

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12062 OF 2016

The State of Maharashtra & Anr.	...Petitioners
Versus	
Siddharth Bhaurao Nagarale	...Respondent

**WITH
WRIT PETITION NO. 12830 OF 2016**

The State of Maharashtra & Anr.	...Petitioners
Versus	
Vivek Chandrashekhar Byale	...Respondent

Mr. N. C. Walimbe – AGP for Petitioners in both Petitions.
Mr. Y. B. Lengare for Respondent in WP 12062 of 2016.
Mr. B. A. Bandiwadekar for Respondent in WP 12830 of 2016.

CORAM: A. S. OKA & M. S. SONAK, JJ.

DATE : AUGUST 20 2018

P.C. :

1] Heard the learned counsel for the parties.

2] The challenge in both these petitions is to the common judgment and order dated 6th January 2015 made by the Maharashtra Administrative Tribunal (MAT) allowing

Original Application Nos. 280 of 2011 and 281 of 2011 instituted by the respondents Siddharth Nagarale and Vivek Byale, in order to question the termination of their services as junior auditors on account of their alleged failure to acquire knowledge of computer operations within two years from the dates of their respective appointments.

3] Nagarale (respondent in WP No. 12062 of 2016), who belongs to SC Category, was appointed as junior auditor vide order dated 27th February 2004 under category of nominee of project affected persons. At the time of his appointment, Nagarale had already cleared the Maharashtra State Certificate of Information Technology (MS-CIT) examination held on 18th October 2008. Nagarale had also completed six months course in computer operations in July 2000. These facts are reflected in the service book of Nagarale maintained by the concerned department of the petitioners – State. On the ground that Nagarale did not possess a certificate in computer operations recognized by the Government of Maharashtra, the services of Nagarale were terminated vide order dated 16th March 2011. However, in compliance with the interim

order dated 3rd May 2011 made by the MAT in Original Application No. 280 of 2011, Nagarale was reinstated in service. Finally, by impugned judgment and order dated 6th January 2015, the MAT, allowed Original Application No. 280 of 2011 instituted by Nagarale and set aside the termination order dated 16th March 2011.

4] Byale (respondent in WP No. 12830 of 2016) was appointed as a junior auditor vide order dated 24th October 2005 under category of nominee of freedom fighters. At the time of his appointment, he had completed MS-CIT course examination held in January 2002. This fact is recorded in Byale's service book maintained by the concerned department of the petitioners - State. On the ground that Byale did not possess a certificate in computer operations recognized by the Government of Maharashtra, the services of Byale were terminated vide order dated 16th March 2011. However, in compliance with the interim order dated 3rd May 2011 made by the MAT in Original Application No. 281 of 2011, Byale was reinstated in service. Finally, by impugned judgment and order dated 6th January 2015, the MAT, allowed Original Application No.

281 of 2011 instituted by Byale and set aside the termination order dated 16th March 2011.

5] Mr. Walimbe, the learned AGP for the petitioners - State submits that in terms of the Maharashtra Civil Services (Requirement of Knowledge of Computer Operation) Rules, 1999 (said Rules) one of the essential qualifications for appointments to Group A, B or C posts in Government Departments is the certificate in computer operations recognized by the Government of Maharashtra. He submits that Rule 4 of the said Rules provides that appointees to Group A, B and C posts in the Government Departments should produce such certificate within two years from the date of their respective dates of appointments. Mr. Walimbe submits that in the present case, the qualifications already possessed by the respondents were not the qualifications as contemplated by the said Rules. He submits that the qualifications / certificate as contemplated by the said Rules were produced by the respondents only in the year 2008 i.e. beyond the period of two years from the dates of their respective appointments. He points out that the State

itself had granted extension upto December 2007 and since the respondents were unable to produce such certificates before 2007, there was no legal infirmity in the termination orders made. Mr. Walimbe submits that in as much as these aspects have not been properly considered by the MAT, the impugned judgment and order warrants interference.

6] Mr. Walimbe submits that the MAT failed to appreciate that the facts in case of ***Sachin s/o. Vitthalrao Kshirsagar vs. The State of Maharashtra & Ors. (Writ Petition No. 4872 of 2012) decided by the Division Bench of this Court on 14th March 2013*** were different and the said decision therefore, could not have been relied upon by the MAT to grant relief to the respondents. Mr. Walimbe points out that in case of *Sachin* (supra), the employee had already appeared for the prescribed examination but there was delay in declaration of the results. Mr. Walimbe submits that the MAT has erred in relying upon *Sachin* (supra) and granted relief to the respondents.

7] Mr. Lengare and Mr. Bandiwadekar, learned counsel for the respondents point out that both the respondents possessed knowledge of computer operations at the time of their initial appointments as junior auditors. They point out that this fact was clearly reflected in their service books. They submit that the Rules nowhere contemplate termination of services for any alleged failure to obtain certificate in computer operations recognized by the Government of Maharashtra. In any case, they point out that even such certificate was ultimately obtained by the respondents much before the termination of their services. They point out that even in case of *Sachin* (supra) the employee concerned had appeared for the prescribed examination beyond the period of 2 years from the date of his appointment. For all these reasons, learned counsel submits that there is absolutely no legal infirmity in the view taken by the MAT so as to warrant any interference.

8] The rival contentions now fall for our determination.

