Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

Date : 11.04.2016.

M.A.No.103/2016 in O.A.No.219/2016 with M.A.No.170/2016 in O.A.No.269/2016

Shri H.J. Nazirkar

Shri S.B. Nangnure ....Applicants

Versus

The State of Maharashtra & Ors. ....Respdts

1. The O.A.No.219/2016 was called out and some initial submissions were made by Shri A.S. Golegaonkar, learned Advocate for the Applicant and Shri A.V. Bandiwadekar, learned Advocate for Respondent No.4.

2. It so appeared that O.A.No.269/2016 is today on the afternoon board of Single Bench in which there is an order made by the Hon'ble Division Bench of the Hon'ble Chief Justice in W.P.No.4112/2016 (Shri Sudhakar B. Nangnure Vs. State of Maharashtra & Ors.), dated 07.04.2016.

3. We, therefore, direct that O.A.No.269 /2016 and O.A.No.219/2016 be urgently placed before us on board ~~for~~ tomorrow.

4. S.O. to 12.04.2016 (First on board).

Sd/- Sd/-

(R.B. Malik) Member (J) **(Rajiv Agarwal) Vice- Chairman**

prk

DATE : 11/4/16
CORAM :
Hon'ble Shri. RAJIV AGARWAL (Vice - Chairman)
Hon'ble Shri R. B. MALIK (Member)
APPEARANCE :
~~Shri/Smt.~~ : A.S. Golegaonkar
Advocate for the Applicant
~~Shri /Smt.~~ : N.K. Rajpurohit
C.P.O/~~P.O.~~ for the Respondents

Adj. To 5.O. to 12/4/16.
with OA 219/16.
with OA 269/16.
FOB

3

(G.C.P.) J 2260 (A) (50,000—2-2015). [Spl.- MAT-F-2 E.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

Original Application No. of 20 DISTRICT

..... Applicant/s

(Advocate .....)

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

Date : 11.04.2016.

O.A.No.782/2015

Shri N.V. Sudame & Ors. ....Applicants

Versus

The State of Maharashtra & Ors. ....Respdts

1. Heard Shri S.D. Dhongde, learned Advocate for the Applicants and Shri K.B. Bhise, Presenting Officer holding for Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

2. In view of the order passed in M.A.No.119/2016 and M.A.No.614/2015, O.A. is adjourned to 07.06.2016.

Sd/- Sd/-

(R.B. Malik) Member (J) **(Rajiv Agarwal) Vice- Chairman**

prk

DATE : 11/4/16
CORAM :
Hon'ble Shri. RAJIV AGARWAL (Vice - Chairman)
Hon'ble Shri R. B. MALIK (Member)
APPEARANCE :
Shri/~~Smt.~~ S.D. Dhongade
Advocate for the Applicant
Shri/~~Smt.~~ K.B. Bhise
~~C.P.O.~~/P.O. for the Respondents holding for N.K. Rajpurohit
~~Adj. To~~
S.O. to 7/6/16.

[P.T.O.

3

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

Date : 11.04.2016.

M.A.No.119/2016 in O.A.No.782/2015

Shri N.V. Sudame & Ors. ....Applicants

Versus

The State of Maharashtra & Ors. ....Respdts

1. Heard Shri S.D. Dhongde, learned Advocate for the Applicants and Shri K.B. Bhise, Presenting Officer holding for Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

2. We have perused the Application with the assistance of Shri S.D. Dhongde, learned Advocate for the Applicants and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

3. In the ultimate analysis the order of Hon'ble High Court in Writ Petition No.5213 /2012 (Shri Sarjerao R. Chauhan & 3 Ors. Versus State of Maharashtra & 3 Ors.) dated 16.07.2015 and G.R. dated 17.05.2003 are sought to be placed on record.

3. Now the judgment of the Hon'ble High Court being a binding precedent and G.R. being document of the State, it is not necessary at all for any application for amendment to be made or any special directions to be given.

4. The judgment of Hon'ble High Court and G.R. may be placed on record and with this, this M.A. stands disposed off with no order as to costs.

