

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 50 OF 2017

Mrs. Manjusha Arun JoshiPetitioner

V/s.

The State of Maharashtra and

Ors.Respondents

Mr. Aniruddha A. Garge, Advocate for the petitioner.

Mr. Vishal Thadani, A.G.P. for the State, Respondents
no.1 to 4.

CORAM :- SMT. V.K. TAHILRAMANI, &
SANDEEP K. SHINDE, JJ.

RESID ON :- 6 JUNE, 2017.

PRON ON :- 14 JUNE, 2017.

ORAL JUDGMENT :- (Per :- SANDEEP K. SHINDE, J)

- 1). Heard both sides.
- 2). Rule. Rule made returnable forthwith.
Heard finally by consent.
- 3). Petitioner, original applicant in O.A. No. 603 of 2014 before the Maharashtra Administrative Tribunal, Mumbai Bench at Mumbai, has filed this

petition under Article 226 of the Constitution of India, *inter-alia*, challenging the judgment and order dated 18th February, 2016 whereby his original application was dismissed by the Maharashtra Administrative Tribunal.

4). The facts giving rise to this petition to be stated in short are as under :-

. The petitioner applicant was appointed as Craft Instructor in Dress Making, initially on 23rd August, 1996 in pay-scale of Rs. 1400-40-1600-50-2000-60-2600. Her appointment was extended by a further period of six months by order dated 28th January, 1997. It appears, the petitioner was continued in service and her services were regularised w.e.f. 8th March, 1999 by order dated 21st July, 1999. Her services were terminated on 25th August, 2005, for want of requisite qualification meant for the post she was holding. Resultantly, the petitioner filed application, O.A. No. 755 of 2005. The Maharashtra Administrative Tribunal vide order dated 24th March, 2006 quashed the termination order dated 25th August, 2005 and directed the respondents to afford her an opportunity to improve her qualification within a reasonable period and if she fails to secure the qualification, the respondents were free to follow the procedure and take suitable action. It appears her

services were terminated as she was not qualified to be appointed to the said post in terms of the recruitment rules framed by the State. Be that as it may, it appears in terms of the order dated 24th March, 2006 the respondents afforded an opportunity to the petitioner vide letter dated 24 August, 2006 for improving her qualification for the post of Craft Instructor (Dress Making) within a year. The petitioner, however, failed to improve her qualification within one year and as such sought extension which was granted by the State for a period of one more year. The petitioner, acquired the requisite qualification on 7 March, 2008.

5). The record indicates that, after reinstatement of the petitioner in the service in terms of the order dated 24 August, 2006 passed by the Tribunal, the petitioner was not paid salary in the regular pay-scale meant for the said post. That after acquiring the qualification i.e. on 7 March, 2008 the petitioner claimed continuity of service from 8th March, 1999 a date on which her services were regularised. The petitioner equally claimed that, she was entitled to receive all the benefits accrued to the said post from the date of regularisation i.e. w.e.f. 8 March, 1999 in accordance with the Sixth Pay Commission. The petitioner also claimed the arrears

of salary in accordance with the Sixth Pay Commission w.e.f. 8th March, 1999. In short, the petitioner claimed all service benefits including arrears of pay w.e.f. 8th March, 1999 though she acquired requisite qualification for the post of Photographer only on 7th March, 2008.

6). The respondents denied the claim of the petitioner and being aggrieved the petitioner preferred O.A. No. 603 of 2014 before the Maharashtra Administrative Tribunal, Mumbai Bench. The Tribunal denied the claim and dismissed the O.A. 603/2014 vide order dated 18th February, 2016 which is impugned in the petition.

7). Mr. Garge, Learned Counsel appearing for the petitioner would contend that the Administrative Tribunal vide order dated 24th March, 2006 in O.A. No. 756 of 2005 directed the State to reinstate the petitioner in service and therefore the petitioner is entitled to claim all the benefits from the date on which her services were initially regularised i.e. w.e.f. 8th March, 1999. Mr. Garge, would further submit that, though the petitioner has acquired the requisite qualifications in terms of Recruitment Rules in March, 2008 but since she was continued in service of the State on the very post, she is entitled to receive all the service benefits, w.e.f. 8th March, 1999.

