

(2007) 04 BOM CK 0125

In the Bombay High Court

Case No : Writ Petition No. 6110 of 1996

Shrinivas Govind Samant and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 29-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 309
Maharashtra Civil Service (Compulsory Marathi Shorthand and Marathi Typing
Examination for English Stenographers and English Typists) Rules, 1991 — Rule 1, 3,
4, 8

Citation : (2007) 6 BomCR 766

Hon'ble Judges : Savant R.M., J;Rebello F.I., J

Bench : Division Bench

**Advocate : G.N. Salunkhe, for the Appellant; A.A. Kumbhakoni, Asso. Advocate
Genl and M.P. Thakur, A.G.P., for the Respondent**

Final Decision : Allowed

Judgement

Savant R.M., J.—By this petition filed under Article 226 of the Constitution of India, the Petitioners who are working in the offices of the various courts in District Kolhapur, which are under control and supervision of the District Judge, Kolhapur, are seeking cancellation and/or revocation of the orders of recovery, both dated 12.2.1996, Exhs. "S" and "T" to the petition and the order passed on the representation of the petitioners dated 21.8.1996 and 18.9.1996 at Exhs. V and Y" to the petition. Consequently, the petitioners have prayed for such relief as they would be entitled to if the main reliefs as prayed for by them are granted.

2. The factual matrix involved in the above petition is stated thus:

The petitioners are working as junior clerks in various court offices in the District of Kolhapur within the control and jurisdiction of the respondent No. 4 i.e. The District Judge, Kolhapur. At the time when the petition was filed, the petitioners Nos. 1, 18 and 21 were working in the office of the respondent No. 4 as Senior Clerks. The petitioners Nos. 2, 4 and 22 were working as Stenographers and the

petitioner No. 6 was working as Clerk-cum-Stenographer. It is undisputed that the services of the petitioners have been used and utilised in various subordinate courts in district Kolhapur. Insofar as the post of the petitioners are concerned, the Civil Manual Volume-I, Chapter 31, Rule 1 to Appendix "A" is applicable under which the post of junior clerks is prescribed. It would be relevant to note at this stage that there is no specific post of Marathi typists in the said Manual. The petitioners were recruited as junior clerk -cum- typists and all of them have passed English typing examination, on the basis of which they were so appointed. To give impetus to Marathi typing, the Government declared incentives to encourage candidates, who were already recruited to appear for the Marathi typing examination. The Director of Languages vide resolution dated 16.6.1981 declared Marathi typing and shorthand examination open to all Government servants in the State including the English typist. The said examination was to be conducted twice in a year in the month of March and August. To enable the candidates to prepare for the said examination a special training program was also started by the respondent No. 5 herein. As indicated above, to encourage candidates to appear in the said examination, the State Government offered various incentives as per Clause -1 of the said resolution, the scheme of prizes was made applicable to all English typists and Clerks who were English Typists. To be eligible for the said incentives /reward, the English typists and clerks were required to pass the said Marathi typing examination with the speed of 30 words per minute. It was contemplated that the candidates who passed the said Marathi typing examination would be entitled to a reward of Rs. 125/ for typists and Rs. 200/- for stenographers. The petitioners appeared for the said examination and successfully passed the same. The State Government, thereafter, issued another resolution dated 12.8.1982, which was in furtherance of the earlier resolution dated 16.6.1981 and by the subsequent resolution decided to raise the incentives given to the candidates for appearing for the Marathi typing examination. By the subsequent resolution, the incentive for passing the said examination was at the rate of Rs. 500/- in cash or two increments. The petitioners having passed the said examination were given to elect either of the two options, all the petitioners were granted two increments on the dates mentioned in Exh. "A" to the petition.

