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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1842 OF 2016

The State of Maharashtra & Anr.	..Petitioners
Vs.	
Bhaskar Trimbak Darade	..Respondent

WITH

WRIT PETITION NO.1391 OF 2016

The State of Maharashtra & Ors.	..Petitioners
Vs.	
Shivaji Hambir Patil & Anr.	..Respondents

Mr. C.P. Yadav, AGP for Petitioner-State.
Mr. Vikram Pai for Respondent in WP 1842/2016.
Mr. Sagar A. Mane for Respondent Nos.1 & 2 in WP 1391/2016.

**CORAM: R.M. BORDE AND
A.S. GADKARI, JJ.**

DATE: 16 FEBRUARY 2017.

ORAL JUDGMENT (PER R.M. BORDE, J.)-

Heard.

2] Rule. Rule made returnable forthwith by consent of learned
counsel for the parties at the admission stage.

3] The State Government is objecting to the Order dated 12th August 2015 passed by the Maharashtra Administrative Tribunal in Original Application No.933 of 2012 along with Original Application No.1140 of 2013, thereby allowing the applications and directing the petitioners to decide the claim of the applicants in the in the Original Applications in accordance with the Government Resolution dated 30.7.2008 and not in accordance with Government Resolution dated 28.11.2011. It is further directed to the petitioners to act in accordance with the aforesaid Government Resolution and if there are no other objections, then to appoint the Original Applicants to the post applied by them within a period of eight weeks from the date of Order.

4] The Original Applicants are the ex-servicemen from the Indian Army who have retired after putting 24 years of service. It is matter of record that Petitioner-State advertised vacancies for filling up various posts and in pursuance to advertisement, original applicants participated in selection process and upon finding them eligible, they were called for document verification. The original applicants participated in the process of selection conducted by the State Government for making appointments of Daftkar Karkoon, Canal Inspector and Measurer. The grievance raised by

the petitioner-State in nutshell is that, Original Applicants are required to clear MS-CIT examination in order to claim employment which according to the Original Applicants is not essential qualification as prescribed under the Recruitment Rules notified on 30th July 2008. Such a condition prescribing production of requisite certificate i.e. MS-CIT was incorporated in revised Rules of 2011. The original applicants contend that, the revised Rules shall not apply in respect of the vacancies which occurred before enforcement of the new Rules and they shall be governed by the Rules of 2008. In order to substantiate their contention, reliance is placed on the decision of the Supreme Court in the matter ***Kulwant Singh & Ors. Vs. Daya Ram & Ors, reported in (2015) 1 SCC (L & S.) 625 = (2015) 3 SCC 177.*** The Maharashtra Administrative Tribunal applying the ration laid down by the Supreme Court in the aforesaid matter, recorded the conclusion that the Original Applicants shall not be governed by the Rules of 2011 and shall be governed by the Rules of 2008 and as such the State cannot insist upon the candidates participating in the process of selection to acquire the qualification i.e. MS-CIT.

5] We have perused the Judgment delivered by the Supreme Court in the matter of ***Kulwant Singh & Ors. Vs. Daya Ram & Ors***

(supra). The appellants before the Supreme Court and the respondent Nos.1 to 34 were recruited as constables in Chandigarh Police by the Union Territory, Chandigarh and they were governed by the Rules as applicable to the Union Territory of Chandigarh. Rule 13.7 of the Rules which dealt with the promotions to the posts of Head Constables from the constables prior to the amendment of the Rules provided that the names of Police Constables desirous of securing admission to Lower School Course shall be entered in List "B" in order of merit determined by the Departmental Promotion Committee on the basis of test scheme, (i) Parade, (ii) written test in general law and (iii) examination of service record. After the amendment of the said Rule a batch of confirmed constables was sent to Lower School Course at Police Training College, Phillaur. The said course was for six months duration and it was conducted twice a year- one commencing in April and the other in October. A batch of 15 constables duly selected on the basis of the unamended Rules was sent for Lower School Course in April 1988. Thereafter, by Notification dated 17.6.1988 Rule 13.7 was amended by the Punjab Police (Chandigarh) Amendment Rules, 1988 which came into force on the date of publication in the Chandigarh Administration Gazette . After the relevant Rule was amended, the Senior Superintendent of Police, Chandigarh Administration

issued a letter dated 27.6.1988 to the effect that a test would be held some time in September 1988 as laid down in the amendment Rules. Being aggrieved by the said Order, Achhar Chand and 24 others challenged the validity of the said administrative Order. It was contended before the Tribunal that, as the employees were confirmed as constables, they had acquired a valuable right to be considered for admission to the Lower School Course in accordance with the pre-amended Rules and the amended Rule shall not be applied in their case. The contention raised by employees was upheld by the Administrative Tribunal. The matter reached the Supreme Court. While dealing with the contention raised in the matter, the Hon'ble Supreme Court has observed in paragraphs-**38 to 42** as under:-

“38] Keeping the aforesaid proposition of law in mind we shall proceed to deal with various other facets which have been canvassed before us, for we feel it is not a case which can be shut down by holding that the order dated 8.1.1990 having gone unassailed, the doors of justice from all quarters get closed. The tribunal in Achhar Chand's case, which was decided on 27.6.1988, had strictly gone by the principles stated in Y.V. Rangaiah (supra) by directing to prepare a fresh list of Constables for sending to Lower School Course at Police Training College, Phillaur, in accordance with the pre-amended Rule as far as vacancies of Head Constables which had come into existence prior to notification dated 17.6.1988. It had further clarified that it is open to the respondent to act in accordance with the amended Rule in respect of the vacancies/posts of Head Constables which may have occurred subsequent to coming into force of the amended Rule. Submission of Mr. Gupta is that the said order was not only in

accord with Y.V. Rangaiah (supra) but also in consonance with the principles stated in P. Ganeshwar Rao (supra), R. Dayal (supra), B.L. Gupta (supra) and Arjun Singh Rathore (supra).

