(G.C.P.) J 2959 (A) (50,000—3-2017) [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
	11.05.2023 **O.A 536/2023** Shri R.M More & Ors ... Applicants Vs. The State of Maharashtra & Ors ... Respondents SPEAKING TO THE MINUTES 1. Heard Ms Bhavana R. Khichi i/b Shri A.S Gaikwad, learned advocate for the Applicants and Ms Archana B.K, learned P.O for the Respondents. 2. Learned counsel for the applicants submit that in the order dated 10.5.2023 in para 2, line no. 27, the word "B. Sc Business Management" is mentioned. However, it should be read as "B. SC (Agri Business Management)" 3. The word "B. Sc Business Management" should be read as "B. SC (Agri Business Management)". 4. Ordered accordingly. Sd/- **(Mridula Bhatkar, J.)** **Chairperson** Akn

(G.C.P.) J 2737 (50,000—4-2019) [Spl.- MAT-F-2 E.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

M.A./R.A./C.A. No. of 20

I N

Original Application No. of 20

FARAD CONTINUATION SHEET No.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	O.A. No.544 of 2023 Sainath S. Gaikwad ..Applicant Vs. The State of Maharashtra & Ors. ..Respondents Heard Ms. Darshna Naval holding for Shri Pranav Avhad, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents. 2. Ld. Advocate for the applicant seeks leave to withdraw the above OA. 3. Leave granted. OA is allowed to be withdrawn and disposed off as such. Sd/- (Mridula Bhatkar, J.) Chairperson 11.5.2023 (sgj)

(G.C.P.) J 2737 (50,000—4-2019) [Spl.- MAT-F-2 E.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

M.A./R.A./C.A. No. of 20

I N

Original Application No. of 20

FARAD CONTINUATION SHEET No.

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

O.A. No.548 of 2023

Umaji S. Rathod ..Applicant
Vs.
The State of Maharashtra & Ors. ..Respondents

Heard Smt. V.K. Jagdale, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. The applicant a Sectional Engineer (Civil) in Public Works Department, Sub Division, Panvel submits that provisional seniority list is issued on 3.2.2023 of the cadre of Junior Engineer (Civil). The applicant has submitted objections dated 7/8.2.2023, 13/14.2.2023 and 17.4.2023 in writing to the said provisional seniority list. Ld. Advocate submits that these objections are to be decided before issuing final seniority list.

3. Ld. PO on instructions submits that consideration of all these objections is in the process and the final seniority list will be published after taking into account all the objections raised by various persons.

4. Hence, the respondents are directed to consider the objections raised by the applicant as mentioned above and thereafter the final seniority list of Junior Engineers (Civil), PWD is to be published. With these directions now nothing remains in the OA and the same is disposed off.

Sd/-

(Mridula Bhatkar, J.)
Chairperson
11.5.2023

(sgj)

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

MA No.337/2023 in OA No.971/2019
MA No.338/2023 in OA No.973/2019
MA No.339/2023 in OA No.1022/2019

R.P. Gaikwad
M.V. Sontakke
D.N. Lone ..Applicants

Vs.

The State of Maharashtra & Ors. ..Respondents

Heard Shri K.R. Jagdale, learned Advocate for the Applicants and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. In all the OAs the applicants are at present working on a reverted post of Superintendent from earlier post of Warden in Tribal Development Department. They have challenged the order dated 30.8.2019 qua the applicants thereby reverting them to the post of Superintendent. They also pray that recruitment process which is initiated pursuant to the advertisement dated 1.12.2018 for the post of Warden (Male) by the respondents is to be quashed and set aside and respondent no.2 be restrained from appointing any candidate on the post of Warden (Male) under ST and NT(A) category forthwith. It is also prayed that the applicants be allowed to work on the same promotional post of Warden or any other post equivalent to the post of Senior Inspector/Office Superintendent with all consequential benefits.