Sd/- Sd/-

(R.B. Malik) Member (J) **(Rajiv Agarwal) Vice- Chairman**

prk

DATE : 11/4/16
CORAM :
Hon'ble Shri. RAJIV AGARWAL (Vice - Chairman)
Hon'ble Shri R. B. MALIK (Member)
APPEARANCE :
Shri/~~Smt~~ S.D. Dhongade
Advocate for the Applicant
holding for K.B. Bhise
Shri /~~Smt~~
holding for N.K. Rajpurohit
C.P.O ~~/ P.O.~~ for the Respondents

Adj. To. ~~-~~ M.A. is disposed of.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

Date : 11.04.2016.

M.A.No.614/2015 in O.A.No.782/2015

Shri D.V. Shande & Ors. ....Applicants

Versus

The State of Maharashtra & Ors. ....Respdts

1. Heard Shri S.D. Dhongde, learned Advocate for the Applicants and Shri K.B. Bhise, Presenting Officer holding for Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

2. This M.A. seeks impleadment of other eight applicants who seek the same relief as the existing applicants. The O.A. is still pending. At the most the Respondents can claim a right to file affidavit-in-reply to the claim of the newly added Applicants and contest the matter. But we do not think it is necessary to protract the matter.

3. With these observations the only order made is that the applicants of M.A.No.614/2015 be impleaded as party applications no.181 to 188, subject to payment of court fees, by appropriate amendment to be effected within three weeks from today.

4. Amended copy be served on the Respondents for them to file affidavit-in-reply, if necessary.

5. M.A. is allowed in these terms with no order as to costs.

Sd/- Sd/-

(R.B. Malik) (Rajiv Agarwal)
Member (J) Vice- Chairman

prk

DATE : 11/4/16
CORAM :
Hon'ble Shri. RAJIV AGARWAL
(Vice - Chairman)
Hon'ble Shri R. B. MALIK (Member)
APPEARANCE :
Shri/Smt. : S.D. Dhongade
Advocate for the Applicant
Shri /Smt. : holding for N.K. Rajpurohit
C.P.O/P.O. for the Respondents

Adj. To M.A. is Allowed.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

O.A.274/2016

Shri C.V. Sane ... Applicant
Vs.
The State of Mah. & ors. ...Respondents

Heard Shri K.R. Jagdale, the learned Advocate for the Applicant and Shri K.B. Bhise holding for Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

The interim order made by me on 21st March, 2016 is current. I have perused the record and proceedings and heard the rival submissions. I am of the opinion that taking into consideration all aspects of the matter including the fact that the Applicant himself is a Septugenian it will be appropriate to expedite the hearing of the OA itself, so that all parties come to know their respective positions sooner than later. The interim order till now in force is extended till further orders. Even as further time is being given for filing Affidavit-in-reply, I think a formal order of admitting the OA can be made here and now. The OA is, therefore, admitted. The matter be placed before the appropriate Division Bench (Bench II as of now) on 4th May, 2016. The interim order till now in force is extended till further orders. Hamdast.

Sd/-

(R.B. Malik) 11.4.16
Member (J)
11.04.2016

(skw)

DATE : 11/4/16
CORAM :
~~Hon'ble Justice Shri A. H. Joshi (Chairman)~~
Hon'ble Shri ~~M. Ramesh Kumar~~ R.B. Malik (Member) ~~A~~ J
APPEARANCE :
Shri/Smt. : K.R. Jagdale
Advocate for the Applicant
Shri /Smt. : N.K. Rajpurohit
C.P.O / P.O. for the Respondent/s
Admit.
Adj. To 4/5/2016. Hamdast
F.H. D/B-II

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

O.A.294/2016

Shri Shaikh H. S. Hyder ... Applicant
Vs.
The State of Mah. & ors. ...Respondents

Heard Shri A.S. Golegaonkar, learned Advocate for the Applicant and Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

Issue notice returnable on 25.04.2016.

Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.

Applicant is authorized and directed to serve on Respondents intimation / notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988 and the questions such as limitation and alternate remedy are kept open.

The service may be done by hand delivery / speed post / courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within four weeks. Applicant is directed to file Affidavit of compliance and notice.

S.O. to 25th April, 2016. The learned P.O. do waive service.

