

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 298 OF 2019

(Subject –Implementation of G.R./ Allow to Discharge Duties)

DISTRICT : AURANGABAD

Sambhaji s/o Wamanrao Suryawanshi,)
Age : 46 years, Occu. : Service,)
R/o : E-7, Tirupati Supreme Enclav,)
Jalan Nagar, Paithan Road, Aurangabad.)
Tq. & Dist. Aurangabad.)

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through Secretary,)
Higher and Technical Education)
Department, Maharashtra State,)
Mantralaya, Mumbai- 32.)
- 2) **The Director of Higher Education,)**
Maharashtra State, Pune-1.)
- 3) **Joint Director of Higher Education,)**
Aurangabad Region, Aurangabad.)

.. **RESPONDENTS**

APPEARANCE : Shri Dilip J. Choudhari, Advocate holding for
Shri B.B. Bhise, Advocate for the Applicant.

: Smt. Deepali S. Deshpande, Presenting Officer
for Respondents.

CORAM : **SHRI BIJAY KUMAR, MEMBER (A).**

DATE : **05.08.2021.**

ORDER

1. The applicant in this case of Original Application No. 298 of 2019 is working as Administrative Officer in the office of respondent no. 3. It is submitted by the applicant that one Dr. Satish M. Deshpande, who is a professor in Geology in the Government Institute of Science, Aurangabad, is holding charge of Joint Director of Higher Education, Aurangabad Region, Aurangabad during the period from April 13, 2018 to December 12, 2018 and again from December 14, 2018 onwards and is the respondent No. 3 in this matter. It is further submitted by the applicant that the respondent No. 3 started usurping powers of applicant of the Administrative Officer immediately after getting additional charge of the Joint Director (Higher Education), Aurangabad Region by either dealing with the subjects assigned to the applicant directly or by getting the proposals approved by the applicant within his powers for ratification by himself. Being aggrieved by above stated manner of working of respondent no. 3, the applicant made representation dated April 19, 2018 to the respondent No. 2 i.e. the Director of Higher Education, Maharashtra State, Pune who in turn, directed the respondent no. 3 vide order dated May 22, 2018 to implement Government Resolution dated May 17, 1994 and February 17, 2007, which

define powers & responsibilities of the administrative officer. The applicant has further submitted that he has made a number of representations to respondent No. 3, respondent No. 2 and finally to respondent No. 1, but for no avail.

2. The applicant has prayed for following reliefs-

- “[A]. The record of the case may please be called for;*
- [B]. The original application may please be allowed;*
- [C]. The respondent no. 3 may please be directed to implement the G.R. dated 17.05.1994 and 17.02.2007 and the order dated 22.05.2018 and ensure that the applicant shall be allowed to discharge his duty as per the Clause -1 (i) to (viii) of the representation dated 12.03.2019 in accordance with the provisions of law;*
- [D]. Pending hearing and final disposal of this Original Application, the respondents may please be directed to allow the applicant to discharge his duty as per the list of works approved by the competent authority from the date of filing of this original application, in the interest of justice.*
- [E] Pass such other and further orders as this Hon’ble Tribunal may deem fit in the peculiar facts of the case.”*

3. Affidavit in reply has been filed on behalf of all the three respondents on August 05, 2019. The applicant filed affidavit in rejoinder on November 11, 2019 followed by filing of sur-rejoinder by the respondent No. 1 and 2 on January 13, 2020. The matter was closed for final hearing on February 26, 2020; however, the matter could not be heard during pandemic period of COVID-19. It came on board on August 03, 2021 on receipt of a Circulation-Note dated July 27, 2021 from the learned advocate for the applicant. As both the parties have stated that the pleadings are complete and therefore, the matter may be taken up for final hearing, final hearing took place on August 03, 2021.

4. (a). During the final hearing learned Advocate for the applicant drew references to documents annexed with the Original Application and affidavit in reply and sur-rejoinder filed by the respondents and rejoinder filed by the applicant. In addition he cited two judgments / orders, as follows-

(i) Judgment of Hon'ble Supreme Court in (2013) 2 SCC (L&S) 156 (Municipal Corporation, Ludhiana & Ors Vs. Jivan Singh & Anr.).

(ii) Order dated May 09, 2019 passed by single judge Bench of Maharashtra administrative Tribunal, Principal seat at Mumbai in O.A. No. 608 of 2019.

(b). Learned Presenting Officer representing the three Respondents stated that the arguments led by respondents through affidavit in reply to the Original Application and sur-rejoinder filed in the matter is sufficient and no further arguments are required to be led. Therefore, the matter was closed for orders on August 03, 2021.

5. **Analysis of facts-**

(a). First of all, I analyze the background facts in the case of Municipal Corporation, Ludhiana & Ors Vs. Jiwan Singh & Anr., which has been decided by the Hon'ble Supreme Court and has been reported in (2013) 2 SCC (L&S) 156. It is followed by analyzing of the order dated May 09, 2019 passed by single judge Bench of Maharashtra Administrative Tribunal, Principal seat at Mumbai in O.A. No. 608 of 2019. Upon analysis, it is evident that the ratio in the two cases had been different in as much as in the instant matter, no office order has been brought on record by the applicant, which shows that the certain parts of job chart of the applicant has been withdrawn by the respondent No. 3, with or without implying blame on the applicant or imputation of

stigma to the working of the applicant. However, there are instances of respondent No. 3 directly dealing with matters covered by job chart of the applicant bypassing the applicant, which have been justified by the respondents through their submissions made by affidavit in reply and sur-rejoinder, on grounds of urgency and administrative exigency.

(b). The applicant has also referred to the Government Resolution dated May 17, 1994 to assert exclusive administrative jurisdiction as per Annexure A-1 to the said G.R. Relevant extracts from the said G.R. is being reproduced as follows which is in Marathi language-

“Para 5- प्रादेशिक विभागप्रमुख

सध्याच्या प्रशासन अधिका-याएवजी उच्च शिक्षण सहसंचालक हे विभागीय कार्यालयाचे प्रमुख म्हणून राहतील. त्यांना प्रादेशिक विभाग प्रमुख म्हणून घेवित करण्यांत येते.....”

“Para 6- प्रादेशिक नियंत्रण अधिकारी :-

विभागीय सहसंचालक (उच्च शिक्षण) हे शैक्षणिक, प्रशासकीय पर्यवेक्षकीय व वित्त अधिकारानुषंगाने प्रादेशिक नियंत्रण अधिकारी म्हणून कार्यरत रहातील. विभागीय कार्यालयासाठी त्यांना आहरण व संवितरण अधिकारी समजण्यांत यावे.”

“

सहपत्र “अ”

विभागीय शिक्षण सहसंचालक (उच्च शिक्षण) यांची कर्तव्ये व जबाबदा-या

१. प्रादेशिक विभाग प्रमुख व कार्यालय प्रमुख म्हणून कामकाज पहाणे व त्याप्रमाणे प्रादेशिक विभाग प्रमुखास विहित असलेले / प्रदान करण्यांत आलेले वित्तीय तथा प्रशासकीय अधिकारांचा अंमल करणे.

२.....
.....”

The above analysis does not sustain claim of applicant of exclusive jurisdiction, free from administrative and supervisory control of respondent No. 3.

(c) Further, on perusal of G.R. dated February 17, 2007, which is another document, relied upon by the applicant, it is amply clear that it does not have effect of dilution of position of Joint Director (Higher Education) as Regional Controlling Officer in the matters of education, administrative supervision and financial powers and his position as regional head and office head. Joint Director (Higher Education) is assisted by a set of staff including the administrative officer.

(d). On examination of citizen's charter too, it is clear that the position of Joint Director (Higher Education) is shown as the head of the office and staff subordinate to him assist him for which duties & responsibilities for each of them have been specified.

(e). Yet another document relied upon by the applicant is the communication made by Director (Higher Education) Maharashtra State vide his letter No. क्रमांक: ममअ -ब/२०१८/का.का./सह सं/प्रशा-१/ ५८३९, दिनांक २२ मे २०१८. On perusal of this letter it is evident

that the respondent No. 2 has not examined the nature of the grievance of the applicant, has not heard the respondent No. 2 and has not recorded his observations / findings before issuing directives for resolving the underlying issue vide the letter dated May 22, 2018. The directives issued by him vide his letter dated May 22, 2018 addressed to respondent No. 3 i.e. the Joint Director (Higher Education), Aurangabad by which, respondent No. 2 seems to have taken cognizance of the grievance of the applicant and issued cautionary advice to respondent No. 3, read with contents of affidavit in reply filed by him jointly with respondent Nos. 1 and 3 and sur-rejoinder filed by him jointly with respondent No. 1, by which the respondent No. 2 has justified the action taken by respondent No. 3, indicates toward inherent contraction in stand of respondent No. 2, which is undesirable in the interest of administration.

(f). On examination of the matter, it is evident that there are mainly two parts of grievance of the applicant, firstly that the respondent No. 3 has been receiving and dealing with the proposals on subjects assigned to the applicant vide G.Rs. dated May 17, 1994 and February 17, 2007 bypassing the applicant altogether and secondly, that the respondent No. 3 calling for

proposals cleared / approved by the applicant for ratification/ his own approval. The second part of calling for proposals cleared / approved by the applicant for ratification may be, at times, part of supervisory exercise however; it seems to be void of rationale if the same be done universally or, for most of the proposals. On the other hand, the act of receiving and dealing with the proposals on subjects assigned to the applicant vide G.Rs. dated May 17, 1994 and February 17, 2007, bypassing the applicant altogether, is an unhealthy practice and may attract disciplinary action unless duly justified. Respondent No. 2 has evidently, not examined this aspect in depth by following principles of natural justice, before issuing letter dated May 22, 2018.

6. After considering all the facts on record, case law and orders cited and oral arguments made by the two sides, following order is being passed :-

ORDER

1. The Original Application No. 298/2019 is allowed in following terms-

- i. The applicant is directed to furnish information to respondent No. 2 within 4 weeks from the date of this order regarding cases falling under above mentioned

- two categories of grievance for the period starting from April 13, 2018 to March 31, 2019 (till the end of the month of filing the original application) for inquiring by respondent No. 2.
- ii. The respondent No. 2 is, hereby, directed that enquiry into the cases submitted by the applicant as per (i) above and the same be completed within 3 months from the date of receipt of the details of the cases falling under the two categories of grievance from the applicant while doing so, the respondent No. 2 shall take into consideration the Government Resolutions relating to roles and responsibilities assigned to the respondent No. 3 and the applicant.
- iii. Taking into account the outcomes of enquiry completed by respondent No. 2 as per order part (ii) above, the respondent No. 2 to initiate departmental action as per provisions of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 against the erring officer, which may be respondent No. 3 or the applicant or both or any other subordinate officer, depending on merit of each case constituting the set of grievance and thereby, restore discipline and order in functioning of the office of Joint Director (Higher Education), Aurangabad.
- iv. No orders as to cost.

PLACE : AURANGABAD.

DATE : 05.08.2021.

KPB S.B. O.A. No. 298 of 2019 BK 2021

(BIJAY KUMAR)

MEMBER (A)