

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION No.766 of 2019 (D.B.)

Shyam Bhaskarrao Gogte,
Aged about 45 years, Occ: Pvt. Service,
R/o Plot No.115, Suyog Apartment, Suyog Nagar,
Near Mahatma Fuley Garden, Nagpur,
Tq.and Distt: Nagpur.

Applicants.

Versus

1) State of Maharashtra,
through its Secretary,
State Intelligence Department,
Mantralaya, Mumbai.

2) Commissioner,
State Intelligence Division, Maharashtra State,
Mumbai Office-Old Vidhan Bhawan, 2nd Floor,
Shahid Bhagatsingh Marg, Kurla, Mumbai.

Respondents.

**S/Shri J.S. Wankhede, Gajanan Asole, Advocates for the applicant.
Shri S.A. Sainis, learned P.O. for respondents.**

**Coram :-Hon'ble Shri Justice M.G. Giratkar,Vice Chairman and
Hon'ble Shri Nitin Gadre, Member (A).**

Date of Reserving for Judgment : 10th September, 2024.

Date of Pronouncement of Judgment : 13th September, 2024.

JUDGMENT

Per : Member (A).

(Delivered on this 13th day of September,2024)

Heard Shri J.S. Wankhede, learned counsel for the applicant and

Shri S.A. Sainis, learned P.O. for the respondents.

2. The case of the applicant in short is as under -

The Applicant is aggrieved by the provisional selection list 2019 published by the respondent no. 2 in pursuance of the advertisement dated 25/05/2018 for the post of 'Assistant Intelligence Officer' Group C. As per the advertisement, there were 204 posts declared for the post of Assistant Intelligence Officer by direct recruitment by the way of written examination and after the written examination physical tests were also conducted. Out of 204 posts, as per the vertical or horizontal reservation for the part time category, 10 positions for part-time category were available in the Open category. The applicant is in Open category. The applicant got 76 marks. But surprisingly, he has been excluded from the provisional selection list. The applicant claims that another candidate who got 68 marks was included in the open part time category.

3. The applicant had prayed to grant stay to the provisional list and also by the way of interim relief, keep one post vacant from the open part time category. The Tribunal vide its order dated 17/12/2019 had made it clear that if any appointments are made, they shall be subject to the final outcome of the O.A.

4. The Respondent No. 2 has submitted his reply on 22/01/2020. The material portion of the reply is as follows:

"The answering respondent had issued the advertisement dated 25/5/2018 thereby inviting the application for the post of Assistant

Intelligence Officer, Grade-C, total post advertised are 204 and out of that 22 posts were reserved for part time employees for various category. Out of 22 posts of part-time employees, 10 posts were reserved for open category.”

5. The respondents have further submitted that:

“ As per clause-20, applicant claiming as part time employee must produced the certificate from competent authority and registered (certificate) in employment exchange with effect that the candidate had worked for 3 years, on honorarium per months. The certificate dated 5/6/2003 produced by the applicant during the document verification on 14/12/2018 was not meeting the above requirement. The certificate showed that the Applicant had worked as a part time employee only for 9 months. For this reason his candidature was rejected.

It is submitted that, at the time of the document verification the applicant has only produced the certificate dated 5/6/2003 on 14/12/2018 the date of document verification. It is further submitted that, the applicant has made application to the office of the answering respondent on 19/3/2019 thereby requesting to consider the candidature of the applicant on the subsequent certificate issued by the Additional Director, Skill Development, Yawatmal dt.18/3/2019. In this regard it is submitted that, even if now the applicant is producing the certificate dated 18/3/2019 but admittedly the Applicant failed to produce any such documents or certificate for claiming part-time employee candidate on 14/12/2018 i.e. on the date of verification. The Applicant is very much aware for claiming the reservation for part time employee he needs to produce all certificates but the same has not been done by the Applicant. Now the respondents had published final select list as well as wait list on

8/3/2019. If the applicant request by letter dt. 19/3/2019 is now consider then there will be an hardship to the selected candidates as per final select list dated 8/3/2019.”

6. The G.R. dated 27/10/2009 has provided horizontal reservation to the part-time candidates who have worked for three years in the scheme and if such experience is recorded in the Employment Guidance Centre. The important issue to be decided here is: Whether the applicant had a valid certificate for part-time candidature on the date of verification ?

The District Employment and Self-Employment Officer, Yawatmal had issued a certificate to the Applicant on 5/6/2003. This certificate mentions that the Applicant had worked between dates 9/98 to 8/2001 for the period of 9 months. This certificate is based on the certificate issued by the Tahasildar, Yawatmal. In the Tahasildar's certificate dated 4/6/2003, it is mentioned that the Applicant worked for 36 months at the rate of Rs. 300/- per month. The Applicant seems to have been rejected due to less than required period shown in the District Employment Officer's certificate. The Applicant had stated that this is a case of wrong interpretation by the District Employment and Self-Employment Officer. P.O. was directed to get instructions in this regard vide Tribunal Order Dated 7/8/2024. However, the P.O. could not get any clarification from the Respondents or produce any G.R. in this regard.

7. The scheme of providing part-time employment at the Government establishments has been explained in the G.R. dated 19/3/1998. The person employed under this scheme is given fixed honorarium for a month and is expected to work for **minimum 15 days** with **four hours** per day in a month. This scheme allows a person to work for **maximum three years**.

8. The Tahasildar in his certificate has mentioned that the Applicant worked for 36 months. The District Employment Officer has given the certificate for only 9 months work, for the same period between 9/98 to 8/2001. He has not given any clarification, why his certificate mentions reduced working months. His calculations might be based on logic as follows:

The Applicant work-hours in a month have been considered as 60, which is equal multiplication of 15 days and 4 hours per day. However, a regular employee is expected to work for 240 hours in a month (30 days X 8 hours/day). Hence, 36 months of part time work becomes equivalent to 9 months of full time work. The respondents have failed to produce any G.R. or clarification in support of this interpretation. With this logic, to get 3 years' work experience certificate in a part-time job, the candidate will have to work for 12 years. However, the scheme itself puts an upper limit of three years as mentioned in the GR dated 19/3/1998. Obviously, the certificate issued by the District Employment Officer mentioning experience of only 9 months is based on incorrect understanding of the scheme and the Certificate issued by

Tahasildar, Yawatmal dated 4/6/2003 should be considered as the correct certificate. The Candidate had produced these certificates at the time of verification and he cannot be held responsible or punished, if the authority had given him an incorrect certificate. The Tribunal had already directed that the appointments if any made, shall be subject to outcome of this O.A. Hence, we pass following order -

ORDER

- (i) The O.A. is allowed.
- (ii) The part-time experience certificate given to the Applicant by the Tahasildar, Yawatmal should be treated as a valid certificate of experience for the recruitment done in pursuance of advertisement dated 25/5/2018.
- (iii) Respondents are directed to appoint the applicant on the post reserved for the part time open candidate in the recruitment, if he is otherwise found eligible. The eligibility should be examined as per the requirements of the advertisement dated 25/5/2018. If this post is already filled by another candidate then the Applicant shall be considered for any other presently vacant post. The respondents are directed to complete the process in four months from the date of this order.
- (iv) The Applicant shall not claim any arrears, if he is given such appointment.
- (v) No order as to costs.

(NitinGadre)
Member(A).

(Justice M.G.Giratkar)
Vice Chairman.

Dated :- 13/09/2024.

dnk.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman and
Member (A).

Judgment signed on : 13/09/2024.