



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1477 OF 2024

THE STATE OF MAHARASHTRA

& ANR.

..PETITIONERS

VS.

YASHWANT ATMARAM DESAI

..RESPONDENT

Mr. B. V. Samant, Addl. GP a/w. Ms. Kavita N. Solunke, AGP for
petitioner-State.

Mr. Gaurav Bandiwadekar for respondent.

Coram : A. S. Chandurkar & Rajesh S. Patil, JJ.

Date on which the arguments were heard : 21st June 2024.

Date on which the judgment is pronounced : 31st July 2024.

JUDGMENT (PER : Rajesh S. Patil, J.)

1. Rule. Rule made returnable forthwith. By consent of both the
counsel taken up for final hearing.

2. This writ petition filed under Articles 226 and 227 of the
Constitution of India, by the State of Maharashtra and by the
Commissioner of Police, Mumbai, challenges the judgment and order
dated 7 August 2023 passed by the Maharashtra Administrative
Tribunal, Mumbai (hereafter referred as 'MAT' for short).

3. By the impugned judgment and order, the MAT allowed the
Original Application No.59 of 2017 filed by the respondent who is the

retired employee of petitioner no.2 - the Commissioner of Police, Mumbai, thereby quashing and setting aside the order dated 19 November 2016 issued by petitioner no.2 - the Commissioner of Police, Mumbai, which had reverted respondent no.2 (retired employee) amongst few other employees to the post of Junior Clerk. The respondent is now a retired employee of petitioner no.2 - the Commissioner of Police, Mumbai.

4. On 17th July 1979, the respondent had joined the services of petitioner no.2 - the Commissioner of Police, Mumbai, as a Watchman (Class-IV). By passage of time, the respondent was promoted as a Junior Clerk on 2 November 1982.

5. In the meantime, the petitioners made Rules to conduct Post Recruitment examination ('PRT examination' for short), for the office of the petitioner no.2 - the Commissioner of Police, Mumbai. The same was titled as "Post Recruitment Training Examination for Junior Grade Clerks in the office of the Commissioner of Police, Greater Mumbai, 1984" ("Rules 1984" for short). The said Rules 1984 came into effect from 17 June 1985.

6. The respondent, thereafter, appeared for the Junior Grade Clerk examination as per 'Rules 1984' on 22 August 1992. However,

in the first attempt, the respondent failed in the said examination.

7. Meanwhile, the petitioner No.2 – Commissioner of Police vide their letter dated 22 July 1993, granted exemption to the respondent, from passing the said PRT examination. However, the petitioner No.1-State, set aside the said exemption, by their letter dated 30 May 2008.

8. The respondent accepted the said decision and subsequently, appeared for the PRT examination and cleared the said examination in the year 1994.

9. On 28 February 2012, the petitioner published the provisional seniority list of petitioner no.2's employees, falling in the cadre of "Senior Clerk", between 1 January 1995 to 31 January 2000. The said list did not contain the name of the respondent. Being aggrieved, the respondent filed Original Application No.906 of 2013, before the Maharashtra Administrative Tribunal (for short 'MAT').

10. After hearing the parties, by its order dated 24 August 2015, the MAT, directed the petitioners to publish "Final Seniority List", within three months, and also granted time to the respondent to lodge his written objections. Accordingly, the respondent lodged his written objections. The MAT, soon thereafter, passed a common order

in Original Application No.259 of 2013, 1248 of 2013 and 1260 of 2013, thereby directing the petitioner no.2-Commissioner of Police to consider the cases of the applicants, for the purpose of their respective seniority.

