

ORIGINAL APPLICATION NO.706/2021
(Devendra Bachav Vs. State of Maharashtra & Ors.)

CORAM : **Hon'ble Justice Shri P.R. Bora, Member (J)**
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : **30.11.2021**

ORAL ORDER :

Heard Ku. Anagha Pandit learned Advocate holding for Shri S.B.Talekar, learned Advocate for the applicant and Shri M.S.Mahajan, learned Chief Presenting Officer for the respondents.

2. Issue notices to the respondents, returnable on 12-01-2022.

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

4. 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.

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.

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O.A.NO.706/2021

6. 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.
7. S.O. to 12-01-2022.
8. Steno copy and Hamdast is allowed to both parties.

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION NO.707/2021
(Chetan Kulkarni Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Heard Ku. Anagha Pandit learned Advocate holding for Shri S.B.Talekar, learned Advocate for the applicant and Shri S.K.Shirse, learned Presenting Officer for the respondents.

2. Issue notices to the respondents, returnable on 12-01-2022.

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

4. 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.

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.

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O.A.NO.707/2021

6. 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.
7. S.O. to 12-01-2022.
8. Steno copy and Hamdast is allowed to both parties.

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION NO.708/2021
(Rahul Patil Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Heard Ku. Anagha Pandit learned Advocate holding for Shri S.B.Talekar, learned Advocate for the applicant and Shri N.U.Yadav, learned Presenting Officer for the respondents.

2. Issue notices to the respondents, returnable on 12-01-2022.

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

4. 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.

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.

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O.A.NO.708/2021

6. 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.
7. S.O. to 12-01-2022.
8. Steno copy and Hamdast is allowed to both parties.

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION NO.709/2021
(Manoj Bagul Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Heard Ku. Anagha Pandit learned Advocate holding for Shri S.B.Talekar, learned Advocate for the applicant and Shri V.R.Bhumkar, learned Presenting Officer for the respondents.

2. Issue notices to the respondents, returnable on 12-01-2022.

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

4. 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.

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.

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O.A.NO.709/2021

6. 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.
7. S.O. to 12-01-2022.
8. Steno copy and Hamdast is allowed to both parties.

MEMBER (A)

MEMBER (J)

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

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Shri Ameya N. Sabnis, learned Advocate for the applicant is **absent**. Smt. M.S.Patni, learned Presenting Officer for the respondents.

2. Since none is present for the applicant, S.O. to 03-01-2022.

MEMBER (A)

MEMBER (J)

C.P.NO.02/2020 IN O.A.NO.10/2019
(Shridevi M. Mahanwar Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 30.11.2021

ORAL ORDER :

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

2. At the request of learned Advocate for the applicant, S.O. to 03-01-2022.

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION NO.26/2019
(Vinod Muley Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Heard Shri M.B.Bharaswadkar, learned Advocate for the applicant and Shri M.S.Mahajan, learned Chief Presenting Officer for the respondents.

2. At the request of learned CPO, S.O. to **05-01-2022** as a last chance.

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION NO.959/2019
(Rahul Sathe Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Heard Shri R.D.Khadap, 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, S.O. to 14-12-2021.

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION NO.183/2021
(Satyajeeet Ambhore Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Vishal P. Bakal, learned Advocate for the applicant and Smt. M.S.Patni, learned Presenting Officer for the respondents.

2. Learned P.O. files affidavit in reply on behalf of respondent no.1. It is taken on record. Copy thereof has been served on the other side.

3. At the request of learned P.O., S.O. to 14-12-2021.

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION NO.655/2021
(Rahul D. Gaikwad Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

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

2. At the request of learned P.O., S.O. to 10-01-2022.

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION NO.190/2017
(Dattatray Zombade Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

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

2. At the request and consent of both the parties, S.O. to 17-12-2021.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO.119/2018
(Smt. Jyoti Rathod Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 30.11.2021

ORAL ORDER :

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

2. At the request and consent of both the parties, S.O. to 21-12-2021.

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION NO.472/2018
(Kishor Lalsare Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

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

2. At the request and consent of both the parties, S.O. to 07-01-2022.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO.666/2018
(Laxmi Gadge Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 30.11.2021

ORAL ORDER :

Heard Shri V.G.Pingle, learned Advocate for the applicant and Smt. Deepali Deshpande, learned Presenting Officer for the respondents.

2. At the request and consent of both the parties, S.O. to 11-01-2022.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO.55/2020
(Bhagwan Sonwane Vs. State of Maharashtra & Ors.)

CORAM : **Hon'ble Justice Shri P.R. Bora, Member (J)**
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : **30.11.2021**

ORAL ORDER :

Heard Shri A.S.Bayas, learned Advocate for the applicant and Shri I.S.Thorat, learned Presenting Officer for the respondents.

2. At the request and consent of both the parties, S.O. to 21-12-2021.

MEMBER (A)

MEMBER (J)

O.A.NO.389/2020 WITH 390/2020
(Radhika Khare & Anr. Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 30.11.2021

ORAL ORDER :

Heard Shri J.M.Murkute, learned Advocate for the applicants and Shri M.S.Mahajan, learned Chief Presenting Officer for the respondents.

2. At the request and consent of both the parties, S.O. to 23-12-2021.

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION NO.174/2021
(Shaikh Musa Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Heard Shri H.M.Shaikh, learned Advocate for the applicant and Shri N.U.Yadav, learned Presenting Officer for the respondents.

2. At the request and consent of both the parties, S.O. to 24-12-2021.

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION NO.735/2021
(Prashant Pol Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

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

2. On perusal of order passed by this Tribunal, Bench at Nagpur in O.A.No.286/2012 and batch, dated 12-10-2012 followed by decision taken by the respondents therein and considering oral submissions and arguments made by the two contesting sides, following order is being passed in view of urgency of the matter. Detail order to follow:

3. Interim relief in terms of prayer clauses (D) and (E) is granted.

4. S.O. to 05-01-2022.

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION NO.735/2021
(Prashant Sopanrao Pol Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

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

2. Learned Advocate for the applicant has prayed for interim relief as stated in paragraph 12 (D) & (E) of this O.A. filed on 23-11-2021, which is reproduced from page 25 & 26 of the paper book for ready reference:

“(D) Pending the admission, hearing and final disposal of this Original Application the Resp. No.1 may kindly be restrained from taking any adverse action against the applicant including the action of discharge/termination of his services on the ground of non-passing of the “Departmental Examination for the Gazetted Officers (Technical) in the Groundwater Surveys and Development Agency.

(E) Pending the admission, hearing and final disposal of this Original Application the Respondents in general and the Resps. No.1 to 3 in particular may

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kindly be directed to permit the applicant to appear in the ensuing "Departmental Examination for the Gazetted Officers (Technical) in the Groundwater Surveys and Development Agency" to be conducted by the Resp. No.3 on 2nd and 3rd December, 2021."

3. In this matter, original applicant had been appointed on the post of Assistant Geologist in Grade-B category in Ground Water Survey and Development Agency (GSDA) vide order dated 22-07-2008 following which the applicant had joined on the said post of Senior Geologist, Raigad District on 28-07-2008. The appointment of the applicant was under probation for a period of 2 years subject to conditions mentioned in the appointment order. In the instant matter, condition no.5 of the appointment order dated 22-07-2008 is the matter of contention between two sides. According to the said condition no.5 of the appointment order, the applicant was required to pass prescribed examination within prescribed period. For ready reference paragraph 5 of the said appointment order issued vide Government Resolution of Water Supply and Sanitation Department of Government of Maharashtra bearing no.आपना ४५०७/प्र.क्र.५/पापु १५, Mantralaya, Mumbai is quoted below:

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“५. श्री पोळ यांना विहित केलेली विभागीय परिक्षा विहित मुदतीत व विहित संधीत उत्तीर्ण व्हावे लागेल. तसेच, एतदर्थ मंडळाने विहित केलेली मराठी व हिंदी भाषा परिक्षाही उत्तीर्ण व्हावे लागेल.”

