

UNREPORTED**IN THE HIGH COURT OF JUDICATURE AT****BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.4997 OF 2003.**

Dwarkadas S/o Shankarlal Naole,
Age 52 years, Occ.Service,
R/o Aurangabad. ... Petitioner.

Versus

1. The State of Maharashtra,
through Secretary, Department
of Education, Mantralaya,
Mumbai.

2. The Deputy Director of
Education, Aurangabad.

3. Miz.Bahauddin Siddiqui,
Age 48 years, Occ.Service,
R/o Aurangabad,
C/o Dy.Director of
Education, Aurangabad.

4. L.K.Pasalwad, Age 55
years, Occ.Service,
Head Clerk, Office of the
Sr.Auditor (Education),
Nanded.

5. Shri R.S.Paste, Age
51 years, Occ.Service,
Jr.Auditor (Head Clerk),
Office of Sr.Auditor
(Education), Nanded. ... Respondents.
(Dismissed as per Registrar's

order dt.11.4.2005.)

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Mr.P.P.Dawalkar, advocate for the petitioner
Mrs.M.A.Deshpande, A.G.P. for the State.

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**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**

Date : 25.08.2016.

ORAL JUDGEMNT (Per S.V.Gangapurwala, J.)

1. Heard.

2. The petitioner has filed Original Application before the Maharashtra Administrative Tribunal, challenging the promotion granted to Respondent No.3, so also the orders dated 9.10.1990 and 31.10.1990.

3. The petitioner was appointed as a Junior Clerk on 1.9.1973, under the Directorate of Education, Maharashtra State, Pune. The Respondent No.3 was also appointed as a Junior Clerk in the same Department on 28.9.1970. The petitioner passed the post requirement examination in three attempts and in the year

1976, whereas Respondent No.3 passed the said examination in 11 attempts and in the year 1982. The petitioner was promoted as a Senior Clerk on 3.7.1979. The Respondent No.3 was promoted as a Senior Clerk on 8.1.1982. The petitioner was placed at serial No.5 as per seniority list corrected on 31.12.1985 and Respondent No.3 was placed at serial No.30. In the year 1988, the petitioner stood at serial No.25 and Respondent No.3 at serial No.53 in the seniority list of Senior Clerks. In 1988, Respondent No.3 was demoted as a Senior Clerk. The said order was challenged by Respondent No.3 in Writ Petition. The said Writ Petition was dismissed for non-prosecution. On 1.11.1990, the Respondent No.3 is promoted as Head-clerk and is given deemed date of 1987. The same is assailed by the petitioner before the Maharashtra Administrative Tribunal. The Maharashtra Administrative Tribunal, dismissed the Original Application. Aggrieved thereby, the present petition.

4. Mr.Dawalkar, learned counsel for the petitioner submits that the Maharashtra

Administrative Tribunal lost sight of the Recruitment Rules governing the Respondents i.e. the Post Recruitment (Ministerial) Examination Rules, Department of Education. According to the learned counsel, Rule 4 of the said Rules would be relevant. The said Rules specifically states that every clerk has to pass the post recruitment examination within four (4) years of his joining the service and within three (3) chances. The petitioner had passed the said examination within three (3) years i.e. in the year 1976, whereas Respondent No.3 though appointed in 1970 passed the said examination in the year 1982 in 11th attempt. Rule 4 states that in case a candidate does not pass the examination within three (3) chances mentioned above, the said candidate would lose the seniority of those who pass the recruitment examination before the said candidate. The Tribunal did not consider the said Rule in its correct perspective. According to the learned counsel, the said Rule has been totally ignored by the Tribunal. The learned counsel submits that the petitioner was promoted as a Head Clerk in the year 1991. The petitioner

ought to have been promoted as a Head Clerk ahead of Respondent No.3 as the petitioner was senior to the Respondent No.3 as Senior Clerk. The petitioner now has retired on attaining age of superannuation, the petitioner should be given deemed date of promotion i.e. the date the Respondent No.3 is promoted and the petitioner would be entitled for all monetary benefits, considering the petitioner to be Head Clerk as of the year 1987. The learned counsel submits that in view of the Circular of the Respondent-State dated 25.2.1965, the petitioner would be entitled for all arrears also.

