

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

WRIT PETITION NO. 1264 OF 2015

Savita Ashok Pethe

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. S.N. Chandrachood for the Petitioner.

Mrs. Rupali M. Shinde, A.G.P. for Respondent Nos.1, 2 and 5- State.

Mr. A.B. Borkar for Respondent Nos.3 and 4.

**CORAM : R.M. SAVANT &
K.K. SONAWANE, JJ.
DATE : 10th SEPTEMBER, 2018.**

P.C. :

1 The order dated 05.08.2009 Exh.-L to the Petition is taken exception to by way of the above Petition. The Petitioner was originally appointed as a junior Clerk and worked as such in various Courts under the jurisdiction of the Respondent No.4. The Petitioner when she was appointed had passed the English Typing Examination. A Policy decision was taken by the State Government vide Government Resolution dated 16.06.1981 whereby it was decided to hold Marathi Typing and Shorthand Examination of all the Government Servants who were working as English typists and English Stenographers in the State of Maharashtra. The Government

announced various incentives so that candidates were encouraged to appear for the said Examination. By further Resolution dated 12.08.1982, the Government decided to raise the incentives in view of inadequate response by the Government staff to the said Scheme, on account of the prizes. The Government thereafter vide Resolution dated 11.11.1983 fixed the guidelines as to how the post of typist either English or Marathi was to be filled and stating the eligibility of the candidates, who should be appointed for the post of typist. Thereafter, Circulars were issued by the State Government mentioning therein that the English typist are also eligible for the Marathi Typing Examination and were also entitled for the benefits under the Government Resolutions dated 16.06.1981 and 12.08.1982. Thereafter the situation underwent a change inasmuch as by Government Circular dated 10.07.1989, the Government declared that the Typists appointed after 11.11.1983 shall not be sent for training. It was further mentioned in the said Circular that the English Typists who pass the Marathi Typing Examination at the speed of 30 words per minute are only eligible for the benefit of the two increments. It is an undisputed position that the Petitioner was given the benefit of the two Government Resolutions i.e. 16.06.1981 and 12.08.1982. The Petitioner has been enjoying the monetary benefits under the said Government Resolutions since then. The Government thereafter on

06.05.1991 issued a Notification publishing the Rules for the eligibility of the Marathi English Typist-cum-Clerk candidates to appear for the Marathi Typing Examination and mentioned therein that it is only the candidates who have been appointed after 11.11.1983 would be eligible. By the said Notification, the State Government has in supercession of all Government Resolutions and the Circulars issued till then, declared the qualification and eligibility of the candidates who could appear for the Marathi Typing Examination. The aforesaid exercise ultimately resulted that the candidates who were appointed on or after 11.11.1983 were held not to be eligible to appear for the Marathi Typing Examination and were therefore not entitled to get the benefit of two advanced increments. Acting upon the said directive, the Respondent No.4 herein passed orders cancelling/withdrawing the benefit of the additional two increments given to the Petitioner. A similar order was passed in respect of another employee who was working in the District Court at Kolhapur who files Writ Petition No.6110 of 1996 challenging the cancellation of the withdrawal of the said two increments by the said order. The said Writ Petition came to be allowed by a Division Bench of this Court by judgment and order dated 29.03.2007 to which one of us R.M. Savant, J. was a party. The said judgment was thereafter relied upon in two more Writ Petitions being Writ Petition Nos.3239 of 2012 and 6612 of 2009 by two other Division

Benches and the said Writ Petitions came to be allowed in view of the said judgment dated 29.03.2007. The facts in the said Writ Petition No.6110 of 1996 and the present Petition are identical, therefore the said judgment would apply on all fours to the facts of the instant case. The above Writ Petition would, therefore, be required to be allowed.

2 On behalf of the Respondents, the learned Counsel Mr. Borkar would draw our attention to the fact that though the impugned order is dated 2009 the instant Petition has been filed in the year 2015. The Petitioner in paragraph 30 has sought to explain the delay which has occasioned the filing of the above Writ Petition. We have to bear in mind that the said Writ Petition No.6110 of 1996 was decided by a Division Bench of this Court on 29.03.2007 and the impugned order has been passed in the teeth of the said judgment in the year 2009 assuming that there is some delay in approaching this Court. Having regard to the subject matter of the above Petition and the three precedents which we have already noted herein above, the delay would not come in the way of the Petitioner. It is also required to be noted that the Petitioner's maiden surname as 'Maya Patankar' whereas her name post her marriage is the present name i.e. Savita Ashok Pethe.

3 The Petition is accordingly allowed and made absolute in terms of prayer clause (c). The consequence would be that the Petitioner would be entitled to the amount which has been recovered from her pursuant to the impugned order.

(K.K. SONAWANE, J.)

(R.M. SAVANT, J.)

Waishali
Sushil
Waghmare

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by Waishali
Sushil
Waghmare
Date: 2018.09.14
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