3. It appears that the State Government thereafter by resolution dated 11th November, 1983 issued guide-lines for the filling up the posts of Marathi typists. The said resolution inter alia stipulated the eligibility of the candidates who could be appointed in the post of Marathi typist. Clause 2(3) of the said Resolution states that on and from the date of the said Resolution, the said post of Marathi typists should be filled only by a person knowing Marathi typing. By way of Clause 2(4) of the said Resolution it was specified that in the event it is necessary to appoint English typist on the said posts, the prior sanction of the concerned department of the respondent No. 1 should be obtained and that under no circumstances such appointments can be made without such prior sanction. Clause 3 of the said Resolution states that if such prior permission was

not obtained, the concerned officer would be made responsible for disobeying the orders. Insofar as the present petitioners are concerned, the prior sanction or permission as contemplated under Clause 2(4) has not been obtained. Thereafter, the Government issued another Government Resolution dated 24.6.1985, laying down guide-lines with a view to enable the candidates to pass the Marathi typing examination conducted by the Respondent No. 5. It is mentioned in the said G.R. that the persons who pass the said examination would be entitled to claim the incentives as mentioned in the earlier G.R. dated 16.6.1981 and 12.8.1982. The said G.R. was followed by another G.R. dated 5.7.1986, which reiterated what was stated in the earlier G.R. dated 24.6.1985. The State Government issued a circular dated 5.7.1987 by which circular the English typist cum-clerks were held eligible to appear for Marathi typing examination and could have the benefits of the G.R. dated 12.8.1982. Thereafter a turn around came inasmuch as by G.R. dated 10.7.1989, the respondent No. 5 for the first time directed that the English typists recruited after 11.11.1983 should not be allowed to appear for the said examination.

4. By circular dated 24.7.1991, the State Government directed the recovery of benefits granted to the clerks in terms of the G.R. dated 16.6.1981 and 12.8.1982 in respect of the clerks who were appointed after 11.11.1983. It is this action taken pursuant to the said G.R. for the recovery of the amounts which is the subject-matter of the above petition. The State Government thereafter issued another circular dated 13.3.1993 by which circular the lower courts and its departments, since they were not fully converted in respect of the use of Marathi were exempted from the rigours of the said G.R.'s. The respondent No. 4 on the basis of the circular dated 24.7.1991 issued orders on 24.5.1995 and 26.5.1995 for the recovery of the two increments granted to the petitioners and which the petitioners were enjoying for considerable time. Against the said order of recovery, the petitioners made representation to the respondent No. 2 on 6.6.1995. The petitioners filed a supplementary representation to the original representation on 8.01.1996. In spite of the said representations, the orders of recovery came to be passed on 12.2.1996. Being aggrieved by the said orders, the petitioners herein filed writ petition No. 1265 of 1996. The said writ petition came to be disposed of in terms of the Minutes of the Orders filed by the parties. Under the said Minutes of the Order, the representation of the petitioners were to be considered and to be disposed of. The representation of the petitioners thereafter, came to be rejected by the respondent No. 4 vide his orders dated 26.8.1995 and 27.9.1996. In the circumstances, the present petition has been filed.

5. Though no affidavit in reply has been filed on behalf of the respondent Nos. 1, 2 and 5, an affidavit in reply has been filed on behalf of the respondents Nos. 3 & 4 by one Suhas S. Barve, Additional Registrar, (Legal), High Court, Appellate Side, Bombay. The said affidavit states that in view of the objections raised by the Director of Accounts and in view of the G.R. dated 11.11.1983, the benefit of two advance increments given to the petitioners were withdrawn by the

department as also the excess payment of pay and allowances due to the said erroneous grant of two advance increments. The said affidavit states that there are no separate posts of clerk-cum-typists or English typists and all clerks working in the judiciary are required to know English typewriting as per the recruitment Rules prescribed in the Civil Manual, 1986. The said affidavit further states that the said advance increments have been granted to the petitioners without verifying the length of service which is required to qualify for grant of two advance increments and that on account of the ignorance of this fact, two advance increments were granted to the petitioners, on the recommendations of the Advisory Committee, which was afterwards rectified by the Pay Verification Unit.

