

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

924 WRIT PETITION NO. 1598 OF 2023

Dyaneshwar Suryabhan Kolhal

VERSUS

The Chief Executive Officer

AND

925 WRIT PETITION NO. 1601 OF 2023

Gajanan Munjaji Chatte

VERSUS

The Chief Executive Officer

AND

926 WRIT PETITION NO. 1602 OF 2023

Pandurang Wamanrao Shinde

VERSUS

The Chief Executive Officer Zilla Parishad Hingoli

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Mr. Sandeep B. Sontakke, Advocate for the Petitioners.

Mr. S. B. Ghute for Respondent/sole.

Mr. D. R. Korde, AGP for Respondent-State.

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CORAM : KISHORE C. SANT, J.

DATE : NOVEMBER 12, 2024

PC.:

1. All these Petitions are arising out of similar set of facts and are therefore, taken up together. In Writ Petition No.1598 of 2023, the petitioner was given an appointment to the post of Junior Assistant, District Services, Class-III on compassionate ground by an order dated 8th December 2009. In Writ Petition Nos.1601 of 2023 and 1602 of 2023, the petitioners were appointed to the post of

Parichar (peon) District Services, Class-IV post on compassionate ground. The Petitioners in Writ Petition Nos.1601 of 2023 and 1602 of 2023 were thereafter promoted to the post of clerk. However, subsequently they were again reverted to the post of peon.

2. In the case of petitioner in Writ Petition No.1598 of 2023, he was demoted to the post of Parichar (peon) by an order dated 13th August 2012. In the case of petitioner in Writ Petition Nos.1601 of 2023 and 1602 of 2023, they were reverted by an order dated 18th April 2012. This action was taken for not passing a typewriting examination within stipulated period.

3. In the case of Dyaneshar Kolhal (petitioner in Writ Petition No.1598/2023), in the appointment order there is specific clause No.10 which required him to pass typewriting examination in Marathi and English languages within two years from the date of appointment with stipulation that in case of failure, he would be terminated.

4. In the case of Gajanan Chatte (petitioner in WP/1601/2023) and Pandurang Shinde (petitioner in WP/1602/2023), while they were promoted by an order dated 5th February 2011, they were promoted with a condition of passing of the typewriting examination within six months from the date of the order. They did

not pass the said examination within six months. It is for this reason, they were reverted back by an order dated 18th April 2012. The petitioners challenged these orders by filing appeals before the Divisional Commissioner, Division Aurangabad.

5. The learned Additional Divisional Commissioner, Aurangabad by impugned Judgment and Order dated 16th March 2021 rejected appeal of Dnyaneshwar Kolhal. He preferred a review before the Learned Additional Division Commissioner. Gajanan Chatte and Pandurang Shinde also preferred appeals before the learned Additional Divisional Commissioner, Aurangabad, the same came to be rejected by an order dated 19th April 2022. On the same day, review by Dnyaneshwar Kolhal also came to be rejected. Thus, petitioners are before this Court.

6. Heard both the parties. By consent of the parties, the petitions are taken up for final disposal.

7. Learned Advocate for the Petitioners vehemently argued that the petitioners were appointed on a compassionate ground. In the case of Dyaneshwar Kolhal (Petitioner in WP/1598/2023) though the condition was there to pass the examination of typewriting within a period of two years, the same was latter on relaxed by Government Resolution (G.R.) dated 20th May 2015 issued by the

State Government. The relaxation was given in the cases where the appointment was given with the said condition, the period of six months also came to be relaxed, in the cases of appointment on compassionate ground. It is submitted that in the present case the petitioner in WP/1598/2023 passed the typewriting examination on 10th May 2013 whereas in WP/1061/2023, petitioner submitted his certificate on 18th August 2017 and in WP/1602/2023, the petitioner submitted his certificate on 25th August 2018. The learned Advocate submitted that by giving benefit of circular of year 2015, the petitioners ought to have been again appointed to the post of clerk by setting aside the order of reversion. He submits that both the authorities have failed to appreciate basic facts of relaxation of period of two years and six months in respective cases. In view of that the present petitions deserve to be allowed by quashing and setting aside the orders passed by the Additional Divisional Commissioner, Aurangabad.