Sd/-

(R.B. Malik)
Member (J)
11.04.2016

(skw)

DATE: 11/4/16
CORAM:
~~Hon'ble Justice Shri A. H. Joshi (Chairman)~~
Hon'ble Shri R.B. Malik (Member) A
APPEARANCE:
Shri/Smt.: A.S. Golegaonkar
Advocate for the Applicant
Shri /Smt.: N.K. Rajpurohit
C.P.O / P.O. for the Respondent/s

Adj. To 25/4/16.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal' s orders

DATE : 11/4/16
CORAM :
~~Hon'ble Shri A. H. Joshi (Chairman)~~
R.B.Malik Hon'ble Member (Member) (A) (J)
K.R. Jagdale
N.K. Rajpurohit
Adj. To 5/5/16.

O.A.229/2016

Shri R.S. Bhapkar ... Applicant
Vs.
The State of Mah. & ors. ...Respondents

Heard Shri K.R. Jagdale, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

Issue notice returnable on 05.05.2016.

Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.

Applicant is authorized and directed to serve on Respondents intimation / notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988 and the questions such as limitation and alternate remedy are kept open.

The service may be done by hand delivery / speed post / courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within four weeks. Applicant is directed to file Affidavit of compliance and notice.

S.O. to 5th May, 2016. The learned C.P.O. do waive service.

Sd/-

(R.B. Malik) 11/4/16
Member (J)
11.04.2016

(skw)

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.299 OF 2016

DISTRICT : NAVI MUMBAI

Miss. Sherlyn S. Jadhav.)...**Applicant**

Versus

1. The State of Maharashtra & Anr.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.
Shri K.B. Bhise, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 11.04.2016

O R D E R

1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri K.B. Bhise, the learned Presenting Officer for the Respondents.

2. This OA is placed before me for consideration of interim order. Be it noted right at the outset that Shri Bhise, the learned P.O. strongly opposed the grant of any relief and sought time to file Affidavit-in-reply. I

have heard him as well as Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant. Time will have to be given to the Respondents to contest the matter both at the stage of Affidavits as well as the final hearing. However, the facts herein generally and more particularly in view of the orders made on earlier OAs are such that the Applicant cannot be left unprotected. In OA 189/2016, the other colleagues of the Applicant have been granted interim relief by a detailed 9 page order made by me on 14th March, 2016. As and by way of convenience, it will be appropriate to fully quote the above referred order.

> "1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicants and Miss Neelima Gohad, the learned Presenting Officer for the Respondents.
>
> 2. The matter is placed before me for consideration of interim relief. I am satisfied that this matter will have to be heard for the issue of interim relief one way or the other because the facts herein are exactly similar to the facts in OA No.311 of 2012 in which MA No.214 of 2012 was taken out and an interim order was made on 11.5.2012. Further another OA No.258 of 2014 was made on which interim relief was granted on 27.3.2014 and a clarificatory order was made on 9.5.2014. The present applicants came to be posted as bonded candidates and in the two OAs referred just now in which two orders came to be made in 2012 and 2014 respectively, the applicants were the senior colleagues so to say of the present applicants who came to be appointed earlier in the same capacity and as mentioned already brought the OAs in 2012 and 2014 respectively,.
>
> 3. It will be appropriate to quote the entire order of 27.3.2014 and it may only be noted that in the same OA by the clarificatory of 9.5.2014 a typographical error was corrected:
>
> > "Heard Shri A.V. Bandiwadekar, learned advocate for the applicant and Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.
> >
> > Learned Advocate Shri Bandiwadekar stated that there are around 500 posts of Staff Nurses vacant on the

establishment of ESIS, Respondent No.2. On instructions, learned Presenting Officer Mrs. Gaikwad stated that the process for appointment of around 25 Staff Nurses is almost complete and those persons are likely to be appointed shortly. However, that will still leave a large number of more than 400 posts vacant. Even if the number of candidates who are undergoing Nursing Training/Education who will be available to be posted as bonded candidate is taken into account, there will be still large number of posts lying vacant on the establishment of ESIS.

