

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

REVIEW APPLICATION No.02 OF 2016

IN

ORIGINAL APPLICATION NO.956 OF 2016

WITH

ORIGINAL APPLICATION NO.957 OF 2016

WITH

ORIGINAL APPLICATION NO.958 OF 2016

1. The General Manager
Brihan Mumbai Milk Scheme,
Worli, Mumbai – 18. **...Applicant (Orig. Respondent No.1)**
2. The Commissioner for Dairy
Development,
Dairy Development Department,
Worli, Mumbai – 18. **...Applicant (Orig. Respondent No.2)**
3. Principal Secretary
[Dairy Development]
Agriculture, Animal **...Applicant**
(Original Respondent No.4 in O.A.No.956
of 2014 & Orig. Respondent No.3 in
O.A.No.957 of 2014 & O.A.No.958 of
2014))

Vs.

1. Shri Shantaram Tribhuvan Tiwari
R/o. Krushna Nagar, Goregaon (W),
Mumbai. **...Respondent**
(Orig. Applicant in O.A.No.956 of 2014)
2. Shri Ramvruksha Yamuna Gound
R/o Room No.R/1, Adiwasi Hutmant
Goregaon (E), Mumbai -65. **...Respondent**
(Orig. Applicant in O.A.No.957 of 2014)
3. Smt. Chandadevi Kamala Yadav
R/o. 305, S.R.D. Bldg.,
Mayur Nagar, Goregaon (E), Mumbai -65 **...Respondent**
(Orig. Applicant in O.A.No.958 of 2014)

Smt. K.S. Gaikwad, the learned Presenting Officer for the Applicants (Org. Respondents).

Shri B.A. Bandiwadekar, the learned Advocate for the Respondents (Org. Applicants).

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

DATE : 05.10.2016.

ORDER

1. Heard Smt. K.S. Gaikwad, the learned Presenting Officer for the Applicants (Org. Respondents) and Shri B.A. Bandiwadekar, the learned Advocate for the Respondents (Org. Applicants).

2. By this application of review, Applicants (Org. Respondents) are seeking review of order passed by this Tribunal on 14th September, 2015 in Original Applications No.956, 957 & 958 of 2014.

3. By way of grounds of review, Applicants (Org. Respondents) has put following grounds:-

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Mr. Gaud and Mr. Tiwari were appeared for the Marathi language examination of the Ad-hoc board, but they were failed. Hence question of exemption does not arise. The letter dated 27.9.2013 of Director of Languages, Maharashtra State declaring the Respondents (Original Applicants) failed in Marathi Examination. Copy of letter dated 27.9.2013 is annexed hereto and marked as EXHIBIT “RA-2.”

(quoted from page no.3 of the O.A.)

“8 The Applicants (Orig. Respondent Nos. 1 to 3) states that the Hon’ble Tribunal had passed order on the basis of Mr. Lotia and Mr. Shah’s case only, But their cases are different. Mr. Lotia was working as Guide Supervisor while Mr. Shah was working as Time Keeper. Both the posts and nature of working of these posts are quite different than the nature of working of post of

Milk Dispather. The abovesiad two posts required no reporting in Marathi while the Milk Dispatcher post has required reporting as well as conversation in Marathi.

(quoted from page no.4 , para no.8 of the O.A.)

“9. The Applicants (Orig. Respondents) state that it was argued before Hon’ble Tribunal that in identical matter, same bench has delivered the judgment. And the matter was dismissed i.e. O.A.No.506 of 2014. Copyof judgment in O.A.No.506 of 2014 is annexed hereto and marked as EXHIBIT “RA-4”. This point had not considered in the order passed by the Hon’ble Tribunal. Hence this Review Application.

(quoted from page no.5, para no.9 of the O.A.)

4. In order to understand the submissions, this Tribunal has heard both sides and perused the records.

5. It is seen from the averment contained in Original Application that the Applicant had averred in O.A., the point of discrimination. This pleading is seen in para Nos. 6.15 to 6.17 of O.A. The plea of discrimination is based on the ground that Shri T.M. Shah (Time Keeper) and Shri T.V. Lotiya (Guide Supervisor) who are similarly situated were granted exemption.

6. The State had opposed the ground of discrimination on the ground that the Competent Authority decides as to whether a particular post is technical post and in present case the Government has taken decision against the Applicant’s claim requesting for exemption, because he is not working on a technical post.

7. Record shows in para 22 of the judgment that the Member (A) has placed reliance on the letter dated 20.5.2013 written by General Manager, Greater Mumbai Milk Scheme supporting Applicants’ claim that failure to pass Marathi Examination is of no relevance in view of the duties performed by the Applicants. The Member (A) also referred to the duties of the post of “Milk Dispatcher”, which post was held by the Applicant, and on facts found that the job undertaken by the Applicants was that of reckoning the volume and of keeping record of dispatch of milk.

8. In the record of the O.A. at page no.71 (Reverse or back side thereof) which is part of Government Memorandum dated 31.12.2007 as well as page no.95 an office memorandum the post of "Time Keeper" as well as "Milk Dispatcher" are shown in executive category.

9. Admittedly, Shri T.M. Shah was "Time Keeper". Duties of the post of Time Keeper involved maintenance of record of attendance in shifts and it do the work of writing the records in Marathi language. In these premises of admitted fact of nature of duties attached to the post of "Time Keeper" exemption has been granted from passing Marathi Language examination. In the said background the Applicant who used to do the work, which does not involve writing records in Marathi Language, has been denied exemption. Therefore on the facts the Member (A) has held that Applicant was entitled for grant of exemption and no action could be taken on account of Applicant's failure to pass Marathi Examination.

10. In the light of foregoing discussions the grounds which are quoted in para no.3 which are part of the Review Application do not have weight whatsoever as the grounds for review.

11. These grounds do not put forward or carry an important of describing an "error apparent on the face of record" much less any semblance of injustice of grave character warranting review and recalling a judicial adjudication well founded on record.

12. In so far as ground contained in para no.9 of the O.A. is concerned, perusal of judgment in O.A.No.506 of 2014 reveals that admittedly the Applicants in the case (O.A.No.506 of 2014 and accompanying O.A.) were working as Clerk and Store Keeper respectively in the Employee State Insurance Corporation.

13. Therefore on facts the judgment in the O.A.No.506 of 2014 does not have an iota of similarity or semblance whatsoever, and said judgment does not have force of precedent or value of persuasion for governing present case. Therefore, failure to

refer to and discuss the judgment in OA.No.506 of 2014 does not constitute an error apparent on the face of record.

14. Reivew Application has no merit and is disposed of accordingly.

(A.H. Joshi, J.)
Chairman

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