

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5300 OF 1997

Kusum Dattaram Mohite

.. Petitioner

Versus

Chairman,

Konkan Gnyanpith Sanstha & Ors.

.. Respondents

Shri. Kiran Bapat a/w T.R. Yadav, for the Petitioner.

Shri. Piyush Shah a/w Shri. M.V. Jogalekar, for Respondent No. 1.

CORAM : M.S. SONAK, J.

DATE : 23 JANUARY 2015

P.C.

1. This Petition is directed against the Judgment and Order dated 26.06.1997 made by the University and College Tribunal, dismissing the Petitioner's Appeal against the Termination Order dated 19.12.1996.

2. The Petitioner applied for the post of Junior Clerk by her Application dated 01.07.1992, in which she has stated that her date of birth is 16.04.1964. In terms of the rules applicable for appointment of post of Junior Clerk, the maximum age limit prescribed was 28 years. Thus, as on the date of making of the Application, the Petitioner was age barred. Nevertheless, the

Petitioner was selected and appointed as a Junior Clerk.

3. After the Petitioner had discharged services for almost four years, by the Order dated 19.12.1996, her services came to be terminated. The reasons set out in the Termination Order are that the Petitioner was age barred at the time of her appointment and further, even the date of 16.04.1964 was not her correct date of birth. The Termination Order referred to information obtained from several sources, including institution from where the Petitioner obtained her education, which would confirm the position that her correct date of birth is 03.04.1960 and not 16.04.1964.

4. Shri. Kiran Bapat, the Learned Counsel for the Petitioner submitted that the Termination Order dated 19.12.1996 was clearly stigmatic in nature. The foundation of the impugned Order was, alleged misconduct committed by the Petitioner in stating an allegedly incorrect date of birth. If this be so, the Learned Counsel contended that it was incumbent upon the Respondents to have conducted an enquiry inconsonance with principle of natural justice and fair play. This having not been done, the Termination Order dated 19.12.1996, ought to have been interfered with, by the Tribunal.

5. Shri. Bapat also pointed out that there was no suppression of true and correct facts, as such by the Petitioner. The Petitioner had stated her date of birth as 16.04.1964, on the basis of which, she was age barred for appointment of the post of Junior Clerk. If, despite the Petitioner having stated the true and correct facts, the Petitioner was chosen and appointed as a Junior Clerk by the Respondents, then Respondents are clearly estopped from terminating the Petitioner's service on the ground of her age bar.

6. Shri. Piyush Shah alongwith Shri. M.V. Joglekar, the Learned Counsel for the Respondents No. 1 and 2 submitted at the outset that conduct of the Petitioner was such as would warrant no indulgence or exercise of discretionary jurisdiction under Articles 226 and 227 of the Constitution of India. The Learned Counsel submitted that in the first place, there can be no estoppel against statutory rules which prescribe age limit of 28 years and secondly, that even the date of 16.04.1964, stated by the Petitioner was incorrect, the correct date of birth being 03.04.1960.

7. Rival contentions now fall for my determination.

8. There is no dispute that the statutory rules for

appointment to the post of Junior Clerk prescribe upper age limit of 28 years. Therefore, even if, we are to accept the position that the Petitioner's correct date of birth is 16.04.1964 (which is in dispute) then the Petitioner was on the date of her application for being considered for the post of Junior Clerk, age barred. In such circumstances, it is not open for the Petitioner to take advantage of the circumstances that notwithstanding the age bar, the appointment order was issued in her favour. At least writ Court, in exercise of its jurisdiction under 226 and 227 of Constitution of India, would not normally direct reinstatement in a situation, when it is clearly established that the initial appointment was itself, *ex facie* in breach of statutory rules.

9 . Accordingly, there is no reason consider the rest of contentions urged by Learned Counsel for the Petitioner, with regard to the impugned Termination Order being stigmatic in nature. The College Tribunal has also gone into the issue as to whether the correct date of birth is 16.04.1964 or 03.04.1960. In my judgment, there was no necessity to go into this issue, particularly, because some certificate had been produced from Sub. Executive Magistrate, though the same was issued on 30.10.1996. Even if, the College Tribunal had rested its decision on the basis that the Petitioner had

herself indicated her date of birth as 16.04.1964 and was consequently, age barred on the date she applied for appointment for the post of Junior Clerk, that would have sufficed. Upon perusal of impugned Termination Order, although there is reference to the controversy with regard to the correct date of birth, same was clearly unnecessary. When viewed from such perspective, it cannot be said that the impugned Termination Order was stigmatic. The impugned Termination Order, to a great extent, is based upon the Petitioner being age barred at the time of her initial appointment.

10. In view of the aforesaid, there is no necessity to interfere with the impugned Judgment and Order made by the Tribunal. Nevertheless, the point remains that notwithstanding the disclosure of the circumstances that she was age barred, the Petitioner was appointed to the post of Junior Clerk and the Petitioner served in that position for four years. The Petitioner today is reported to be afflicted with ill-health, which requires medical treatment. In such circumstances, this Court suggested to the Learned Counsel appearing for the Respondents No. 1 and 2 that notwithstanding the Termination Order dated 19.12.1996, whether Respondents No. 1 and 2, without prejudice, and by way of good gesture, would be willing to offer some compensation, (*ex gratia*) to

the Petitioner.

11. This Court is pleased to record that the Respondents No. 1 and 2 (Respondent No. 2 is present in the Court at the stage of final hearing) stated that they would pay an amount of Rs. 1,25,000/- (Rupees One Lac Twenty Five Thousand only) *ex gratia* to the Petitioner within a period of four weeks from today. The statement made on instructions is accepted.

12. Accordingly, the present Petition is disposed of with the following Order.

(a) The impugned Judgment and Order dated 26.06.1997 made by the University and College Tribunal is not interfered with.

(b) The Respondents No. 1 and 2, within a period of four weeks from today shall pay Rs. 1,25,000/- (Rupees One Lac Twenty Five Thousand only), *ex gratia* to the Petitioner.

(c) There would be no order as to costs.

[M.S. SONAK, J.]