

ORIGINAL APPLICATION NO.475/2021

(Dr. Sanjay Kisan Gaikwad Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri V.B.Wagh, learned Advocate for the applicant and Shri S.K.Shirse, learned Presenting Officer for the respondent.

2. Learned Advocate for the applicant has pleaded that as per Government Resolution No.SRV-2021/प्र.क्र.20/कार्या12, Mantralaya, Mumbai dated 29-07-2021 general transfers have to be maximum upto 25% of the total cadre strength and the process of general transfer has to be initiated in the months of April-May of the year, which is required to be completed during the current year by 9th August, 2021. Any transfer from 10-08-2021 to 30-08-2021 will fall under a special category transfer which would require approval of higher authority and it has to be maximum of 10% of the total cadre strength. As per the applicant, impugned transfer order amounts to mid-term transfer which has been done in the month of August and not in April-May of the year. Moreover, the applicant is working in COVID Centre under the supervision of Taluka Medical Officer, Rahata and he is operating under overall supervision and control of District Collector, Ahmednagar under the provisions of the Disaster Management Act, 2005 and disturbing him at this point of time will not be in public interest.

3. On the other hand, learned P.O. has pointed out that due to pandemic situation prevailing at its peak in the month of April-May, the State Government has allowed general transfers to be carried out in the month of August as per timeline prescribed by above mentioned G.R. dated 29-07-2021. Therefore, it is not a special category transfer but effected with approval of authorities in Government at highest level. He further mentions that the applicant is working at Primary Health Centre, Dorhale, Tq. Rahata, Dist. Ahmednagar since 31-05-2009 onwards i.e. for more than 12 years. His transfer is well within the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Transfer Act, 2005 for short). Moreover, his transfer is within Ahmednagar District i.e. from Rahata Taluka to Kopergaon Taluka after a tenure of 12 years at one place. Therefore, there is no well-founded reason to grant relief prayed for by the applicant in respect of the impugned order of transfer.

4. Learned Advocate for the applicant further argued that the applicant has already represented to various authorities including Principal Secretary, Public Health Department, Government of Maharashtra, and Director, Directorate of Public Health Services, Saint George Hospital, Mumbai and Commissioner, Public Health Department, Government of Maharashtra. So far nothing

has been communicated to the applicant from their side. Therefore, the applicant has approached the tribunal with this O.A. challenging the transfer order dated 09-08-2021.

5. This transfer order dated 09-08-2021 includes transfer of another Medical Officer who is at Sr.No.181 Dr. Pradnya Govind Bhagat who has been transferred from Primary Health Centre, Dahigaon Bolka, Tq. Kopargaon, Dist. Ahmednagar to Primary Health Centre, Dorhale, Tq. Rahata, Dist. Ahmednagar i.e. in place of the applicant. As per the submissions of the learned Advocate for the applicant none of them have been relieved from their respective posting. Learned Advocate for the applicant has also presented xerox copy of certificate dated 20-08-2021 issued by Taluka Health Officer, Panchayat Samiti, Rahata in favour of the applicant certifying that the applicant is sincere in his working. It is marked as document "X" and taken on record. He has also cited and submitted photocopy of order passed by Single Bench of Maharashtra Administrative Tribunal, Mumbai in O.A.No.571/2021 granting interim relief of staying transfer in that case which is taken on record and marked as document "X-2".

6. Learned Advocate for the applicant has further requested that authorities may be directed to take decision on three representations dated 20-08-2021 (paper book

page 52 to 57, Annexure A-4, collectively). However, Tribunal is equally inquisitive to know that even after over 10 days of passing order of transfer what prevented the respondents from implementing the same and this be specifically explained in the affidavit in reply by the respondents.

