

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 268 OF 2020

DISTRICT : SINDHUDURG

Shri B.R Savandkar)...**Applicant**

Versus

The State of Maharashtra & Others)...**Respondents**

Dr Gunratan Sadavarte, learned advocate for the Applicant.

Smt K.S Gaikwad, learned Presenting Officer for the Respondents.

CORAM : **Justice Mridular R. Bhatkar (Chairperson)**
Shri P.N Dixit (Vice-Chairman) (A)

DATE : **23.06.2020**

PER : **Justice Mridular R. Bhatkar (Chairperson)**

ORDER

1. Heard Dr Gunratan Sadavarte, learned advocate for the applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.
2. The applicant was serving as Police Sub Inspector at Sindhudurg and his letter of resignation dated 20.4.2020 was accepted by the Respondents and communicated to the applicant by order dated 1.6.2020.
3. The applicant has challenged the said order on various grounds and especially on the ground that it was not a resignation, but a representation, which is wrongly considered as resignation. It was written under threat and suffering and hence he should have been called by the higher authorities for further confirmation before the said acceptance.

4. Learned Counsel for the applicant seeks interim relief in terms of para 11(b) in respect of the service quarter which is occupied by the applicant, wherein his family is residing in the said quarter and it is difficult to vacate the same due to Covid-19 Pandemic.

5. Learned Presenting Officer submits that the matter is coming first time on Board today and therefore she seeks time to take instructions and file reply. Learned P.O states that the applicant is not in service as on today which is also confirmed by learned Counsel Mr. Sadavarte.

6. Respondents are directed to file reply before next date and copy of reply to be served on the applicant on or before 8.7.2020.

7. No notice is required to be served as it is waived due to exceptional circumstances. However, Learned Counsel for the applicant is directed to serve the copies of the Original Application to the office of the Learned Chief Presenting Officer and the Respondents.

8. The Respondents shall not ask the applicant to vacate the service quarters till 17.7.2020 as the matter is fixed on 16.7.2020.

9. S.O to 16.7.2020. Hamdast granted.

Sd/-
(P.N Dixit)
Vice-Chairman (A)

Sd/-
(Mridula R. Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 23.06.2020
Dictation taken by : A.K. Nair.

23.06.2020

O.A 272/2020

Dr K.S Deshpande ... Applicant
Vs.
The State of Maharashtra & Ors ... Respondents

1. Heard Shri A.V Bandiwadekar, learned advocate for the applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents,

2. In this Petition, the Petitioner seeks the order of consequential service benefits for a period of 4 months and 4 days from 4.6.2019 to 17.10.2019, as he was not given a posting though he is working as a Medical Officer with the Respondents.

3. Learned Counsel for the applicant relied on the order dated 20.9.2019 passed by Single Bench of this Tribunal in O.A 804/2019, wherein the Tribunal in its order has stated as under:-

“6. It is appalling to note that employee is kept out of posting for more than four months without work which is loss of public money as he will be entitled to the salary without doing any work because of lapses on the part of administration. It appears that the Respondents are not taking the orders passed by the Tribunal seriously and the Tribunal is inclined to allow the O.A with costs.....

8. The Tribunal hope that the Respondents would realize the seriousness of the matter and pass appropriate orders without loss of time.”

4. Learned P.O seeks time to take instructions from the concerned Department. He submits that the necessary orders are to be sought by putting up the proposal and it will take some time.

5. Respondents are directed to take note of the earlier order passed by this Tribunal and especially the observations made by the bench in paras 6 & 8 which is reproduced above. The time to take decision on this issue is granted till 21.7.2020 and matter is posted for hearing on 28.7.2020.

