

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

WRIT PETITION NO. 367 OF 2018

Smt. Manda (Diksha) Vijay Thokale ...Petitioner
Versus
State of Maharashtra & Ors. ...Respondents

Mr. Vipul Bodhare i/b. Mr. Ashok M. Joshi for Petitioner.
Mr. N. C. Walimbe – AGP for Respondents – State.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 12th MARCH 2018

ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgment and order dated 28th September 2016 made by the Maharashtra Administrative Tribunal (MAT) in Original Application No. 923 of 2014 instituted by the petitioner.

4] The petitioner was appointed as clerk-typist (Group 'C' post) by the order dated 23rd June 2010 on compassionate basis. In her appointment letter, there was a clear condition which required her to submit certificates of passing typing and MS-CIT within two years from the date of appointment. Since no such certificates were submitted, the show cause notice dated 10th September 2013 was issued to the petitioner requiring her to show cause as to why her services should not be terminated. The petitioner submitted response dated 20th September 2013, in which she pointed out that she has already submitted the certificate of passing typing test in May 2013 and she requested for extension by one year in order to submit MS-CIT certificate. By order dated 16th December 2013 however, the services of the petitioner came to be terminated.

5] The petitioner instituted O.A. No.923 of 2014 to question the termination order dated 16th December 2013. The MAT, by the impugned judgment and order has partly allowed the OA. The MAT has held that there was no infirmity in the impugned termination order dated 16th

December 2013, since, the petitioner, failed to submit the MS-CIT certificate within the prescribed period. However, the MAT also held that the request of the petitioner to consider her for Group 'D' post ought to have been considered by the respondents and accordingly, MAT directed to the respondents to appoint the petitioner to Group 'D' post within one month from the date of the impugned judgment and order. There is no dispute that the petitioner, in compliance with this direction in the impugned judgment and order has been appointed to Group 'D' post.

6] Mr. Bodhare, the learned counsel for the petitioner submits that there is nothing in the Maharashtra Civil Services (Requirement of Knowledge of Computer Operation) Rules, 1999 (1999 Rules), which requires an appointee on compassionate basis to produce MS-CIT Certificate within 2 years from the date of appointment. In any case, Mr. Bodhare submits that Rule 6 of the 1999 Rules confers upon the respondents power of relaxation. He submits that such power has been relaxed in similar cases. He submits that since such power is not being

exercised in the case of the petitioner, there is discrimination and infringement of the Article 14 of the Constitution of India.

7] Mr. Bodhare submits that the respondents were not justified in relying upon the Government Resolution (G.R.) dated 8th September 1997 in order to terminate the services of the petitioner. He submits that the G.R. dated 8th September 1997 is clearly inconsistent with the 1999 Rules. He submits that in case of any dispute between the provisions of G.R. and statutory rules, it is later which must prevail. For all such reasons, Mr. Bodhare submits that the impugned judgment and order, to the extent, it does not restore the petitioner to the post of clerk typist along with all consequential benefits, warrants interference.

8] Mr. Walimbe, the learned AGP submits that both in terms of the recruitment rules as also the appointment order issued to the petitioner, it was made very clear that the petitioner has to acquire typing and computer (MS-CIT) qualifications within two years from the date of appointment. Admittedly, the petitioner failed to comply

with this requirement, at least in so far as MS-CIT qualification is concerned. Mr. Walimbe submits that the petitioner was appointed on compassionate basis and therefore, her appointment is governed by the GR dated 8th September 1997. In terms of this GR, if, an appointee to Group 'C' post like clerk-typist is unable to produce typing / MS-CIT certificate, then, such appointee cannot insist upon continuance in the Group 'C' post. Mr. Walimbe submits that the termination order was issued after due compliance with principles of natural justice and fair play. For all these reasons, Mr. Walimbe submits that there is no case made out to interfere with the impugned judgment and order made by the MAT.

9] The rival contentions now fall for our determination.

10] There is no dispute that the petitioner came to be appointed as a clerk-typist, which is a Group 'C' post only on compassionate basis. Normally, compassionate appointment, which is itself an exception to the general rule, has to be made to the lowest rung of the hierarchy of post and that too provided that compassionate appointee

fulfill the qualifications prescribed in the recruitment rules suitable to such appointment.

11] There is no merit in the contention of Mr. Bodhare that there is no requirement for obtaining a typing certificate and MS-CIT certificates for appointment to the post of clerk-typist in the 1999 Rules. In fact, Rule 3 of the the 1999 Rules, very clearly provides that notwithstanding anything contained in any rules regulating recruitment to Groups A, B and C posts in the Government Departments, offices, or any orders or instruments made in that behalf, the knowledge of computer operation of the level specified by the Government by order, issued from time to time, in this behalf, shall be an additional essential qualification for appointment to any Group A, Group B or Group C post in the Government Department *“excluding” the appointments made after the date of commencement of these rules on the basis of the selection process started before such commencement date.* There is no dispute that the commencement date of the 1999 Rule is 25th January 1999 and whereas, the petitioner, came to be appointed as clerk-typist only 23rd June 2010.