7. In view of the transfer order issued by the superior authorities, I do not find any merit and rationale in Taluka Health Officer, Panchayat Samiti, Rahata issuing such sincerity certificate to the applicant to influence the ongoing proceedings. Cognizance has been taken of the fact that the applicant has been working in the Primary Health Centre, Dorhale, Tq. Rahata, Dist. Ahmendagar from last more than 12 years. His transfer has been effected in the same district within a short distance from present place to next posting and reliever has been provided. It is thus clear that the authorities have taken care that COVID management work does not get hampered. Therefore, *prima facie*, I find no merit in granting interim relief in the matter. Hence, the prayer for interim relief is rejected.

8. Issue notices to the respondents, returnable on 24.09.2021.

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

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

11. 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.

12. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicants are directed to file affidavit of compliance and notice.

13. S.O. to 24.09.2021.

14. Steno copy and Hamdast is allowed to both parties.

MEMBER (A)

ORIGINAL APPLICATION NO. 443 OF 2017
(Dr. Uttam B. Jadhav Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Shri Shamsunder B. Patil, learned Advocate for the applicant (**Absent**). Heard Smt. M.S. Patni, learned Presenting Officer for the respondents.

2. Learned Presenting Officer seeks time for filing affidavit in reply on behalf of respondents. Time granted.

3. S.O. to 27.09.2021.

MEMBER (A)

MEMBER (J)

C.P. No. 30/2019 in O.A. No. 526/20211
(Mohd. Azizullah Khan Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri Avinash S. Deshmukh, learned Advocate for the applicant and Shri B.S. Deokar, learned Presenting Officer for the respondents.

2. At the request of learned Advocate for the applicant, time is granted for filing rejoinder affidavit.

3. S.O. to 24.09.2021.

MEMBER (A)

MEMBER (J)

**C.P. No. 26/2020 in O.A. No. 772/2018
(Anil S. Barkul Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 24.08.2021

ORAL ORDER :

Heard Shri K.D. Khade, learned Advocate for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondents.

2. Learned Presenting Officer seeks time for filing affidavit in reply on behalf of respondents. Time granted.

3. S.O. to 28.09.2021.

MEMBER (A)

MEMBER (J)

**C.P. No. 29/2020 in O.A. No. 1014/2019
(R. S. Bade Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 24.08.2021

ORAL ORDER :

Heard Shri A.S. Mirajgaonkar, learned Advocate holding for Shri C.V. Dharurkar, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.

2. Learned Chief Presenting Officer has filed affidavit in reply on behalf of respondent No. 1 in C.P. Same is taken on record and copy thereof has been served on the other side.

3. S.O. to 28.09.2021.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO. 508 OF 2020
(S.P. Bhojane Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri A.S. Mirajgaonkar, learned Advocate holding for Shri C.V. Dharurkar, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondent No. 1. None present for respondent No. 2, though duly served.

2. Learned Presenting Officer seeks time for filing affidavit in reply on behalf of respondent No. 1. Time granted.

3. S.O. to 28.09.2021.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO. 208 OF 2021
(Dnyaneshwar B. Biradar Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri S.B. Solanke, learned Advocate for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondents.

2. Learned Presenting Officer seeks time for filing affidavit in reply on behalf of respondents. Time granted.

3. S.O. to 29.09.2021.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO. 218 OF 2021
(Mohamad Husain Tayyabsaheb Inamdar Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Dr. Swapnil Tawshikar, learned Advocate for the applicant (**Absent**). Heard Shri I.S. Thorat, learned Presenting Officer for the respondents.

2. Record shows that affidavit in reply on behalf of respondent No. 2 is already filed on record.

3. Learned Presenting Officer seeks time for filing affidavit in reply on behalf of other respondents. Time granted.

4. S.O. to 29.09.2021.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO. 225 OF 2021
(Surekha B. Andhale Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri S.R. Shirsath, learned Advocate holding for Shri S.S. Jadhavar, learned Advocate for the applicant and Shri B.S. Deokar, learned Presenting Officer for the respondents.

2. At the request of learned Presenting Officer for the respondents, short time is granted for filing affidavit in reply.

