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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.22 OF 2017

Madhukar Lobha Rathod
Age – 50 years, Occ – Nil
R/o Aniket Niwas, Tilak Nagar
Nanded, Taluka and District - Nanded

PETITIONER

VERSUS

- | | |
|--|-------------|
| 1. The State of Maharashtra
Through the Secretary,
Agriculture Department,
Mantralaya, Mumbai – 400 032 | RESPONDENTS |
| 2. The Agricultural Commissioner,
Agricultural Commissionerate,
Maharashtra State, Pune | |
| 3. The Divisional Agricultural Joint Director,
Latur Division, Latur | |
| 4. Shri. S. H. Walsanghkar
Enquiry Officer,
C/o Divisional Agricultural
Joint Director, Latur Division, Latur | (DEAD) |
| 5. The District Superintendent
Agricultural Officer,
district Agriculture Office,
Nawa Mondha, Nanded | |

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Mr. Girish S. Rane h/f Mr. R. B. Ade, Advocate for the petitioner
Mr. S. S. Dande, AGP for respondents No.1 to 3 and 5 - State

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[CORAM : SUNIL P. DESHMUKH AND
S. M. GAVHANE, JJ.]

DATE : 3rd OCTOBER, 2019

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. Pursuant to an advertisement issued by Regional Secondary Service Selection Board, Nagpur in June, 1990, petitioner, being possessed of B.Sc. degree, which he considered since comprising subjects relating to agriculture made him eligible and qualified to the post of Agricultural Assistant, a Class III post in State service, had applied for said post.

3. Petitioner accordingly had submitted his B.Sc. degree certificate referring the same to be B.Sc. (Agro) and not B. Sc. (Agriculture). It appears, despite that petitioner's application had been considered and he was allowed entry to selection process. In the recruitment process, he emerged successful and had been selected for the post of Agricultural Assistant and figured in the select list of thirty eight candidates. List of selected candidates had been forwarded by selection board to Superintendent Agriculture Officer, Nagpur. While forwarding the list, it had been mentioned that documents in respect of educational qualifications and other eligibility criteria of the candidates have

been verified by the board, albeit, same may be re-verified while issuing appointment orders. Superintendent Agriculture Officer, Nagpur had sought from the petitioner original documents in respect of educational qualifications, caste and other certificates. Accordingly, petitioner had submitted the documents before said authority.

4. Petitioner had been issued appointment order on 8th January, 1992. It appears that there were some hiccups, before issuing appointment order in favour of the petitioner. Subsequent to appointment of petitioner, it appears that an officer had considered petitioner's educational qualifications to be not appropriate and appointment of the petitioner to be not proper. No action with reference thereto ensued and matter with regard to eligibility and qualifications of petitioner was put to rest at that. Petitioner worked continuously, without any interruption and without any hindrance for over sixteen years. There were no complaints in respect of performance in duty.

5. In view of decision of the Apex Court, to be precise, *“District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Viz Anagaram and Another V/s M. Tripura Sundari Devi”* reported in (1990) 3 SCC 655 : 1990 (4) SLR 237, a circular dated 12th October, 1993 had been issued by the State government to the

effect that if recruitment of an employee takes place with reference to incorrect information about eligibility, while the incumbent is not eligible and qualified and does not possess requisite qualifications, services of such employee shall not be continued and the same shall be brought to an end, after causing inquiry pursuant to rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and such employee shall not be given any other punishment except dismissal or removal from service.

6. While said circular had been issued in 1993, no action had been contemplated against the petitioner since then till 2008.

7. Learned advocate for the petitioner purports to advert to that subsequently some litigation cropped up with respect to promotional post from the post of Agricultural Assistant and petitioner succeeded in the same in 2008. According to learned counsel thereafter, employer was moved to cause an inquiry in respect of petitioner's educational qualifications being not proper.

8. It appears that an opinion from Maharashtra Agriculture Education and Research Council had been sought in respect of eligibility or otherwise of the petitioner. It further appears that a report had been received back at the end of employer about

B.Sc. degree possessed by the petitioner would not be equivalent to the one according to the recruitment rules, which is B.Sc. (Agriculture).

9. Enquiry was initiated and fallout had been, removal of the petitioner from service as Agricultural Assistant, in 2011.

10. While the petitioner had approached Maharashtra Administrative Tribunal, he had been redirected to exhaust remedy available according to the Maharashtra Civil Services Rules. While that failed, the petitioner was back to Maharashtra Administrative Tribunal in Original Application No. 82 of 2015. The original application failed and thus, present writ petition.

