

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 43 OF 2015

DISTRICT : BEED

Ramchandra Ganeshlal Pardeshi,)
Age : 58 years, Occu. : Service,)
At Swami Ramanand Teerth Rural Govt.)
Medical College Ambajogai,)
Tq. Ambajogai, Dist. Beed.)
R/o : Ambajogai, Tq. Ambajogai,)
Dist. Beed.)

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APPLICANT

V E R S U S

1. **The State of Maharashtra,**)
Through the Secretary,)
Public Health Department,)
Mantralaya, Mumbai.)
2. **The Director of Medical Education &**)
Research, Mumbai.)
3. **Account Officer,**)
Salary Verification Committee,)
Aurangabad.)
4. **Dean,** Swami Ramanand Teerth Rural)
Govt. Medial College, Ambajogai,)
Tq. Ambajogai, Dist. Beed.)

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RESPONDENTS

APPEARANCE : Shri T.G. Gaikwad, Advocate for the
Applicant.

: Shri S.K. Shirse, Presenting Officer for
respondents.

CORAM : **Justice Shri P.R. Bora, Member (J)**
and
Shri Bijay Kumar, Member (A)

DATE : **08.03.2022.**

ORDER
(Per : Shri Bijay Kumar, Member (A))

1. This Original Application has been filed by one Shri Ramchandra Ganeshlal Pardeshi, R/o Ambajogai, Dist. Beed, on 19.01.2015 invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, challenging the validity of the order passed by the respondent No. 4 vide communication bearing outward No. वैम/आस्था-४/८५५८/२०१४, dated 30.12.2014, thereby, promotion of the applicant on the post of Laboratory Attendant, issued earlier vide order outward No. वैम/आस्था-४/११८४४/९९, dated 29.11.1999 has been cancelled.

2. The present Original Application was dismissed in default for want of prosecution vide order of this Tribunal passed on 13.11.2019. However, the same was restored by an order dated 18.12.2019 passed in M.A. No. 606/2019 in the present O.A. No. 43/2015.

3. **The facts of the matter** – The background facts as submitted by the applicant may be summed up as follows:-

(a) The applicant was initially appointed as Sweeper vide appointment order dated 30.06.1975 by the respondent No.

4, i.e. the Dean of the Government Medical College, Ambejogai, District-Beed.

(b) The applicant was promoted by the respondent No. 4 in due course from the post of Sweeper of Library Department of College to the post of Peon vide an office order bearing No. EB/NGO/Class IV/PRG/9509/1982, dated 02.08.1982.

(c) The respondent No. 4 passed order dated 29.11.1999 effecting change in cadre of the applicant from "Peon" to "Laboratory Attendant" citing fulfillment by the applicant of the terms & conditions stipulated in Government Resolution No. वेपुर १२९८/प्र.क्र. १५/९८/सेवा-१०, dated 31.10.1998 and N.P.C. 1289(1529)/VG/4/ dated 29.01.1990.

(d) Subsequently, the respondent No. 4 cancelled the abovementioned order dated 29.11.1999 vide impugned order bearing outward No. वैम/आस्था-४/८५५८/२०१४, dated 30.12.2014 citing objection raised by the Pay Verification Unit, Aurangabad and provisions of Government Resolution No. वेपुर १२९८/प्र.क्र. १५/९८/सेवा-१०, dated 31.10.1998.

(e) The applicant has alleged that he was found eligible and qualified for promotion from the post of “Peon” to the post of “Lab Attendant” and also for change in designation and as such, cancellation of order of his promotion and change in designation was done with a view of harassing him at the time of retirement.

(f) The applicant further claimed that cancellation of order of his promotion order dated 29.11.1999 was without giving him notice and therefore, the same is in violation of the Principles of Nature Justice.

(g) The applicant has filed the Original Application on 19.01.2015, which is within time limit.

4. **Relief prayed for** – The applicant has prayed for following reliefs in terms of para No. 7 of the Original Application, which is being reproduced verbatim as follows:-

“7. **Relief South For :**

A. *The Original Application may please be allowed;*

B. *The letter/order dated 30.12.2014 issued by the respondent no. 4 thereby promotion of the applicant on the post of Laboratory Attendant which was issued vide*

order dated 29.11.1999 is cancelled may kindly be quash and set aside in the interest of justice.

