

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 297 OF 2021

(Subject – Leave)

DISTRICT : AURANGABAD

Manjusha D/o Malaiyya Mutha,)
Age : 42 years, Occu. : Service as District)
Supply Officer, Parbhani.)
R/o. Harsool, Aurangabad, Mob. 9970411826.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through: The Principal Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai –32.)
2. **The Divisional Commissioner (Revenue),**)
Aurangabad Division, Aurangabad.)
3. **The Dy. Commissioner (Revenue),**)
Divisional Commissioner Office,)
Aurangabad.)

...RESPONDENTS

APPEARANCE : Shri Kakasaheb B. Jadhav, Advocate for the
Applicant.

: Shri N.U. Yadav, Presenting Officer for
Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **27.04.2022.**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the impugned letter / communication dated 20.04.2021 (Annexure A-11) issued by the respondent No. 3 i.e. the Dy. Commissioner (Revenue), Divisional Commissioner Office, Aurangabad in concurrence of respondent No. 2 i.e. the Divisional Commissioner (Revenue), Aurangabad Division, Aurangabad, thereby rejecting the applicant's claim for converting the extra ordinary leave of 145 days into leave not due and to grant her all the consequential benefits.

2. The facts in brief giving rise to this Original Application are as follows :-

(a) The applicant was initially appointed vide order dated 07.11.2001 as Tahasildar on probation by the respondent No. 1 i.e. the State of Maharashtra. The applicant joined on 26.11.2001. She also completed her training at Yashada, Pune for the period of 04.03.2002 to 29.03.2002 for the post of Tahasildar. Thereafter, she worked on the post of Tahasildar at various places. She has also passed Revenue Departmental Officer Examination, which was conducted

by the MPSC from 02.04.2002 to 04.04.2002 and the MPSC issued letter dated 03.10.2002 (part of annexure A-1 collectively) in that respect to the respondent No. 2 i.e. the Divisional Commissioner (Revenue), Aurangabad Division, Aurangabad. She was granted exemption from passing the Marathi and Hindi language examination by the order dated 19.09.2003. She was promoted on the post of Dy. Collector by the order dated 31.07.2012 and was posted as Dy. Collector, (Land Acquisition), Aurangabad. Thereafter, she worked at different places. Lastly the applicant was transferred as District Supply Officer, Parbhani by the order dated 29.05.2020 and since then she is working on the said post.

(b) It is contended that the respondent No. 3 sanctioned total 180 days leave including the Earned Leave, Half Pay Leave and extraordinary leave to the applicant by an order dated 29/30.11.2004 (part of Annexure A-2 collectively at page No. 21 of the paper book). Out of the said leave, 85 days leave was sanctioned as extraordinary leave to the applicant by the said order. Thereafter, the respondent No. 1 by the order dated 24.10.2005 (part of Annexure A-2 collectively at page No. 22 of the paper book) also

sanctioned 60 days extraordinary leave to the applicant. The period of 85 days extraordinary leave is for the period of 06.03.2005 to 29.05.2005, whereas the period of another 60 days extraordinary leave is for the period of 30.05.2005 to 28.07.2005.

(c) It is further contended that by issuing G.R. dated 27.04.2006 (Annexure A-3) the probation period of the applicant was said to be completed successfully by 22.12.2003. The applicant had joined as probationary Tahasildar on 26.11.2001 and the probation period of the applicant was completed on 21.12.2003, thereby the services of the applicant were confirmed as regular Tahasildar.

(d) It is further submitted that the applicant submitted application dated 12.07.2019 (part of Annexure A-4 collectively) to the respondent Nos. 1 and 2 separately requesting to convert/alter her extraordinary leave to lave not due as per the Rule 62 of the Maharashtra Civil Services (Leave) Rules, 1981. Thereafter, she again submitted another application dated 13.09.2019 (part of annexure A-4) to the respondent No. 2 i.e. the Divisional

Commissioner, Aurangabad making the same request. In that regard the respondent No. 3 sent letter dated 16.10.2019 (Annexure A-5) to the respondent No. 1 seeking guidance as to whether extraordinary leave granted to the applicant can be converted into leave not due category. The respondent No. 3, however did not receive any response from the respondent No. 1 to that letter.

