

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

WRIT PETITION NO.6285 OF 2015

The State of Maharashtra & Another	..	Petitioners.
v/s.		
Mr. Hemant H. Thakare	..	Respondent.

Mr. N. K. Rajpurohit, AGP for the Petitioner.

**CORAM: A.S.OKA &
M.S.SANKLECHA, JJ.**
DATE : 26th MARCH, 2019.

P.C:-

By this Petition under Article 226 of the Constitution of India, the State of Maharashtra had challenged the judgment and order dated 25th April, 2014 passed by the Maharashtra Administrative Tribunal (for short 'the Tribunal') in Original application No.582 of 2011. The State Government conducted recruitment process to fill up the posts of clerk-cum-typist. The process was conducted through the Maharashtra Service Public Commission (for short 'MPSC'). The Respondent applied for said post. The Respondent applied on 28th February, 2007 for a post reserved for Scheduled Tribe. In January, 2009, MPSC recommend the case of the Respondent for appointment. Accordingly, with effect from 11th May, 2009, the Respondent was appointed on the post of clerk-cum-typist (Marathi). The advertisement published by the MPSC noted that the

Applicant should possess Government Recognized certificate in Marathi Typing Examination of 30 w.p.m. and a certificate of English Typing Examination of 40 w.p.m. issued by the Government Recognized Institute. It was stated that the said qualification should be possessed on or before 28th February, 2007.

2 We must note here that the Respondent was possessing a certificate dated 17th August, 2007 recording that he had passed English Typing Examination with a speed of 40 w.p.m. Prior to that, he was possessing a certificate dated 27th February, 2007 of English Typing at the speed of 30 w.p.m. It appears that after the order of appointment and after the Respondent had assumed the charge of the post, a show cause notice dated 9th September, 2010 was issued calling upon the Respondent to show cause as to why his employment should not be terminated on the ground that he did not possess requisite certificates. Accordingly, on 17th June, 2011, the order of termination of employment of the Respondent was passed by the appointing Authority. The said order of the termination was subjected to a challenge by the Respondent before the Tribunal. By the impugned order, the said application has been allowed and by setting aside the order of termination, the Tribunal directed the Petitioners to reinstate the Respondent with all consequential service benefits.

3 The learned AGP appearing for the Petitioner submitted that on his own showing the Respondent was not possessing requisite qualifications on the cut off date which was mentioned in the advertisement published by the MPSC. He submitted that reliance placed by the Tribunal on the Government Resolution dated 30th September, 2011 which granted extension of time for passing Marathi typing at the

speed of 30 w.p.m and English typing at the speed of 40 w.p.m., was not applicable to the Respondent as the order of termination was passed on 17th June, 2011. He submitted that even the reliance placed on Rule 4 of the Maharashtra Civil Services (Compulsory Marathi Shorthand and Marathi Typing Examination for English Stenographer & English Typist) Rules 1991, providing for a period of four years for obtaining qualifications will not apply to the case of the Respondent as the said Rules are applicable to in-service candidates. He submitted that the decision of the Division Bench of this Court in Writ Petition Nos. 4872 of 2012 and 6676 of 2012 relied upon on was in a case wherein an employee was appointed on compassionate ground and, therefore, the said decision had no application.

4 We have carefully considered the submissions. As noted earlier, not only that the MPSC has allowed the Respondent to appear for the test conducted but also recommended his appointment in the year 2009. His appointment was recommended on a post reserved for Schedule Tribe. It is only after the Respondent assumed the charge of the office, that a show cause notice was issued. At that time, the Respondent was admittedly possessing necessary qualification.

5 The Tribunal was impressed by the fact that by the Government Resolution dated 30th September, 2011, the State Government granted an extension for passing Marathi and English typing with the speed of 30 w.p.m and 40 w.p.m respectively till 30th July, 2011.

6 Moreover, the Tribunal referred to the Government Resolution dated 25th January, 1999 which noted that the typing has

become outdated and passing of MS-CIT Examination has become more important. The Tribunal noted that much before the cut off date, the Respondent had passed the MS-CIT Examination and was possessing computer qualification. After considering the policy reflected from the said Government Resolution, the Tribunal interfered with the order of termination. According to us, the Tribunal has passed a discretionary and equitable order in exercise of powers vested under Article 226 of the Constitution of India. If we interfere with such discretionary and equitable order, an order by which the Respondent is thrown out of the employment, will be revived.

7 It is well settled that the jurisdiction under Article 226 of the Constitution of India, is discretionary and equitable. After finding that the Respondent who was protected by the Government Policy and by Government Resolution, the Tribunal protected the service of the Respondent who had applied for and was appointed as a clerk-cum-typist in the post reserved for the Scheduled Tribe category.

8 No interference is called for in the impugned judgment and order of the Tribunal.

9 Accordingly, **Writ Petition is rejected.**

(M.S.SANKLECHA,J.)

(A.S.OKA,J.)