- C. The respondents may kindly be directed to consider the representations dated 2.5.2013, 28.11.2013, 6.3.2014 and 12.11.2014 submitted by the applicant for taking necessary entries of P.F. account and G.P.F. account as per 6th pay scale rules.*
- D. The respondents may kindly be directed not to deduct any amount from the account of applicant by taking resort of impugned order dated 30.12.2014 issued by the respondent No. 4.*
- E. Any other suitable or equitable relief may kindly be granted in favour of applicant which deems fit in the interest of justice.”*

5. **Interim relief prayed for** – The applicant had prayed for interim relief in terms of para No. 8 of the Original Application, which is reproduced verbatim as follows:-

“8. **Interim relief prayed for :**

- A. Pending hearing and final disposal of Original Application, the effect, operation and implementation of the impugned letter / order dated 30.12.2014 issued by the respondent No. 4 may please be stayed.*
- B. Pending hearing and final disposal of Original Application, the respondents may kindly be directed to consider the representations dated 2.5.2013, 28.11.2013, 6.3.2014 and 12.11.2014 submitted by the*

applicant for taking necessary entries of P.F. account and G.P.F. account as per 6th pay scale rules forthwith or within stipulated period as this Hon'ble Tribunal may deem fit.

- C. *Pending hearing and final disposal of this Original Application, the respondents may kindly be directed not to take any action or deduct any amount from the account of applicant by taking resort of impugned order dated 30.12.2014 issued by the respondent No. 4.*
- D. *Any other suitable or equitable relief may kindly be granted in favour of applicant which deems fit in the interest of justice.”*

Interim relief was granted by this Tribunal by an order dated 22.01.2015 in following terms :-

“Impugned Annexure A-8 dated 30.12.2014 is stayed with notice to the respondents to show cause as to why the ad interim order should not be made absolute with the liberty to respondent to move this Tribunal for vacation of Interim Relief after filing reply.”

Interim relief so granted was continued on subsequent occasions of hearing.

6. **Pleadings and Arguments :-**

- (i) Joint affidavit in reply on behalf of respondent Nos. 1, 2 and 4 was filed on 09.06.2015, which was taken on record and copy of the same was provided to the other side.

Affidavit in reply filed on behalf of respondent No. 3 was filed on 10.07.2015, which was also taken on record and copy thereof was served on the learned Advocate for the applicant. However, as mentioned in abovementioned para No. 2, the Original Application was dismissed in default on 13.11.2019 for want of prosecution. However, the O.A. was restored to its original number vide order of this Tribunal passed on 18.12.2019 in M.A. No. 606/2019 in O.A. No. 43/2015. As pleadings were complete, the present matter was fixed for final hearing on 07.02.2022 vide order dated 20.01.2022. However, final hearing took place on 08.02.2022 and the matter was reserved for orders.

(ii) The respondent No. 1, 2 and 4 have argued that the applicant, who was in the cadre of "Peon" was posted as "Laboratory Attendant" by the respondent No. 4 vide office order dated 29.11.1999, by wrong interpretation of G.R. of Finance Department, Government of Maharashtra bearing No. वेपुर १२९८/प्र.क. १५/९८/सेवा-१०, dated 31.10.1998, which deals with correction in pay-scales of different cadres including the cadre of "Laboratory Attendant" and the same did not provide for Cadre Change (संवर्गित बदल) of "Peon" to "Laboratory Attendant". As soon as, the same came to notice of the

respondent No. 4 through remarks of Pay Verification Unit, the mistake was corrected.

(iii) On the other hand, the applicant has cited the provisions of Principles of Natural Justice and the law settled down by the Hon'ble Apex Court's judgment in **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc. and a batch in Civil Appeal No. 11527 of 2014 (Arising out of SLP (C) No. 11684 of 2012)** by which recovery of any amount paid to him due to any *wrong orders of promotion* is not permissible.