5. Mrs.Deshpande, learned A.G.P. states that the Tribunal has considered the provisions of the Maharashtra Civil Services Rules. The Respondent No.3 was appointed prior to the petitioner as a Junior Clerk and the said seniority is considered by the Tribunal. The Government also considered the said aspect in its proper perspective. The seniority list at the behest of the Respondent No.3 was corrected. After the letter dated 19.10.1990, the Respondent

No.3 was given deemed date of promotion as Senior Clerk with effect from 4.7.1979.

6. We have considered the submissions canvassed by the learned counsel for respective parties. We have also gone through the judgment of the Tribunal.

7. Upon perusal of the judgment of the Tribunal, it is manifest that the Tribunal has not at all given any importance to the Post Recruitment (Ministerial) Examination Rules, Department of Education. The parties are bound by the said rules also. Rule 4 of the said Rules reads as under :-

"4) Every Clerk/Clerk-cum typist/typist should pass the examination within 4 years of his joining the service and within three chances. If the candidate's name is included in the post recruitment Training Class, he is expected to appear at the post-Recruitment Training

Examination and pass it as early as possible. If he passes the examination within three chances (To be taken at any three out of four successive examination held immediately after the completion of the training course to which he was admitted) he would retain his Original seniority. In case he does not pass the examination within the three chances mentioned above, he will also lose the seniority to all those who pass the P.R.T. Examination. Before he passes it. The candidates who are not admitted to the examination on account of their attendance in the training class being below the prescribed minimum, will be deemed to have failed in that P.R.T. Exam. and have lost one chance. A candidate will not be confirmed till he passes the examination."

8. The said Rule is unambiguous and does not require any interpretation. The said Rule

succinctly lays down that even if a candidate is appointed earlier in point of time but fails to pass the examination within the number of attempts permissible and a junior candidate passes the post recruitment examination prior to the senior candidate then the senior candidate loses his seniority.

9. The facts on record are undisputed. The petitioner had passed the said examination in the year 1976 within three years, whereas Respondent No.3 who was appointed earlier could pass the said examination only in the year 1982 in 11th attempt. At the said point of time, the Respondent No.3 had lost his seniority to the petitioner. On and from the date the petitioner had passed the said examination in 1976 and Respondent No.3 having failed to pass the said examination, the petitioner certainly will have to be held as senior to Respondent No.3.

10. It is also required to be considered that even the Department considered the petitioner to be senior and the petitioner was promoted as

Senior Clerk on 3.7.1979, whereas Respondent No.3 was promoted as Senior Clerk in the year 1982 much after the petitioner. Even in the seniority list of senior clerks, the petitioner is shown senior to the Respondent No.3. The petitioner ought to have been considered senior to the Respondent No.3 and ought to have been promoted as Head clerk prior to the Respondent No.3.

11. The Department promoted the Respondent No.3 on 1.11.1990 giving him deemed date of 1987, whereas the petitioner is promoted as a Head Clerk in the year 1991. The grievance of the petitioner is certainly justified. The said aspect in fact ought to have been considered by the Tribunal.

12. The Respondent No.3 also would not be in a position to take benefit of Rule 5 as the said exemption from appearing from the examination is granted to those persons who are employed three years prior to the enforcement of the said Rule. The respondent No.3 was appointed as a Junior Clerk on 28.9.1970 and the said Rules came into

force in July 1973 i.e. before the lapse of three (3) years of Respondent No.3 entering into the service. The Respondent No.3 would not get the benefit of Rule 3 of the said Rules also.

13. In light of the above, the impugned judgment passed by the Tribunal can not be sustained and deserves to be set aside and is hereby set aside. The Respondent Department shall notionally consider the petitioner to have been promoted as a Head Clerk in the year 1987 and the benefits therein till the date of his superannuation shall be notionally calculated for the purpose of retiral benefits and pension. The petitioner shall be paid retiral benefits and pension considering date of petitioner being promoted as Head Clerk in 1987, though we have not granted the payment of actual arrears for the period till petitioner attained age of superannuation.

14. Considering the fact that the Respondent No.3 has retired, the retiral benefits and pension of the Respondent No.3 shall not be

affected by this order.

15. Rule accordingly made absolute in above terms. No costs.

Sd/-
(K.L.WADANE, J.)

Sd/-
(S.V.GANGAPURWALA, J.)

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