11. The petitioners also constituted a Committee on 22 July 2015 for examining the “issue of seniority”. The liberty was granted to the affected employees to lodge their objections to the seniority list. The petitioner, on 2 November 2016 published the “final seniority list”, for various posts including that of “Senior Clerk”. According to the said list, the respondent lost his seniority on account of not having passed PRT examination within a requisite period of three years and within two chances. By an order dated 19 November 2016, the respondent was reverted from the post of Head Clerk to the post of Junior Clerk. Being dissatisfied with the order dated 19 November 2016, the petitioner filed original application No.59 of 2017, before the MAT. The respondent prayed that the order dated 19 November 2016 be quashed and set aside and that his seniority be retained in the cadre of “Junior Clerk” from the date of his appointment i.e. 2 November 1984. The MAT by its order dated 7 August 2023, quashed and set aside the order of the petitioner dated 19 November 2016 and allowed the respondent’s application.

12. Being aggrieved by the impugned judgment and order dated 7 August 2023, passed by the MAT, the petitioner being the employer of the respondent have filed the present writ petition under Articles 226 and 227 of the Constitution of India.

13. Mr. B. V. Samant appearing on behalf of the State submitted that the MAT has erred in concluding that the respondent has within a period of three years passed the PRT examination as contemplated under Rule 3(b) of 'Rules 1984', so also, has within two chances, cleared the said PRT examination.

14. Mr. Samant further submitted that it is a matter of record that examination was not held by the petitioners after 1985 till 1992. He submitted that it is a matter of record that the respondent chose not to appear for the examination when it was conducted for the first time in the year 1985 and thereafter, for the second time in the year 1991. He submitted that there is no explanation from the respondent as to why he chose not to appear for the examination in the year 1985 and in the year 1991.

15. Mr. Samant further submitted that thereafter, in the year 1992 when the examination was held between 22 August 1992 to 24 August 1992, the respondent did appear, however, the respondent

failed in this examination. Mr. Samant submitted that thereafter, the examination was conducted in the year 1994, when the respondent appeared and cleared the examination.

16. Mr. Samant submitted that respondent appearing in the exam in the year 1994 and clearing the said examination, which was the fourth chance of the respondent. Therefore, the respondent as per Rule 3(b) of the Rules 1984 had not passed examination within two chances. Mr. Samant further submitted that so also, the respondent did not clear the examination within three years from the appointed date as per 'Rules 1984' i.e. 17 June 1985.

17. Mr. Samant submitted that the judgment and order of the Division Bench of this Court in *S. B. Sahasrabudhe vs. Prasad Vasant Mahajan and others* reported in *2017 (3) Mh.L.J. 461* will not apply to the present proceedings as the facts in the said judgment are quite different then the facts in the present proceedings. He, therefore, submitted that the writ petition should be entertained and interim relief should be granted.

18. Mr. Bandiwadekar appearing for the respondent submitted that the MAT has taken into consideration the 'Rules 1984', in correct perspective and has also considered the Division Bench judgment of

S. B. Sahasrabudhe (supra), which held that there is difference between the words “attempt” and “chance”. He submitted that though examinations were held in the year 1985 and in the year 1991, the respondent, not filling up the examination form and hence, not appearing for the examination, would mean the respondent has not taken up the “chances”. He submitted that the respondent appeared in the examination for the first time in the year 1992 and unfortunately failed. That was the first “chance” taken up by the respondent. The examination thereafter took place only in the year 1994 when for the second time the respondent took up a “chance”, appeared and cleared the said examination. He submitted that hence the petitioner, should have granted the respondent all the benefits, considering that he had cleared the examination as per the requisite condition as mentioned in Rule 3(b) of the Rules 1984 and granted him all the benefits from the appointed date i.e. 17 July 1982. Mr. Bandiwadekar further submitted that there is no merit in the writ petition and the writ petition should not be entertained and should be dismissed.

19. We have heard counsel for both sides and have also considered the documents on record.

20. It is the matter of record that examination for PRT was conducted in the year 1985 and also in the year 1991, when the respondent could have appeared for the said examination. However, the respondent chose not to appear for these examinations.

