

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2081 OF 2014

The State of Maharashtra
through Chief Conservator of Forest
(Regional) Swargate, Pune and Ors.

... Petitioner

Versus

Miss Ashwini Ashok Kadam

... Respondent

Mr.N.C. Walimbe, AGP for Petitioner – State.

Mr.Sanjay Kshirsagar, Advocate for Respondent No.1.

**CORAM : NITIN JAMDAR AND
MANJUSHA DESHPANDE, JJ.**

DATE : 17 October 2023.

P.C. :

The present Writ Petition is filed by the State of Maharashtra through the Chief Conservator of Forest (Regional) Swargate, Pune and other authorities of the Forest Department who were Respondents before the Maharashtra Administrative Tribunal (MAT) in Original Application No.299 of 2013 filed before the Maharashtra Administrative Tribunal at Mumbai. The order passed by the MAT has been challenged by the State, since the said order was passed granting reinstatement of service, by setting aside the termination order dated 28 March 2013 in favour of the Respondent herein who is the original Applicant.

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2 The brief facts giving rise to the present Petition are as under:

- (i) The Respondent herein was appointed as a Forest Guard on 22 January 2008, by the Deputy Conservator of Forest, Pune Division, Pune. While she was working as a Forest Guard, an advertisement came to be issued by the Conservator of Forest, Pune Forest Division, on 21 August 2009 for the post of Clerk-cum-Typist. The Respondent herein applied in response to the said advertisement, she was selected for the post of Clerk-cum-Typist *vide* appointment order dated 30 July 2012. She was relieved from her post of Forest Guard on 31 July 2012 and she joined the post of Clerk-cum-Typist on 1 August 2012. She was posted in the office of Deputy Director, Social Forestry Division, Pune. After working on the post for about six months, she received a show-cause notice dated 11 March 2013 which was received on 16 March 2013.

. In the said show-cause notice, it was alleged that, while making application for the post of Clerk-cum-Typist, she has mentioned that she holds qualification of typing in English and Marathi with 40 and 30 w.p.m. speed, respectively, as mentioned in the advertisement. The respondent has mislead the Government by suppressing the fact that, she did not possess the requisite qualification as prescribed in the advertisement on the date of application. She was called upon

to give explanation as to why criminal complaint should not be filed against her and she should be dismissed from service. The Respondent has filed her reply to the show-cause notice on 25 March 2013, wherein she had taken a defence that she has not mislead or suppressed any facts while making the application. According to her, she was required to pass the Government Commercial Certificate (GCC) Examination for typing of English and Marathi. The said advertisement did not stipulate that she should hold the said certificate on the date of advertisement. According to her, she was already undergoing her training while making application before her joining on 1 August 2012 she was holding the required certificate. Her certificates were verified before issuing appointment order.

- (ii) In spite of the explanation given by the Petitioner, the services of Petitioner came to be terminated by order dated 27 March 2013, referring to the Recruitment Rules of 2011 under which Rule 8(1)(b)(3) provides that it is necessary for a candidate aspiring for the post of Clerk-cum-Typist that, one should have a certificate issued by the GCC of English typewriting with 40 word per minute (w.p.m.) speed and Marathi typewriting 30 w.p.m. speed. Since the Respondent was not holding the said qualification and she had suppressed that she did not hold the said qualification, her services came to be terminated by cancellation of her appointment resorting to condition no.2 mentioned in the appointment order.

3 Being aggrieved and dissatisfied by the said termination order, the Applicant i.e. Respondent herein filed Original Application No.299 of 2013. In the said Original Application, after considering the arguments of respective parties and after going through the documents on record, the MAT has been pleased to quash and set aside the termination order dated 27 March 2013, and, it was further directed that the Applicant should be paid all her salary etc., from the date of her appointment to the date of her termination. It was further directed that the requisite orders should be issued within two months from the date of the order. However, it was also made clear that the Applicant would not be eligible for any back-wages from the date of her termination to the date of her reinstatement.

4 While deciding the said Original Application, the MAT has taken into consideration the overall situation of the matter. The Tribunal has taken into consideration that, the Respondent herein was already in employment as a Forest Guard and after her selection on the post of Clerk-cum-Typist, she has resigned from the said post and joined the selected post. If her candidature would have been rejected for the said post, she would not have resigned from the post of Forest Guard. As a result of termination of her services, she was left lurch, without any employment inspite of being selected for the post of Forest Guard as well as for the post of Clerk-cum-Typist. What weighed the MAT was that, the Authorities have failed to exercise due diligence while making her appointment. The

authorities could have rejected her candidature if she was not fulfilling the eligibility criteria on account of lack of required certificates. The authorities have failed to verify the certificates of the Applicant therefore, it would be unfair to blame the applicant alone and the action of termination of services would be too an harsh penalty.

5 The Tribunal has also taken into consideration that, the Applicant had appeared for the GCC examination in the month of November 2009, for English typewriting with 40 w.p.m. and passed the same on 12 March 2010 with “A” grade. The applicant had also appeared for Marathi typewriting in May 2010. Therefore at the time of her appointment on 1 August 2012, she was holding the necessary qualifications, proficiency and speed in typing both English and Marathi and possessed the necessary certificates. Therefore, considering the lethargic approach of the Government Authorities in not verifying the certificates of the Applicant and the Applicant acquiring the necessary qualifications before her joining, these two aspects were taken into consideration by the learned Member of MAT, and proceeded to pass an order of reinstatement.

6 We have gone through the contents of the Writ Petition, the Original Application alongwith annexures, the reply filed by the Government Authorities to the Original Application and also the order passed by the MAT. After going through the said order, we do not find any ground for interference in the said order passed by the

MAT. In fact, after going through the order it seems that the MAT has applied its judicious mind and has tried to balance the equities. As already observed by the MAT, both the parties were at fault to some extent for which order of termination is too harsh punishment. So also so far as merits are concerned, one more aspect which needs to be considered is that the advertisement issued by the present Petitioner dated 21 August 2009 provides for qualifications of GCC examination of Marathi and English typewriting at 30 w.p.m. and 40 w.p.m., respectively. The said stipulation in the advertisement is contrary to the Recruitment Rules for the post of Clerk-cum-Typist, which were prevailing then i.e. Recruitment Rules of 29 October 1987 issued by the Revenue and Forest Department, which required only "Possessing a speed of 40 w.p.m. in English Typewriting and 30 w.p.m. in Marathi typewriting". Therefore, the said stipulation in the advertisement itself being contrary to the Recruitment Rules and action based on the same would not be tenable.

7 When the Petition was filed in this Court, this Court after hearing the parties had been pleased to pass an order on 5 August 2016, to reinstate the Respondent forthwith pursuant to the order passed by the MAT, on 11 December 2013, and , it was clarified that the reinstatement shall be subject to further orders that may be passed in this Petition. Therefore, considering that the order of reinstatement was already passed in 2016, and it is almost six years after the said order, the Respondent is already in employment and

also considering the merits of the order passed by the MAT, we do not find any case for interference in the same. Hence, Writ Petition is dismissed being devoid of any merits. No order as to costs.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)