3. Ld. Advocate for the applicants submits that pending OAs the authority has submitted proposal dated 10.2.2023 for promotion of other Junior Officers to the post of Assistant Project Officer/Research Officer, Group-B. Ld. Advocate submits that if these persons are promoted to the post of Assistant Project Officer/Research Officer, Group-B then it will lead to further complications.

4. In all these MAs communication dated 10.2.2023 is challenged. This is a Vacation Bench, where only urgent matters can be entertained. It is not a bench of regular hearing. Considering the date of communication, artificial urgency is created today. The applicants should have come earlier. As they have not approached the Tribunal immediately after submission of the proposal, it shows that there is no urgency in the matter to entertain these MAs during vacation.

5. S.O. to 22.6.2023.

Sd/-

(Mridula Bhatkar, J.)
Chairperson
11.5.2023

(sgj)

(G.C.P.) J 2959 (A) (50,000—3-2017) [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

~~10.05.2023~~

M.A 341/2023 in O.A 545/2023

Shri M.M Palkar & Ors ... Applicants

Vs.

The State of Maharashtra & Ors ... Respondents

1. Heard Shri S.S Dere, learned advocate for the applicant and Ms Swati Manchekar, learned C.P.O for the Respondents.

2. Misc Application to sue jointly is allowed, subject to payment of court fees, if not already paid.

Sd/-

(Mridula Bhatkar, J.)
Chairperson

Akn

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.543 OF 2023

Dr. Vandana N. Wahul & 11 Ors.)..Applicants

Versus

The State of Maharashtra & Ors.)..Respondents

Shri S.S. Dere – Advocate for the Applicants

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson

DATE : 9th May, 2023

ORDER

1. Heard Shri S.S. Dere, learned Advocate for the Applicants and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. Ld. Advocate for the applicants seeks leave to add 9 officers as party respondents in the array of respondents. Leave granted. Respondents to provide address of respondents to the Ld. Advocate. Amendment be carried out forthwith and amended copy be served on all the respondents.

3. All the 12 applicants are working as Deputy Director of Education and holding additional charge of Joint Director of Education at various places. However, Govt. has now issued the order dated 4.5.2023 appointing some officers on deputation to the post of Joint Director of Education for a period of one year or till regularly appointed person is available for the post of Joint Director of Education.

4. Ld. Advocate for the applicants relied on clause 5(a) of the GR dated 17.12.2016 wherein the Govt. has taken a policy decision that this GR is applicable only to the cadre where in the recruitment rules of the said post the appointment by way of deputation is provided. He pointed out Rule 3 of the Joint Director of Education in the Maharashtra Education Service, Group A (Administrative Branch) Recruitment Rules, 2018, which reads as under:

> *"3. Appointment to the post of Joint Director of Education in the Maharashtra Education Service, Group A (Administrative Branch) shall be made by promotion of a suitable person on the basis of merit-cum-seniority from amongst the persons holding the post of Deputy Director of Education in the Maharashtra Education Service, Group A (Administrative Branch) having not less than three years of regular service in that post."*
>
> (Emphasis laid)

5. Ld. Advocate for the applicants submits that there is no provision of appointment to the post of Joint Director by way of deputation and the post of Joint Director is to be filled up by promotion from the feeder cadre of Deputy Director. It is necessary that the person from feeder cadre should have put in not less than 3 years of regular service on the post of Dy. Director. Ld. Advocate submits that none of the applicants has put in 3 years of regular service on the post of Dy. Director and at present all the applicants are given additional charge of Joint Director, Education on the ground that applicants are from feeder cadre and they have some experience of the said department and at least all the applicants have been holding this additional charge for more than one year. All the applicants have completed 2 ½ years on the post of Deputy Director and all of them will complete 3 years of tenure in December, 2023. Therefore, appointment of all the 9 officers on deputation as per order dated

4.5.2023 on the post of Joint Director, Education is illegal. Moreover, all these 9 officers have no experience in the Education Department.

