

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

**WRIT PETITION NO. 10058 OF 2014
WITH
WRIT PETITION NO. 1812 OF 2015**

Mrs. Sarla Shravan Kedar	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

Mr. K. K. Malpathak with Mr. Sagar Mane i/b. Mr. N. V. Bandiwadekar for Petitioner.
Mr. N. C. Walimbe – AGP for the State.

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

DATE : 18 JUNE 2018

ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] The learned counsel for the parties state that both these petitions may be taken up for disposal together since the outcome in writ petition no. 1812 of 2015 will determine the fate of the outcome in writ petition no. 10058 of 2014. Accordingly, both these petitions are taken up together for disposal.

3] Rule in both the petitions. With the consent of and at the request of the learned counsel for the parties, Rule in both the petitions is made returnable forthwith.

4] The challenge in writ petition no. 1812 of 2015 is to the judgment and order dated 6th August 2014 dismissing the petitioner's Original Application No. 683 of 2008, in which she had applied for the following reliefs :

“(a) By a suitable order / direction, this Hon. Tribunal may be pleased to direct the Respondents to produce the record and proceedings leading to the order dated 22.07.2008 issued by the Respondent No. 2 and after examining the legality and validity of the same, to quash and set aside the impugned order and accordingly, the Applicant may be granted all consequential service benefits.

(b) By a suitable order / direction, this Hon. Tribunal further be pleased to hold and declared that in the fact and circumstances of the case it is incumbent upon the Respondents to submit the name of the Applicant to the surplus cadre cell and by suitable order the Respondent Nos. 1 to 3 be directed to forward the name Applicant to the surplus cadre cell i.e. the Respondent No. 4 with further direction to the Respondents to absorb the Applicant the technical post equivalent to the post of Workshop Assistant.”

5] Mr. Malpathak, the learned counsel for the petitioner submits that the respondents have breached the

provisions of their own GR dated 10th September 2001, in terms of which, the case of the petitioner, was required to be referred to the Surplus Cadre Cell for determination to the post to which the petitioner ought to have been absorbed. Mr. Malpathak submits that the petitioner, upon being informed that the post of Workshop Assistant held by her was declared surplus, had, in her representation dated 24th August 2007 clearly stated that she may be absorbed in a technical post and until such post was available she may be retained as a Workshop Assistant itself. This representation was not considered and the petitioner, was absorbed as a Senior Clerk. Such absorption is contrary to the option exercised by the petitioner as well as the GR dated 10th September 2001. Mr. Malpathak submits that the MAT has not considered these aspects and therefore the impugned judgment and order warrants interference.

6] Mr. Walimbe, the learned AGP submits that absorption of the petitioner as Senior Clerk was in pursuance of her own request that she be retained in Mumbai. He submits that there is no breach of the provisions of GR dated 10th September 2001, particularly, since this is a case of

absorption on the basis of the option exercised by the petitioner. He points out that the petitioner had in fact made a clear statement in her representation that she would consent to her absorption in a suitable post to be determined by the respondents. For these reasons, Mr. Walimbe submits that this petition may be dismissed.

7] Rival contentions now fall for our determination.

8] From the perusal of the impugned judgment and order as well as the records, we find that there is no jurisdictional error or perversity so as to warrant interference.

9] Admittedly, the post of Workshop Assistant held by the petitioner was declared surplus and such intimation was given to the petitioner on 5th October 2007. She was called upon to submit her options in the proforma attached to the communication dated 5th October 2007. The petitioner did furnish her option on 26th October 2007 which has been transcribed by the MAT in paragraph 6 of the impugned judgment and order. From the same, it is clear that the petitioner only stated that she be absorbed in a suitable

post taking into consideration her educational and technical qualifications. She has also stated that the choice made by the respondents will have the petitioner's consent.

10] The petitioner thereafter addressed a representation dated 24th August 2007 in which, she applied for absorption in the post of Instructor. In the said representation she also stated that her husband and daughter reside in Mumbai and therefore, her absorption may be at some suitable post in Mumbai itself.

11] The claim for absorption as Instructor, was entirely misconceived. This is because an Instructor is a promotional post carrying higher pay scale. Request for absorption in a suitable post in Mumbai was in fact acceded to by the respondents and the petitioner was absorbed as Senior Clerk at Mumbai.

12] Taking into consideration the aforesaid facts and circumstances, we do not see any good ground to interfere with the impugned judgment and order made by the MAT on the ground that the respondents may have deviated

from the GR dated 10th September 2001. There is no specific deviation as such pointed out but Mr. Malpathak submits that the matter ought to have been referred to for determination by Surplus Cadre Cell. At the stage when the petitioner was required to give her option, the petitioner could have herself left the decision to the Surplus Cadre Cell. However, the petitioner, exercised her option and even indicated that she be absorbed in some suitable position in Mumbai itself. After all this, we agree with the MAT that the petitioner has not made out any case for grant of reliefs now claimed by her.

13] For the aforesaid reasons, we dismiss writ petition no. 1812 of 2015. Rule issued therein, is hereby discharged.

14] Mr. Malpathak, the learned counsel for the petitioner accepts that as a consequence of dismissal of writ petition no. 1812 of 2015, writ petition no. 10058 of 2014 will not survive and will have to be dismissed. From the perusal of the prayers in Original Application No. 798 of 2008 in which the impugned order dated 6th August 2014 came to be made, it is seen that the petitioner seeks a declaration that

she is eligible to be promoted to the post of Full Time Instructor / Instructor. This was on the basis of the petitioner's claim that she ought to have been retained in the position of Workshop Assistant itself, even though, such post had been declared surplus. Since, in dismissing writ petition no. 1812 of 2015, we have held that there was no illegality in not retaining the petitioner as a Workshop Assistant and in her absorption as a Senior Clerk, obviously, there is no question of grant of any relief to the petitioner as claimed in Original Application No. 798 of 2008. Accordingly, even writ petition no. 10058 of 2014 is liable to be dismissed and is hereby dismissed and is hereby dismissed.

15] Accordingly both the writ petitions are dismissed. Rule in both the writ petitions is hereby discharged. However, there shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)