11. Learned advocate Mr. Girish Rane holding for Mr. Ade, appearing on behalf of the petitioner vehemently submits that the tribunal has failed to appreciate that a circular would not prevail over Maharashtra Civil Services Rules. The Rules are made pursuant to powers of the State under Article 309 of the Constitution of India and have legal sanctity. In such a case, while petitioner has been found to be not educationally qualified to be recruited way back in 1992 as Agricultural Assistant, the circular, issued in 1993, had not been acted upon for sixteen long years thereafter. He submits that there was no

misrepresentation. All the documents were submitted, produced, checked, examined etc. before recruitment. Recruitment was under a process, involving verification and re-verification about credentials of petitioner. There is neither any complaint about performance in duty by the petitioner nor there is complaint that appointment of the petitioner having caused prejudice to any other candidate. In the circumstances, while the petitioner has completed nearly twenty years' service, it would not call for truncation of service and punishment of removal from service being awarded to him is too harsh and disproportionate to the charge levelled and in any case deserves less punishment than prescribed by instructions under the circular.

12. Learned advocate Mr. Rane during the submissions purports to refer to considerations which have weighed with the supreme court as would be appearing in the case of "*Vikas Pratap Singh and Others V/s State of Chhattisgarh and Others*" reported in *AIR 2013 SC 3414*, wherein the court had considered plight of employees similarly situated as the petitioner and had deemed it appropriate that when an employee serves the State for considerable time and could not be in a position to have any fresh earning avenue open and while his livelihood and dependents and their careers would be affected, the matter

would have to be viewed from that angle. He refers to that the court has considered case of “*Rajesh Kumar and Others V/s State of Bihar and Others*” reported in 2013 (3) SCALE 393 : (2013 AIR SCW 4309) and keeping in view decision in *District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Viz Anagaram and Another V/s M. Tripura Sundari Devi*” (*supra*) and other judgments where wrongful or irregular appointment is made upon discovery of error or irregularity in appointment while the employee is terminated, the courts have taken a sympathetic view in the light of various factors, *inter alia*, length of service of the employee, dependencies and *bona fides* of the employees.

13. Learned advocate purports to draw attention to that in many a case, considered by the Supreme Court, even three years’ service has weighed with the court, wherein the court has gone to the extent of directing reinstatement. Learned advocate has also referred to “*Tridip Kumar Dingal and Others V/s State of W.B. and Others*” reported in AIR 2008 SC (Supp) 824 and other matters. He also refers to “*Munindra Kumar and Others V/s Rajiv Govil and Others*” reported in (1991) 3 SCC 368, “*Gujrat State Dy. Executive Engineers' Association V/s State of Gujarat and Others*” reported in 1994 supp (2) SCC 591, “*Buddhi Nath Chaudhary and Others V/s Abahi Jumar and Others*” (2001) 3 SCC 328 and recent one “*Mamta Rohit V/s Dr. Prafulla Ranjan and Others*”

2018 (4) SCT 579 : 2018 (15) Scale 346. He puts emphasis on that in the latest citation of 2018, factual situation may be said to be quite close to the one as involved in present matter, albeit, duration of services rendered by present petitioner is far more than the one by the appellant in said case. He submits that therein as well, it had been considered that the employee did not have qualifications and was ineligible even to put in an application, yet, looking at the circumstances that it would not be a case that the employee had misled for the purpose of appointment and it was not the case wherein employee had not disclosed actual qualification and while the employer at the relevant time had thought it fit to appoint the employee, requiring her to resign from the post, the employee would be neither here nor there. Looking at the situation, the court had taken a view that it was eminently fit case for doing complete justice between the parties, without treating said judgment as a precedent, the employee had been directed to be reinstated, setting aside order impugned therein. He, therefore, urges to indulge into the request of the petitioner while the punishment awarded is too harsh and disproportionate. In the circumstances, with a view to do complete justice, less punishment than dismissal and/or removal from service can be awarded.

14. On the other hand, Mr. S. S. Dande, learned AGP submits that while qualifications prescribed for the post of Agricultural Assistant were B. Sc. (Agriculture), though the petitioner was B. Sc. Has posed that he was B.Sc. (Agro). He had entered the competition, may be he had successful in selection process, however, it would not remove the basic deficiency in him about not being educationally qualified. He submits that in view of such a defect in qualifications, looking at the observations of the Supreme Court in the case of “*District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Viz Anagaram and Another V/s M. Tripura Sundari Devi*” (*supra*), while the circular (*supra*) had been issued, action had been taken. He further submits that there is no procedural lacuna before taking action and before passing impugned order. The tribunal has taken into account all the relevant aspects and has come to conclusion that the petitioner did not possess qualification required for appointment on the post of Agricultural Assistant and has found that B.Sc. degree possessed by the petitioner is not equivalent to B.Sc. (Agriculture) degree. In the circumstances, the qualifications possessed by the petitioner did not answer the requirements of qualifications under the recruitment rules and having regard to the decisions referred to has found that applicant – petitioner

was not eligible and challenge to departmental inquiry on any procedural count was not sustainable. Having regard to that he did not possess qualification, the original application has been dismissed. He, therefore, submits that having regard to circular the action taken by the respondents would not be liable to be faulted with.