6. Ld. Advocate for the applicants by way of interim relief prays that charge is not to be taken from the applicants as they are senior in the department and all the 9 officers are not from Education Department and applicants charge is to be continued.

7. Ld. CPO submits that none of the 9 officers are made party to this OA and if any relief is granted, it will affect adversely to those officers. Ld. CPO refers to clause 5(a)(2)(ii) of the GR dated 17.12.2016 which empowers the State to fill up post of Joint Director of Education on deputation. Ld. CPO on instructions submits that Shri Dilip D. Jagdale from Beed at Sr. No.1 has joined at Pune today and Smt. Manjusha Miskar at Sr. No.4 has also joined at Pune yesterday against applicants no.1 and 5.

8. Considered the submissions and also Rule 3 of the Joint Director of Education in the Maharashtra Education Service, Group A (Administrative Branch) Recruitment Rules, 2018 hereinabove and also the GR dated 17.12.2016 issued by GAD. The clauses 5(a)(1) and (2) prima facie have direct bearing over this issue of appointment by deputation to this post. If such mode is not available then no appointment by deputation can be made. Clauses 5(a)(1) and (2) reads as under:

"५. शासकीय अधिकारी / कर्मचाऱ्यांना शासकीय कार्यालयात प्रतिनियुक्तीने नियुक्ती करण्यासाठी खालील अटी व शर्ती राहतील :-

(अ) खालील परिस्थितीमध्ये शासकीय अधिकारी / कर्मचारी यांना प्रतिनियुक्तीवर जाता येईल:-

(१) संबंधितास ज्या संवर्गातील पदावर जायचे आहे त्या संवर्ग पदाच्या सेवाप्रवेश नियमात प्रतिनियुक्ती बाबत विविष्ट / स्पष्ट तरतूद असेल तरच या मार्गाने नियुक्ती द्यावी. संबंधित पदाच्या सेवाप्रवेश नियमात विभागाच्या आवश्यतेनुसार किती प्रमाणात पदे प्रतिनियुक्तीने भरता येतील याबाबत विर्निदिष्टपणे प्रमाण निश्चित करण्यात यावे. हे प्रमाण मूळ मंजूर संवर्ग संख्येच्या कमाल १५ टक्कयाच्या मर्यादेपेक्षा अधिक असू नये. त्यानुसार सर्व शासकीय कार्यालयांनी प्रतिनियुक्तीने पदे भरण्यासंदर्भात त्यांच्या सेवा प्रवेश नियमात तरतूद करणे आवश्यक राहील. मात्र ज्या शासकीय सेवेतील पदांच्या सेवाप्रवेश नियमात या अगोदरच मंजूर संवर्ग संख्येच्या १५ टक्क्या पेक्षा जास्त पदे प्रतिनियुक्तीने भरण्याची तरतूद केली असेल अशा सेवाप्रवेश नियमात १५ टक्केच्या मर्यादेत प्रतिनियुक्तीने पदे भरण्याबाबतची सुधारणा करण्यात यावी. प्रतिनियुक्तीच्या प्रमाणाच्या कमाल मर्यादेची ही अट मंडळे, महामंडळे व स्वायत्त संस्था यांना लागू असणार नाही.

(२) (i) सेवाप्रवेश नियमातील तरतूदीनुसार नामनिर्देशनाव्दारे नियुक्तीसाठी यथास्थिती लोकसेवा आयोग पुरस्कृत अथवा जिल्हा / प्रादेशिक निवड समितीकडून निवड झालेले उमेदवार उपलब्ध होण्यास, किंवा (ii) पदोन्नतीने पद भरण्यासाठी योग्य व पात्र उमेदवार उपलब्ध नसल्यास आणि असे उमेदवार उपलब्ध होण्यास, एक वर्षापेक्षा अधिक कालावधी लागणार आहे अशा अपवादात्मक परिस्थितीत प्रथमत: १ वर्षाकरिता सरळसेवेव्दारे अथवा पदोन्नतीने उमेदवार उपलब्ध होईपर्यंत या मार्गाने नियुक्ती करता येईल, किंवा (iii) ज्या कार्यालयाच्या आस्थापनेवरील पदे केवळ प्रतिनियुक्तीने भरण्याची तरतूद आहे अशा परिस्थितीत या मार्गाने नियुक्ती करता येईल. ”