This Tribunal in MA No.214/2012 in OA No.311/2012 dated 11.5.2012 has passed the following order:

'4. With reference to Para 3 of MA, I say that taking into account the large number of vacancies, these posts are required to be filled in by purely temporary appointments as ESIS Hospital run in equal share of 1:7 by Government of Maharashtra & ESIS Corporation. In view of the exigencies of services, appointment of Staff Nurses are required to be made on purely temporary basis till posts of Staff Nurses, on regular basis are filled in by adopting the guidelines in GR as amended from time to time by the Government of Maharashtra.'

The situation appears to be similar and a similar relief is required to be given.

In view of the facts and circumstances mentioned above, interim relief as sought in Para 10(c) of the OA is granted. Respondents are directed to file reply before the next date."

4. It will, therefore, become very clear that in the cases of similarly placed nurses this Tribunal in two earlier OAs granted relief. Now there are a few points raised by the Ld. Presenting Officer Miss Neelima Gohad which need to be dealt with. In the first place she contends that the process of filling up the Staff Nurses on regular basis is going on and therefore there is no need now to grant any relief to the present applicants. May be on the generality of the matter or principles she may in her own way be right but then in actual practice it would appear that when on 9.5.2014 a clarificatory

order was made by the second bench of which I was also a Member, the bench was told that the process for filling up the vacant posts had commenced. Whatever may be the practical difficulty but if the process goes on and on then in my view it will not be just to keep the fate of the applicants hanging like this. If the process includes issuance of advertisement which I think it must be, and if the applicants are eligible to apply and if they do so and get through so much the better but if they could not, the matter would end. However, to perpetuate the uncertainty and then to tell them that they must wait will be, as I mentioned above, unjust.

5. A factual aspect was raised by the Ld. PO Miss Gohad that the applicants have not made a representation to the respondent no.2 Commissioner, ESIS. I must sympathize with the Ld. PO because she did not have the assistance of and she does not have the assistance of anybody of the said office because none from that office has remained present even till now. The document is shown to me which has also been furnished to her where it clearly appears that representation was submitted to the respondent no.2 and was received in his office. However, while annexing the copies the applicants have annexed the copies of the representation to the Hon'ble Chief Minister and the Hon'ble Minister. Had there been any responsible officer from the office of the Commissioner, it would perhaps have been possible for him to point out to the Ld. PO the facts of the matter.

6. The Ld. PO then told me that by the very nature of the things the interim relief cannot be granted unless there is an unassailable or at least strong prima facie case meaning 'existence of right'. It is not necessary for me to enter into a detailed academic discussion about the concept of "right" but it is clear that even that issue has to be determined with due regard to the peculiarities of each matter and the context in which it becomes necessary to consider the existence of right. Here what appears from the record is that the applicants hold basic qualification for being appointed as Staff Nurses. If the regular posts were advertised then in all probability they would be able to run for them irrespective of the ultimate outcome and therefore if there was no occasion for them to establish their right to the permanent post then the only right that they can lay a claim on, is what was created twice in their favour. And in this view of the matter, therefore, I am of the opinion that in the absence of compelling reasons and circumstances they could be denied the same relief that was

granted to their senior colleagues only if the constitutional provisions inter alia of equality and absence of discrimination was to be violated and that is something no Court or forum of justice can even think of. Further there is an element of judicial discipline also when in exactly similar facts and circumstances of the case the relief was granted to the applicants in those two OAs the same cannot be denied to the present applicants unless the circumstances had changed and that too, radically so as to justify that course of action. In the affidavit in reply it is pleaded inter alia and it was also contended by the Ld. PO that if this state of affairs continues there would be multiplicity of similar proceedings. As to this contention of the Ld. PO I find that it is in the hands of the respondents themselves to avoid such contingencies by single mindedly finishing the work of regular appointments. As far as this Tribunal is concerned, I do not think on such submissions or pleas the constitutional and legal principles can be given a go by.

7. Finally, as far as the contention of the Ld. PO that the applicants no more hold the post of Bonded Staff Nurse and therefore no relief can be granted, I find that every judicial forum is empowered to make, even at interim stage an order of mandatory nature. Though exercise of this power would be with circumspection, care and caution but it is not as if such a power does not exist at all. In fact it is the other way round. It is for the respondents to justify as to how they could support their action vis-a-vis the present applicants when a certain state of affairs has come into existence because of the two earlier orders of the Tribunal in case of the two sets of similarly placed Staff Nurses and I find nothing at all in justification thereof.