15. Factual aspects which may be pertinent to be noted are – petitioner has undergone recruitment and selection process and had competed and had been on scrutiny selected. It is not the case that the petitioner had posed himself to be holding as B.Sc. (Agriculture) degree. He had all along appears to have referred to that he possesses B.Sc. degree, studies of which comprised subjects concerning agriculture, he had referred to as ('Agro') and not agriculture. Neither it is the case that the selection board had not verified documents submitted by the petitioner nor it is the case that appointing authority had not verified those documents. It appears that certain deliberation has taken place before appointment order had been issued in favour of the petitioner. Post the appointment order, it appears that there had been a doubt about educational qualifications of the petitioner. It appears to have been considered to be moot and treated accordingly. Looking at overall situation, no action had been

taken against the appointment of the petitioner. Even circular issued with reference to *“District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Viz Anagaram and Another V/s M. Tripura Sundari Devi” (supra)* had not been resorted to from 1993 to 2008. It had never occurred to the employer that the petitioner would not be qualified to continue in service on account of educational qualifications being not proper nor it appears that there had been any complaint about his performance in service.

16. There is no dispute on that some litigation over promotion had taken place where petitioner is stated to have succeeded and thereafter in 2008, once again educational qualifications of the petitioner were purportedly questioned. Opinion had been sought from Maharashtra Agriculture Education and Research Council and the council had not opined that there is equivalence.

17. It appears that the employee as well as the employer were carrying an impression that petitioner's educational qualifications being not improper. Appointment of petitioner is considered to be belied by the opinion given by the Maharashtra Agriculture Education and Research Council and resort had been sixteen years after uninterrupted service, to cause inquiry pursuant to circular of 1993. The same had not been invoked immediately against the petitioner. It had been kept frozen for about sixteen

long years despite, queries about petitioner earlier on soon after recruitment. It is not the case that petitioner's appointment had been an unilateral belief and a representation by the petitioner alone. Petitioner appears to have believed him to be possessed of requisite qualifications *bona fide*. The same belief had pervaded to and retained by the employer for years together. The belief being not proper has transpired only after opinion had been sought from Maharashtra Agriculture Education and Research Council.

18. It appears that the tribunal has not taken into account that the punishment being awarded is pursuant to a circular and not the rules. It had not fallen for consideration of the tribunal that rules would get precedence over circular. While rules prescribe various punishments, a punishment if to be awarded, it should have to be in proportion of misconduct. In the present matter, decision of the tribunal tends to be rather cursory, simply relying on the circular, irrespective of the prevailing rules. Besides, the tribunal had been oblivious of the decisions relied on in the present matter and that enquiry sixteen years down had been a fallout of a complaint after litigation over promotion. It ought to have been considered that the punishment being awarded to the petitioner is disproportionate, in the circumstances completely

wiping out source of survival for him, his family members and dependents, affecting all of them disastrously.

19. The decisions, with reference to the earlier decisions, as observed by the Supreme Court in paragraphs No. 41, 42, 47, 48, 49, 50, 51, 52 and 53 in *Tridip Kumar Dingal*, case (*supra*) and the other decisions, relied on, on behalf of the petitioner give an indication that if an act is not attributable to one person alone, he would not be made to suffer, brunt in consequence. In the circumstances, the situation calls for a balancing view being taken, while the petitioner has worked for sixteen long years and spending his prime time in life, in the process, getting cutoff from the other avenues of earning livelihood and making career. A punishment, if is to be awarded, it should not be disproportionate and should not totally cut him off from eking out existence of him, his family members and dependents and bringing their developments to a grinding halt, leaving them in dire straits.

20. While the petitioner is of such an age, truncating his service abruptly would not only affect him individually, but would also affect many dependents in various ways and career of the petitioner as well as that of dependents would be in peril and would be leaving them in dire straits if the extreme punishment

awarded in view of 1993 circular overlooking prevailing rules would be allowed to be maintained. Rather harsh punishment has been imposed on the petitioner in the circumstances and appears to be shockingly disproportionate.

21. We, under the circumstances, having regard to decisions which have been referred to by learned advocate for the petitioner, are of the opinion that lesser punishment would come petitioner's way other than dismissal or of removal from service, from the punishments as are enumerated under Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, which would provide him a source to sustain, like compulsory retirement or like a retired employee.

22. Authorities may keep in view that petitioner is of such an age, would be prevented from a source and/or avenue to sustain and maintain family and dependents.

23. Having regard to aforesaid, impugned order passed by the disciplinary authority and the one by the Maharashtra Administrative Tribunal are set aside remanding the matter to disciplinary authority.

24. With aforesaid, writ petition stands disposed of. Rule is made absolute in aforesaid terms. It would be appropriate that

the disciplinary authority decides on a punishment as referred to above, as early as possible, preferably within a period of six months from the date of receipt of writ of this order.

[S. M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

drp/wp22-17