3. S.O. to 08.09.2021.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO. 227 OF 2021
(Surekha B. Andhale & Ors. Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri S.R. Shirsath, learned Advocate holding for Shri S.S. Jadhavar, learned Advocate for the applicants and Shri S.K. Shirse, learned Presenting Officer for the respondents.

2. At the request of learned Presenting Officer for the respondents, short time is granted for filing affidavit in reply.

3. S.O. to 08.09.2021.

MEMBER (A)

MEMBER (J)

**M.A. No. 145/2021 in O.A. St. No. 494/2021
(Sitaram K. Zodage Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 24.08.2021

ORAL ORDER :

Heard Shri V.N. Shelke, learned Advocate holding for Shri Avinash S. Khedkar, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents.

2. At the request of learned Presenting Officer for the respondents, time is granted for filing affidavit in reply.

3. S.O. to 30.09.2021.

MEMBER (A)

MEMBER (J)

**M.A. No. 146/2021 in O.A. St. No. 506/2021
(Sunil D. Kulkarni Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 24.08.2021

ORAL ORDER :

Heard Shri V.N. Shelke, learned Advocate holding for Shri Avinash S. Khedkar, learned Advocate for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondents.

2. At the request of learned Presenting Officer for the respondents, time is granted for filing affidavit in reply.

3. S.O. to 30.09.201.

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION ST. NO. 1138 OF 2020
(Vishnu S. Sanap Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 24.08.2021

ORAL ORDER :

Shri Ameya N. Sabnis, learned Advocate for the applicant (**Absent**).

Heard Shri M.P. Gude, learned Presenting Officer for the respondents.

2. No steps have been taken by the applicant for removing office objection.

3. In the interest of justice, S.O. to 09.09.2021 for passing necessary order.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO. 472 OF 2021
(Dr. Rahul R. Salve Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri B.R. Kedar, learned Advocate for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondents.

2. The applicant is M.D. Physiology. Initially he was appointed as Assistant Professor on 16.12.2017. The said appointment was by way of bounded candidate for a period of 364 days by taking a requisite undertaking from him. He was continued thereafter till 16.02.2021 by different appointment orders by giving technical breaks of one or two days in between. However, for the best reason known to the respondent No. 2, the services of the applicant was discontinued by the order dated 16.02.2021 (part of Annexure B-1 collectively). The applicant has challenged the said order. He seeks interim relief of continuation of his services till regularly recruited candidate is available and further directing not to fill up the said post during

the pendency of the present O.A. stating that one ad-hoc cannot be replaced by another ad-hoc.

3. Learned Presenting Officer opposes the submission made on behalf of the applicant and she sought time for taking instructions from the respondent and for filing affidavit in reply. She submits that the services of the applicant have been discontinued in accordance with law.

4. Perusal of the impugned order of discontinuation dated 16.02.2021 (Page No. 30 of paper book) would show that the services of the applicant have been discontinued in view of the letter dated 18.06.2020. The applicant has stated that it is well established principle of law that the ad-hoc cannot be replaced by another ad-hoc.

5. Considering overall facts and circumstances of the case and in order to avoid multiplicity of litigation, at this stage, it would be just and proper to restrain the respondents from appointing another candidate on ad-hoc basis on the post of Assistant Professor

Physiology in the respondent No. 2 Medical College & Hospital, which was held by the applicant till filing of the affidavit in reply by the respondents. It is ordered accordingly.

6. Issue notice to the respondents, returnable on 30.09.2021.

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

8. Applicant is authorized and directed to serve on respondent/s intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of the case. Respondents are put to notice that the case would 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.

//4// O.A. No. 472/2021

10. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

11. S.O. to 30.09.2021.

12. Steno copy and Hamdast is allowed to both parties.

13. The present matter be placed on separate board.

MEMBER (A)

MEMBER (J)

C.P. No. 02/2020 in O.A. No. 10/20219
(Shridevi M. Mahanwar Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri H.P. Jadhav, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents.