He further contended that, once the petitioner was reinstated by MAT vide order dated 24 March, 2006, the respondents could not have issued re-appointment order to her or regularise her services w.e.f. 8th March, 2011.

8). The State countered the claim by filing affidavit-in-reply contending that her initial appointment in August, 1996 was on ad-hoc basis and even though her services were regularised w.e.f. 8th March, 1999 she did not have the requisite qualification. The State would contend that, the services of the petitioner were continued pursuant to the order of the Maharashtra Administrative Tribunal dated 24th March, 2006 in O.A. No. 756 of 2005 and that was done only with a view to give a chance to the petitioner to improve her qualification. The State further contended that a person cannot be appointed on a regular basis unless he has the requisite qualification for the post as per the Recruitment Rules.

9). It is not in dispute that, when the petitioner was appointed initially on ad-hoc basis on 24th March, 2006 as Craft Instructor in Dress Making, she was not possessing the requisite qualifications. It is not in dispute that, she acquired the requisite qualification on 7th March, 2008. The

appointment of the petitioner in the very post is subject to Recruitment Rules called the Craft Instructor (Class-III) in Industrial Training Institute and Basic Training and Related Instructions Centre in the Department of Technical Education (Recruitment) Rules, 1983. The relevant Rule reads as under :-

“3(B)II(a) : a Diploma at least in second class in appropriate branch of Engineering or Technology at the Board of Technical Education, Bombay its equivalent qualification; or
(b) have passed the Second School Certificate Examination with Mathematics and Science or its equivalent Examination; and possess either -
(i) National Apprenticeship Certificate in the appropriate Trade of the National Council for Training in Vocational Trades or its equivalent; and
(iii) have practical experience in appropriate trade for a period of not less than four years including the minimum period prescribed for training by the persons possessing the qualifications mentioned in sub-clause (a) and b(i), (ii) and (iii) of Clause (B) of this rule.”

10). Upon perusal of the Recruitment Rules, it is clear that after acquiring the necessary qualification for the post in question, a candidate

should have a practical experience in appropriate trade for a period of not less than four years including the minimum period prescribed for training by the persons possessing qualification mentioned in Sub-Clause (a),(b)(i), (ii), (iii) of Clause (B) i.e. of these Rules. It therefore follows, the practical experience is to be counted on and from the date on which a candidate possesses the qualification for the appropriate trade. Since the petitioner possessed the qualification on 7th March, 2008 the respondent-State granted her regular appointment, three years after her acquiring necessary qualification, i.e. w.e.f. 8th March, 2011.

11). The Learned Counsel appearing for the State has correctly relied upon the decision in **Ashwani Kumar and Ors. V/s. State of Bihar and Ors. reported in (1997) 2 Supreme Court Cases page 1** and submitted that if the initial entry is found to be totally illegal or in disregard to the established rules and regulations governing such recruitment, such appointment cannot be regularised.

12). In the case in hand, on the date of the initial appointment of the petitioner on temporary basis the Recruitment Rules as stated hereinabove were in force. Admittedly, the petitioner was not

possessing requisite qualification to hold the said post and therefore the Administrative Tribunal, at first instance, correctly afforded her opportunity to qualify herself. It was not an order to reinstate the petitioner. Petitioner qualified herself in March, 2008. The Recruitment Rules, for the post, require experience after possessing qualification. In the given set of facts, the Tribunal has correctly denied the claim of the petitioner and rejected the O.A. Resultantly, there is no substance in the petition and the same is dismissed with no order as to costs. Rule is discharged.

(SANDEEP K. SHINDE, J) (SMT. V.K. TAHILRAMANI, J)