6. We have heard the learned Counsel for the parties; Mr. G.N. Salunkhe, the learned Counsel for the petitioners and the Associate Advocate General for the respondents. On behalf of the petitioners, the principal contention is that the Government Resolution dated 11.11.1983 is not applicable to the petitioners inasmuch as the posts in the judiciary are coming under the exception clause of the said resolution. In the alternative, it is the submission of the learned Counsel for the petitioners that assuming that the said G.R. is applicable, for appointment of any person who knows English typing to the post of Marathi typist, the permission from the concerned department ought to have been taken by the concerned officer and the petitioners, therefore, cannot be made to suffer on the said count. It is further submitted on behalf of the petitioners that in view of the framing of the rules known as the Maharashtra Civil Service (Compulsory Marathi Shorthand and Marathi Typing Examination for English Stenographers and English Typists) Rules, 1991 framed under Article 309 of the Constitution of India by which all earlier orders and Resolutions have been superseded the petitioners, who were appointed prior to 6.5.1991 on which date the said Rules came into force, cannot be deprived of the benefits of the G. Rs. by which incentives were granted to them. It is the submission of the learned Counsel for the petitioners that passing of the examination of Marathi typing is made compulsory only after 6.5.1991 when the said Rules have come into force. The petitioners having been recruited much earlier and having passed examination between years 1983 to 1989 cannot be deprived of the benefit of the incentives. In any event, according to the learned Counsel for the petitioners, the said Rules published vide notification dated 05.06.1991 would have over riding effect over administrative instructions contained in various Resolutions, Circulars etc. including the Government Resolution dated 11.11.1983. The petitioners have also based their case on estoppels inasmuch as though the qualification of the Marathi typists have been prescribed vide the said Government resolution dated 11.11.1983; even in the year 1993, according to the petitioners, the respondent No. 4 herein, that is the District Judge Kolhapur, had advertised posts of junior clerks, wherein the qualification prescribed was knowledge of English typing and that the candidates having knowledge of Marathi typing would be given preference. The petitioners also relied upon an advertisement issued in the year 1996 for judicial

clerks in Pune District, wherein English typing is made compulsory and Marathi is made optional. Based on the said facts, it is the contention of the learned Counsel for the petitioners that consistently the post of Marathi typist has been filled up by persons who were knowing English typing and who had thereafter acquired the qualification of having passed Marathi typing examination. The learned Counsel for the petitioners therefore, contended that the respondents are now stopped from withdrawing the said two increments granted relying upon the said Government resolution dated 11.11.1983.

7. On behalf of the respondents, the learned Associate Advocate General fairly conceded that there are no separate posts of Marathi typist in the Civil Manual and the post that is mentioned is that of junior clerk and typist. The learned Associate Advocate General drew our attention to the relevant provisions of the Civil Manual, Appendix "A", paragraph 577 (iii). The qualification for the post of clerks is mentioned in the said Rule 8 thereof:

Clerks : (i) Not lower than a pass in the S.S.C. or other examination recognised as equivalent to the S.S.C. Examination.

(is) A reasonably good speed in typing.

(Viii) Adequate knowledge of the regional language of the Court in the District.

8. It is pertinent to note that in the said paragraph, there is no mention of the post of Marathi typist. It was sought to be submitted by the learned Associate Advocate General that in view of the said Government Resolution dated 11.11.1983 that the pay verification committee found that the petitioners were not entitled to two advance increments as also amounts on account of outstanding work.

9. We have given our anxious consideration to the rival submissions. What emerges from the reading of the resolutions as reproduced earlier in this judgment is that the Government was desirous to give an impetus to persons working in the Government departments to learn Marathi typing in view of the policy of the State Government to spread the use of Marathi in all the departments. In the said circumstances, the State Government had issued the said two Government resolutions dated 16.6.198 and 12.8.1982. The petitioners who were admittedly working as junior clerks at the relevant time, in view of the said two Government Resolutions, enrolled themselves for training and passed the Marathi typing examination between the year 1983 to 1989. There is serious doubt about the applicability of the said Government Resolution dated 11.11.1983 to the judiciary. On account of the fact that the use of Marathi was not adopted, insofar as lower judiciary is concerned, therefore, the said G.R. cannot be per se applied to the lower judiciary. In any event, the said G.R. prescribed the qualification for the post of Marathi typists and states that the post of Marathi typists could not be filled up by persons knowing English typing. However, it is significant to note that the said G.R. in Clause 2(4) thereof, states that a person knowing English typing could be appointed in the post of Marathi

typist provided the concerned officer obtains sanction of the concerned department, We, therefore, find considerable merit in the submission of the learned Counsel for the petitioners that the petitioners cannot be made to suffer on account of the operation of the said G.R. dated 11.11.1983 on the said two counts.