2. Considering the facts and circumstances, it reveals that it is the case of appointment on compassionate ground and it is also brought on record that the name of the applicant is already taken in waiting list. In view of the same, status report of the matter would be necessary in order to take in to consideration the grievance made by the applicant.

3. S.O. to 14.09.2021.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO. 184 OF 2020
(Govardhan B. Kawale Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri R.P. Bhumkar, learned Advocate holding for Shri V.V. Gujar, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondent Nos. 1 to 3 & 5. Shri S.J. Salunke, learned Advocate for respondent No. 4, **absent.**

2. Learned Advocate for the applicant submits that in the Original Application, the applicant has requested for quashing and setting aside the appointment order of respondent No. 4 dated 01.06.2020, but inadvertently he could not pray for appointment of the applicant in his place, in as much as he is being at Sr. No. 1 in the waiting list applicable to O.B.C. category. Therefore, he seeks leave of this Tribunal to amend the O.A.

3. In view of the same, in our considered opinion, amendment sought for by the applicant would not change the nature of proceedings and the proposed

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O.A. No. 184/2020

amendment would be necessary to determine the real controversy between the parties.

4. Permission to amend the O.A. is granted. The applicant shall amend the O.A. on or before the next date of hearing.

5. S.O. to 28.09.2021.

MEMBER (A)

MEMBER (J)

KPB ORAL ORDERS 24.08.2021

ORIGINAL APPLICATION NO.274 OF 2021
(Rajesh M. Rathod Vs. State of Maharashtra & Ors.)
WITH
ORIGINAL APPLICATION NO.275 OF 2021
(Parmeshwar P. Pawar Vs. State of Maharashtra & Ors.)
WITH
ORIGINAL APPLICATION NO.276 OF 2021
(Akshay V. Thorat Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri R.P. Bhumkar, learned Advocate holding for Shri Dayanand B. Bhange, learned Advocate for the Applicants in all these O.As. and Shri N.U. Yadav, Smt. Deepali S. Deshpande and Smt. Sanjivani K. Deshmukh-Ghate, respective learned Presenting Officers for the Respondents in respective O.As.

2. At the request of learned P.Os., time is granted for filing affidavit-in-reply.

3. At the request and by consent of both the parties, S.O. to 30.09.2021.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO.57 OF 2018
(Uttam T. Dabhade & Ors. Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri S.D. Dhongde, learned Advocate for the Applicants and Shri M.P. Gude, learned Presenting Officer for the Respondents.

2. By consent of both the parties, S.O. to 21.09.2021 for final hearing.

MEMBER (A)

MEMBER (J)

SAS ORAL ORDERS 24.08.2021

ORIGINAL APPLICATION NO.66 OF 2018
(Dnyeshwar P. Kadam Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri A.S. Deshmukh, learned Advocate holding for Shri Kuldeep S. Patil, learned Advocate for the Applicant and Shri V.R. Bhumkar, learned Presenting Officer for the Respondents.

2. We have heard the arguments advanced by the learned Advocate for the Applicant substantially.

3. During the arguments, learned P.O. for the Respondents places on record the copy of communication dated 05.08.2021 received from the Respondent No.2 i.e. M.P.S.C. The same is taken on record and marked as document 'X-1' for the purpose of identification. From this letter it transpires that the contents of this letter dated 05.08.2021 do not run in concurrence of affidavit-in-reply filed by the Respondent No.2 i.e. M.P.S.C.

4. Learned P.O. submits that he would call the original record in order to clarify the situation.

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O.A.66/2018

5. In view of above, S.O. to 02.09.2021 for production of original record. This case be treated as part-heard.

MEMBER (A)

MEMBER (J)

SAS ORAL ORDERS 24.08.2021

ORIGINAL APPLICATION NO.849 OF 2018
(Dr. Vinod A. Kakade Vs. State of Maharashtra & Ors.)
CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND

Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri S.G. Chapalgaonkar, learned Advocate for the Applicant and Shri D.R. Patil, learned Presenting Officer for the Respondents.

