

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

922 WRIT PETITION NO.8351 OF 2022

Smt. Shobha Rangnath Tak

.. Petitioner

Versus

The State of Maharashtra
Through The Secretary and Others

.. Respondents

...
Advocate for Petitioner : Mr. Kakasaheb B. Jadhav
AGP for Respondent - State : Mrs. M.A. Deshpande

...

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 12-08-2022

ORAL ORDER (*PER* SANDEEP V. MARNE, J.) :

. By the present petition, the petitioner challenges the judgment and order dated 05.05.2022 passed by the Maharashtra Administrative Tribunal, Mumbai bench at Aurangabad in Original Application No.330 of 2020. The tribunal has quashed and set aside the seniority list of clerk-typist as on 01.01.2020 notified vide circular dated 17.07.2020. The tribunal has further directed revision of the seniority list by following the principles laid down in the Government Resolution dated 01.03.2018, as applicable.

2. Mr. K.B. Jadhav, learned advocate appearing for the

petitioner has raised three principal grounds of challenge to the order passed by the Tribunal. Firstly, he submits that the learned advocate for the petitioner was absent when original application was decided and on that ground, the order of the Tribunal deserves to be set aside. Secondly, he submits that some of the applicants before the Tribunal had not exhausted the alternate remedy of filing representation against the seniority list and in view of the provisions of Section 20 of the Administrative Tribunals Act, 1985, the Tribunal ought not to have entertained their original application. Lastly, he submits that the petitioner has already been promoted on the post of “*Awwal karkun*” and her promotion not being under challenge, the Tribunal ought not to have disturbed the seniority for the post of clerk – typist.

3. Mrs. M.A. Deshpande, learned Additional Government Pleader appearing for the State Government has supported the order passed by the tribunal. She has invited our attention to the provisions of Rule-4 of the Maharashtra Sub-Service Departmental Examination Rules, 1988 (hereinafter referred to as the ‘Rules of 1988’) which provides that seniority of clerk-typist, who are granted exemption on attaining the age of 45 years, is to be determined from the date of grant of such exemption and not from the date of their initial appointment on the post of clerk-typist.

4. Rule - 4 of Rules of 1988 reads thus :

“4. Period and number of chances.- (a) A Clerk recruited in the Revenue Department shall be required to pass the Sub-Service Departmental Examination within four years of his date of recruitment and within three chances :

(b) The Collector may, at his discretion; grant any deserving person an additional chance and an extension of the period prescribed for passing the examination upto two years ;

(c) Seniority among the Clerks for the purpose of confirmation shall be determined by the date of their appointment as Clerk, if they pass the examination within the period and chances prescribed under sub-rule (a). Otherwise, the seniority shall be determined by the date of their passing the examination or date of exemption from passing the examination as the case may be.

(d) No Clerk shall be confirmed, unless he has passed or has been exempted from passing the examination.”

5. Thus, a clerk recruited in the Revenue Department is required to pass the Sub-Service Departmental Examination within four years of his recruitment. If he passes such examination within the time stipulated, he is entitled to have his seniority counted from the date of his initial recruitment. However, in the event he passes the examination beyond the stipulated period of four years, his seniority is lost and he is entitled to have his seniority counted only from the date of passing of the examination. Rule - 6 provides for grant of exemption from passing of the Departmental Examination on attaining the age of 45 years. However, Rule 4 (c) provides that in the event of grant of exemption from passing the examination, such

clerk would be entitled to count the seniority from the date of grant of exemption and not from the date of initial recruitment. The tribunal has extracted the relevant portion of seniority in para 6 of its order. Perusal of it shows that the petitioner was appointed / promoted to the post of clerk – typist from 03.03.2014 and was granted exemption from passing the departmental examination on attaining the age of 45 years on 20.08.2015. On application of Rule - 4 (c), the petitioner ought to have been granted seniority on the post of clerk – typist with effect from 20.08.2015. However, it appears that she was erroneously granted seniority on the post of clerk – typist with effect from 03.03.2014. The tribunal had directed correction of this position and the seniority by application of the rules. We do not find that the tribunal has committed any error while issuing this direction.

6. So far as the objection of Mr. Jadhav about the advocate of the petitioner being absent before the tribunal is concerned, we have extensively heard Mr. Jadhav and have accordingly obliterated this objection. After hearing Mr. Jadhav, we do not find that there is any valid ground of challenge to the order passed by the tribunal.

7. Coming to the objection that some of the applicants

before the tribunal had not exhausted alternate remedies before filing the original application, the tribunal has observed in para 2 of its order that since it was a joint original application and two of the applicants had filed representations questioning the seniority list, the tribunal has proceeded to entertain the original application. We do not find that any error is committed by the Tribunal while doing so.

8. Coming to the last objection of Mr. Jadhav that the petitioner has already been promoted on the post of “*Awwal Karkun*” and therefore, the tribunal ought not to have disturbed her seniority on the lower post of clerk-typist, we find that the said objection is stated only to be rejected. The tribunal was essentially concerned with the seniority position of the petitioner on the post of clerk-typist. Whether she is further promoted on the post of “*Awwal Karkun*” was clearly inconsequential. If the seniority for the post of the clerk-typist was erroneously prepared, the tribunal was right in directing the correction of the same. Therefore, this objection is also rejected.

9. Mr. Jadhav further submits that after passing of the impugned judgment and order by the Tribunal, a fresh provisional seniority list of clerk-typist was published by the State Government on 04.07.2022, in which the name of the petitioner was included.

He further submits that after considering the objections to the draft seniority list, a final seniority list has been published on 03.08.2022, in which the name of the petitioner has not been included. We are afraid the same may be a separate cause of action to the petitioner and she may avail appropriate remedy in that respect.

10. In the result, we do not find any merit in the present petition. The same is dismissed without any order as to costs.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)

GGP