4. On above stated background, it is an admitted position that the prescribed examination, period and chances are stipulated for passing the same are as provided in the Rules known as “The Gazetted Officers (Technical) in the Groundwater Surveys and Development Agency (Departmental Examination) Rules, 1992” and amendment to which was effected on 16-02-1993 (“Rules” for short).

5. Our attention has been drawn towards Rule No.3 of the “Rules”. Admittedly, the Maharashtra Public Service Commission (“MPSC” for short) could not conduct examination every year ordinarily in the month of October as stipulated in Rule 6 of the said “Rules”. Therefore, the employees appeared in the departmental examination as and when the same was held. In total 8 employees of the rank of Assistant Geologist Grade-B could not pass the examination within two chances with exception of the applicant who could not pass the said examination even after availing 3 chances. For ready reference, provisions of Rule 3 are being reproduced below:

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“3. *Eligibility for appearing, period and number of chances for passing Examination – (1) Subject to the provisions of rule 5, every person appointed by nomination to the Scheduled Post shall be required to pass the Examination within the probation period of two years:*

Provided that if for any reason or otherwise, any person fails to appear for the Examination, the Director Groundwater Surveys and Development Agency may with the prior permission of Government, allow the person to appear within a year time.

(2) Subject to the provisions of these rules, every person holding any of the Scheduled Post on the date of commencement of these rules, or appointed by promotion to any such post thereafter shall be required to pass the Examination in accordance with these rules, within a period of three years.

Provided that if a person fails to pass the Examination within the stipulated period or chances, as the case be, specified in sub-rule (2) of this rule, the Director Groundwater Surveys and Development Agency may, with the prior permission of

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Government, give on more chance to appear for the Examination by extending the period by one year:

Provided further that if for any reason the Examination is not held in any particular year, that year shall be excluded in computing the period of year specified in sub-rule (2) of this rule.”

6. A communication made by the Director, GSDA with Additional Chief Secretary, Water Supply and Sanitation Department, Government of Maharashtra bearing letter no. प्रशासन/आस्था-२/प्र.क्र.७/वि.परीक्षा/२३५/२०२१ dated 08-05-2021 [Annexure A-6(i) paper book page 45 to 52] has been brought to our notice which shows that these 21 employees of different technical cadres, including 8 employees of cadre of Assistant Geologist, have crossed normal prescribed period of 2 years of probation as they had been appointed during the years 2008, 2011 and 2012 and despite the fact that they have not passed the prescribed examination during the probation period of 2 years, their services have not been terminated as prescribed in Rule 4 of the said “Rules of 1992”.

7. Learned Advocate for the applicant has also contended that Rule 3(1) applies to the appointment on the post of Assistant Geologist Grade-B by nomination and

Rule 3(2) applies to those who were already on the post of Assistant Geologist Grade-B on the date of commencement of these Rules i.e. 31-07-1992 or appointed by promotion on such post thereafter. He has further cited the order of Maharashtra Administrative Tribunal, Bench at Nagpur in O.A.No.286/2012 and batch dated 12-10-2012 whereby it has been decided that in cases where probation period has not been concluded and employee is allowed to continue in service even though he has not passed the prescribed examination within stipulated time and attempts, cases of such employees may be considered by the respondents for granting them one more opportunity/chance to appear at the departmental qualifying examination over and above the maximum number prescribed under the said Rules. The Tribunal had granted a time of 3 months to the respondent State authorities to take final decision and communicate the same immediately to the applicants.

8. Learned Advocate for the applicant further submitted citing a notification dated 05-12-2013 issued by MPSC whereby such candidates were allowed to appear in the examination and their results were reserved subject to outcome of the O.A., the said notification issued by the MPSC dated 5th December, 2013 is annexed at page 134-a of the paper book. Though, the learned Advocate for the applicant could not produce the copy of decision of

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respondents on the result so kept by the MPSC in the sealed envelope, he has made oral submission that the respondents had allowed the results to be published and accepted the same.

9. Learned Advocate for the applicant submitted that in the present matter cases of all eight employees of the rank of Assistant Geologist have been recommended by the Respondent no.3 i.e. Director of GSDA vide his letter dated 08-05-2021 for grant of the additional one chance to them to appear in the Departmental Examination to be conducted during the current year. However, the respondent no.1 has vide G.R. No.आपना ०२२१/प्र.क्र.९६/पापु १५, New Mantralaya Building, Mumbai dated 29-10-2021 approved proposal of only seven of them allowing them 3rd chance to appear in the said examination. But, the respondent no.1 had not granted 4th chance to the original applicant who has already availed 3 chances earlier but could not pass the said examination. He further argued that the applicant has attained the age of 47 years, if he is not given permission to appear in the next examination and his services are terminated at the stage, that may amount to grave injustice to him.

10. The learned Advocate for the applicant argued that this Tribunal Bench at Nagpur has allowed 4th chance to

the applicant in O.A.No.286/2012 (supra) and principle of precedence may be followed to grant similar relief to the applicant herein. He further argued that unless interim relief is granted, the applicant may not be allowed to appear in the examination to be held in December, 2021 and his services may also be terminated.

11. Learned P.O. did not contest the submissions made by the learned Advocate for the applicant except for citing provisions of Rule 3(2) under which maximum three chances can be provided including one chance as special case. Therefore, following order is passed.

12. After hearing the two sides the Tribunal decided to pass order on prayer clause 12(D) and 12(E) and grant interim relief to the applicant and pass oral order pending passing of detailed speaking order. Operative order passed is reproduced below:

“2. On perusal of order passed by this Tribunal, Bench at Nagpur in O.A.No.286/2012 and batch, dated 12-10-2012 followed by decision taken by the respondents therein and considering oral submissions and arguments made by the two contesting sides, following order is being passed in view of urgency of the matter. Detail order to follow:

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3. *Interim relief in terms of prayer clauses (D) and (E) is granted.”*

13. Issue notices to the respondents, returnable on 05-01-2022.

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

15. 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.

16. 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.

17. 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.

18. S.O. to 05-01-2022.

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

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION NO.735/2021
(Prashant Pol Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

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

2. On perusal of order passed by this Tribunal, Bench at Nagpur in O.A.No.286/2012 and batch, dated 12-10-2012 followed by decision taken by the respondents therein and considering oral submissions and arguments made by the two contesting sides, following order is being passed in view of urgency of the matter. Detail order to follow:

3. Interim relief in terms of prayer clauses (D) and (E) is granted.

4. S.O. to 05-01-2022.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO. 749 OF 2021
(Rajendra B. Bachate Vs. State of Maharashtra & Ors.)

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

DATE : 30.11.2021

ORAL ORDER :

Heard Smt. Priya R. Bharaswadkar, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents.

