

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 31 OF 2022 WITH M.A 131 &
499/2022**

DISTRICT : MUMBAI

Yogesh. B Wagh)
Assistant Section Officer,)
Revenue & Forest Department,)
Mantralaya, Mumbai 400032.)
C/o: Shrikant Vashisht, AIR Office,)
Meadows House, Nagindas Master)
Road, Fort, Mumbai.)...**Applicant**

Versus

The State of Maharashtra)
Through Addl. Chief Secretary,)
General Administration Department,))
Mantralaya,)
Mumbai 400 032.)...**Respondent**

Shri Y.B Wagh, applicant in person.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)**

RESERVED ON : 03.05.2024

PRONOUNCED ON : 14.06.2024

J U D G M E N T

1. The applicant working as Assistant Section Officer prays that the Government Resolution dated 1.3.2018 by which the G.R dated 1.11.1977 has been arbitrarily revoked be quashed and set aside. Further to declare that the G.R dated 1.3.2018 is not applicable qua the applicant and other similarly situated employees who have not entered Government service by taking the benefit of upper age limit of 38 years and 43 years. The applicant further prays that the Respondent No. 1 be directed to grant the exemption to the applicant from passing the departmental examination for promotion to the post of Section Officer as per G.R dated 1.11.1977. Further the applicant prays that the Respondent No. 1 be directed to place on record all service details including educational qualifications, service tenure in feeder cadre of ASO, age on date of joining post of Assistant Section Officer (ASO), mode of recruitment etc., of all ASOs who were granted exemption from passing the departmental examination for promotion to the post of Section Officer.

2. The Applicant relied on Pursis dated 4.4.2024, wherein he has given the list of 93 Assistant Section Officer who are junior to the applicant and they belong to 2005 direct recruit batch and the persons who were granted the promotion as Section Officer were exempted from appearing in the Limited Departmental Competitive Examination for the years 2007, 2009 & 2011. Applicant further submitted that 8 ASOs of his batch of 2005 who did not appear for the examination were promoted to the post of Section Officer. Applicant relied on G.R dated 1.11.1977 and 1.3.2018. Applicant submits that the persons promoted who were junior to him have completed 4 to 9 years and more than 38 years of age and he relied on G.R dated 1.11.1977. Applicant further submits that none of

the ASOs have completed 20 years of service like him. Applicant further submits that only 5 years' service is required in feeder cadre of ASOs to be eligible for the post of Section Officer. 93 ASOs who were promoted have not completed 5 years been considered for promotion. Applicant relies on Circular dated 13.9.2012 which relates to the exemption of passing the departmental exam. The applicant submits that he cannot write the departmental examination in Marathi. Earlier the candidates were allowed to write the departmental examination in English and Marathi till 2013 and after that the candidates were allowed to write in Marathi only. The applicant joined as ASO of the batch of 2005 in the year 2009 and he was eligible to appear for the departmental examination in the year 2014. He appeared and wrote in Marathi, but failed. In the year 2015, he did not appear for the examination. In the year 2016, he did not fill up the form because he was not allowed to write in English. In the year 2017 & 2018 he did not apply as English was not allowed. Again, he filled up the form in the year 2019 and failed. In the year 2020 there was no examination. In the year 2021 he filled up the form but he did not appear as English language was not allowed. Thereafter he filed the present O.A in the year 2022. There is no equality of opportunity provided by the Respondents. Applicant submitted that G.R dated 1.11.1977 should have been made applicable to him and it is against Arts 14 & 16 of the Constitution of India. Applicant submitted that he completed 45 years in June, 2020.

3. Applicant submits that Article 345 of the Constitution of India is not applicable. The said Article reads as under:-

Article 345, Constitution of India 1950

Subject to the provisions of articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or

languages to be used for all or any of the official purposes of that State:

Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution.

4. Applicant relied on following case laws:-

- (1) Judgment of Hon'ble Supreme Court in **Amarendra Kumar Pandey Vs. Union of India & Ors, AIR Online 2022 SC 1013.**
- (2) **State of U.P Vs. Renusagar Power Company, (1988) 4 SCC 59.**
- (3) **Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology & Ors, (2002) 5 SCC 111.**
- (4) **Ajit Singh & Ors Vs. State of Punjab & Ors (1997) 7 SCC 209.**

5. Learned C.P.O relied on the affidavit in reply dated 24.2.2022 filed by Ms Geeta Kulkarni, Deputy Secretary (Services), G.A.D. Learned C.P.O relied on para 5 (II). Learned CPO submitted that when 93 ASOs were given promotion at that time G.R dated 1.11.1977 was in force and exemption was available and when the applicant reached the age of 45 years the G.R of 1.11.1977 was not in force and G.R dated 1.3.2018 was applicable.

6. Submissions of the applicant in person are based on two G.Rs and therefore to understand the issue it is necessary to reproduce the relevant portion of the said G.R. By G.R dated 1.11.1977 the Respondent-State for the first time declared its policy of granting exemption to candidates who are over aged, i.e., after attaining the age of 45 years.

“After examining this question carefully, Government has decided that Government is accordingly pleased to direct (I) that the existing departmental examination rules, both for continuance and confirmation and also for qualifying for promotion to higher posts, should be suitable amended so as to provide therein for the grant of exemption from passing the departmental examination attaining the age of 45 years by the concerned Government servant subject to the condition that the seniority, if lost by such as a result of not passing the examination within the prescribed time limit and the number of chances permissible, will not be restored on granting such exemption, and (ii) that the effect to these order should be given in the proposed amendment of the rules from the date of these orders.”