2. S.O. to 03.09.2021 for final hearing.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO.339 OF 2019
(Dr. Kishor S. Ubale Vs. State of Maharashtra & Ors.)

WITH

ORIGINAL APPLICATION NO.340 OF 2019
(Dr. Kishor S. Ubale Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

AND

Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri A.S. Deshmukh, learned Advocate for the Applicants in both the O.As and Shri I.S. Thorat, learned Presenting Officer for the Respondents in both the O.As.

2. By consent of both the parties, S.O. to 01.09.2021 for final hearing.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO.693 OF 2019
(Savita S. Birge Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri V.B. Wagh, learned Advocate for the Applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the Respondents.

2. Short affidavit filed by the Applicant is taken on record.

3. S.O. to 06.09.2021 for final hearing.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO.181 OF 2020
(Rajesh H. Gaikwad Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri Avinash S. Deshmukh, learned Advocate for the Applicant, Shri V.R. Bhumkar, learned Presenting Officer for the Respondent Nos.1 & 2 and Shri A.P. Basarkar, learned Advocate for the Respondent Nos.3 to 5.

2. By consent of parties, S.O. to 30.08.2021 for hearing. Interim relief granted earlier to continue till then.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO. 876 OF 2019
(Ishwar J. Chavan Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.8.2021

ORAL ORDER :

Heard Shri Kakasaheb B. Jadhav, learned Advocate for the applicant, Shri N.U. Yadav, learned Presenting Officer for respondent Nos. 1 & 2 and Shri S.R. Sapkal, learned Advocate for respondent No. 3.

2. The present case be treated as part heard.
3. The applicant is required to produce attested copies of Voter ID, Adhar Card, Ration Card & School Leaving Certificate.
4. S.O. to 22.9.2021.

MEMBER (A)

ORAL ORDERS 24.8.2021-HDD

ORIGINAL APPLICATION NO. 916 OF 2019
(Ishwar J. Chavan Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.8.2021

ORAL ORDER :

Heard Shri S.R. Sapkal, learned Advocate for the applicant, Shri N.U. Yadav, learned Presenting Officer for respondent Nos. 1 & 2 and Shri Kakasaheb B. Jadhav, learned Advocate for respondent No. 3.

2. The present case be treated as part heard.
3. By consent S.O. to 22.9.2021.

MEMBER (A)

ORAL ORDERS 24.8.2021-HDD

ORIGINAL APPLICATION NO. 365 OF 2021
(Prabhakar B. Jondhale Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.8.2021

ORAL ORDER :

Heard Shri V.N. Shelke, learned Advocate holding for Shri Avinash S. Khedkar, learned Advocate for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondents.

2. At the request of learned Presenting Officer, S.O. to 22.9.2021 for filing affidavit in reply.

MEMBER (A)

ORAL ORDERS 24.8.2021-HDD

**ORIGINAL APPLICATION NO. 687 OF 2019
(Pushpa C. Dhangar Vs. State of Maharashtra & Ors.)**

CORAM : Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.8.2021

ORAL ORDER :

Heard Shri Sunil B. Jadhav, learned Advocate for the applicant, Shri D.R. Patil, learned Presenting Officer for respondent No. 1 and Shri P.H. Patil, learned Advocate for respondent No. 2.

2. By consent of both the parties, S.O. to 30.8.2021 for final hearing.

MEMBER (A)

ORAL ORDERS 24.8.2021-HDD

**ORIGINAL APPLICATION NO. 918 OF 2019
(Ashok M. Gaikwad Vs. State of Maharashtra & Ors.)**

CORAM : Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.8.2021

ORAL ORDER :

Heard Shri S.D. Dhongde, learned Advocate holding for Smt. Suchita A. Dhongde, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondents.