2. The present Original Application is filed challenging the impugned order of transfer of the applicant dated 10.11.2021 (Annexure A-1) whereby the applicant is transferred from the post of Clerk in the office of Government Milk Scheme, Ahmednagar to the office of Regional Dairy Development Officer, Navi Mumbai due to administrative reason on temporary basis (प्रशासकीय कारणास्तव उसनवारी तत्वावर). The applicant is seeking interim relief to the execution and implementation to the said impugned order stating that it is per se illegal as the ground of administrative reason on temporary basis (प्रशासकीय कारणास्तव उसनवारी तत्वावर) is new terminology, which is not recognized under the Transfer Act, 2005.

3. Learned Advocate for the applicant stated that the applicant is working in the office of present office

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of Government Milk Scheme, Ahmednagar since 01.06.2014. It is the contention of the applicant that he is working in Nashik Region and by the impugned order of transfer he has been transferred to the Mumbai Region, which is altogether different Region. Moreover, this is a mid-term transfer order and there is no mention of any exceptional circumstances or special reason as contemplated under Section 4(4)(ii) and 4(5) of the Transfer Act, 2005.

4. Learned Advocate for the applicant further submitted that the applicant has fairly produced on record a copy of his relieving order dated 15.11.2021 (Annexure A-2). However, the applicant has not joined on the transferred post. In this regard, learned Advocate for the applicant submits that nobody else is appointed in place of the applicant. Therefore, the impugned order may be stayed and the applicant may be allowed to work on his present place. The applicant can join at transferred post under protest.

5. Learned Advocate for the applicant further submitted in similarly situated matters, where the Government servants were transferred on administrative reasons on temporary basis (प्रशासकीय कारणास्तव उसनवारी तत्वावर) the learned Principal Seat of this

Tribunal at Mumbai has been pleased to grant stay. In this regard, the learned Advocate for the applicant has tendered on record the order dated 22.11.2021 passed in O.A. Nos. 923 to 925 of 2021 in the case of S.N. Shinde and 2 Ors. Vs. The State of Maharashtra and Ors.

6. Learned Presenting Officer appeared on behalf of the respondents. He opposed the submissions made on behalf of the applicant and invited my attention to the impugned order dated 10.11.2021 (Annexure A-1) where in Clause No. 4 it is mentioned that, if the applicant has grievance about the impugned order, he can file appeal before the Principal Secretary, Animal Husbandry, Dairy and Fisheries Development Department, Maharashtra State, Mumbai. However, the applicant has not exhausted this remedy and therefore, the present Original Application cannot be maintainable.

7. Considering the facts and circumstances of the case, prima-facie, it appears that though the order is passed in the form of to some extent deputation basis temporarily, the said concept is not recognized under the Transfer Act, 2005 and it amounts to transfer only.

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O.A. No. 749/2021

If this is mid-term order, same has to be passed within the purview of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act, 2005. However, the impugned order would show that the said procedure is not followed. Moreover, the applicant has been transferred out of Region. Prima-facie, record does not show that requisite procedure for inter region transfer is followed. However, that apart the applicant has been relieved from his present post on 15.11.2021 (Annexure A-2) and the undesirable and unwarranted situation has been created compelling the applicant to join at the transferred place.

8. Learned Advocate for the applicant submitted that nobody else is posted in the place of the applicant. In such circumstances, in my considered opinion, the interest of the applicant can be protected by directing the respondents of keeping one post of Clerk vacant in the present office of the applicant namely the respondent No. 4 i.e. the Government Milk Scheme, Ahmednagar and to maintain the said status-quo till filing of the affidavit in reply by the respondents and filling up that post would be subject to decision in the present Original Application. Ordered accordingly.

//5//

O.A. No. 749/2021

9. Issue notices to the respondents, returnable on 07.01.2022.

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

11. 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.

12. 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.

13. 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.

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O.A. No. 749/2021

14. S.O. to 07.01.2022.

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

MEMBER (J)

KPB ORAL ORDERS 30.11.2021

ORIGINAL APPLICATION NO. 577 OF 2020
(Kalidas B. Choudhari Vs. State of Maharashtra & Ors.)

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Shamsundar B. Patil, learned Advocate holding for Shri K.G. Salunke, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents.

2. Pleadings up to rejoinder affidavit are complete. The present matter is pertaining to transfer. Hence, the O.A. is admitted and it be fixed for final hearing on 07.01.2022.

3. Interim relief granted earlier to continue till then.

MEMBER (J)

ORIGINAL APPLICATION NO. 172 OF 2021
(Baliram S. Pandule Vs. State of Maharashtra & Ors.)

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri V.B. Wagh, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents.

2. Pleadings up to rejoinder affidavit are complete. The present matter is pertaining to show cause notice for termination of services of the applicant. Hence, the O.A. is admitted and it be kept for final hearing on 10.01.2022.

3. Interim relief granted earlier to continue till then.

MEMBER (J)

**M.A. No. 610/2019 in O.A. St. No. 1061/2019
(Kerba N. Jetewad Vs. State of Maharashtra & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Shamsundar B. Patil, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents.

2. The present matter is closed for orders.

MEMBER (J)

**M.A. No. 14/2020 in O.A. St. No. 1059/2019
(Kerba N. Jetewad Vs. State of Maharashtra & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

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

2. Learned Presenting Officer filed affidavit in reply on behalf of respondent Nos. 1 to 5 in M.A. Same is taken on record and copy thereof has been served on the other side.

3. S.O. to 04.01.2022.

MEMBER (J)

M.A. No. 122/2020 in O.A. St. No. 349/2020
(Narandra Krishna Rameshdev Joshi Vs. State of Maharashtra & Ors.)

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

DATE : 30.11.2021

ORAL ORDER :

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

2. Learned Advocate for the applicant submits that at the time of death of the applicant's father on 20.09.2003, he was working in the office of Sub Divisional Engineer, Sub-Division Ahmedpur. However, inadvertently it remained to be mentioned in the Original Application. He therefore, seeks permission to amend the Original Application to that effect.

3. Liberty as prayed for by the applicant is granted. The applicant shall carry out the necessary amendment in the O.A. forthwith.

4. The present M.A. is closed for orders.

MEMBER (J)

**M.A. No. 173/2020 in O.A. St. No. 576/2020
(Prakash M. Kulkarni Vs. State of Maharashtra & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Mayur Subhedar, learned Advocate holding for Shri C.V. Dharurkar, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondents.

2. At the request and by consent of both the sides, S.O. to 07.01.2022.

MEMBER (J)

KPB ORAL ORDERS 30.11.2021

**M.A. St. 889/2021 with M.A. St. 890/2021 with
M.A. 111/2020 in O.A. St. 1964/2018
(Madhav B. Marde and Ors. Vs. State of Maharashtra & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Heard Smt. Priya R. Bharaswadkar, learned Advocate holding for Shri K.G. Salunke, learned Advocate for the applicants, Smt. M.S. Patni, learned Presenting Officer for the respondent Nos. 1 to 5 and Shri G.N. Patil, learned Advocate for respondent No. 6.

2. At the request of learned Advocate for the applicants, S.O. to 04.01.2022.

MEMBER (J)

ORIGINAL APPLICATION NO. 844 OF 2019
(Raviraj R. Darak Vs. State of Maharashtra & Ors.)

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Vivek Bhavthankar, 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, S.O. to 06.01.2022.

MEMBER (J)

KPB ORAL ORDERS 30.11.2021

ORIGINAL APPLICATION NO. 1106 OF 2019
(Sanjay R. Koli Vs. State of Maharashtra & Ors.)