6. No notice is required to be served as it is waived due to exceptional circumstances. However, Learned Counsel for the applicant is directed to serve the copies of the Original Application to the office of the Learned Chief Presenting Officer and the Respondents

7. S.O to 28.7.2020. Matter will be finally decided at the stage of admission.

Sd/-
(Mridula R. Bhatkar, J.)
Chairperson

23.06.2020

O.A 270/2020

Dr Vijay N. Dekate ... Applicant
Vs.
The State of Maharashtra & Ors ... Respondents

1. Heard Shri A.V Bandiwadekar, learned advocate for the applicant and Smt K.S Gaikwad learned Presenting Officer for the Respondents,
2. No notice is required to be served as it is waived due to exceptional circumstances. However, Learned Counsel for the applicant is directed to serve the copies of the Original Application to the office of the Learned Chief Presenting Officer and the Respondents
3. Learned P.O seeks time to file reply.
4. S.O to 21.7.2020.

Sd/-
(Mridula R. Bhatkar, J.)
Chairperson

Akn

23.06.2020

O.A 271/2020

Dr V.N Dekate ... Applicant

Vs.

The State of Maharashtra & Ors ... Respondents

1. Heard Shri A.V Bandiwadekar, learned advocate for the applicant and Smt K.S Gaikwad learned Presenting Officer for the Respondents,

2. No notice is required to be served as it is waived due to exceptional circumstances. However, Learned Counsel for the applicant is directed to serve the copies of the Original Application to the office of the Learned Chief Presenting Officer and the Respondents

3. Learned P.O seeks time to file reply.

4. S.O to 21.7.2020.

Sd/-
(Mridula R. Bhatkar, J.)
Chairperson

Akn

23.06.2020

O.A 273/2020

Shri M.N. Thomke ... Applicant
Vs.
The State of Maharashtra & Ors ... Respondents

1. Heard Shri A.V Bandiwadekar, learned advocate for the applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents,
2. No notice is required to be served as it is waived due to exceptional circumstances. However, Learned Counsel for the applicant is directed to serve the copies of the Original Application to the office of the Learned Chief Presenting Officer and the Respondents
3. Learned P.O seeks time to file reply.
4. S.O to 28.7.2020.

Sd/-
(Mridula R. Bhatkar, J.)
Chairperson

Akn

23.06.2020

M.A 165/2020 in O.A 269/2020

Shri T.D Ghuge & Others ... Applicant

Vs.

The State of Maharashtra & Ors ... Respondents

1. Heard Dr Gunratan Sadavarte, learned advocate for the applicant and Smt Krant S. Gaikwad, learned Presenting Officer for the Respondents.

2. The present Misc Application is filed to sue jointly as the facts involved are similar.

3. Misc Application to sue jointly is allowed subject to payment of Court fees if not already paid.

Sd/-
(P.N Dixit)
Vice-Chairman (A)

Sd/-
(Mridula R. Bhatkar, J.)
Chairperson

Akn

23.06.2020

O.A 269/2020

Shri T.D Ghuge & Others ... Applicant

Vs.

The State of Maharashtra & Ors ... Respondents

1. Heard Dr Gunratan Sadavarte, learned advocate for the applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. In this application, 26 Police Personnel are challenging the seniority list prepared by the Respondents and also the communication dated 16.5.2020 issued by Respondent no. 1, i.e. Exh. 'A' of the O.A, which is to be quashed and set aside.

3. It is mainly contended by the learned counsel for the applicants that all the 26 applicants due to this communication and the seniority list are reduced in their rank and this is illegal.

4. Learned P.O wants time to seek proper instructions in the matter and also to prepare a say. She informs that some of the Police Officers have already joined their respective posts as directed in the seniority list. However, the department is ready to maintain status quo as on today without prejudice and keeping all the contentions of the State open.

6. Respondents are directed to file reply before next date and copy of reply is to be served on the applicants on or before 8.7.2020.

7. No notice is required to be served as it is waived due to exceptional circumstances. However, Learned Counsel for the applicant is directed to serve the copies of the Original Application to the office of the Learned Chief Presenting Officer and the Respondents.