2. At the request of learned Presenting Officer, S.O. to 9.9.2021 for filing affidavit in reply.

MEMBER (A)

ORAL ORDERS 24.8.2021-HDD

ORIGINAL APPLICATION NO. 132/2020
(Jaywant B. Patil Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri K.B. Jadhav, learned Advocate for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondents.

2. Learned Advocate seeks time for filing rejoinder affidavit of the applicant. Time granted.
3. S.O. to 21.9.2021.

MEMBER (J)

ORIGINAL APPLICATION NO. 229/2021
(Balbirsingh J. Tyagi Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri K.G. Salunke, learned Advocate for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondents.

2. Learned P.O. seeks time for filing affidavit in reply of the respondents. Time granted.

3. S.O. to 9.9.2021.

MEMBER (J)

ORIGINAL APPLICATION NO. 285/2021
(Hemant S. Patil Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri A.S. Deshmukh, learned Advocate for the applicant and Shri D.R. Patil, learned Presenting Officer for the respondent nos. 1 & 2. None appears for respondent no. 3, though duly served.

2. Record shows that affidavit in reply of respondent no. 2 is already filed. Learned P.O. seeks time for filing affidavit in reply of the respondent no. 1. Time granted.

3. S.O. to 9.9.2021.

MEMBER (J)

ORIGINAL APPLICATION NO. 426/2021

(Dr. Abhishek A. Pendharkar Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri S.D. Joshi, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents.

2. Learned P.O. seeks time for filing affidavit in reply of the respondents. Time granted.

3. S.O. to 8.9.2021.

4. The interim relief granted earlier to continue till then.

MEMBER (J)

M.A. 218/2020 IN O.A. ST. 456/2020
(Ashok B. Pawar Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri K.B. Jadhav, learned Advocate for the applicant and Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for the respondents.

2. Learned P.O. seeks time for filing affidavit in reply of the respondents. Time granted.

3. S.O. to 15.9.2021.

MEMBER (J)

ORIGINAL APPLICATION NO. 469/2021
(Dhondiba M. Zade Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri K.B. Jadhav, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondents.

2. It is the case of the applicant that as per the order dated 10.6.2020 (Annex. A-1) issued by the respondent no. 3 i.e. the Superintendent of Police, Beed he is retired from the post of A.S.I. w.e.f. 30.6.2020 on attaining the age of superannuation. The pension case of the applicant was submitted by the respondent no. 3 to the respondent no. 4 i.e. the Accountant General-II, Nagpur. The respondent no. 4 raised objections and in view thereof the respondent no. 3 again submitted the pension case of the applicant to the respondent no. 4. The respondent no. 4 thereafter took the objection regarding the pay fixation of the applicant and issued letter dated 17.11.2020 (paper book page 15). The objection was that yearly increment was not applicable to the applicant on his promotion from the post of Police Naik to the post of Head Constable and only Grade Pay of Rs. 2500/- was to be

paid to him. The respondent no. 3 accordingly revised the pay of the applicant as per the objection raised by the respondent no. 4 and prepared the Due, Drawn and Difference statement and issued the impugned order dated 4.4/5.20021 (paper book page 16). As per the said statement an amount of Rs. 1,55,520/- is paid to the applicant in excess and it was ordered to be recovered from his pensionary benefits. The applicant has challenged the said order in the present O.A. and is seeking interim stay to the execution and operation of the said impugned order.

3. The applicant belongs to Group-C category. He has retired from the service w.e.f. 30.6.2020. The recovery is for the period in excess of 5 years. In view thereof, the applicant relies upon the judgment and order of the Hon'ble Supreme Court in **Civil Appeal No. 11527/2014 arising out of S.L.P. (C) No. 11684/2012 & Ors. (State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.)** reported at **AIR 2015 SC 596**. Hon'ble Supreme Court in para 12 has laid down as follows :-

“12. It is not possible to postulate all situations of hardship, which would govern

employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employees, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

4. Learned P.O. opposes the prayer of the applicant for grant of interim stay and seeks time for filing affidavit in reply of the respondents.