21. Thereafter, the examination was held in the year 1992 when the respondent appeared, and failed. Subsequently, the examination was conducted in the year 1994, when the respondent appeared and passed.

POINTS FOR CONSIDERATION..

22. In the present case, the claim of the respondent is required to be considered under the provisions of the Post-Recruitment Training Examination for Junior Grade Clerks in the Office of the Commissioner of Police, Greater Bombay, Rules, 1984. The Tribunal while deciding the Original Application has placed heavy reliance on the decision in *S. B. Sahasrabudhe Vs. Prasad Vasant Mahajan & Ors. (2017 (3) Mh. L. J. 461*. In that case, the Court examined the provisions of the District Transport Officers (Motor Vehicles Department) Departmental Examination Rules, 1984. Perusal of the scheme of the aforesaid Rules indicates that the Post Recruitment Training Examination Rules are distinct from the District Transport

Officers Rules. This would be clear from the following comparative chart.

Item No.	Post-Recruitment Training Examination Rules	District Transport Officers Rules
I	<i>3. Period and number of chances for passing Examination -</i> (1) Subject to the provisions of these rules, every Junior Grade Clerk- (a) appointed after the appointed date shall be required to pass the Examination within a period of four years from the date of his appointment and within three chances; (b) appointed before the appointed date shall be required to pass the Examination within a period of three years from the appointed date and within two chances unless he has already passed or is exempted from passing the Examination under the existing rules.	<i>4. Period within which Examination is to be passed-</i> (1) Every District Transport Officer appointed by promotion after the appointed date shall be required to pass the Examination within the period of two years from the date of the appointment and within three chances. (2) Every District Transport Officer recruited by nomination on or after the appointed date shall be required to pass the Examination within the period of probation of two years or within the extended period of probation, as the case may be, and within three chances: Provided that if he is not able to pass the Examination within the regular period of probation of two years he shall be liable to

	(2) <u>If for any reasons an Examination is not held in a particular year, that year shall be excluded in computing the total period of years mentioned in sub-rule (1).</u>11 pt	the same consequences as provided under sub-rule (3) of Rule 5. (3) Every District Transport Officer, working as such on the appointed date and who has not passed the Examination or has not been exempted from passing it, under the existing rules, shall be required to pass the Examination within a period of two years from the appointed date and within three chances, including any chance or chances availed of by him under the existing rules: Provided that a person promoted or appointed by nomination who is on probation or extended probation as District Transport Officer belonging to Scheduled Caste, Scheduled Caste converts to Buddhism, Scheduled Tribe, Denotified Tribe or Nomadic Tribe, shall be given one more chance and one more year to pass the
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		Examination than otherwise admissible to him under sub-rule (1) or (2). (4) Notwithstanding anything contained in sub-rule (1) or sub-rule (2) the Government may, having regard to the performance of the District Transport Officer in the examinations in respect of earlier chances already availed of by him and to any other facts and circumstances of the case, grant not more than two additional chances to a District Transport Officer to appear for the Examination. For this purpose, the period of two years' probation of a District Transport Officer appointed by nomination may be extended by a period not exceeding one year.
II	<i>4. Consequences of failure to pass Examination-</i> <u>A Junior Grade Clerk who fails to pass the Examination within the</u>	<i>5. Consequences of failure to pass the Examination. —</i> (1) A District Transport Officer who is appointed by