8. In view of this submission, the State to maintain status quo as on today.

9. S.O to 16.7.2020. Hamdast.

Sd/-
(P.N Dixit)
Vice-Chairman (A)

Sd/-
(Mridula R. Bhatkar, J.)
Chairperson

Akn

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.232 OF 2020

Dr. S.S. Thakur **...Applicant**
Versus
The State of Maharashtra & Ors. **...Respondents**

Shri Arvind V. Bandiwadekar, the learned Advocate for the Applicant.

Ms. S.P. Manchekar, the learned C.P.O. for the Respondents.

CORAM : SHRI A.P. Kurhekar, Member(J)

DATE : 23.06.2020

ORDER

1. Heard Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents on the point of interim relief.
2. Applicant is working on Medical Officer, Group-B and presently in Pay Band of Rs.15600-39100 with Grade Pay of 5400. He is retiring at the end of June 2020 on attaining age of superannuation i.e. 58 years of age. However, Applicant contends that in view of G.R. dated 03.09.2015 as well as G.R. dated 29.08.2018, he is entitled to extension of age upto 60 years. He therefore prayed interim relief for continuation in service in terms of G.R. referred to above.
3. Learned Advocate for the Applicant sought to contend that by virtue of Pay Band of Rs.15600-39100 with Grade Pay of 5400, Applicant is entitled for extension upto 60 years in terms of G.R. as well orders passed by the Tribunal in similar situation. In this behalf, he referred to the decision referred by this Tribunal in O.A.No.392/2016 decided on 28.03.2019.
4. Par contra, learned C.P.O. submits that Applicant is Group-B officer and only because he is in Pay Band of Rs.15600-39100 with Grade Pay of 5400 and that *ipso facto* does not entitle him for extension of age as the G.R. relied by him pertains to Group-A medical Officer. She has further pointed out that recently Hon'ble High Court Bench at

Aurangabad in Writ Petition No.5420/2018, (Dr. Sanjay R. Kadam Versus The State of Maharashtra & 4 Ors.) declared G.Rs. dated 30.05.2015, 30.06.2015 and 03.09.2015 as illegal and consequently are quashed by the Hon'ble High Court. She therefore submits that the Applicant is not entitled to interim relief for continuation in service.

5. Though it appears that this Tribunal in O.A.No.392/2016 granted relief for extension of age of medical officer in terms of G.R. dated 03.09.2015, however, now there is material change in the situation in view of the authoritative pronouncement in W.P.No.5402/2018, wherein G.Rs dated 30.05.2015, 30.06.2015 and 03.09.2015 are declared illegal and quashed.

6. Learned Advocate sought to distinguish the decision of Hon'ble High Court in Writ Petition No.5402/2018 contending that it is arising from the different situation and therefore *per se* would not apply here. I find myself unable to agree with his submission. No doubt W.P.No.5402/2018 was filed by Medical Officer who are aspiring for promotion contending that because of executive instructions by issuance of G.R. the Government had extended age of retirement and thereby their legitimate chances of promotions were hampered. Hon'ble High Court in its judgment held that unless there is statutory amendment in Maharashtra Civil Services (Pension) Rules, 1982, there could be no extension of age by executive instructions and accordingly quashed G.R.s dated 30.05.2015, 30.06.2015 and 03.09.2015. Here it would be appropriate to reproduce paragraph No.51, 52, 53 and 55 :-

"51. It is well settled law that what cannot be done directly cannot be done indirectly. When any alteration is to be brought about by legislation, the same purpose cannot be achieved by taking recourse to Government Resolutions or Executive instructions which do not have the force of law.

52. In the present matter, the Government is not able to point out any provision under any statute, under which the State Government can issue such executive instructions by the way of Government Resolutions, increasing the age of superannuation from 58 years to 60 years, except Rule 12 of the Rule, 1982 which we have already discussed herein above and held that its application is limited to an individual Public Servant and not in an unrestricted and general manner.

53. In view of the above discussions, we have no hesitation to hold that the impugned Government Resolutions dated 30th May, 2015, 30th June 2015 and 3rd September 2015 are illegal and issued without any express authority or power under the statute. Thus, the said Government Resolutions are arbitrary in nature and are liable to be set aside.