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Sunil B. Jadhav, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.

2. At the request and by consent of both the sides, S.O. to 07.01.2022.

MEMBER (J)

ORIGINAL APPLICATION NO. 66 OF 2021
(Gajendra T. Patil Vs. State of Maharashtra & Ors.)

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri S.R. Patil, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents.

2. At the request and by consent of both the sides, S.O. to 04.01.2022.

MEMBER (J)

**O.A. No. 581/2021 with M.A. No. 326/2021 with
Caveat No. 57/2021
(Dr. Sarika B. Bade Vs. State of Maharashtra & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Anil R. Shirsat, learned Advocate holding for Shri J.M. Murkute, learned Advocate for the applicant, Shri N.U. Yadav, learned Presenting Officer for the respondent Nos. 1 to 4 and Shri Indranil Godse, learned Advocate holding for Shri Avinash S. Deshmukh, learned Advocate for respondent No. 6 (Caveator). None present on behalf of respondent No. 5, though duly served.

2. Learned Presenting Officer placed on record a copy of communication dated 26.11.2021 addressed by the office of respondent No. 1 to the Dy. Director, Health Services, Aurangabad Division, Aurangabad, deputing the applicant at Civil Hospital, Aurangabad. Copy of the said communication is taken on record and marked as document 'X' for the purpose of identification.

3. Learned Advocate for the applicant seeks time for taking necessary instructions from the applicant. Time granted.

4. S.O. to 10.12.2021.

MEMBER (J)

ORIGINAL APPLICATION NO.301 OF 2019
(Sakharam B. Rakh Vs. State of Maharashtra & Ors.)

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri V.G. Pingle, learned Advocate for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondent No.1. Shri S.B. Mene, learned Advocate for the respondent Nos.2 to 4 has filed **leave note**.

2. As per order passed in farad sheet dated 30.08.2021, learned Advocate for the applicant files short affidavit. It is taken on record.

3. Learned Advocate for the applicant seeks permission to correct the page numbers of paper book. Liberty is granted.

4. S.O. to 14.01.2022.

MEMBER (J)

ORIGINAL APPLICATION NO.1011 OF 2019
(Vitthal S. Lokhande Vs. State of Maharashtra & Ors.)

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

DATE : 30.11.2021

ORAL ORDER :

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

2. Record shows that affidavit-in-reply is filed only on behalf of respondent No.4.
3. Learned P.O. submits that para-wise remarks are received and the same are submitted to the Government for approval.
4. In view of same, he seeks time for filing affidavit-in-reply on behalf of respondent Nos.1 to 3. Time is granted.
5. S.O. to 21.12.2021.

MEMBER (J)

ORIGINAL APPLICATION NO.389 OF 2021
(Baburao C. Mahire Vs. State of Maharashtra & Ors.)

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Mayur Subhedra, learned Advocate holding for Shri Yogesh Jadhav, learned Advocate for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondents.

2. At the request of learned P.O., time is granted for filing affidavit-in-reply on behalf of the respondents.
3. S.O. to 04.01.2022.

MEMBER (J)

ORIGINAL APPLICATION NO.425 OF 2021
(Kirtimala M. Sonwale Vs. State of Maharashtra & Ors.)

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri A.B. Rajkar, learned Advocate for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondent Nos.1 & 2.

2. Respondent Nos.3 & 4 are remained unserved.

3. Nobody present on behalf of respondent No.5 though duly served.

4. Issue fresh notice to the respondent Nos.3 & 4, returnable on 12.01.2022.

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

6. 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.

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O.A.425/2021

7. 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.

8. 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.

9. Learned P.O. seeks time for filing affidavit-in-reply on behalf of respondent Nos.1 & 2. Time is granted.

10 S.O. to 12.01.2022.

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

12. The present matter is placed on separate board.

MEMBER (J)

**ORIGINAL APPLICATION NO.689 OF 2021
(Ajay R. More Vs. State of Maharashtra & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Kiran G. Salunke, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondents.

2. At the request of learned P.O., time is granted for filing affidavit-in-reply on behalf of the respondents.
3. S.O. to 13.12.2021.

MEMBER (J)

ORAL ORDERS 30.11.2021-SAS

ORIGINAL APPLICATION NO.690 OF 2021
(Dr. Arvindkumar N. Waghmare Vs. State of Maharashtra & Ors.)

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

DATE : 30.11.2021

ORAL ORDER :

Heard Smt. Priya R. Bharaswardkar, learned Advocate holding for Shri Jayant S. Deshmukh, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondents.

2. Await service of notice on the respondents.
3. At the request of learned Advocate, S.O. to 03.01.2022 for filing service affidavit.

MEMBER (J)

**M.A.NO.136 OF 2019 IN O.A.ST.NO.346 OF 2019
(Yayati T. Ghorband Vs. State of Maharashtra & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Anant D. Gadekar, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents.

2. Record shows that affidavit-in-reply is filed only on behalf of respondent No.3.
3. At the request of learned P.O., last chance is granted for filing affidavit-in-reply on behalf of other respondents.
4. S.O. to 07.01.2022.

MEMBER (J)

**M.A.NO.255 OF 2021 IN O.A.ST.NO.931 OF 2019
(Subhash H. Puri Vs. State of Maharashtra & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Anant D. Gadekar, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents.

2. Record shows that affidavit-in-reply is filed only on behalf of respondent No.2.
3. At the request of learned P.O., last chance is granted for filing affidavit-in-reply on behalf of other respondents.
4. S.O. to 07.01.2022.

MEMBER (J)

**M.A.NO.626 OF 2019 IN O.A.ST.NO.2319 OF 2019
(Babab N. Jadhav Vs. State of Maharashtra & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri P.R. Tandale, learned Advocate for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondent No.1. Shri G.N. Patil, learned Advocate for the respondent No.2 is **absent.**

2. At the request of learned P.O., time is granted for filing affidavit-in-reply on behalf of respondent No.1.
3. S.O. to 14.01.2022.

MEMBER (J)

**M.A.NO.01 OF 2020 IN O.A.ST.NO.2317 OF 2019
(Devidas M. Khandhare Vs. State of Maharashtra & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri P.R. Tandale, learned Advocate for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondent No.1. Shri G.N. Patil, learned Advocate for the respondent Nos.2 & 3 is **absent.**

2. Record shows that affidavit-in-reply is filed on behalf of respondent Nos.2 & 3 and it is adopted by respondent No.1.

3. At the request of learned Advocate for the applicant, time is granted for filing affidavit-in-rejoinder, if any.

4. S.O. to 14.01.2022.

MEMBER (J)

**M.A.NO.03 OF 2020 IN O.A.ST.NO.2143 OF 2019
(Dr. Deelip R. Tandale Vs. State of Maharashtra & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri P.R. Tandale, learned Advocate for the applicant, Shri B.S. Deokar, learned Presenting Officer for the respondent Nos.1 & 2 and Shri Ajinkya Reddy, learned Advocate for the respondent No.3.

2. Affidavit-in-reply filed on behalf of the respondent No.3 is taken on record and copy thereof has been served on the other side.

3. At the request of learned P.O., time is granted for filing affidavit-in-reply on behalf of respondent Nos.1 & 2.

4. S.O. to 14.01.2022.

MEMBER (J)

**M.A.NO.04 OF 2020 IN O.A.ST.NO.2316 OF 2019
(Laxman R. Jadhav Vs. State of Maharashtra & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri P.R. Tandale, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondent No.1. Shri G.N. Patil, learned Advocate for the respondent Nos.2 & 3 is **absent.**

2. Record shows that affidavit-in-reply is filed on behalf of the respondent Nos.2 & 3 and it is adopted by respondent No.1.