10. The State Government in exercise of the powers conferred under Article 309 of the Constitution of India has framed the rules known as the 1991 Rules, which rules have been brought into effect by the notification dated 6th May, 1991. The said rules, inter alia, defined as to what is English typing; the Existing Training Scheme, Rule 4 thereof is very relevant and is reproduced therein below:

4. Period for passing examinations - (i) The English Stenographer or English Typist, who passed the Secondary School Certificate Examination with Marathi (Higher standard) as the first language, -

(a) who are already in the service of the Government on the commencement date, shall pass the examination prescribed in Rule 3 within four years from the commencement date;

(b) Who are recruited after the commencement date, shall pass the examination prescribed in Rule 3 within four years from the date of joining the Government service.

(ii) The English Stenographer or English Typist who has passed the Secondary School Certificate Examination but not with Marathi (Higher Standard) as the first language , -

(a) Who are already in the service of the Government on the commencement date, shall pass the examination prescribed in Rule 3 within six years from the commencement date;

(b) Who are recruited after the commencement date, shall pass the examination prescribed in Rule 3 within four years from the date of joining the Government service.

11. Rule 3 of the said Rules, inter alia states that every stenographer or typist performing the duties of the English stenographer or English typing, as the case may be, shall pass the following examinations, (which are mentioned in the Rules) within the period prescribed in Rule 4 herein. The typists and clerk typists who are mentioned in Clause (iii) of Rule 3 has to pass the Marathi typing examination of the Ad hoc Board with the speed of 30 words per minute. Rule 4(i) (a) of the said Rules stipulates that the persons who are already in service of the Government on the commencement date, shall pass the examination prescribed in Rule 3 within four years from the commencement date. Similarly, Rule 4(ii)(a) prescribed the period of six years for those persons who are already in service on the commencement date. It is thus Rule 4 which in our view would cover the cases of the petitioners. The petitioners being clerks, stenographers or junior clerks who know English typing, are therefore required to pass the said Marathi

typing examination within the time stipulated in the said Rules. In view of the fact that the petitioners have already passed the said examination, there is compliance of the said Rules of 1991. The said Rule being in the form of subordinate legislation under Article 309 of the Constitution of India would, therefore, prevail over the Government Resolution dated 11.11.1983 and the circular dated 24.7.1991 on the basis of which the impugned orders have been passed against the petitioners. In our view therefore, the action taken by the respondents for making recoveries, and refixation of pay of the petitioners is unsustainable.

12. As can be seen, the Civil Manual does not contemplate a post of Marathi typist, the recruitment has been consistently done of clerks cum-typists. The petitioners have rightly relied upon the advertisement issued by the respondent No. 4 in the year 1993 and by the learned District Judge, Pune in the year 1996, calling for clerks, knowing English typing and Marathi typing was optional. The petitioners relying upon the said resolutions dated 16.6.1981 and 12.8.1982 enrolled themselves for training for appearing at the Marathi typing examination and having passed the said examination, were given two increments and also amounts for outstanding works. Having dealt with issue of applicability of the said Government resolution dated 11.11.1983 in the context of the Rules of 1991 made under Article 309 of the Constitution of India, we are of the view that the respondents are now estopped from recovering the said two advance increments paid to the petitioners as also refixation of the petitioners pay on the said basis.

13. Insofar as petitioner No. 4 Shri Moreshwar Vishwanath Pujari is concerned, his case, we are informed by the learned Associate Advocate General, stands on different footing than the case of the other petitioners. It is mentioned in paragraph 13 of the affidavit of Shri Suhas S. Barve, that the said M.V. Pujari, who was clerk cum-stenographer was granted two advance increments w.e.f. 1.10.1985 for his outstanding work. Shri Pujari was appointed as clerk-cum-stenographer in August, 1983. It is the stand of the Respondents that the benefit of advance increment for outstanding work is to be given to the persons after verification of confidential record of last five years. Since the said petitioner had not completed five years of continuous service, according to the respondents, he was not eligible for two advance increments for outstanding work. This fact was pointed out by the Pay Verification Unit while verifying the pay fixation done by the officers. Since, the respondents are of the view that Shri Pujari was not eligible for the said two advance increments on the grounds mentioned in the said affidavits, we direct the respondents to hear Shri Pujari and, thereafter, pass appropriate orders in accordance with law in respect of the withdrawal of the benefit of the two advance increments and excess pay and allowances paid to him. The said exercise to be carried out by the respondents within three months from date.

14. In view of the foregoing, the above petition will have to be allowed and Rule would have to be made absolute in terms of prayer Clause (c) of the petition with

parties left to bear their respective costs.