55. *Accordingly, we declare that the impugned Government Resolutions dated 30th May, 2015, 30th June, 2015 and 3rd September, 2015 are illegal and are hereby set aside. However, we are not inclined to unsettle the Medical Officers, Civil Surgeons and Superior Officers in Public Health Department who are benefited by the said Government Resolutions, in view of the fact that they are not party before us and in view of present situation which has arisen because of COVID-19. However, we make it clear that the State Government shall not grant further extension by way of executive instruction without the authority and power under the statute."*

7. True, G.R. dated 29.08.2018 is not referred in the judgment in W.P.No.5402/2018 as pointed out by learned Advocate for the Applicant. However, that hardly makes any difference. The Government had earlier issued G.R. dated 03.09.2015 for extension of age of Medical Officer in Group-A from 58 to 60 for three years with retrospective effect from 31.05.2015. Later the Government had issued one more G.R. dated 29.08.2018 which is relied by the Applicant in present case. The G.R. dated 03.09.2015 was issued for the period of three years of extension which was over and therefore by G.R. dated 29.08.2018 the benefit of extension of age was granted for five years with retrospective effect from 31.05.2018. Indeed there is specific reference of G.R. dated 03.09.2015, in G.R. dated 29.08.2018 to that effect and necessity to issue fresh G.R. dated 29.08.2018. In other words G.R. dated 29.08.2018 is continuation of basic G.R. dated 03.09.2015. Thus the basic G.R. dated 31.05.2015 has been quashed and set aside by Hon'ble High Court in W.P.No.5402/2018. This being the position only because there is no reference of G.R. dated 29.08.2018 in W.P.No.5402/2018 it cannot be said that the Applicant is entitled to interim relief. The matter in subsistence before the Hon'ble High Court was authority of Government to extend age of retirement by issuing executive instructions without amending M.C.S. Pension Rules. The Hon'ble High court has categorically held that there could be no extension of age by executive instructions and the same is without authority and power under the statute.

8. Suffice to say when G.R. dated 03.09.2015 is quashed and set aside by Hon'ble High Court, the question of granting benefit of extension of age does not survive.

9. In view of the above, I have no hesitation to sum up, no case is made out to grant interim relief. Claim for interim relief is declined.

10. Three weeks time is granted to Respondents to file reply.

11. S.O. to 14.07.2020.

Sd/-

(A.P. Kurhekar)

Member(J)

prk

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Date : 23.06.2020

O.A.NO.49 OF 2020

R.K. Mali

...Applicant

Versus

The State of Maharashtra & Ors.

...Respondents

1. Heard Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.
2. Today learned Advocate for the Applicant has filed affidavit-in-rejoinder. It is taken on record.
3. The matter is adjourned for hearing at the stage of admission.
4. S.O. to 07.07.2020.

**Sd/-
(A.P. Kurhekar)
Member(J)**

prk

Date : 23.06.2020

O.A.NO.122 OF 2020

A.S. Bhamare **...Applicant**
Versus
The State of Maharashtra & Ors. **...Respondents**

1. Heard Shri Bhushan A. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer holding for Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.
2. Today learned Advocate for the Applicant has filed affidavit-in-rejoinder. It is taken on record.
3. The matter is adjourned for hearing at the stage of admission.
4. S.O. to 14.07.2020.

Sd/-
(A.P. Kurhekar)
Member(J)

prk

Date : 23.06.2020

O.A.NO.157 OF 2020

D.Y. Kamble & Ors.

...Applicants

Versus

The State of Maharashtra & Ors.

...Respondents

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

2. In terms of order dated 24.02.2020 directions were issued to the Respondents to grant provisional pension as per entitlement of the Applicant. Learned Advocate submits that till date there is no compliance of the order.

3. Learned C.P.O. for the Respondents seeks two weeks time to ensure compliance of the directions given by the Tribunal as well as file reply.