5. It is an admitted position that the applicant belongs to Group-C category and has already retired from the post of A.S.I. w.e.f. 30.6.2020 on attaining the age of retirement and the impugned recovery is beyond the period of 5 years. The applicant has categorically stated in the O.A. that he has not given an undertaking to the respondents before his retirement regarding recovery of amount of excess payment.

6. In view of above, prima-facie, the case of the applicant is covered in the parameters laid down by the Hon'ble Supreme Court in the case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** (supra).

7. In the circumstances, ad interim stay to the impugned order of recovery is granted in terms of prayer clause X (E) of the present O.A., which reads as under :-

“X(E). Pending hearing and final disposal of the original application, the impugned letter dtd. 4.4/5.2021 issued by the respondent no. 3 may kindly be stayed and the respondent no. 3 may kindly be directed not to deduct / recover the excess payments of Rs. 1,55,520/- from the retiral benefits i.e. the amount of gratuity, amount of Commutation Value of pension and regular pension of the applicant.”

8. Issue notices to the respondents, returnable on 30.9.2021.
9. Tribunal may take the case for final disposal at once and separate notice for final disposal shall not be issued.
10. Applicant is authorized and directed to serve on respondent/s intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of the case. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.
11. 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.

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O.A. NO. 469/2021

12. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

13. S.O. to 30.9.2021.

14. Steno copy and Hamdast is allowed to both parties.

MEMBER (J)

ORIGINAL APPLICATION NO. 474/2021
(Dr. Shobha S. Waidande Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri Vivek Deshmukh, learned Advocate for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondents.

2. Learned Advocate for the applicant seeks leave of the Tribunal to amend the O.A. thereby incorporate the requisite G.R. dated 9.4.2018. Leave as prayed for is granted. Amendment shall be carried within 2 days from today

3. After amendment is carried out, issue notices to the respondents, returnable on 20.9.2021.

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

5. Applicant is authorized and directed to serve on respondent/s intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of the case. Respondents are put to notice that

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O.A. NO. 474/2021

the case would be taken up for final disposal at the stage of admission hearing.

6. 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.

7. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

8. S.O. to 20.9.2021.

9. Steno copy and Hamdast is allowed to both parties.

MEMBER (J)

ORIGINAL APPLICATION NO. 640/2019
(Pradeep M. Kaushike Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri S.D. Joshi, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents.

2. Learned P.O. has placed on record copy of judgment of the Hon'ble Himichal Pradesh High Court delivered on 6.11.2020 in the case of Hari Prakash R. Vs. State of Himachal Pradesh & Ors. (CWP No. 2503/2016 a/w CWPOA No. 663/2020), thereby taking a different view than the view taken by the Hon'ble Madras High Court in the matter of P. Ayyamperumal Vs. the Registrar, C.A.T. Chennai & Ors. (writ petition No. 15732/2017) delivered on 15.9.2017. The said judgment of Hon'ble Himichal Pradesh High Court is taken on record and marked as document 'X' for the purpose of identification.

3. Learned Advocate for the applicant submits that he needs to find out whether the judgment of Hon'ble Himichal Pradesh High Court in the case of Hari

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O.A. NO. 640/2019

Prakesh R is carried to the Hon'ble Supreme Court.
Time granted.

4. S.O. to 8.9.2021.

MEMBER (J)

ORIGINAL APPLICATION NO. 451/2019
(Suryakant R. Biradar Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri Shamsundar B. Patil, learned Advocate for the applicant and Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for the respondents.

2. With the consent of both the sides, S.O. to 8.9.2021 for hearing at the stage of admission.

MEMBER (J)

ORIGINAL APPLICATION NO. 447/2020
(Vaishali V. Hinge Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri S.D. Joshi, learned Advocate for the applicant and Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for the respondents.