3. At the request of learned Advocate for the applicant, time is granted for filing affidavit-in-rejoinder, if any.

4. S.O. to 14.01.2022.

MEMBER (J)

**M.A.NO.05 OF 2020 IN O.A.ST.NO.2458 OF 2019
(Dr. Manik S. Madke Vs. State of Maharashtra & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri P.R. Tandale, learned Advocate for the applicant, Shri I.S. Thorat, learned Presenting Officer for the respondent Nos.1 to 4 and 6 and Shri Ajinkya Reddy, learned Advocate for the respondent No.5.

2. Affidavit-in-reply filed on behalf of respondent No.5 is taken on record and copy thereof has been served on the other side.

3. At the request of leaned P.O., time is granted for filing affidavit-in-reply on behalf of respondent Nos.1 to 4 and 6.

4. S.O. to 14.01.2022.

MEMBER (J)

**M.A.NO.06 OF 2020 IN O.A.ST.NO.2318 OF 2019
(Dattatrya K. Istake Vs. State of Maharashtra & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri P.R. Tandale, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondent No.1. Shri G.N. Patil, learned Advocate for the respondent Nos.2 & 3 is **absent.**

2. Record shows that affidavit-in-reply is filed on behalf of the respondent Nos.2 & 3 and it is adopted by respondent No.1.

3. At the request of learned Advocate for the applicant, time is granted for filing affidavit-in-rejoinder, if any.

4. S.O. to 14.01.2022.

MEMBER (J)

M.A.NO.18 OF 2020 IN O.A.NO.81 OF 2018
(Sayyed Wali Abdul Khadar Vs. State of Maharashtra & Ors.)

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri L.S. Shaikh, learned Advocate holding for Shri D.A. Bide, learned Advocate for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondents.

2. Record shows that this Misc. Application is filed for seeking amendment in the Original Application.
3. The relief sought for in the Original Application is challenging the alleged action of respondents prior to the period of 2014.
4. The Original Application is filed in the year 2018.
5. In view of same, affidavit-in-reply of respondents is necessary.
6. However, it seems that the respondents despite of several opportunities have not bothered to file affidavit-in-reply.

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7. Learned P.O. for the respondents seeks one more last chance.
8. Considering the facts and circumstances, subject to payment of costs of Rs.1,000/- one more last chance is granted for filing affidavit-in-reply.
9. S.O. to 03.01.2022.

MEMBER (J)

**M.A.NO.172 OF 2020 IN O.A.ST.NO.578 OF 2020
(Ashok S. Shelke Vs. State of Maharashtra & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Mayur Subhedar, learned Advocate holding for Shri C.V. Dharurkar, learned Advocate for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondents.

2. At the request of learned P.O., time is granted for filing affidavit-in-reply on behalf of the respondents.
3. S.O. to 07.01.2022.

MEMBER (J)

ORAL ORDERS 30.11.2021-SAS

ORIGINAL APPLICATION NO.667 OF 2021
(Netendrasing E. Rajput Vs. State of Maharashtra & Ors.)

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

DATE : 30.11.2021

ORAL ORDER :

Shri A.B. Girase, learned Advocate for the applicant is **absent**. Heard Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.

2. As none present on behalf of the applicant, S.O. to 17.12.2021.

MEMBER (J)

**M.A.ST.NO.11 OF 2020 IN O.A.ST.NO.12 OF 2020
(Babu M. Dudhane & Ors. Vs. State of Maharashtra & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Shamsundar Patil, learned Advocate for the applicants and Shri I.S. Thorat, learned Presenting Officer for the respondents.

2. By this Misc. Application the applicants are seeking to sue the respondents jointly.

3. The Original Application is filed seeking relief of arrears of wages in view of notification dated 15.02.2003 and 28.09.2010 and G.R. dated 07.03.2018 issued by the Government of Maharashtra from time to time.

4. All the applicants are working as Safai-kamgars i.e. part time sweeper in various police stations in Nanded district since many years.

5. After issuances of the requisite G.R., the applicants made representation to the respondent authority for payment of arrears. However, the said representation is not considered. The applicants are having same cause of action and they are seeking similar relief.

//2// M.A.No.11/2020 In
O.A.St.No.12/2020

6. In the circumstances, in order to avoid the multiplicity of litigation, it would be just and proper to grant permission to the applicant to sue the respondents jointly, subject to payment of court fee stamps, if not paid. Hence, following order:-

ORDER

- (a) Misc. Application St. No.11/2020 is allowed.
- (b) Accompanying O.A. be registered and numbered in accordance with law, after removal of office objections, if any.
- (c) The present M.A. stands disposed of accordingly without any order as to costs.

MEMBER (J)

ORIGINAL APPLICATION ST.NO.12 OF 2020
(Babu M. Dudhane & Ors. Vs. State of Maharashtra & Ors.)

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Shamsundar Patil, learned Advocate for the applicants and Shri I.S. Thorat, learned Presenting Officer for the respondents.

2. Issue notice to the respondents, returnable on 06.01.2022.

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

4. Applicants are 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.

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.

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O.A.St.12/2020

6. 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.
7. S.O. to 06.01.2022.
8. Steno copy and Hamdast is allowed to both parties.
9. The present matter is placed on separate board.

MEMBER (J)

ORIGINAL APPLICATION NO.744 OF 2021
(Dr. Suresh G. Dhakne Vs. State of Maharashtra & Ors.)

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

DATE : 30.11.2021

ORAL ORDER :

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

2. Learned Advocate for the applicant seeks liberty to elaborate the Original Application showing as to how the alternate remedy is not available.
3. Liberty as prayed for is granted.
4. Applicant to carry out amendment by tomorrow.
5. After amendment, issue notices to the respondents, returnable on 04.01.2022.
6. Tribunal may take the case for final disposal at once and separate notice for final disposal shall not be issued.
7. Applicant is authorized and directed to serve on respondent/s intimation/notice of date of hearing duly authenticated by Registry, along with complete paper

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O.A.744/2021

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.

8. 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.

9. 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.

10. S.O. to 04.01.2022.

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

12. The present matter is placed on separate board.

MEMBER (J)

ORIGINAL APPLICATION NO.746 OF 2021
(Dr. Tilottama V. Bhatkar Vs. State of Maharashtra & Ors.)

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Jayant S. Deshmukh, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondents.

2. The Original Application is filed challenging the impugned communication dated 29.09.2021 (Annex. 'A-1') issued by the respondent No.3 i.e. District Civil Surgeon, Jalna by which recovery of alleged excess amount of Rs.3,99,818/- is sought from applicant.

3. The applicant is seeking interim relief of stay to the execution and implementation of said order. The applicant is appointed on the post of Auxilary Nurse Midwifery (A.N.M.) and was posted at District Civil Hospital, Jalna w.e.f. 31.07.1997. The Central Government subsequently stopped the aid to such posts w.e.f. 01.08.2002. The applicant, therefore, was absorbed on the post of Staff Nurse by downgrading pay scale of the post of Staff Nurse vide order dated 25.09.2003 (Annex. 'A-3').

