioned in rule number 3, 4, 5 and 6, whether by promotion, transfer, deputation or nomination shall be required to pass the Departmental Examination and Examinations in Hindi and Marathi according to the rules made in that behalf, unless he has already passed, or has been exempted from passing, these examinations.”

18. For the reasons discussed hereinabove, we have come to the conclusion that no case is made out to grant any of the reliefs claimed in the application.

19. According to the Applicant he has given only interim reply to the show cause notice because some of the documents necessary to prepare final reply are yet to be supplied to him. Respondent No.1 shall supply these documents to the Applicant within 1 month from today. Within 15 days from receipt of these documents the Applicant shall file his final reply to the show cause notice dated 11-10-2024. On receipt of such reply Respondent No.1 shall pass further necessary orders. In case this order goes against the Applicant, it shall not be implemented for 3 weeks thereafter so as to afford time to the Applicant to challenge the same in accordance with law. It would be open to the Applicant to seek relief under Rule 6 of Rules of 1975 which empowers the Government to extend, for special reasons, the period prescribed for passing the examination by one year or more or exempt an

officer from passing the same for cogent reasons to be recorded in writing. In case the Applicant seeks relief under Rule 6 of Rules of 1975 Respondent No.1 shall decide the issue on its own merits and without being influenced by any of the observations made/conclusions reached hereinabove. The Original Application and the Miscellaneous Application are disposed of in the aforesaid terms. No order as to costs.

Sd/-

(A.M. Kulkarni)
Member (A)

Sd/-

(M. A. Lovekar)
Vice-Chairman

Place: Mumbai

Date : 28.04.2025

Dictation taken by: V. S. Mane

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