2. With the consent of both the sides, S.O. to 2.9.2021 for hearing at the stage of admission.

MEMBER (J)

ORIGINAL APPLICATION NO. 459/2020
(Priti J. Patale Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri Amit S. Savale, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents.

2. With the consent of both the sides, S.O. to 7.9.2021 for hearing at the stage of admission.

MEMBER (J)

M.A. 214/2021 IN O.A. 179/2021
(State of Maharashtra & Ors. Vs. Ujwala A. Deshmukh)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

DATE : 24.08.2021

ORAL ORDER :

Heard Shri V.R. Bhumkar, learned Presenting Officer for the applicants in the present M.A. / respondents in O.A. and Shri V.G. Pingle, learned Advocate for the respondent in the present M.A. / applicant in O.A.

2. With the consent of both the sides, S.O. to 2.9.2021.

MEMBER (J)

**ORIGINAL APPLICATION NO. 721 OF 2019
(Bhagwan W. Landge Vs. State of Maharashtra & Ors.)**

CORAM : Hon'ble Shri Bijay Kumar, Member (A)

DATE : 24.8.2021

ORAL ORDER :

Heard Shri Suresh D. Dhongde, learned Advocate for the applicant and Shri B.S. Deokar, learned Presenting Officer for the respondents.

2. By consent of both the parties, S.O. to 26.8.2021 for final hearing.

MEMBER (A)

ORAL ORDERS 24.8.2021-HDD

Date : 24.08.2021
ORIGINAL APPLICATION NO. 482 OF 2021
(Kishor U. Chaudhari V/s State of Maha. & Ors.)

Per :- Standing directions of Hon'ble Chairperson, M.A.T., Mumbai

1. Shri Harshal Prakash Randhir, learned Advocate for the applicant and Mrs. Deepali S. Deshpande, learned Presenting Officer for respondents, are present.
2. Circulation is granted. Issue notices to the respondents, returnable on 20.09.2021. The case be listed for admission hearing on **20.09.2021**.
3. Tribunal may take the case for final disposal at this stage and a separate notice for final disposal shall not be issued.
4. Applicant is authorized and directed to serve on Respondent intimation / notice of date of hearing duly authenticated by Registry, along with complete paper book of case. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.
5. 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.
6. 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 as far as possible before the returnable date fixed as above. Applicant is directed to file Affidavit of compliance and notice.

REGISTRAR

Date : 24.8.2021

O.A. 478/2021

**(Syed Mujahed Syed Qutubddin V/s State of
Maharashtra & Ors.)**

**Per :- Standing directions of Hon'ble
Chairperson, M.A.T., Mumbai**

1. Shri Vivek Pingle, learned Advocate for the applicant and Shri D.R. Patil, learned P.O. for respondents, are present.
2. Circulation is granted. Issue notice to the respondents, returnable on 24.9.2021. The case be listed for admission hearing on 24.9.2021.
3. Tribunal may take the case for final disposal at this stage and a separate notice for final disposal shall not be issued.
4. Applicant is authorized and directed to serve on Respondent intimation / notice of date of hearing duly authenticated by Registry, along with complete paper book of case. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.
5. 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.
6. 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 as far as possible before the returnable date fixed as above. Applicant is directed to file Affidavit of compliance and notice.

REGISTRAR

Date : 24.8.2021

O.A. 480/2021

(Shankar M. Sutar V/s State of Maharashtra & Ors.)

Per :- Standing directions of Hon'ble Chairperson, M.A.T., Mumbai

1. Shri A.B. Rajkar, learned Advocate for the applicant and Shri N.U. Yadav, learned P.O. for respondents, are present.

2. Circulation is granted. Issue notice to the respondents, returnable on 22.9.2021. The case be listed for admission hearing on 22.9.2021.

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

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

5. 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.

6. 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 as far as possible before the returnable date fixed as above. Applicant is directed to file Affidavit of compliance and notice.

REGISTRAR