9] There are findings of fact recorded by the MAT that both the respondents had produced on the dates of their

respective appointments as junior auditors certificates to indicate that they had knowledge of computer operations. These findings are not only on the basis of the actual certificates annexed to the Original Applications instituted by the respondents but also backed by the entries in the service books maintained by the petitioners – State.

10] There is also no serious dispute that in the years 2007-2008, the respondents did obtain the certificates in computer operations, which according to the petitioners – State are the certificates contemplated by Rule 3 of the said Rules. This means that on the dates of termination of the respondents services vide orders dated 16th March 2011, the respondents did possess the prescribed certificates in relation to knowledge of computer operations. The affidavit in reply filed by the petitioners – State before the MAT also accepts this position. In fact, the MAT, in paragraph 8 of the impugned judgment and order has quoted paragraph 8 of the affidavit in reply filed by the petitioners – State in Original Application No. 281 of 2011 instituted by Byale. The MAT has also recorded that the affidavit in reply in both the Original Applications are

almost identical.

11] In the aforesaid circumstances, there is really no case made out to interfere with the findings of fact recorded by the MAT *inter alia* to the effect that the respondents did possess the necessary certificates in relation to knowledge in computer operations at the time of their initial appointments in the years 2004-2005. In addition to this factor, we are unable to accept Mr. Walimbe's contention that there was material difference in the case of *Sachin* (supra) and the present cases. Admittedly, the decision of the Division Bench of this Court in case of *Sachin* (supra) had been challenged by the petitioners – State before the Hon'ble Supreme Court but such challenge was not successful. The MAT, has therefore, quite correctly relied upon *Sachin* (supra) whilst granting relief to the respondents by the impugned judgment and order.

12] In *Sachin* (supra), the petitioner (Sachin) was appointed as a clerk cum typist in the irrigation department on 30th July 2009. The appointment was subject to the condition that Sachin must pass the typing

test in Marathi and English within a period of one year from the date of appointment. This period was extended as a policy measure incorporated in GR dated 8th September 1997 to appointees on compassionate basis. Sachin was issued a show cause notice some time in 2011, requiring him to show cause as to why his services should not be terminated for failure to acquire the typing qualifications within two years from the date of his appointment. Sachin filed reply dated 25th November 2011 informing the State that he had appeared for the typing test in November 2011 and therefore, his services may not be terminated. However, services of Sachin came to be terminated on 30th December 2011. On 31st January 2012, Sachin was declared as passed in the typing test at which he had appeared in November 2011. Based upon this factual situation, the Division Bench of this Court, vide its judgment and order dated 14th March 2013 set aside the termination order and directed reinstatement of Sachin. The relevant observations are at paragraphs 9 and 10, which read as follows :

“9. Having heard the learned counsel for the parties and having regard to the fact that the petitioners were appointed as Clerk-cum-Typist on compassionate ground i.e. on account of death of

their respective fathers, who were in Government service, and also having regard to the fact that the petitioners had already appeared at the typist test in English and in Marathi in November, 2011, and this fact was brought to the notice of the respondents and ultimately the results were declared on 31.1.2012 and both the petitioners are declared to have passed the typing test in English as well as in Marathi, the termination of the petitioners' services was not justified. In the peculiar facts and circumstances of the case and as stated above, having regard to the fact that the petitioners were appointed on compassionate basis and that they had passed the typing test in English and in Marathi, which was conducted prior to termination of their services, we are of the view that the petitions deserve to be allowed and the respondents are required to be directed to continue the petitioners in service on the post of Clerk-cum-Typist.

10. Accordingly, both the writ petitions are allowed. The impugned termination orders dated 30.12.2011 are quashed and set aside. The respondents are directed to reinstate the petitioners in service with continuity of service for all purposes except the back wages. The respondents shall accordingly implement these directions and permit them to resume their duty immediately and in any case at least from 1.4.2013 onwards, but with continuity of service for all purposes except back wages. Rule is made absolute accordingly."

13] There is no dispute that the Special Leave Petition instituted by the petitioners – State against the judgment and order dated 14th March 2013 in case of *Sachin* (supra) was dismissed by the Hon'ble Supreme Court. In *Sachin* (supra) as well as the connected **Writ Petition No. 6676**

of 2012 (*Gajanan s/o. Khandu Sahane vs. The State of Maharashtra & Ors.*) there was no dispute that the employees had appeared for the test only after expiry of a period of two years from the dates of their appointments on compassionate basis. There is no dispute that the respondents in the present matters were appointed under special categories and have cleared the prescribed tests relating to knowledge in computer operations much prior to the date of termination of their services, though, after the period of two years from the dates of their respective appointments under special categories. The ratio in *Sachin* (supra) was therefore quite rightly applied by the MAT to the case of the respondents. Besides, as noted earlier, there are findings of fact that the respondents in fact possessed knowledge of computer operations on the dates of their initial appointments itself. To that extent, it is clear that the case of the respondents is on a better footing than that of *Sachin* (supra) or *Gajanan Sahane* (supra).

14] On cumulative consideration of the aforesaid therefore, we see no good ground to interfere with the impugned judgment and order made by the MAT. These

petitions are therefore dismissed. There shall however be no order as to costs

(M.S. SONAK, J.)

(A. S. OKA, J.)

CHANDKA