12] Rule 4(a) of the 1999 Rules further provides that every person who is holding, on the date of commencement of these rules, any Group A, Group B or Group C post in any Government Department shall submit a certificate within a period of two years from such commencement date. This sub-rule 4(a) is inapplicable to the case of the petitioner. Since, the petitioner was appointed on 23rd June 2010, i.e., after the commencement of 1999 Rules on 25th January 1999.

13] Rule 4(b) of the 1999 Rules provides that every person who is appointed to any Group A, Group B or Group C post in any Government Department, after the commencement of these rules as a result of the selection process started before such commencement date, shall submit a certificate as prescribed in Rule 3 within a period of two years from the date of his appointment. Again, even this sub-rule is inapplicable to the case of the petitioner who was appointed as a clerk-typist, which is a Group C post on 23rd June 2010, i.e., almost 11 years after commencement of the 1999 Rules and that too, not on the basis of any selection process, which started before the

commencement date, i.e., 25th January 1999.

14] Rule 5 of the 1999 Rules exempts the requirement of producing the certificate to every Government servant who has attained the age of 55 years on the date of commencement of the 1999 Rules. Again, the petitioner, is not covered under the provisions of Rule 5 of the 1999 Rules.

15] Rule 6 of the 1999 Rules, however, provides that notwithstanding anything contained in these rules, Government may relax provisions of any these rules, under such circumstances in such manner as shall appear it to be just and reasonable and shall record the reasons for any such relaxation.

16] As noticed earlier, the respondents, before appointing the petitioner to a Group 'C' post should have insisted upon the petitioner having the qualification of MS-CIT, which is admittedly the prescribed qualification in terms of Rule 3 of the 1999 Rules. This is because the case of the petitioner was neither covered under Rule 4(b) nor under Rule 5 of

the 1999 Rules. Even if Rule 4(b) were to be applicable, the requirement was that the petitioner had to submit the MS-CIT certificate within two years from the date of her appointment. This requirement, admittedly, the petitioner has failed to comply with.

17] This means that the petitioner is already beneficiary of relaxation of the 1999 Rules and that too, without record of any reasons for such relaxations. The petitioner's insistence for further relaxation is, therefore, completely unjustified and unwarranted, in the facts and circumstances of the present case. In any case, it is settled position in law that no person has a legal right to insist upon grant of any relaxation and consequentially, no writ of mandamus or writ in nature of mandamus can issue to the respondents directing them to relax such requirement in favour of the petitioner. In fact, the petitioner, had not even applied for any such relief, since, it was the case of the petitioner that there is no requirement in any rules that the petitioner must produce a MS-CIT certificate within two years from the date of her appointment.

18] The contention that similar relaxation was granted to some other employees is misconceived. In the first place, no details have been furnished by the petitioner to substantiate this statement. Secondly, even assuming that such relaxation had indeed been granted, that by itself, will not constitute any discrimination. It is settled law that there can be no equalities of illegalities. The right conferred by Article 14 is a positive right and not a negative right. Two wrongs do not make a right. (**See: General Manager, Uttaranchal Jal Sansthan vs. Laxmi Devi & Ors.¹, State of Uttaranchal vs. Alok Sharma & Ors.², Punjab State Electricity Board & Ors. vs. Gurmail Singh³ and Union of India & Anr. vs. A. K. Narula⁴**). Therefore, the contention based on discrimination cannot be accepted.

19] The contention that there is inconsistency between G.R. dated 8th September 1997 and the 1999 Rules again not acceptable. The 1999 Rules deal with the issue of requirement of knowledge of computer operations in matters of appointments to the Group A, Group B or

1 (2009) 7 SCC 205

2 (2009) 7 SCC 647

3 (2008) 7 SCC 245

4 (2007) 11 SCC 10

Group C posts in the Maharashtra Civil Services. The G.R. dated 8th September 1997 deals with the issue of appointments on compassionate basis. In fact, the petitioner, is the beneficiary of G.R. dated 8th September 1997, it is on the basis of this G.R. that the petitioner not only secure her initial appointment, but also reinstatement given by the impugned judgment and order made by the MAT. Merely because, the G.R. has no provision similar to Rule 6 of the 1999 Rules, it is not render the G.R. as inconsistent with the 1999 Rules. The G.R. and the 1999 Rules operating in different spheres and therefore, there is no question of inconsistency involved. Even otherwise, it is settled position in law that the executive instructions in a G.R. can supplement statutory rules though, they cannot supplant them.

20] The petitioner, in response to the show cause notice issued to her admitted that she has not been able to obtain the MS-CIT certificate for production within the prescribed period. The petitioner however made a request that her case be considered sympathetically and in case, it is not permissible to grant the petitioner any further extension to

produce the MS-CIT certificate, then, at least a case of the petitioner may be considered for appointment to a Group 'D' post. Now that the request of the petitioner stands considered by virtue of the directions in the impugned judgment and order, it is really not open to the petitioner to question the impugned judgment and order, by virtue of which, she has secured appointment to a Group 'D' post.

21] For all the aforesaid reasons, we see no ground to interfere with the impugned judgment and order dated 28th September 2016 made by the MAT. Rule is accordingly, discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA