

Pdp

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

WRIT PETITION NO. 12210 OF 2022

The Secretary Maharashtra
Public Service Commission,
Mumbai.

.. Petitioner

Vs.

Arjun Ramkrishnarao Tarke & Ors. .. Respondents

Mr. Shekhar Jagtap a/w Ms. Manisha Jagtap a/w Mr.
Shubham Gade for petitioner.

Mr. Sandeep Dere for respondent no.1.

Mr. B. V. Samant, AGP for respondent nos.2 and 3.

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

DATE : OCTOBER 19, 2022

ORAL JUDGMENT (Per Chief Justice):

1. The Secretary, Maharashtra Public Service Commission (hereafter "the Commission", for short) is the petitioner before us questioning the correctness of a judgment and order dated 22nd July, 2022 of the Maharashtra Administrative Tribunal, Mumbai (hereafter "the Tribunal", for short), whereby the original application (Original Application No. 693 of 2022) of the original applicant (hereafter "respondent no.1", for brevity) was allowed.

2. The facts lie in a narrow compass but present an interesting case for us to decide.

3. The Commission issued an advertisement dated 21st December, 2021 conveying that it shall conduct a combined

preliminary examination for recruitment to 900 vacant posts in Group "C" services of the Government of Maharashtra (hereafter "GoM", for short). Such 900 posts were in different departments of the GoM and, *inter alia*, included the posts of (i) Tax Assistant in the Finance Department, (ii) Clerk-cum-Typist (Marathi) and (iii) Clerk-cum-Typist (English), both in the General Administration Department (hereafter "the said posts", for short). Eligibility criteria for the said posts, *inter alia*, required the aspirants to possess the following: -

Tax Assistant	Clerk Typist	Clerk Typist
	Marathi	English
Passing Government Commercial certificate examination specifying Marathi Typewriting speed of minimum 30 words per minute and English Typewriting speed of minimum 40 words per minute.	Passing Government Commercial Certificate examination specifying Marathi Typewriting speed of minimum 30 words per minute or any other certificate examination declared by the government to be equivalent for this purpose.	Passing Government Commercial Certificate examination specifying English Typewriting speed of minimum 40 words per minute or any other certificate examination declared by the government to be equivalent for this purpose.

We do not refer to the other clauses pertaining to typewriting eligibility except those which are relevant reading as follows: -

"7.7. Date of calculating the eligibility:

7.7.1 It is mandatory to possess the stipulated educational eligibility before or upto the last date of accepting application for the main examination.

7.7.2 The typewriting eligibility of the Government Commercial Examinations Board is required to be obtained upto the last date of submitting the application/information for the main examination.

7.8 Temporary relaxation from obtaining typewriting eligibility (for posts of Tax Assistant and Clerk Typist)

7.8.1 If any Differently Abled (Divyang) candidate is not holding the stipulated typewriting eligibility certificate, the same is not mandatory for the eligible candidates claiming reservation under Differently Abled (Divyang) persons category, since 2 years period and 2 opportunities from the date of appointment are admissible to them for passing the typewriting examination, in terms of **General Administration Department Government Resolution no Differently Abled (Divyang) 2016/case no 116/16A dated 16th November 2016.**

7.8.2 If any ex-Servicemen is not holding the stipulated typewriting eligibility certificate, the same is not mandatory for the eligible candidates claiming reservation under ex Servicemen category since 2 years period and 2 opportunities from the date of appointment are admissible to them for passing the examination, in terms of **General Administration Department Government Resolution no Differently Abled (Divyang) 2018/ case no 180/28 dated 13th June 2019."**

(bold in original)

4. Clause 5 of the advertisement referred to the general provisions regarding number of posts and reservation. Clause 5.5 being relevant is quoted below: -

"5.5 The horizontal reservation for the women, sports persons, Ex servicemen, Differently Abled (Divyang) and orphan candidates shall be as per instructions issued by the Government from time to time in this respect."

It is also apposite to note clause 5.19 of the advertisement providing reservation for 'orphans'. The three clauses thereunder read as follows: -

"5.19 Reservation for orphans

5.19.1 The process of reservation for orphans shall be conducted as per Women and Child Development

Department Government Resolution no. Orphans – 2018/ case no. 182 / O D no.3 dated 23rd August 2021 and instructions issued by the Government in this regard from time to time.

5.19.2 The candidates selected to the post reserved for orphans on merit will be included in the social category to which he belongs.

5.19.3 It is mandatory for the candidates claiming orphan reservation through the application for this examination, to submit the certificate in their possession in the present circumstances. Similarly it would be necessary to submit revised orphan certificate as per process stipulated vide the Government Resolution dated 23d August 2021 and domicile certificate of Maharashtra State within the time limit stipulated by the Commission. Else the claim for orphan reservation will not be considered.”

5. After the results of the preliminary examination were declared, the Commission issued a further advertisement dated 28th June, 2022 conveying that it shall conduct main examination of the candidates who have emerged eligible for the respective cadre on the basis of the Maharashtra Group “C” Service combined preliminary examination held on 3rd April, 2022 in terms of the advertisement dated 21st December, 2021. Clause 4.16 of the advertisement dated 28th June, 2022 appears to have been worded in similar lines as clause 5.19 of the advertisement dated 21st December, 2021. Clause 4.2 of the advertisement dated 28th June, 2022, which is relevant for the purpose of a decision on this writ petition, reads as follows: -

“4.2 The Horizontal reservation for the women, sports persons, ex Servicemen, Differently Abled (Divyang) and orphan candidates shall be as per instructions issued by the Government from time to time in this respect.”

6. Apart from other posts, the respondent no.1 had applied for consideration of his candidature for appointment against the said posts, 1 (one) post each whereof was reserved for the candidates belonging to 'orphan' category. It is not in dispute that the respondent no.1 is an orphan. It is also not in dispute that the preliminary examination having been conducted by the Commission, the respondent no.1 emerged successful and was eligible to participate in the main examination, application wherefor was required to be submitted together with relevant documents in support of eligibility by 14th July, 2022. In terms of the advertisement dated 28th June 2022, the respondent no.1 was mandatorily required to possess typewriting eligibility on the last date for filing application for the main examination, i.e., 14th July, 2022. Admittedly, the respondent no.1 does not possess such typewriting eligibility as specified in the advertisement as on date.

7. However, fortune smiled on the respondent no.1. A Government Resolution dated 7th July, 2022, (hereafter "GR", for short) intervened prior to the last date for applying online. The said GR recites that it was engaging consideration of the GoM as to whether age, educational fees, examination fees and minimum eligibility criteria stipulated for the Scheduled Castes are to be made applicable to the candidates submitting applications under the category of 'orphan' reservation, since a meagre percentage of posts is reserved for orphans; hence, the GoM had decided to consider the matter of allowing the orphans the maximum opportunity for employment as well

as allowing the orphans similar period and opportunities on similar lines with the ex-servicemen and differently abled (Divyang) persons for passing Marathi/English Typewriting Examination. Accordingly, it had been decided as follows: -

“ The Government has decided that if the orphan candidates get appointment to post where they are required to pass the (English/Marathi) Typewriting examination as per the provisions of the Recruitment Rules for the concerned post in Government Service, they should be allowed a period of two years and two opportunities from their date of appointment to the concerned post for passing the said the (English/Marathi) Typewriting examination.

2. The said Government Resolution is issued with the concurrence of the General Administration Department...”

8. Having regard to the terms of the said GR, the respondent no.1 made a claim for consideration of his candidature on the said posts reserved for ‘orphans’ by contending that he should be granted relaxation and extension of time to acquire the typewriting eligibility. However, his prayer was spurned by the Commission by an order dated 11th July, 2022. It is in view of such rejection that the respondent no.1 was disabled to upload his form online prior to 14th July, 2022. Faced with such a situation, the respondent no.1 approached the Tribunal which, by its order dated 22nd July, 2022, directed the Commission to open the online link and accept the application of the respondent no.1 and allow him to appear for the main examination pursuant to the advertisement dated 28th June, 2022.

9. We have heard Mr. Jagtap, learned advocate for the Commission, Mr. Dere, learned advocate for the respondent no.1 and Mr. Samant, learned AGP for the respondent nos.2 and 3.

10. The only question that we are tasked to decide is whether the Tribunal was right in allowing the respondent no.1 to fill up the application for the main examination based on the terms of the said GR which, admittedly, was not in existence either on the date of the initial advertisement dated 21st December, 2021 for the preliminary examination or on the date of issuance of the subsequent advertisement dated 28th June 2022 for the main examination.

11. It is no doubt true that as on 28th June, 2022, when the right of the respondent no.1 to participate in the main examination crystallized upon declaration of results of the preliminary examination and even on 14th July, 2022, being the last date for filing the application for the main examination, the respondent no.1 did not possess the requisite typewriting eligibility. However, the said GR turned the tide in favour of the respondent no.1. It permitted the respondent no.1 the liberty of seeking a relaxation in respect of typewriting eligibility on the same lines as granted to candidates who belong to Divyang and ex-servicemen categories. The GoM having decided, as a matter of policy, to grant certain concessions to candidates belonging to the category of 'orphans' and the respondent no.1 undisputedly being an orphan, he was entitled to the benefit flowing from the said GR and the Tribunal granted

him relief based on a reading thereof.

12. Interestingly, the judgment and order of the Tribunal granting the respondent no.1 is not challenged by the GoM but by the Commission, which is merely the selecting authority. Even as the selecting authority, the Commission was bound by clause 5.5 forming part of the advertisement dated 21st December, 2021 as well as clause 4.2 of the advertisement dated 28th June, 2022 referred to above.

13. Since reservation for the category of candidates who are 'orphans' is a horizontal reservation and the Commission had informed the public at large that reservation for orphan candidates would be as per the instructions issued by the Government from time to time, we have failed to comprehend why the Commission has taken exception to the candidature of the respondent no.1 for being considered on the lines of the said GR, which was recently issued and prior to 14th July 2022. A Government Resolution which seeks to carve out a benefit for a particular class of persons by creating a reservation in their favour, in case of any ambiguity, has to be read and interpreted in a manner that advances the cause of the class of persons for whom such resolution has been taken and not in a constricted manner so as to deprive them of the benefit that is sought to be granted. The Commission's reluctance to give the respondent no.1 the benefit that the said GR confers has been baffling.

14. Contention raised by Mr. Jagtap that the rules of the game cannot be changed after the game has commenced is

misconceived. In the present case, the advertisements made it clear in no uncertain terms that horizontal reservation for, *inter alia*, orphan candidates shall be as per instructions issued by the GoM from time to time in this respect. Once the game was started on the clear understanding that the rules could be changed midway as per instructions of the GoM, it is not open for the Commission, which bound itself by clause 4.2, to take a different stand now. The ratio of the decisions in **K. Manjusree vs. State of A.P.**, reported in (2008) 3 SCC 512, and **State of Orissa vs. Mamata Mohanty**, reported in (2011) 3 SCC 436, would have no application here. For similar reason, since a change during the process was expressly made permissible, the decision in **Madan Mohan Sharma vs. State of Rajasthan**, reported in (2008) 3 SCC 724, cited by Mr. Jagtap would also not apply here.

15. Even otherwise, on facts and circumstances, we are of the clear opinion that the view taken by the Tribunal is a plausible view. We are also mindful of the settled position of law that if in a given set of facts and circumstances two views are possible and one view has been taken by the Tribunal, which is not an absurd view, the writ court would not substitute its view for the view taken by the Tribunal.

16. For the reasons aforesaid, we see no ground to interfere with the impugned judgment and order of the Tribunal. The same is upheld and the writ petition stands dismissed, without costs.

17. Since the respondent no.1 has been allowed to participate in the main examination pursuant to the impugned judgment and order of the Tribunal, we direct the Commission to publish his result and if he is otherwise found suitable for any of the posts for which he has applied, his name may be recommended to the GoM for appointment. However, this is subject to the caveat that if the respondent no.1 is selected for appointment on any of the said posts which require him to possess typewriting eligibility, he has to acquire such eligibility within the permissible chances and the period specified in the said GR failing which consequences would follow.

18. We wish to make a parting observation on the topic of reservation for 'orphans'. Although such a reservation appears to us to have been conceived for the benefit of a particular class of unfortunate candidates, we have neither been able to trace nor has any of the parties been able to show us any provision enabling reservation for the category of 'orphans' in terms of the Constitution. Since each aspirant for public employment is entitled to be equally treated, reservation for orphans in an appropriate case could be vulnerable should a challenge be thrown. It would, therefore, be appropriate for the GoM to reconsider whether such reservation should at all be continued or not unless, of course, there is legal support behind such reservation.

(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)