9. Thus from these clauses points can be discerned as follows:

(a) Unless there is a provision in the recruitment rules, no appointment can be made on deputation.

(b) Appointments can be made under exceptional circumstances viz. where appointments are made by nomination, some time is going to be consumed for appointment in between the recommendation and the appointment of the candidates, then a person can be appointed on deputation, for short period.

(c) When the posts are to be filled up by promotion then if the eligible candidates are not available and also not going to be available for a period of more than one year, under such circumstances initially for a period of one year appointment can be made by deputation.

(Emphasis laid)

10. Thus, after reading all the sub-clauses of clause (5) of said GR, it is found that mode of appointment on deputation is not prescribed in the recruitment rules, then appointments by such mode can be made just as a stop-gap arrangement in exceptional circumstance. Such exceptional circumstance should be genuine and not created artificially.

11. I am informed by Ld. Advocate for the applicants that all the applicants who are Dy. Directors of Education and holding additional charge of Joint Director of Education will be completing three years of tenure as Deputy Director within six months i.e. by end of December, 2023 and thus they all will be eligible and available for consideration for their promotion to the post of Joint Director.

12. As per the requirement of sub clause (2) of clause (5) of the GR the Government has failed to show that no person will be available from feeder cadre i.e. Dy. Director to be considered for promotion to the post of Joint Director for more than one year. Hence, prima facie I am of the opinion

that all the appointments made on deputation by the Government by order dated 4.5.2023 are not sustainable in law considering the Recruitment Rules of 2018 and GR dated 17.12.2016.

13. Ld. CPO has submitted that one Shri Dilip D. Jagdale and one Smt. Manjusha Miskar, whose names are appearing in the order dated 4.5.2023, have joined at Pune. Prima facie it is already held above that said appointments on deputations are illegal. However, if any officer has joined at respective post and she/he is not made party to the proceedings then the said officer is required to be heard. While concluding the arguments, the Ld. Advocate for the applicants has requested to add them as party respondents, which is allowed. Such officer is to be informed and it is made clear to her/him that her/his appointment is subject to order passed after giving her/him audience at any interim/final stage.

14. Hence, in view of the above, status quo as of today is granted in favour of all the applicants, except who have already joined today, also in respect of officers in order dated 4.5.2023 who have not joined till 9.5.2023.

15. Ld. Advocate on instructions from applicants submits that Shri D.N. Jagdale, who stood at Sr. No.1 in the impugned order, is on leave till 23.5.2023 and he has not joined at Pune. However, Ld. CPO on instructions submits that Shri Jagdale has joined today. In view of the counter submissions and the facts of which cannot be verified right now, if Shri Jagdale has not joined, then the status quo is to be maintained qua applicant no.5.

16. The office objections, if any, are to be removed and court fees to be paid, if not already paid.

17. Issue notice before admission returnable on 8.6.2023. The respondents are directed to file reply.

18. 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. Private service is allowed. Respondents are put to notice that the case may be taken up for final disposal at the stage of admission hearing.

19. 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.

20. By Hand delivery, speed post, courier notice to be served and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.

21. In case notice is not collected within **seven days** or service report on affidavit is not filed **three days** before returnable date, the OA shall be placed on board before the concerned Bench under the caption **"For Dismissal"** and thereafter on the subsequent date the OA shall stand dismissed.

Sd/-

(Mridula Bhatkar, J.)
Chairperson
9.5.2023

Dictation taken by: S.G. Jawalkar.