7. Subsequently, G.R dated 1.3.2018 was issued modifying the G.R dated 1.11.1977, which is regarding giving exemption from passing the departmental examination. By this G.R the Government realized that as per 1959 Maharashtra Civil Service Rules, the maximum age limit was 25 years and therefore the age exemption was considered as 45 years. Thus, the Government employee at that time used to complete minimum 20 years of service. However, thereafter, from time to time the age limit for appearing in the examination was increased and in the year 2016 the maximum age limit for open category was fixed at 38 years and for reserved category it was fixed at 43 years. Therefore, the Respondent-State by G.R dated 1.3.2018 cancelled the G.R dated 1.11.1977 and increased the age of exemption from passing the departmental examination from 45 years to 50 years and condition of completing 15 years minimum service. The relevant portion of G.R dated 1.3.2018 is reproduced below:-

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

Applicant in person had no issue till then.

8. The Corrigendum dated 11.8.2022 to G.R dated 1.3.2018 was issued by the Respondents wherein para 2 was modified on the point of completion of 15 years as a minimum service. By this Corrigendum the Respondent-State decided to count the entire minimum period of service of 15 years from the date the Govt. servant is appointed and not like earlier G.R dated 1.3.2018, wherein a Government employee was required to put in 15 years of his service at that particular post and not from the date he was appointed. In the result the promotee Government employees who were promoted to the post of Assistant have already service of 9-10 years to their credit. Thus, they completed the requirement of 15 years for exemption within 5-6 years may be 3 years. On the other hand direct recruits who are directly appointed by MPSC to the post of Assistant do not have any service to their credit. Hence, they have to complete 15 years of their service on the post of Assistant. The age limit for the purpose of exemption is same i.e. 50 years. The direct recruits and promotees both have same opportunity to pass the departmental examination within stipulated chances and period and if at all they are put in 3-5 years' service in the feeder cadre of Assistant they all are eligible as per their seniority to the next promotion of Section Officer. In the present case the applicant also had same opportunity however he could not pass the examination despite his 4-5 attempts.

9. At this stage we make it clear that his grievance that the respondents made compulsory to the Government servant to write the papers in Marathi and the applicant who has studied in English Medium could not express properly in Marathi, cannot be accepted. Marathi is vernacular and State language and it is mandatory for every Government servant to have basic and

working knowledge of Marathi. More over applicant has not at any time made application asking for special concession for writing papers in English. If he would have asked for, the authority might have considered his request and therefore his excuse for not passing departmental examination on account of any reason of hurdle of Marathi language is lame and totally rejected.

10. It is admitted fact that he attempted for 4-5 times but he could not succeed. Therefore, he wants benefit of completion of 15 years of service on the post and completion of 50 years of age whichever is later. He has no grievance for this condition which was mentioned in the GR dated 1.3.2018 even though the age limit from 45 was extended to 50 years. Change of counting of 15 years of service on the post of Assistant to counting of period of total service of 15 years i.e. on the post of Senior Clerk and the feeder cadre of Assistant is a major issue and the reason for grievance for the applicant. The applicant is a direct recruit who is appointed through competitive examination of MPSC directly to the post of Assistant. Naturally he has aspiration to rise to higher post of Section Officer. However, he could not clear the departmental examination and therefore is completely dependent on the scheme of exemption provided to all Government employees. Thus, the applicant has not put in more than 15 years on that post of Assistant however he has not attained the age of 50 years and therefore he was not given exemption. The anomaly in the issue is that the Government servants who are promoted to the post of Assistant at the age of 44, 46 etc. already had total service of more than 15 years to their credit and they have completed 3-5 years requisite service in the feeder cadre of Assistant and immediately they reach to the age of 50 years. In the result they become eligible for exemption and enter the zone of consideration. On the other hand the applicant though he had completed 15 years of

service on the post in feeder cadre but however did not attain age of 50 years is required to be on the same post of Assistant and wait for the getting the benefit of exemption for 3-4 years. However, his juniors who were promoted to the post of Assistant much later to him even 8-10 years, they superseded him as soon as they attained the age of 50 years.

11. Thus, apparently one really gets the impression that injustice is caused to the applicant as his juniors have superseded him. However, by close scrutiny of the facts and the scheme of exemption, it is found not. The scheme of giving benefit of exemption from passing the departmental examination is made applicable irrespective of seniority. When a person will attain that particular age it is a matter of time depending on the date of birth of that person. Further, the case laws relied on by the applicant is irrelevant in view of the facts of the present case.

12. Thus, the Government servants who cannot clear the departmental examination by availing of the stipulated chances within time, they maintain their seniority in the cadre of Assistant. However, as they all stand on the same footing of not clearing the departmental examination they are entitled to exemption as soon as they reach the age of 50 years, which was earlier 45 years. Thus, after reaching the age of 50 years the Government servants who are exempted from passing the departmental examination become eligible, if at all they are otherwise found eligible, i.e., completing 3 years' service in the feeder cadre (on the post of Assistant). Such Government servants can be considered for promotion to the post of Section Officer, irrespective of his seniority. We should not lose sight of the basic fact that for all those candidates equal opportunity was provided to appear and clear the departmental examination which they could not do.

Moreover, the age of exemption to all the Government servants is 50 years and so also the requirement of putting service of 3 years' on the post of Assistant is also same condition to all and therefore if a junior person to the applicant attains the age of 50 years prior to him, then if a post of Section Officer is available, then he is rightly to be going to be promoted. Under such circumstances, there is no anomaly and illegality in the process adopted by the Respondents.

13. We find no merit in the case of the applicant. Accordingly, Original Application stands dismissed. As the Original Application is dismissed, both the Misc Application also stand dismissed.

(Medha Gadgil)
Member (A)

(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 14.06.2024
Dictation taken by : A.K. Nair.