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O.A.746/2021

4. Thereafter, as per order dated 30.03.2013 (Annex. 'A-4') issued by the respondent No.2 i.e. Deputy Director of Health Services, Aurangabad, the applicant was granted Assured Career Progression Scheme (A.C.P.) in Sixth Pay after completion of 12 years service w.e.f. 31.07.2009. She was placed on the pay scale of Rs.9300-34800/- Grade Pay Rs.4200/-. The respondent No.3 i.e. District Civil Surgeon, Jalna after noticing that the applicant was given wrong enhanced pay scale, he issued communication dated 10.10.2018 (Annex. 'A-5') to the respondent No.2 seeking guidance.

5. The applicant by communication dated 25.09.2020 (Annex. 'A-6') addressed to the respondent No.3 conceded the said position. Thereafter, by impugned communication dated 29.09.2021 (Annex. 'A-1'), recovery of excess amount of Rs.3,99,818/- is issued by respondent No.3 as per revised pay fixation order dated 17.11.2020 (Annex. 'A-7'), issued by the respondent No.2.

6. The recovery is ordered in thirty nine equal monthly installments from September, 2021. Two

installments are already recovered from salary of September, 2021 and October, 2021.

7. Learned Advocate for the applicant submits that the applicant belongs to Group 'C' category. He submits that recovery of excess amount paid on account of wrong pay fixation is impermissible in view of ratio laid down in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer Case) reported in 2015 (4) SCC334**. In para No.12 it is laid down as under:-

"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).*

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- (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.*

8. Learned P.O. for the respondents opposed the submissions made on behalf of the applicant and submitted that he would seek necessary instructions and file detailed affidavit-in-reply.

9. Considering the facts and circumstances involved in the matter, prima-facie, it seems that the case of applicant is squarely covered by Clause Nos.(i) and (iii) of guidelines issued by the Hon'ble Apex Court in the matter of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer)**, thereby recovery of excess amount is impermissible.

10. Hence, it is fit case for grant interim relief of stay to the execution and implementation of impugned communication dated 29.09.2021 (Annex. 'A-1').

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O.A.746/2021

11. Accordingly, interim relief of stay to the execution and implementation of impugned communication dated 29.09.2021 (Annex. 'A-1') is granted till filing of reply by the respondents.

12. Issue notice to the respondents, returnable on 06.01.2022.

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

14. 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.

15. 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.

16. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained

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O.A.746/2021

and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

17. S.O. to 06.01.2022.

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

19. The present matter be placed on separate board.

MEMBER (J)

ORAL ORDERS 30.11.2021-SAS

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

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Amit S. Savale, learned Advocate for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondents.

2. The present matter is already part heard.

3. At the request of learned P.O., S.O. to 13.12.2021.

MEMBER (J)

**O.A.NOS. 773/19, 766/19, 794/19, 120/19, 66/20,
809/19, 195/20, 705/18, 234/20 & 301/20
(Babu V. Gitte & Ors. Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Heard S/Shri Avinash S. Deshmukh & V.D. Gunale, learned Advocates for the respective applicants in respective cases and Shri V.R. Bhumkar, learned Presenting Officer for the respondents in all these cases.

2. At the request and by consent of both the parties, S.O. to 13.12.2021.

MEMBER (A)

MEMBER (J)

ORAL ORDERS 30.11.2021-HDD

**O.A.NOS. 537 & 941 BOTH OF 2019
(Narendra R. Thakur & Anr. Vs. State of Maha. & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Heard Ms. Angha Pandit, learned Advocate holding for Shri S.B. Talekar, learned Advocate for the applicants and Shri B.S. Deokar, learned Presenting Officer for the respondents in both these cases.

2. At the request and by consent of both the parties, S.O. to 13.12.2021.

MEMBER (A)

MEMBER (J)

ORAL ORDERS 30.11.2021-HDD

Date : 30.11.2021
ORIGINAL APPLICATION NO. 752 OF 2021
(Ramesh N. Swami V/s State of Maha. & Ors.)

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

1. Shri D.T. Devane, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for respondents, are present.
2. Circulation is granted. Issue notices to the respondents, returnable on 13.12.2021. The case be listed for admission hearing on **13.12.2021**.
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

**ORIGINAL APPLICATION NO. 686/2019
(Brijlal H. Bibe Vs. State of Maha. & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Heard Shri S.D. Joshi, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents.

2. Learned Presenting Officer submits that additional reply is not required to be filed in the present case.

3. In the circumstances, the present matter be posted for admission hearing on S.O. to 4.1.2022.

MEMBER (A)

MEMBER (J)

ARJ ORAL ORDERS 30.11.2021

**ORIGINAL APPLICATION NO. 249/2021
(Dr. Pandit R. Rathod & Ors. Vs. State of Maha. & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Heard Shri J.S. Deshmukh, learned Advocate for the applicants, Shri V.R. Bhumkar, learned Presenting Officer for the respondent nos. 1, 3 & 4, Shri Balaji S. Shinde, learned Advocate for respondent no. 2, Shri C.D. Biradar, learned Advocate for respondent no. 5 and Shri Rakesh Jain, learned Advocate for respondent no. 6. None appears for respondent nos. 7 & 8.

2. Learned Counsel for the respondents sought time for filing affidavit in reply on behalf of respective respondents. Time granted.

3. In the circumstances, S.O. to 4.1.2022.

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION NO. 251/2019
(Dr. Swapnil S. Ajabe & Ors. Vs. State of Maha. & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Heard Shri J.S. Deshmukh, learned Advocate for the applicants, Shri V.R. Bhumkar, learned Presenting Officer for the respondent nos. 1 to 3, 5, 7, 8 & 9, Ms. Vanita H. Sangale, learned Advocate holding for Ms. Ashwini Hoge Patil, learned Advocate for respondent no. 4 and Shri N.U. Yadav, learned Advocate for respondent no. 10. None appears for other respondents.

2. Learned Counsel for the respondents sought time for filing affidavit in reply on behalf of respective respondents. Time granted.

3. In the circumstances, S.O. to 4.1.2022.

MEMBER (A)

MEMBER (J)

C.P. 12/2021 IN O.A. 2/2019
(Shri Tukaram R. Bhojane Vs. State of Maha. & Ors.)

CORAM : **Hon'ble Justice Shri P.R. Bora, Member (J)**
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : **30.11.2021**

ORAL ORDER :

Heard Shri V.M. Maney, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents.

2. The present Contempt Petition has been filed by the applicant alleging that the order dated 26.6.2019 passed by this Tribunal in O.A. No. 2/2019 though has been complied with by the respondents, it has been complied with too late and after the transfers of other employees were effected, without considering the representation of the applicant pending at that time.

3. It is the contention of the applicant that before effecting the transfers of other employees the representation of the present applicant ought to have been considered by the respondents in view of the order of this Tribunal dated 26.6.2019 passed in O.A. No. 2/2019. In the circumstances, according to the applicant, the respondents have breached the order of

this Tribunal and are thus guilty of the contempt of the order of this Tribunal.

4. We have perused the affidavit in reply filed by the respondent no. 4 as well as the communications made in this regard. After having gone through the affidavit in reply of the respondent no. 4 and the communications so made, we are of the opinion that no case is made out by the applicant to hold that any contempt is committed by the respondents of the order passed by this Tribunal. The representation of the applicant may be considered by the respondents as and when occasion arises, on going through the order passed by this Tribunal in O.A. no. 2/2019, we found that no such time limit was fixed by the Tribunal to decide the representation of the applicant. On going through the record, it also appears to us that, the applicant has completed majority of his service period at Aurangabad only and at present also he is posted at Paithan, which is one of the Talukas of Aurangabad District.