	<u>period and chances specified in rule 3-</u> (a) shall not until he passes the Examination or is exempted from passing the Examination under rule 5. (i) be confirmed in the post of Junior Grade Clerk; or (ii) be allowed to draw his next increment in the scale of Junior Grade Clerk; (b) <u>shall lose his seniority in the cadre of Junior Grade Clerk to all those who pass the Examination before him and rank below all such clerks who have passed the Examination before him and also below all those who are senior to such Junior Grade Clerk below whom he is placed, and who may pass the Examination after him but within the period and chances specified in rule 3:</u> Provided that the increment so withheld under sub-clause (ii)	nomination or by promotion fails to pass the Examination within the time limit and chances laid down in Rule 4, shall be liable to be discharged from service or reverted, as the case may be. (2) No District Transport Officer, who is required to pass the Examination under these rules, shall be promoted to a higher post, unless he passes the Examination or is exempted from passing the Examination. (3) If a District Transport Officer fails to pass the Examination within the time limit and chances laid down in Sub-rules (1), (2) and (3) of Rule 4 above, he shall lose seniority for the purpose of promotion to the higher post, that is to say, he shall be ranked below, all the District Transport Officers, who pass or are exempted from
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	of clause (a) shall become payable to him with effect from the date on which he passes the Examination and all future increments shall accrue to him as if no increment is withheld. However, he shall not be entitled to draw arrears of increment for the period during which increment was so withheld.	passing the Examination before him and also below all those who are senior to such District Transport Officers below whom he is placed and who may pass the Examination after him but within the period and chances laid down in Rule 4. (4) During the interim period from the appointed date to the date on which the result of the first Examination held under these rules is declared, promotion to the higher posts shall where necessary, be made according to the seniority and suitability. However, subject to the provisions of Rule 6, the District Transport Officer so promoted shall have to pass the Examination under these rules within the period and chances laid down in Rule 4 failing which they shall be reverted and shall lose seniority in the cadre of District Transport Officer in
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		the manner provided in sub-rule (3).
III	7. Any number of changes on loss of seniority- Subject to the provisions of rule 4, a Junior Grade Clerk may avail of any number of chances for appearing for the Examination.	Such Rule does not appear in these Rules.
IV	Such Rule does not appear in these Rules.	<i>10. Application for appearing at Examination. —</i> (1) Every District Transport Officer who desires to appear for the Examination, shall apply to the Commissioner in writing in the form in Appendix 'B' hereto from stating his intention of appearing at such Examination. Such application shall be made before the 1st April or 1st October, as the case may be, for appearing in the Examination to be held in July or January, respectively, of a year according to Rule 7. (2) <u>The applicant shall also clearly state the previous chances, if any, availed of by</u>

		<u>him and the year and the months in which they were availed of.</u> (3) On the basis of the applications received, the Commissioner shall draw up a list of the candidates and forward it to the Commission, so as to reach them before the end of May or November of each year as the case may be.
V	Such Rule does not appear in these Rules.	<i>11. Candidates not to withdraw their names from the list. -</i> No District Transport Officer, whose name has been included in the list of candidates for the Examination, <u>shall be permitted to withdraw his name, except for valid reasons acceptable to the Commissioner.</u>

23. From the scheme of the Post-Recruitment Training Examination Rules, it is clear that there is no requirement for an applicant to indicate if he had previously availed of any chance by giving the year and month of such examination. Similarly, in the said Rules, there is no provision that a candidate cannot withdraw his name after his name has been included in the list of candidates for the examination.

On the contrary, Rule 7 permits a Junior Grade Clerk to avail any number of chances for appearing in the examination but subject to the provisions of Rule 4. The consequence of failure to pass the examination is indicated in Rule 4. On the other hand under Rule 5 of the District Transport Officers Rules, a District Transport Officer appointed by the nomination or by promotion is liable to be discharged from service or reverted if he fails to pass the examination within the time limit and the chances laid down in Rule 4.