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(G.C.P.) J 2959 (A) (50,000—3-2017) [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

11.05.2023

O.A 537/2023

Shri D.T Chaudhari ... Applicant
Vs.
The State of Maharashtra & Ors ... Respondents

1. Heard Ms Purva Pradhan i/b Shri D.B Khaire,, learned advocate for the Applicants and Ms Archana B.K, learned P.O for the Respondents.

2. It is informed by S.D.O, Jalgaon that Proforma of Caste Certificate of the year 2006 or 2007 or 2008 is not available. These submissions are not acceptable. The concerned S.D.O, Jalgaon is directed to remain present before this Tribunal tomorrow at 12.00 noon.

3. Learned P.O is directed to email this order to the Collector and Additional Collector, Jalgaon forthwith.

4. S.O to 12.5.2023.

Sd/-

(Mridula Bhatkar, J.)
Chairperson

Akn

(G.C.P.) J 2737 (50,000—4-2019) [Spl.- MAT-F-2 E.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

M.A./R.A./C.A. No. of 20

I N

Original Application No. of 20

FARAD CONTINUATION SHEET No.

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

M.A. No.342 of 2023 in O.A. No.546 of 2023

Nilima R. Takey & Anr. ..Applicants
Vs.
The State of Maharashtra & Ors. ..Respondents

Heard Shri S.S. Dere, learned Advocate for the Applicants and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. The applicants are prosecuting for the same cause of action. For the reasons stated in the MA, leave to sue jointly as prayed for is granted, subject to the Applicants paying requisite court-fees, if not already paid. MA disposed off accordingly.

Sd/-

(Mridula Bhatkar, J.)
Chairperson
10.5.2023

(sgj)

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.546 OF 2023

Nilima R. Takey & Anr. ..Applicants

Versus

The State of Maharashtra & Ors. ..Respondents

Shri S.S. Dere – Advocate for the Applicants

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson

DATE : 10th May, 2023

ORDER

1. Heard Shri S.S. Dere, learned Advocate for the Applicants and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. Both the applicants are working as Deputy Director of Education and holding additional charge of Joint Director of Education at various places. However, Govt. has now issued the order dated 4.5.2023 appointing some officers on deputation to the post of Joint Director of Education for a period of one year or till regularly appointed person is available for the post of Joint Director of Education.

3. Ld. Advocate for the applicants prays that the impugned order dated 4.5.2023 be quashed and set aside and the respondent no.1 may be directed to continue the applicants to hold the additional charge of the post of Joint Director of Education. The Ld. Advocate for the applicant also prays for status quo ante as on 4.5.2023 by way of interim relief.

4. In similar set of facts and circumstances this Tribunal has passed a detailed order and granted status quo by way of interim relief by order dated 9.5.2023 in OA No.543 of 2023 filed by Dr. Vandana N. Wahul & 11 Ors. against The State of Maharashtra & Ors.

5. Hence, in view of the above and for the reasons recorded in said order dated 9.5.2023 passed in OA No.543 of 2023, status quo as on today is granted in favour of both the applicants and also in respect of Respondents No.3 & 4 who have not joined till 10.5.2023.

6. The office objections, if any, are to be removed and court fees to be paid, if not already paid.

7. Issue notice before admission returnable on 8.6.2023. The respondents are directed to file reply.

8. 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. Private service is allowed. Respondents are put to notice that the case may be taken up for final disposal at the stage of admission hearing.

9. 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.

10. By Hand delivery, speed post, courier notice to be served and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.

11. In case notice is not collected within **seven days** or service report on affidavit is not filed **three days** before returnable date, the OA shall be placed on board before the concerned Bench under the caption **"For Dismissal"** and thereafter on the subsequent date the OA shall stand dismissed.

Sd/-

(Mridula Bhatkar, J.)
Chairperson
10.5.2023

Dictation taken by: S.G. Jawalkar.

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