39] In P. Ganeshwar Rao (supra) the Court reproduced a passage from Y.V. Rangaiah (supra) and observed that it appositely applied to the facts of the said case. The question that emerged for consideration in the said case was whether the amendment made on April 28, 1980 to the Special Rules in the said case applied only to the vacancies that arose after the date on which the amendment came into force or whether it applied to the vacancies which had arisen before the said date also. Interpreting the Rule the Court observed that the amendment on April 28, 1980 did not apply to the vacancies that had arisen prior to the date of amendment. The ratio of the said decision is that the vacancies that had arisen after the amendment would be governed by the amended Rule and the vacancies that had arisen prior to the amendment would be governed by the unamended Rule.

40] In R. Dayal (supra) the Court was considering the effect of Rule 24-A of the Rajasthan Service of Engineers (Building and Roads Branch) Rules, 1954 (as amended). It pertained to the vacancies those were filled up prior to the amended Rule. Question arose whether the vacancies were prepared to be filled up under the amended rule or unamended rule. On behalf of the respondents therein reliance was placed on Y.V. Rangaiah (supra). The Court, appreciating the factual scenario and the rule position, came to hold as follows: (R. Dayal Case SCC 422 P.422 para-8):-

“But the question is whether selection would be made, in the case of appointment to the vacancies which admittedly arose after the amendment of the Rules came into force, according to the amended Rules or in terms of Rule 9 read with Rules 23 and 24-A, as mentioned hereinbefore. This Court has considered the similar question in para 9 of the judgment above-cited. This Court has specifically laid that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and

not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in in accordance with the law existing as on the date when the vacancies arose.”

41] In B.L. Gupta (supra) the Court reiterated the principle stated in Y.V. Rangaiah (supra), P. Ganeshwar Rao (supra) and A.A. Calton v. Director of Education[21] wherein it had been held that vacancies which had occurred prior to the amendment of rules were governed by the old rules and not by the amended rules. In Arjun Singh Rathore (supra) the views stated in Y.V. Rangaiah (supra) and R. Dayal (supra) were reiterated.

42] The reference to the aforesaid proposition of law makes it vivid that the decision rendered by the tribunal in Achhar Chand’s case was in accord with the precedent of this Court and, in fact, the tribunal clearly meant that.

6] On perusal of the facts of the aforesaid reported matter, as well as the ratio laid down by the Supreme Court, according to us the Maharashtra Administrative Tribunal has committed an error in directing consideration of claims of original applicants in consonance with unamended Rules. The challenge in the reported matter relates to recruitment or promotion of in service candidates. The candidates in reported matter who were claiming their entitlement to admission to Lower School course which was a essential requirement for securing further promotion. The Hon'ble Apex Court took a view that in service candidates have vested right to be granted by unamended rule and by virtue of

amendment their vested right cannot be taken away insofar as such of those vacancies which occurred prior to the date of amendment. The factual matrix of the instant matter is totally different. The petitioner-State has issued an advertisement for direct recruitment and the respondents are not in service candidates. The principle laid down in Kulwant Singh's matter as such cannot be made applicable to the instant matter.

7] The original applicants/respondents invited our attention to the reported judgment in the matter of ***P. Ganeshwar Rao & Ors. Vs. State of Andhra Pradesh & Ors, reported in 1988 (Supp) SCC 740***. However, the facts giving rise to the appeal before the Supreme Court are also totally different and are akin to the facts arising in the Kulwant Singh's matter. The appellants who raised the grievance in respect amended Rules were in service candidates and the grievance was in respect of the vacancies prescribed for direct recruitment which affected the entitlement of in service candidates adversely. The ration laid down by the Supreme Court in reported judgment cannot be applied to the instant matter.

8] It is contended on behalf of the State placing reliance on the decision of the Apex Court in the matter of ***Rakesh Kumar Sharma & Ors.***

Vs. Govt. of NCT of Delhi & Ors, reported in 2013 (10) Scale 42, that the candidate applying for the post shall possession the requisite qualification on the date of advertisement. The proposition canvased by the State appears to be proper and deserves to be accepted. Apart from this the advertisement issued by the Petitioner/State make it abundantly clear that the candidates applying for post shall possess necessary qualification on the date of presentation of the application. Admittedly, the respondents did not possess the requisite qualification on the date of issuance of advertisement. Apart from this, the candidates-respondents who participated in selection process were fully aware about the essential precondition relating to prescription of qualification and were aware that they did not possess the requisite qualification and as such they were ineligible to participate in the selection process. Having participated in the process and having failed, they cannot be permitted to challenge the validity of the selection-process or the qualification requirements prescribed under the advertisement. In this regard, reliance can be placed on the decision of Hon”ble Supreme Court in the matter of ***Dhananjay Malik & Ors. Vs. State of Uttaranchal & Ors, reported in (2008) 4 SCC 171.***

9] For the reasons aforesated, the both petitions presented by the State deserve to be allowed. Hence, the following Order:

- (i) Both Writ Petitions are allowed;
- (ii) The Order dated 12th August 2015 passed by the Maharashtra Administrative Tribunal in Original Application No.933 of 2012 along with Original Application No.1140 of 2013 are quashed and set aside;
- (iii) Rule made absolute;
- (iv) No costs.

(A.S. GADKARI,J.)

(R.M. BORDE, J.)