4. Learned C.P.O. is directed to ensure the compliance of the order passed by this Tribunal by next date.

5. S.O. to 07.07.2020.

**Sd/-
(A.P. Kurhekar)
Member(J)**

prk

Date : 23.06.2020

O.A.NO.230 OF 2020

Dr. J.S. Jagtap **...Applicant**
Versus
The State of Maharashtra & Ors. **...Respondents**

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

2. Applicant is seeking extension in the age of retirement. This O.A. was filed on 20.03.2020. In the meantime applicant stands retired on 30.04.2020.

3. Today, the matter is for filing reply. Learned C.P.O. seeks two weeks time to file reply on the ground that in similar situation Hon'ble High Court, Bench at Aurangabad in Writ Petition No.5420/2018 declared G.Rs. dated 30.05.2015, 30.06.2015 and 03.09.2015 as illegal and are accordingly quashed. She therefore submits that the Applicant is not entitled to interim relief as well as final relief.

4. Whereas, learned Advocate for the Applicant pointed out that the Applicant is relying on G.R. dated 29.08.2018 and not on G.Rs. which are quashed by the Hon'ble High Court.

5. As the Applicant is already retired on 30.04.2020 now the question of granting interim relief does not survive. O.A. however, needs to be decided expeditiously. In view of the relief claimed, it is therefore necessary for the Respondents to file reply. Three weeks time is granted for filing reply.

6. S.O. to 14.07.2020.

Sd/-
(A.P. Kurhekar)
Member(J)

prk

Date : 23.06.2020

O.A.NO.627 OF 2019

P.B. Pawar

...Applicant

Versus

The State of Maharashtra & Ors.

...Respondents

1. Heard Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.
2. Despite order dated 12.02.2020 and 26.02.2020, Respondent No.1 has not issued appropriate orders about modification of the posting of the applicant.
3. Learned C.P.O. again requested for one week time to ensure compliance.
4. Adjourned to 30.06.2020.

**Sd/-
(A.P. Kurhekar)
Member(J)**

prk

Date : 23.06.2020

O.A.NO.98 OF 2020

**S.D. Bari
Versus**

...Applicant

The State of Maharashtra & Ors.

...Respondents

1. Heard Shri Bhushan A. Bandiwadekar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer holding for Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.
2. Respondents have already filed reply and matter is for hearing at the stage of admission.
3. After filing reply by the Respondents, Applicant has also filed affidavit-in-rejoinder. Thus matter is kept for hearing.
4. Adjourned for hearing at the stage of admission with liberty to the Respondents to file sur-rejoinder, if any.
5. S.O. to 30.06.2020.

**Sd/-
(A.P. Kurhekar)
Member(J)**

prk

Date : 23.06.2020

O.A.NO.152 OF 2019

D.M. Dore

...Applicant

Versus

The State of Maharashtra & Ors.

...Respondents

1. Heard Shri Bhushan A. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. Today in terms of order passed by this Tribunal on 09.03.2020, learned P.O. has filed additional affidavit of Dr. Nitin Kareer, Additional Chief Secretary, Revenue & Forest Department, Mantralaya. It is taken on record.

3. The present O.A. was filed for delay on the part of Respondents to issue posting order. In the meantime, Government had issued posting order to reinstate the Applicant in service. The issue was about duty period from 09.08.2019 to 26.02.2020. In affidavit it is stated that the said period is treated as duty period and pay and allowances will be paid to the Applicant soon.

4. In the affidavit it is further stated that due to administrative reasons there was delay in issuance of posting order. As such, the grievances of the Applicant is redressed and his absence is treated as duty period.

5. In view of the above, O.A. deserves to be disposed of with directions to the Respondents to pay salary and other allowances of the period from 09.08.2019 to 26.02.2020 which is stated as duty period, within two weeks from today.

6. O.A. is disposed of with no costs.

**Sd/-
(A.P. Kurhekar)
Member(J)**

prk