5. In the above circumstances, we are of the considered opinion that, no contempt is committed by the respondents of the order dated 26.6.2019 passed

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C.P. 12/2021 IN O.A. 2/2019

by this Tribunal in O.A. No. 2/2019. Hence, we proceed to pass the following order :-

ORDER

Contempt Petition No. 12/2021 in O.A. No. 2/2019 does not survive and hence it is disposed of with no order as to costs.

MEMBER (A)

MEMBER (J)

ARJ ORAL ORDERS 30.11.2021

**ORIGINAL APPLICATION NO. 685/2021
(Amol V. Chate & Ors. Vs. State of Maha. & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Heard Shri S.D. Munde, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.

2. Learned Chief Presenting Officer submits that he is in receipt of communication dtd. 29.11.2021 from the respondents and in view of the same he sought time for filing affidavit in reply. Time as sought for is granted.

3. S.O. to 5.1.2022.

3. In the circumstances, the present matter be posted for admission hearing on S.O. to 4.1.2022.

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION NO. 571/2021
(Namdeo B. Dhakne Vs. State of Maha. & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

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

2. Learned P.O. filed affidavit in reply of respondent nos. 1 to 4 across the bar. It is taken on record and copy thereof has been supplied to other side.

3. S.O. to 10.1.2022 for hearing at the stage of admission.

4. It will be open for the applicant to file rejoinder affidavit to the affidavit in reply of respondents

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION NO. 608/2021
(Pawansing R. Bight Vs. State of Maha. & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Avinash S. Deshmukh, learned Advocate for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondents.

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

3. In the circumstances, S.O. to 5.1.2022.

MEMBER (A)

MEMBER (J)

ARJ ORAL ORDERS 30.11.2021

**ORIGINAL APPLICATION NO. 287/2021
(Vijaysing H. Bagul Vs. State of Maha. & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

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

2. The present Original Application was filed by the applicant with the following reliefs :-

“(A) This Original Application may kindly be allowed.

“(B) By issue of an appropriate order or direction, the respondent no. 2 may kindly be directed to decide the appeal (Annex. A-2 to the Original Application) within the stipulated period.”

3. Today when the matter was taken up for consideration it is brought to our notice that the appeal preferred by the applicant has been decided by the respondent no. 2 and the final order has also been passed on 24.9.2021. Copy of the said order dated 24.9.2021 has already been placed on record.

4. In view of the fact that the appeal preferred by the applicant has been decided by the concerned respondent

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O.A. NO. 287/2021

and therefore the purpose of filing the present O.A. is served.

5. In the circumstances, the present O.A. stands disposed of with following order :-

ORDER

- (i) Original Application No. 287/2021 stands disposed of with no order as to costs.
- (ii) In view of the order passed by the respondent no. 2 on 24.9.2021, the present applicant shall report to the duties within one week from the date of this order and the respondent no. 3 shall allow the applicant to resume the duties.

MEMBER (A)

MEMBER (J)

**M.A. 262/2019 IN O.A. ST. 349/2019
(Dadasaheb M. Kewat Vs. State of Maha. & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Heard Shri V.G. Pingle, learned Advocate for the applicant, Smt. M.S. Patni, learned Presenting Officer for the respondent nos. 1 to 3 and Shri S.D. Dhongde, learned Advocate for respondent no. 4. None appears for respondent no. 5.

2. The present M.A. has been filed by the applicant for condonation of delay of 19 months caused in filing the accompanying O.A.

3. Perused the M.A. Considered the contentions of both the sides.

4. For the reasons stated in the M.A., the delay caused in filing O.A. deserves to be condoned and is accordingly condoned.

3. Accordingly, the present M.A. stands disposed of with no order as to costs.

4. Office to register the accompanying O.A. on its due scrutiny.

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION ST. NO. 349/2019
(Dadasaheb M. Kewat Vs. State of Maha. & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Heard Shri V.G. Pingle, learned Advocate for the applicant, Smt. M.S. Patni, learned Presenting Officer for the respondent nos. 1 to 3 and Shri S.D. Dhongde, learned Advocate for respondent no. 4. None appears for respondent no. 5.

2. Issue notices to the respondents, returnable on 11.1.2022.

3. Learned Presenting Officer as well as learned Advocate for respondent no. 4 waive notice for respective respondents.

4. In the circumstances, the present matter now stands adjourned for filing affidavit in reply by the respective respondents on 11.1.2022.

MEMBER (A)

MEMBER (J)

**OA 337/2021 WITH M.A. 372/2021 WITH MA 333/2021
(Sandip D. Golwal & Anr. Vs. State of Maha. & Ors.)**

**CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 30.11.2021

ORAL ORDER :

Heard Shri A.R. Borulkar, learned Advocate for the applicants and Smt. M.S. Patni, learned Presenting Officer for the respondent nos. 1 & 2. None appears for respondent nos. 4 & 5.

2. Shri Avinash D. Aghav, learned Advocate has filed his V.P. for respondent no. 3. It is taken on record. He seeks time for filing affidavit in reply of respondent no. 3. Time granted.

3. Learned Presenting Officer tendered across the bar the affidavit in reply of respondent nos. 1 & 2 in the present O.A. It is taken on record and copy thereof has been supplied to other side.

4. When the present matter was taken up for consideration, the learned Advocate for the applicants submits that despite the due attempts made to serve the respondent nos. 4 & 5 on their last known address, they could not be served. Learned Advocate

**::-2-:: OA 337/2021 WITH M.A. 372/2021
WITH MA 333/2021**

for the applicants further submitted that the entire record of conducting the examination is now in possession of the respondent no. 2 i.e. the Collector, Ahmednagar and in such circumstances learned Advocate for the applicants requested the Tribunal to exempt the service of notice upon the respondent nos. 4 & 5 for the time being. The said request of the learned Advocate for the applicants is granted for the time being.

5. It is further submitted that the respondent nos. 1 & 2 have filed their detailed affidavit in reply today and the applicants are ready to proceed with the hearing of the matter finally.

6. In the above circumstances, the present O.A. stands adjourned to 23.12.2021 for hearing the at the stage of admission.

MEMBER (A)

MEMBER (J)

**ORIGINAL APPLICATION NO. 372/2020
(Ramsingh B. Chavan & Ors. Vs. State of Maha. & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Heard Shri Ajay S. Deshpande, learned Advocate for the applicants and Shri B.S. Deokar, learned Presenting Officer for the respondents.

2. Learned Presenting Officer submits that the present matter is part heard. Shri N.U. Yadav, learned P.O., who has earlier argued the present matter, is not present today and, therefore, matter may be adjourned.

3. In the circumstances, at the request of learned P.O., S.O. to 10.12.2021.

MEMBER (A)

**ORIGINAL APPLICATION NO. 583/2018
(Sahebrao A. Sormare Vs. State of Maha. & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Shri Kakasaheb B. Jadhav, learned Advocate for the applicants (**absent**). Shri B.S. Deokar, learned Presenting Officer for the respondents, is present.

2. The present matter has been reopened on 11.10.2021 by passing the following order :-

“2.Learned Advocate for the applicant may also submit copy of joining report along with medical certificate with acknowledgement of the office of the Senior Geologist, Jalna/Hingoli, whichever is applicable, so that the period of delay can be assigned at proper level for calculation of interest.”