8. I am, therefore, so inclined as to hold that I must exercise my powers of granting mandatory relief at interlocutory stage the net result whereof would be to place the present applicants exactly at par with the applicants of OAs No.311 of 2012 and 258 of 2014. It is however made clear that this interim order will be exactly in the same terms in which the applicants were given appointments for 364 days with all those terms and conditions and they will inter alia not be allowed to claim on the strength of this order alone what could be described as permanent appointment. All these terms and conditions will be read as a part of this order. They shall however be allowed to compete for the regular posts. However, in the event a candidate is selected

and appointed on regular basis, these applicants will have to vacate their posts but it is also made clear that even then if other posts are lying vacant, then merely by reason of this order the applicants will not necessarily be refused appointment in the same capacity. With this abundant clarification and till further orders the interim relief is granted till 11.4.2016. Four weeks time is given to the respondents to comply. Hamdast. This OA be tagged along with OAs No.311 of 2012 and 258 of 2014.

Sd/-
(R.B. Malik)
Member (J)
14.3.2016"

3. In view of the above order, I am of the opinion that the Applicant being similarly placed as the Applicants thereof, the same interim relief as per Para 8 thereof will have to be given and is accordingly given. I am informed that in compliance with the order above referred to in OA 189/2016, orders have already been issued on 2nd April, 2016. With the above interim relief, this OA stands adjourned for Affidavit-in-reply to 14th June, 2016. Hamdast. Steno-copy allowed.

Sd/-

(R.B. Malik)
Member-J
11.04.2016

Mumbai
Date : 11.04.2016
Dictation taken by :
S.K. Wamanse.
E:\SANJAY WAMANSE\JUDGMENTS\2016\4 April, 2016\O.A.299.16.w.4.2016.doc

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

MISC. APPLICATION NO.97 OF 2016
IN
REVIEW APPLICATION NO.31 OF 2015
IN
ORIGINAL APPLICATION NO.270 OF 2012

DISTRICT : NASHIK

Shri Jarshad Bhikanrao Ahirrao.)
Akola District Prison, Kaulhed Road,)
Officers Quarter, Akola – 444 001.)**...Applicant (Ori.Resp.No.11)**

Versus

1. Savita Nivrutti Salve @ Savita)
Pravin Dethe, R/o. Jaidatta,)
Survey No.882/3/45, Vaibhav)
Colony, Rajeev Nagar, Mumbai Agra)
Road, Nashik.)

2. The Desk Officer.)
Through the Chairman / Secretary,)
Maharashtra Public Service)
Commission, Having office at)
3rd Floor, Bank of India Building,)
M.G. Road, Fort, Mumbai - 400 001.)

3. The State of Maharashtra.)
Through its Secretary, Home Dept.,)
Having office at Mantralaya,)
Mumbai – 400 032.)

4. The State of Maharashtra.
Through its Secretary, General
Administration Department,
Mantralaya, Mumbai – 400 032.

5. Shrikumara A. Madhukarrao.
R/o. A Type, 33/1, R.C.F. Colony,
Kurul, Tal. Alibaug,
Dist : Raigad – 402 201.

6. Shribhaidas Namdeo Dhole.
Superintendent of Jalgaon,
District Prison, Jalgaon Collector
Office back side, Jalgaon – 425 001.

7. Kirti Kishore Dahale.
Kirti Rajesh Chintamani (Dahale),
Gurukrupa Jwellers, Sarafa Line,
Mahagaon, Yavatmal.

8. Shrivaibhav S. Agey.
Jailor Grade-2, Byculla District
Prison, Clare Road, Byculla,
Mumbai 400 008.

9. Aruna Arjunrao Mugutrao.
C/o. Arun T. Handal, A/p.
Pimpalgaon, Naku, Tal. : Newas,
Dist : Ahmadnagar – 414 603.

10. Geeta Hanumant Shikare.
Jail Officers Quarter No.1,
Near Female Prison, Yerawada,
Pune – 411 006.

11. Swati Khushalrao Jogand.
C/o. Jadhav D.D. G, 001, B-2,
Yogidham, Murbad Road, Kalyan (W)
Dist : Thane.

12. Shrinagnath Gangadhar Sawant.

A/P. Bolegaon (Khurd), Tal. Chakur,)
District : Latur – 413 525.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Resps. 2 to 4.
Shri M.D. Lonkar, Advocate for Respondent No.1.
Shri A.A. Desai, Advocate for Resps. 5,7,9, & 12.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)