(e) It is further contended that the respondent No. 2 i.e. the Divisional Commissioner, Aurangabad Division, Aurangabad is the competent authority for Tahasildar cadre to sanction all types of leave except Special Handicap leave and Study Leave in terms of guidelines issued by the respondent No. 1 in that regard by issuing G.R. dated 03.12.2016 (Annexure A-6).

(f) Thereafter, the applicant submitted letter dated 26.12.2009 (Annexure A-7) to the respondent No. 2 to issue permanency certificate stating that she has fulfilled all the criteria mentioned in G.R. dated 11.09.2014 (Annexure A-12) issued by the General Administrative Department. She again submitted application dated 24.01.2020 (Annexure A-8) requesting to convert/alter extraordinary leave into

leave not due for the said period of 145 days. She thereafter submitted another application dated 07.07.2020 (Annexure A-9) to the respondent No. 2 in continuation of her earlier applications reiterating that she has fulfilled criteria as laid down in G.R. dated 11.09.2014 for issuance of permanency certificate and therefore, she is entitled for conversion of extraordinary leave into leave not due, but for formal issuance of permanency certificate.

(g) It is further submitted that by the letter dated 15.07.2020 (Annexure A-10) addressed by the District Collector, Parbhani to the respondent No. 2, recommended to the respondent No. 2 to convert / alter the applicant's extraordinary leave of 145 days into leave not due as per the Rule 62 of the Maharashtra Civil Services (Leave) Rules, 1981 observing that the applicant fulfilled all the criteria required for permanency benefits as per the G.R. dated 11.09.2014. However without considering the abovesiad facts, the respondent No. 3 by the impugned communication / letter dated 20.04.2021 (Annexure A-11) rejected the claim of the applicant for conversion of extraordinary leave of 145 days into leave not due. The

said order is not in accordance with law and the same is liable to be quashed and set aside.

3. The affidavit in reply is filed on behalf of respondent Nos. 2 and 3 by one Shri Sheshrao Prabhakarrao Sawargaonkar, working as Assistant Commissioner (Revenue) in the office of Divisional Commissioner, Aurangabad Division, Aurangabad i.e. the respondent No. 2. He thereby denied all the adverse contentions raised in the Original Application. At the outset, it is stated that the applicant has not exhausted alternate remedy available to her by approaching the respondent No. 1 as per the G.R. dated 03.12.2016. Moreover, the applicant made application for conversion of leave after about lapse of 15 years. Moreover, the G.R. dated 03.12.2016 is having prospective application and the applicant is seeking relief of applicability of the said G.R. retrospectively. Hence, the Original Application is liable to be rejected on this ground alone. It is not disputed that the applicant made various representations for conversion of extraordinary leave into leave not due and that the respondent No. 3 sought guidance of respondent No. 1 in that regard as stated by the applicant. However, there is no entry in the service book of the applicant about permanency certificate. In the absence of said permanency certificate, the applicant will not be

eligible for such conversion. Only because the applicant is granted permission to continue in Government service for long does not mean that the applicant is become permanent. In view of the same, the impugned communication / letter dated 20.04.2021 rejecting the conversion of leave is legal and proper and therefore, the O.A. is liable to be dismissed.

4. The applicant filed her affidavit in rejoinder and denied all the adverse contentions raised in the affidavit in reply and reiterated the contents raised in the Original Application.

5. I have heard the arguments at length advanced by Shri K.B. Jadhav, learned Advocate for the applicant on one hand and Shri N.U. Yadav, learned Presenting Officer for respondents on the other hand.

6. Perusal of the record would show that by the impugned communication / letter dated 20.04.2021 (Annexure A-11) issued by the respondent No. 3 in concurrence of respondent No. 2 would show that the conversion of 145 days extraordinary leave into leave not due to the applicant is refused only on the ground that the applicant was not a permanent employee as contemplated under Rule 62 of the Maharashtra Civil Services (Leave) Rule, 1981. In the view of this, the present matter

revolves around the Sub Rule (1) of the Rule 62 of the Maharashtra Civil Services (Leave) Rule, 1981, which is as follows :-

“62. Leave not due.- (1) *Save in the case of leave preparatory to retirement , leave not due may be granted to a Government servant in permanent employ subject to the following condition :-*

- (a) *the authority competent to grant leave is satisfied that there is reasonable prospect of the Government servant returning to duty on its expiry;*
- (b) *leave not due shall be limited to the half pay leave he is likely to earn thereafter;*
- (c) *leave not due during the entire service shall be limited to a maximum of 360 days out of which not more than 90 days at a time and 180 days in all may be otherwise than on medical certificate;*
- (d) *leave not due shall be debited against the half pay leave the Government servant may earn subsequently;*
- (e) *the authority competent to grant leave obtains an undertaking from the Government servant that in the event of his resigning or retiring voluntarily from service without returning to duty , he shall refund the leave salary paid to him.”*

Plain reading of the abovesaid Sub-rule 1 of the Rule 62 of the Maharashtra Civil Services (Leave) Rule, 1981 would show that the requirement for granting leave not due is that the concerned Government employee should be permanent employee.