3. Today, neither the learned Advocate for the applicant is present nor any such document has been submitted.

4. In the circumstances, as a last chance for produce aforesaid documents, S.O. to 15.12.2021, failing which suitable order will be passed on merit of the matter.

MEMBER (A)

**ORIGINAL APPLICATION NO. 264/2019
(Supadu V. Bhalerao Vs. State of Maha. & Ors.)**

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

DATE : 30.11.2021

ORAL ORDER :

Shri B.R. Kedar, learned Advocate for the applicant (**absent**). Shri B.S. Deokar, learned Presenting Officer for the respondents, is present.

2. In view of absence of applicant and his learned Advocate, S.O. to 15.12.2021 for final hearing.

MEMBER (A)

ARJ ORAL ORDERS 30.11.2021

(1) ORIGINAL APPLICATION NO. 280/2021
(Laxman M. Bhise & Anr. Vs. State of Maha. & Ors.)

(2) ORIGINAL APPLICATION NO. 281/2021
(Kusum M. Bjhise & Anr. Vs. State of Maha. & Ors.)

CORAM : Hon'ble Justice Shri P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 30.11.2021

ORAL ORDER :

Original Application No. 280/2021

Heard Shri Jiwan J. Patil, learned Advocate for the applicants, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent nos. 1 to 3 and Shri S.D. Dhongde, learned Advocate for respondent no. 5. None appears for respondent no. 4.

Original Application No. 281/2021

Heard Shri Jiwan J. Patil, learned Advocate for the applicants, Smt. M.S. Patni, learned Presenting Officer for the respondent nos. 1 to 3, Shri V.A. Bagadiya, learned Advocate for respondent no. 4 and Shri A.G. Vasmatkar, learned Advocate for respondent no. 5.

2. Since in both these Original Applications the issue involved is one and the same, we deem it proper to decide both these matters by this common order.

3. It is the case of the applicants in both the matters that, though they are senior to respondent nos. 4 & 5, in so far as date of appointment is concerned, in the final seniority list published on 10.7.2020 they are shown below the said respondents on the ground that they have not passed the Sub-Service Departmental Examination as per the provisions of rule 4(a) of the Maharashtra Sub-Service Departmental Examination Rules, 1988 (hereinafter referred to as 'the Rules of 1988') within 3 attempts in 4 years from the date of their recruitment. It is the contention of the applicants that the rules of 1988 have been wrongly interpreted by the respondents, which has resulted in placing the present applicants in the seniority list below the respondent nos. 4 & 5. It is further contention of the applicants that, so far as the aforesaid Rules are concerned, the Clerk appointed in Revenue Department has to pass the Departmental Examination within 04 years from the date of appointment and within 03 chances. According to the applicants, they have passed the Departmental examination within the aforesaid limit.

::-3-:: O.A. NOS. 280 & 281 BOTH OF 2021

4. As against this, it is the contention of the respondent nos. 4 & 5 as well as the respondent authorities that in the first O.A. i.e. O.A. NO. 280/2021, the applicants did not appear for the Departmental Examination, which was held during the first year of their joining and, as such, it can be said that the first chance was not availed by them and considering the same it is their further contention that the applicants cannot be said to have complied with the Rules of 1988 cited supra. In second matter i.e. in O.A. No. 281/2021 it is their contention that 04 Departmental Examinations were held in the 04 years, one was missed by the applicants therein and as such it has been held that the applicants in the said second O.A. i.e. O.A. no. 281/2021 did not qualify the criteria as prescribed in the Rules of 1988. It is the submission on behalf of the respondents that nothing wrong has been committed and no case is made out by the applicants for accepting the prayers made by them in their respective O.As.

5. We have carefully considered the submissions advanced by both the sides in both the cases. We have also gone through the rules referred to and the G.Rs. and Circulars relied upon by the parties.

::-4-:: **O.A. NOS. 280 & 281 BOTH OF 2021**

6. Rule 4 of Maharashtra Sub-Service Departmental Examination Rules, 1988 reads as under :-

“4. Period and number of chances –

(a) A clerk recruited in the Revenue Department shall be required to pass the Sub-Service Departmental Examination within four years of his date of recruitment and within three chances.”

7. On plain reading of aforesaid rule, it appears that, the person entering in Revenue Services on recruitment as Clerk is required to pass the Departmental Examination within 04 years and within 03 chances. It is nowhere mentioned therein or there is no clarification that the Clerk concerned is required to pass the Departmental Examination in first 03 consecutive chances. In the circumstances, the contention of the respondents that the first attempt, which was available to the applicants in O.A. No. 280/2021 and which was not availed by them was their first chance, cannot be accepted. For similar reasons, the contention of the respondents in another O.A. bearing no. 281/2021 for not availing three

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O.A. NOS. 280 & 281 BOTH OF 2021

consecutive chances during the period of four years of recruitment does not find any legal basis.

8. Reliance is sought to be placed on the recent G.R. issued by the General Administration Department No. विपधो २६२०/प्र.क.१६/का.१७, मंत्रालय, मुंबई, dated 31-3-2021 and Circular of General Administration Department bearing No. संकीर्ण २३१७/प्र.क.३३/का-१७, मंत्रालय, मुंबई, dated 17.11.2017. We have gone through the aforesaid G.R. and Circular. So far G.R. dated 31.3.2021 is concerned without going into the correctness of the criteria laid down therein it has to be held that same cannot be attracted in the present matter since its operation is prospective. We need not to state that the G.R. or the Circular cannot supersede or override the rules framed in that regard. As noted earlier, plain reading of rules does not provide for passing the Departmental Examination within first 03 consecutive chances or within 04 years. Even the justification given by the General Administration Department for inferring limitation of three consecutive chances for passing Sub-Service Departmental Examination by way of an illustration

::-6-:: O.A. NOS. 280 & 281 BOTH OF 2021

given in para 2 of the said Circular suffers from wrong interpretation of the term, 'year', which is to be counted from the date of recruitment. Thus, it can safely be inferred that the applicants in the present O.As. have fulfilled the criteria as laid down in the Rules by passing the Departmental Examination within the period and chances prescribed.

9. In the circumstances, as further stated in the said Rules, the seniority of the applicants in both the cases has to be counted from the date of their entry in service. Since the date of joining of the present applicants in both the O.As. is prior to the date of joining of the respondent nos. 4 & 5 in both the O.As., the seniority list prepared by showing these respondent nos. 4 & 5 senior to the applicants in both the O.As. needs to be corrected and rectified. For the reasons mentioned above, O.A. Nos. 280/2021 & 281/2021 deserve to be allowed. Hence, we proceed to pass the following order :-

ORDER

- (i) The final seniority list published on 10.7.2020 is quashed and set aside.

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- (ii) The seniority of the Clerks passing the Sub-Service Departmental Examination within 4 years of the date of their appointment and within 3 chances shall be maintained and / or reckoned from the date of their original appointment. It is clarified that it may not be necessary that new appointee Clerk shall pass the Sub-Service Departmental Examination within first 3 consecutive chances. It will be sufficient that, within 4 years and by availing 3 chances he passes the said examination.
- (iii) Applying the said criteria the applicants in both the O.As. be placed in the seniority list at the appropriate place taking into account their date of joining.
- (iv) Accordingly, O.A. Nos. 280/2021 and 281/2021 stand disposed of.
- (v) There shall be no order as to costs.

MEMBER (A)

MEMBER (J)