DATE : 11.04.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This Misc. Application (MA) throws up for determination an issue which is not a common place one. The issue is as to whether it is per-se legally impermissible to allow appearance of an Advocate for a party in a Review Application, other than the Advocate who argued his main proceeding which in this case was the Original Application (OA). Pertinently, there is not even slightest of an allegation of any sharp practice or oblique motive in what can be described as "change of Advocate" for arguing the Review Application.

2. The facts to the extent they are necessary to be stated are a few and simple. Shri R.M. Kolge, the learned Advocate represented the Applicant in the OA. It came to be decided by this Bench on27.7.2015. The said OA came to be dismissed. Thereagainst, the said Applicant Savita Salve brought this Review Application and even at that time, she was represented by Shri Kolge, Advocate. The Applicant of this MA Mr. H.B. Ahirrao is the Respondent No.11 to the Review Application.

3. Pending the said R.A, Mr. M.D. Lonkar, the learned Advocate filed his Vakalatnama. Pertinently, although in Para 3 of this MA, the present Applicant Ahirrao has made an averment that on 20.1.2016, the learned Advocate Mr. R.M. Kolge withdrew his appearance, there does not seem to be any such document on record and the Bench did not make any order permitting him to withdraw appearance. Therefore, it must follow that the original Applicant of the R.A. was represented by two Advocates – S/s Kolge and Lonkar.

4. In the above set of circumstances, the Applicant of this MA has moved us inter-alia pleading that the present Respondent No.1 being the original Applicant could not be allowed to change her Lawyer, and therefore,

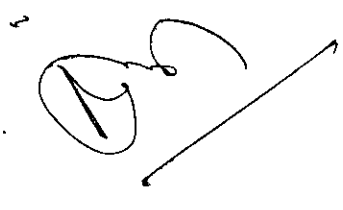
she must continue to be represented by Shri Kolge, Advocate. In that connection, reliance is placed on case law.

5. The original Applicant and the other Respondents did not file Affidavits-in-reply. In the MA, we have heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant hereof, Shri Lonkar, the learned Advocate for the Respondent No.1 being the original Applicant – Smt. K.S. Gaikwad, the learned Presenting Officer for Respondent Nos.2 to 4, Shri A.A. Desai, the learned Advocate for Respondent Nos.5, 7, 9 & 12.

6. We have already indicated as to what is the issue that is to be determined. The Advocate-Client relationship as per the traditional law of contract is a contract between Agent and Principal. Incidentally, even the Master-Servant relationship also is an instance of contract of service. However, with passage of time and evolution of law, so as to remain serviceable to the needs of the society, there has been instances of codification of law of contract. There are several such instances, but we need not get drawn into the academics. The Advocate-Client relationship is also now governed by the statute enshrined in the Advocates Act, 1961 and in fact also, the procedural law enshrined in

order 3 of the Code of Civil Procedure. Therefore, when one talks about the contractual relationship between the Client and Advocate, the traditional liberty in the matter of law of contract available to a Principal and Agent would have to be studied in that perspective. The conduct of matters before the judicial fora has to be with utmost purity and that indeed is a matter of public policy which the judicial institutions must uphold and they do in fact do so. In actual practice which in some cases is also supported by the directions of the Court of superintendence, the document evidencing the establishment of Client-Counsel relationship is known by what are commonly called "Vakalatnama, Power, Vakalat, etc. There is a practice of the Court endorsing its seal of approval, if anything to indicate that the Advocate has the authority to conduct the said case before the said judicial forum.