7. In the present case, the applicant is not declared as permanent Government employee. However, communication dated 15.07.2020 (Annexure A-10) addressed by the District Collector, Parbhani, under whom the applicant is working addressed to the respondent No. 2 i.e. the Divisional Commissioner (Revenue), Aurangabad Division, Aurangabad would show that the said authority has specifically stated that the applicant fulfills all the requirements in view of the G.R. dated 11.09.2014 (Annexure A-12) issued by the General Administration Department for issuance of permanency certificate, which are as follows :-

“9. प्रथम नियुक्तीच्या पदावर ३ वर्षांची नियमित सेवा पूर्ण करणा-या व पुढील शर्तीची पूर्तता करित असलेल्या अस्थायी शासकीय कर्मचा-यांपैकी गट-अ व गट-ब (राजपत्रित) अधिका-यांच्या बाबतीत संबंधित नियुक्ती प्राधिका-याने, तसेच गट-ब (अराजपत्रित), गट-क व गट -ड कर्मचा-यांच्या बाबतीत संबंधित कार्यालय प्रमुखाने स्थायित्व प्रमाणपत्र देणे आवश्यक आहे. :-

- (१) कर्मचा-याची नियुक्ती सेवाप्रवेश नियमानुसार व विहित पध्दतीने होणे,
- (२) कर्मचारी सेवेस पात्र असल्याबाबतचे वैद्यकीय प्रमाणपत्र असणे व कर्मचा-याने सेवाप्रवेशोत्तर प्रशिक्षण परीक्षा उत्तीर्ण होणे,

(३) कर्मचा-याचा सेवाभिलेख (उदा. गोपणीय अहवाल, उपस्थिती, सचोटी इत्यादी) चांगला असणे.”

In view of the same, the District Collector, Parbhani recommended the case of the applicant for grant of converting extraordinary leave of 145 into leave not due as per the Rule 62 of the Maharashtra Civil Services (Leave) Rule, 1981.

8. No doubt by filing the affidavit in reply the respondent Nos. 2 and 3 have resisted the claim of the applicant. However, the contentions of the applicant about those requirements are not denied. What is stated is that the applicant is not holding permanency certificate. Fulfillment of requirement for issuance of permanency certificate is one thing and issuance of permanency certificate is another thing. When the requirements for permanency certificate are fulfilled, the benefits cannot be denied to such Government employee, only because formally the applicant is not holding permanency certificate. The employee will not have control over seeking such permanency certificate. It falls entirely within the administration function of the respondents Government. In these circumstances, in my considered opinion, feeble attempt made by the respondents to resist the claim of the applicant is of no use and is not sustainable. The impugned communication / letter seems to

have been passed mechanically without taking into consideration the proposal dated 15.07.2020 (Annexure A-11) submitted by the District Collector, Parbhani which is based on proper reasoning. In these circumstances, I hold that the impugned communication / letter dated 20.04.2021 (Annexure A-11) issued by the respondent No. 3 in concurrence of respondent No. 2 is not sustainable in the eyes of law and it is required to be quashed and set aside. I therefore, proceed to pass following order :-

ORDER

The Original Application No. 297/2021 is allowed in following terms :-

- (A) The impugned communication / letter dated 20.04.2021 (Annexure A-11) issued by the respondent No. 3 in concurrence of respondent No. 2 is hereby quashed and set aside.
- (B) The respondents are directed to consider the claim of the applicant to convert the 145 days extraordinary leave into leave not due to the applicant in accordance with law and to grant her all the admissible consequential benefits within a period of two months from the date of this order.
- (C) There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 27.04.2022.

KPB S.B. O.A. No. 297 of 2021 VDD Leave

(V.D. DONGRE)

MEMBER (J)