24. Having seen that the scheme of the Post Recruitment Training Examination Rules is distinct from the scheme of the District Transport Officers Departmental Examination Rules, it would be necessary to consider the correctness of the impugned communication dated 19/11/2016 that was the subject matter of challenge before the MAT. By that communication, the services of the respondent came to be demoted as a consequence of the failure to pass the requisite examination within the period and chances prescribed by Rule 3. The consequence of a Junior Grade Clerk losing his seniority in that cadre as a consequence of failing to pass the requisite examination within the period and chances prescribed in Rule 3(1)(b) has been specified in Rule 4(b). It is not in dispute that the respondent was promoted to the post of Junior Clerk on

02/11/1982. He was required to appear in the Post Recruitment Training Examination as per the Rules of 1984. The first such examination after the respondent was confirmed in service was held in December, 1985 in which he did not appear. The next examination was held in January 1992 wherein he again did not appear. Yet another examination was held in August 1992 in which the respondent appeared but failed. He ultimately cleared the Post Recruitment Test Examination in 1994. Rule 3(1)(b) requires a Junior Grade Clerk to pass such examination within a period of three years from 17/06/1985 and within two chances. It is clear that though such examinations were held in December 1985 and January 1992, the respondent did not appear therein. The years in which these examinations were held but in which the respondent did not appear will have to be taken into consideration. Since the examinations were held in December 1985, January 1992 for the year 1991 and August 1992 which the respondent failed to clear, he did not satisfy the requirement of Rule 3(a)(b) of the Rules of 1984. He passed the said examination only in 1994 which is after a period of three years as the examinations were held in 1985, 1991 and 1992.

25. The object behind requiring a Junior Grade Clerk to pass the

Post Recruitment Examination within the specified period is to ensure his attaining the requisite standard within the stipulated period. After being so appointed as Junior Grade Clerk, the Training Examination if cleared within the prescribed time enables such Junior Grade Clerk to draw his next increment in the scale of Junior Grade Clerk. The consequence of not passing such examination is also provided which is loss of seniority. Rule 7 makes it clear that subject to the consequences provided in Rule 4, a Junior Grade Clerk may avail any number of chances for appearing for the examination. It is thus clear that the impugned communication dated 19/11/2016 merely seeks to give effect to the consequences provided under Rule 4(b) of the Rules of 1984. The MAT misdirected itself in proceeding on the basis that since the respondent did not make any application for appearing in the examinations held for the years 1985 and 1991, the consequences provided under Rule 4(b) were not attracted. As stated above, the scheme of the Rules that were considered in ***S. B. Sahasrabudhe (supra)*** are different from the scheme of the present Rules. For this reason, since the respondent failed to pass the requisite examination within the time prescribed by Rule 3(1)(b) of the Rules of 1984, the consequences provided under Rule 4(b) were attracted. The MAT therefore was not justified in quashing the

impugned communication as regards the petitioner.

26. The Tribunal while granting relief to the respondent has held that a show cause notice ought to have been given to the respondent before reverting him vide order dated 19/11/2016. In that regard, it has relied upon the decision in *Union of India and Anr. Vs. Narendra Singh, (2008) 2 SCC 750*. In the case in hand, the consequence of failure to pass the examination within the period specified and within the requisite chances as specified in Rule 3 (1)(b) is indicated in Rule 4(b). The order dated 19/11/2016 is merely a consequential order that gives effect to Rule 4(b). In *Narendra Singh (supra)* an erroneous promotion was sought to be cancelled without complying with the principles of natural justice. In the light of Rule 4(b) of the Post-Recruitment Training Examination Rules, it cannot be said that any further opportunity of hearing is required to be given to a Junior Grade Clerk who fails to pass the examinations within the period and chances specified in Rule 3(1)(b). In any event, the same would be an empty formality. Hence the ratio of that decision cannot apply to the facts of the present case.

27. Hence, the Petitioners succeed. Rule is made absolute in terms of prayer clause (A) which reads as under:-

(A) The Record and Proceedings in Original Application No.

59 of 2017 before the Hon'ble Maharashtra Administrative Tribunal, Mumbai Bench including the Judgment and Order dated 7.8.2023 be called for and looking into legality and propriety thereof, the same be quashed and set aside by issuing Writ of Certiorari or any other appropriate Writ.”

28. In the facts of the case, this judgment would operate on the expiry of a period of four weeks from the date it is uploaded.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]