8. The learned Advocate further relied upon the judgment and order passed by this Court in WP/7440/2014 dated 2nd May 2016. In the said case the petitioner therein passed out typewriting examination within a period of two years. He was demoted as he passed subsequent examination to improve his performance after

two years and on that ground he was reverted. He submits that the said judgment is clearly applicable to the facts of this case.

9. As against this, Mr. Ghute, the learned Advocate for the Respondent vehemently submitted that there is no merit in the petition. He submits that while accepting the appointment order, the petitioner Dnyaneshwar has accepted clause-10 requiring him to pass typewriting examination within two years from the date of appointment. He pointed out clause-3 wherein the petitioners Gajanan Chatte and Pandurang Shinde were required to execute an affidavit in the format which also contained clause No.7, in the letter granting them promotion to the post of clerk. Thus, the petitioners had knowledge of clause No.7. Admittedly, he submits, the petitioners did not pass the examination within two years from the date of appointment and from the date of promotion of the post of class-III respectively in appropriate cases. So far as Government Resolution dated 20th May 2015 is concerned, he submits that the wording of the G.R. is clear. This G.R. is not made applicable with retrospective effect but is applicable only in the cases where till passing of the G.R. period of two years or six months is not expired.

10. Considering that the petitioner was appointed in the year 2009, they were required to pass the examination before 2011. In

the case of WP/1598/2023 and in WP/1601/2023 and WP/1602/2023 within six months from the date of promotion i.e. 5th February 2011. It is submitted that where the orders are already passed reverting or demoting candidates, the said G.R. is not applicable. So far as the applicability of the judgment in WP/7440/2014 is concerned, he submits that in that case the petitioner was already possessing the certificate of passing of typewriting examination prior to his appointment. He had appeared for the next level examination after two years and therefore, he was demoted in that case. In the judgment relief upon by petitioners rules in G.R. dated 15th April 1991 was applicable, whereas in the present case, rules as per G.R. dated 23rd August 1996 are applicable and thus the judgment is not applicable to the present case and prays for rejection of the petitions.

11. After hearing the parties, this Court has examined the record. In the order dated 8th December 2009, clause-10 clearly stipulates that the petitioner in WP/1598/2023 was required to pass typewriting examination within a period of two years from the date of appointment. Time of two years expired on 7th December 2011. Admittedly, he did not pass the examination within said period. In other two writ petitions, the appointment was made to the post of

peon. By an order dated 5th February 2011, they were promoted to the post of clerk with stipulation to pass the typewriting examination within a period of six months from the date of such promotion. Clause No.7 provides for this stipulation. Undisputedly, the petitioners submitted the typewriting passing certificate much after the period of two years and six months in respective cases.

12. So far as G.R. dated 20th May 2015 is concerned, from the wording it is clear that it is applicable only to those persons whose term of two years or six months respectively had not expired on the date of this G.R. There is nothing to indicate that this G.R. is applicable even in the cases wherein the persons failed to submit such certificate within stipulated period and such period is already expired. There is nothing to indicate that even the persons who are already demoted or action is taken for failure to comply with the said condition are to be restored to their original position.

13. So far as the judgment in the Writ Petition No. 7440 of 2014 is concerned, this Court finds that the same is not applicable on the facts of the present case. Taking overall view of the matter this Court finds that the authorities have not committed any mistake. There is no merit in the Writ Petitions and therefore, writ petitions deserve to be dismissed.

14. Writ Petitions stand dismissed with no order as to costs.
15. Pending applications, if any, also stand disposed off.

(KISHORE C. SANT, J.)