

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD**

WRIT PETITION NO. 2173 OF 2011

Bansilal Chabilal Dhangar ...Petitioner

VERSUS

The State of Maharashtra & ors. ...Respondents

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Shri S.R.Barlinge, advocate for petitioner
Smt. M.A.Deshpande, A.G.P. for respondent nos. 1 to 3
Shri Y.V.Kakade, advocate for Resp. No. 4

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CORAM : S.V.GANGAPURWALA & K.L.WADANE, JJ.

DATED : 10th January, 2017

O R D E R :-

Pursuant to the advertisement issued by the respondents, the petitioner was selected and appointed on the post of Clerk-cum-Typist from NT category in the year 2008 under appointment order, dated 17.6.2008. Respondent no.4 herein was not selected. He had also applied from NT category. Respondent no.4

filed Original Application No. 663 of 2008 before the Maharashtra Administrative Tribunal, Aurangabad challenging the appointment of the petitioner. Respondent no.4 basically relied upon the Government Resolution dated 19.3.1998 to contend that he would be entitled for additional 5 per cent grace marks. The said 5 per cent grace has to be computed from the total marks and not only the marks allotted in written test. The Tribunal accepted the said contention and allowed the Original Application thereby setting aside the appointment of the petitioner. Pursuant to the order passed by the Tribunal, the petitioner was terminated and Respondent no.4 was appointed. The order of the Tribunal is assailed in the present Writ Petition.

2 Mr. Barlinge, learned counsel submits that the Government Resolution, dated 19.3.1998 is misread by the Tribunal. The Tribunal has not considered the actual length of service rendered by respondent no.4 and without discussing anything

upon the said aspect straight way the Tribunal added 5 per cent marks from the total marks to be awarded in favour of respondent no.4. The said exercise was without any basis nor the said Government Resolution contemplates 5 per cent marks to be added to the marks of the candidate who has served as a part time worker.

3 Alternatively, the learned counsel further submits that there are still vacancies available and the petitioner can be accommodated in the said vacancy even from the open category. The learned counsel, on instructions, further states that the petitioner would not claim benefit of reservation.

4 Mrs. Deshpande, learned A.G.P. states that the Tribunal had interpreted the Government Resolution dated 19.3.1998, by virtue of which the appointment given by respondent was set aside. The learned A.G.P., on instructions, states that there are total 12 vacancies i.e. 13 vacancies are available in open category, however, 2 excess

posts are filled in from O.B.C. category and one excess post from NT category. The petitioner and respondent no.4 both are claiming from NT category.

5 We have also heard Mr. Kakade, learned counsel for respondent no.4. According to him, the Tribunal has rightly interpreted the Government Resolution dated 19.3.1998. No error has been committed by the Tribunal while allowing the Original Application.

6 We have considered the submissions canvassed by the learned counsel for respective parties. It is not disputed that pursuant to the selection process the petitioner came to be selected. Even appointment order was issued in favour of the petitioner. The petitioner pursuant to the appointment order had joined the post and was working as Clerk-cum-Typist. The petitioner was appointed from NT category.

7 The bone of contention of learned counsel for respondent no.4 is that as per the Government Resolution, dated 19.3.1998, 5 per cent more marks are to be awarded to the person who had served as a part time employee. The said 5 per cent marks are to be awarded from total marks i.e. the written as well as oral test and the Department in the selection process had calculated 5 per cent marks only from the marks obtained in the written test.

8 The Government Resolution, dated 19.3.1998 lays down various criteria. It is not that for each and every candidate who has worked as part time employee, 5 per cent marks are to be added. The marks are to be given according to the length of service rendered by the person as part time employee. For every year the person who has worked as part time employee, 2 per cent marks are to be added, however, maximum additional marks to be allowed should not exceed 5 per cent. The Tribunal has nowhere ascertained about the period

for which respondent no.4 has worked as a part time employee, while straight way allotting 5 per cent marks from the total marks.

9 It is a matter of fact that respondent no.4 has also been given appointment order after decision of the Tribunal and petitioner is terminated from service. It would be inappropriate now to dislodge respondent no.4 from the employment. The petitioner is also selected by undergoing proper selection process and was appointed.

10 It is also submission by the State that still there are 12 posts vacant. The petitioner has undertaken that he will not claim the benefit of reservation. The respondent no.2 shall appoint the petitioner on the post of Clerk-cum-Typist i.e. on the post for which the petitioner was selected and appointed earlier. However, the appointment of the petitioner shall be considered from the open category and the petitioner will not

claim benefit of reservation on the said post.

As such, the Writ Petition is allowed. The termination order is quashed and set aside. The petitioner will not be entitled for the back wages from the date of termination till the date of this order, however, the said period will be considered for continuity and all other consequential benefits.

Rule is accordingly made absolute in the above terms. No costs.

(K.L.WADANE, J.) (S.V.GANGAPURWALA, J.)

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