

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7440 OF 2014

Krushana Dattarao Kamble
Age 25 years, Occ. Service
R/o Siddhartha Nagar,
Basmat, Dist. Hingoli.

..Petitioner

Versus

1. The State of Maharashtra
Through Secretary,
General Administration Deptt.
Mantralaya, Mumbai.

2. The Chief Executive Officer,
Zilla Parishad, Hingoli.

3. Dy. Chief Executive Officer,
Zilla Parishad, Hingoli.

4. Block Development Officer,
Panchayat Samiti, Hingoli.

5. Integrated Child Development
Project Officer, Hingoli.

..Respondents

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Advocate for Petitioner : Shri Dhoble V.L.
AGP for Respondent 1 : Shri Basarkar A.P.
Advocate for Respondents 2 to 5 : Shri Bagul S.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: May 02, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the order dated 13.8.2012, passed by respondent No.2 and the order dated 3.3.2014 passed by respondent No.1, by which, the petitioner has been reverted from Class III category to Class IV category.

5. The petitioner submits that he had passed his Marathi Typewriting examination on 13.3.2009 at the speed of 30 words per minute and the English Typewriting Examination on 17.8.2007 at the speed of 30 words per minute. He was appointed on compassionate basis by order dated 8.12.2009 and was made aware vide condition No.10 that he will have to pass the typewriting examination in Marathi and English within two years from the date of appointment, failing which, his appointment would be cancelled.

6. It is, therefore, submitted that considering that he had passed both the examinations, he was appointed in service. Nevertheless, he improved his English typewriting by passing the examination at the speed of 40 words per minute on 10.8.2013.

7. Shri Dhoble, learned Advocate for the petitioner submits that before respondent No.1 passed the impugned order, he had succeeded in passing the English typewriting examination at 40 words per minutes, notwithstanding the fact that no such condition was imposed upon him at

the time of his appointment.

8. He submits that both the lower authorities relied upon the Government Resolution dated 15.4.1991, which mandates vide Clause 2 that those candidates working in the Class IV category, who are eligible for promotion to the Class III category, should have passed their Marathi and English Typewriting Examinations at the speed of 30 words per minutes and 40 words per minutes respectively. If such examinations are not passed, they would be reverted back to the post in the Class IV category.

9. Shri Dhoble submits that this condition is applicable to to candidate seeking promotion. He has been appointed on compassionate ground in the Class III category itself and neither was this Government Resolution made applicable to him, nor was he made aware by imposing any condition in the appointment order. Copy of the said Government Resolution is taken on record and marked Exhibit "X" for identification.

10. Learned Advocate for respondents 2 to 5 has strenuously defended the impugned orders along with the learned AGP. Both of them submit that when the Government Resolution dated 15.4.1991 imposes certain conditions for entering the Class III category, such conditions are ipso facto applicable to the petitioner because he has also entered service in the Class III category.

11. Learned Advocates, however, are unable to point out any

communication issued to the petitioner prior to his appointment or any condition imposed through the appointment order to indicate either that the Government Resolution dated 15.4.1991 is applicable to him or that he has to pass his English Typewriting Examination at the speed of 40 words per minute. Both the learned Advocates are unable to confirm that this condition of 40 words per minute for English Typewriting was formally made applicable / imposed upon the petitioner.

12. I have considered the submissions of the learned Advocates.

13. It is not disputed that the petitioner has passed both the typewriting examinations at the speed of 30 words per minute on 17.8.2007 and 13.3.2009. Apparently, he has passed his examinations before issuance of his appointment order dated 8.12.2009. Neither does the appointment order mention that the Government Resolution dated 15.4.1991 would apply to the petitioner nor does the appointment order states that he shall have to pass his English Typewriting examination at the speed of 40 words per minute. In addition to these factors, the petitioner has improved his English typewriting by passing a further examination at the speed of 40 words per minutes on 10.8.2013.

14. In the light of the above, I do not find that any condition was imposed upon the petitioner that he will have to pass his English typewriting examination at the speed of 40 words per minutes within two years from the date of his appointment. Moreover, his very entry in the

service was in the Class III category on the compassionate ground and he has been now placed in the Class IV category.

15. Considering the above I find that the impugned judgments are unsustainable. Same are, therefore, quashed and set aside. The petitioner shall be placed in the Class III category on the post on which he had been appointed by order dated 8.12.2009 and shall, therefore, be entitled to all consequential benefits from the date of the impugned order of reversion dated 13.8.2012 which stands set aside.

16. The Writ Petition is, therefore, allowed and Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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