7. Now, as a matter of fact, even if the practices set out in the preceding Paragraph are not followed in letter in the Tribunals, they are undoubtedly followed in spirit at least and it is a matter of not only judicial discipline vis-à-vis the Court on the one hand and the Litigant and Counsel on the other. But it provides sanctity and purity to the proceedings. In our view, these observations need to



be borne in mind in adjudicating the MAs like the present one. If there is nothing worth taking exception to, then there is a certain degree of latitude to the litigant to chose his Advocate in exactly the same way as a patient has to chose a Doctor.

8. In the present matter, as indicated hereinabove, there is absolutely no indication that any dishonourable practice was adopted by any one, be it party or advisors.

9. In the context of the above facts, we now turn to the authorities cited at the Bar. In **G. Chandramohan Vs. IOC, Review Application No.167/2014 in Writ Appeal No.950/2013, dated 11.12.2014 (Madras)**, there was a change of Advocate at the stage of the review. It was, however, found that the review did nothing, but re-state the facts and the facts at issue in the Writ Appeal which judgment was sought to be got reviewed. To that extent, it was an authority laying down the cantours of review jurisdiction. It was in that factual background that the change of Advocate in review was noticed.

10. The next judgment was in the matter of **Shobha Bajirao Damodar Vs. Triratna Krida and Shikshan Prasarak Mandal, Akola and others, 2009 (1)**

Maharashtra Law Journal 979. That matter was a Writ Petition brought before the Hon'ble High Court. Interim orders were made. The Advocate was changed. The observations in Para 12 thereof would make it clear as to how certain statements at the admission stage must have led the Court to formulate a particular point of view. In Para 17, it was specifically observed that a device of filing an application for review by changing Advocates had to be deprecated. Thereafter, in Para 22, Hon'ble Bombay High Court referred to a judgment of the Hon'ble Supreme Court in **Tamil Nadu Electricity Board and another Vs. N. Raju Reddiar and another, AIR 1997 SC 1005**. A particular Paragraph quoted from the judgment of the Hon'ble Supreme Court, in fact needs to be quoted here as well.

> "It is a sad spectacle that new practice unbecoming of worthy and conductive to the profession is cropping up. Mr. Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of Mr. V. Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on April 24, 1996. Yet another advocate, Mr. S.U.K. Sugar, had now been

engaged to file the present application styled as "application for clarification", on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is on record who neither appeared nor was party in the main case. It is salutary to note that Court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage. This is not conductive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. ....."

The judgment was then concluded with an imposition of cost on the defaulting litigant.

11. In **C.S. Venkatasubramanian Vs. State Bank of India, AIR 1997 SC 2329** was essentially an authority in the matter of the remuneration to the previous Counsel

(fees). There the learned Advocate sued the Banks, for whom he had appeared. The principles emanating therefrom had already been applied by us to the present facts.

12. An unreported judgment of the Hon'ble Supreme Court in **Review Petition (Civil) No.2279/2010 in Civil Appeal No.4757/2010 (Delhi Pradesh Regd. Med. Prt. Association Vs. Union of India & Ors., dated 11.03.2011)** was cited before us. There a Review Petition was moved on the ground that the main matter was heard and decided in his absence and hence, breach of principles of natural justice was invoked as a ground. Their Lordships were pleased to formulate an important issue in Para 4, on whether an Advocate other than the Advocate-on-Record could file Review Petition and in that connection **Tamil Nadu Electricity Board** (supra) was also cited. The Review Application was then considered in depth and it was found that it had no merit.

13. **R.D. Saxena Vs. Balaram Prasad Sharma, AIR 2000 SC 2912** was a matter which required the determination of the issue with regard to the lien, if any, of the Advocate on the file of his client for failure to pay his fees. On facts, the issues were not similar to the present

one. We have already, at the outset, made a reference to the provisions of Advocates Act and applied the principles laid down by the Hon'ble Supreme Court.

14. Now, the above discussion, more particularly based on the judgment in the matter of **Shobha** (supra) and **Tamil Nadu Electricity Board** (supra), in our opinion, makes it clear that what is required to be guarded against is the indulgence by scheming litigants and may be even their advisors into sharp practice, so as to somehow or the other try to achieve success. That affects the administration of justice and also pollutes the serene environment of institution of justice. If there is a clear evidence to show that the party changing the Advocate midstream was actuated with bad motive then of course such a practice would not only have to be curbed, but such a person would have to be penalized. It is, however, very clear that in the present set of facts, there is not even a particle of material to show that there was any such sharp practice having been played or attempted to be played. If that be so, then in our view, there is no ground to direct the removal from record of the learned Advocate Shri Lonkar.

15. In our opinion, the crux of the matter is that if there is any material to show any dishonourale practice or questionable conduct in the name of Review Application by change of the Advocate, then the judicial forum will come down hard on such an attempt and those that made or attempted such an act. If that vice is found not to be there, then in our opinion, there would be no ground to act. It is after-all a question of facts which would be peculiar to each matter. In **Shobha** (supra) and **Tamil Nadu Electricity Board** (supra), there was clear material to show that in the guise of review jurisdiction by a questionable conduct ulterior motives were involved. That quite clearly is not the state of affairs herein.

16. For the foregoing, therefore, this Misc. Application stands dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
11.04.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
11.04.2016

Mumbai
Date : 11.04.2016
Dictation taken by :
S.K. Wamanse.
E:\SANJAY WAMANSE\JUDGMENTS\2016\4 April, 2016\M.A.97.16 in R.A.31.15 in OA 270.12.w.4.2016.doc

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

Original Application No. of 20 DISTRICT

..... Applicant/s

(Advocate .....)

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

Date : 11.04.2016.

O.A.No.1001 of 2012

Shri V.K. Thakare ....Applicant

Versus

The State of Maharashtra & Ors. ....Respdts

1. Applicant and his Advocate absent. Head Shri K.B. Bhise, Presenting Officer for the Respondents.

2. However, the perusal of the earlier orders would show that ~~in this~~ today also O.A. will have to be adjourned with the same liberty.

3. It is adjourned to 01.09.2016.

Sd/- Sd/-

(R.B. Malik) (Rajiv Agarwal)
Member (J) Vice- Chairman

prk

DATE : 11/4/16
CORAM :
Hon'ble Shri. RAJIV AGARWAL (Vice - Chairman)
Hon'ble Shri R. B. MALIK (Member)
APPEARANCE :
~~Shri/Smt. :~~ Applicant and Advocate absent.
~~Advocate for the Applicant~~
Shri/~~Smt.~~ K. B. Bhise
~~C.P.O./~~P.O. for the Respondents
~~Adj. to~~ S.O. to 1/9/16.

[P.T.O.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

M.A.173/2015 in C.A.1 to 14/2012 & 118/2014 (at Mumbai) in O.A.787/1995

The Principal Secretary, Public Health Department Smt. Sujata M. Saunik is present. Mr. S.K. Nair, Special Counsel for the State. Mr. M.D. Lonkar, learned Advocate appearing as Amicus Curie.

The MA appears before us for the first time after its assignment. The matter is debated only to a certain extent. The learned Special Counsel may have to first of all satisfy us as to whether appearing as a Special Counsel for the State which would mean that State is defending the alleged Contemptnor, he can appear as such. No doubt that the alleged Contemptnor has got a right to be represented by an Advocate of her choice. But the issue is as to whether the State can defend her. In this connection, a reference was made to Rules 10 and 13 of Maharashtra Administrative Tribunal (Contempt of Courts) Rules, 1996. The learned Special Counsel seeks a short adjournment. The matter is adjourned to 2nd May, 2016.

Sd/-
(R.B. Malik)
Member (J)
11.04.2016

Sd/-
(Rajiv Agarwal)
Vice-Chairman
11.04.2016

(skw)

DATE: 11/4/16

CORAM:

Hon'ble Shri. RAJIV AGARWAL
(Vice - Chairman)

Hon'ble Shri R. B. MALIK (Member)

APPEARANCE:

~~Shri/Smt.~~ S.K. Nair
Spl. Counsel
~~Advocate~~ for the Applicant

Shri ~~/Smt.~~ M.D. Lonkar
~~C.P.O./P.O. for the Respondents~~ Advocate
appearing as amicus Curie.

~~Adv.~~ S.O. to 2/5/16