7. **Analysis of Facts and Conclusion** – On considering facts on record and oral submissions made by the two contesting sides, following facts have come to our notice :-

(a) The respondent No. 4 has granted Cadre Change (संवर्ण बदल) vide order dated 29.11.1999 citing provisions of G.R. dated 31.10.1998. Thereafter, he has passed another order dated 30.12.2014 cancelling the earlier order dated 29.11.1999 operating part of which is reproduced below for ready reference:-

“उपरोक्त संदर्भिय लेखा अधिकरी, वेतन पडताळणी पथक औरंगाबाद यांच्या आक्षेपाच्या अनुषंगाने संदर्भिय शासन निर्णयानुसार अपण सदरील शासन निर्णयाच्या

अटी व शर्ती पुर्ण करीत नसल्यामुळे आपणास शिपाई या पदावरून प्रयोगशाळा परिचर या पदावर कार्यालयाचे आदेश क्र. वैम/आस्था-४/११८४४-८६०/९९ दि. २९/११/१९९९ अन्वये देण्यात आलेली पदोन्नती नियम बाह्य आहे. प्रयोगशाळा परिचर या पदावर देण्यात आलेली पदोन्नती प्रस्तुत आदेशान्वये रद्द करण्यात येवून सदर पदावरून आपणास शिपाई या पदावर पदावनत करण्यात येत आहे.”

(b). From above it is clear that the respondent No. 4 had impliedly admitted that he had erred grossly by passing order dated 29.11.1999. The facts show that the respondent No. 4 admittedly lacked administrative capabilities to the extent that he could not differentiate between commonly used term 'संवर्ग बदल' used in the order dated 29.11.1999 and "पदोन्नती" used in the order dated 31.12.2014. The respondent No. 4 had further committed mistake of not offering opportunity to the applicant to present his side by issuing show cause notice. The respondent No. 4 has impliedly admitted the gross mistakes committed by him by averments made in para 5, 6 and 8 of the affidavit in reply filed on his behalf.

(c) Learned Presenting Officer has not contested the arguments made by the applicant regarding applicability of the law laid down by the Hon'ble Apex Court in Rafiq Masih (White Washer) case (cited supra).

(d) **Conclusions** – Therefore, in our considered opinion, there is merit in the Original Application and the respondent No. 4 is admittedly responsible for gross mistakes committed by him in decision making at the stage of first ordering change in cadre of the applicant from “Peon” to “Laboratory Attendant” and thereafter, while cancelling the said order without following due procedure of giving opportunity to the applicant to be heard. The applicant’s claim of benefit of law laid down by Hon’ble Apex Court’s judgment in White Washer case is also not contested by the respondents. However, no case has been made out by the applicant for taking into account the pay of the applicant fixed on the basis of grossly erroneous orders of “cadre change”/ “promotion”, for the purpose of determining post-retirement benefits such as pension, gratuity, leave encashment etc., which are yet to be paid to the applicant and, thereby, to grant undue monetary benefits to him hereafter. Likewise, in view of above facts, there is no case of admitting prayer clause 7(C) by which applicant’s pay in the cadre of ‘Laboratory Attendant’ may be ordered to be reviewed as per the recommendation of 6th

Central Pay Commission. Hence, following order is being passed:-

ORDER

After considering the facts on record and oral submissions made by the contesting parties, the Original Application No. 43 of 2015 is allowed in following terms :-

- (A) Benefits granted by the respondent No. 4 to the applicant vide erroneous order No. वैम/आस्था-४/११८४४/९९, dated 29.11.1999 and already paid, shall not be recovered from the applicant in view of settled law in this regard by Hon'ble Apex Court's judgment in **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc. and a batch in Civil Appeal No. 11527 of 2014 (Arising out of SLP (C) No. 11684 of 2012).**
- (B) For the purpose of post-retirement benefits, eligible service shall be considered to have been rendered on the post of "Peon" and not on the post of "Laboratory Attendant" and amount of post-retirement benefits including pension, gratuity, leave encashment etc. shall be calculated accordingly. In other words, post-retirement benefits shall be computed treating order No. वैम/आस्था-४/८५५८/२०१४, dated 30.12.2014 to be in force.
- (C) Responsibility for passing grossly erroneous order dated 29.11.1999 by the concerned officer working as

the respondent No. 4 at the relevant point of time of passing such order, be fixed by the respondent Nos. 1 and 2 following due process, as per the provisions of law and rules in force.

(D) There shall be no order as to costs.

MEMBER (A)

MEMBER (J)

Kpb/D.B. O.A. 83 of 2015 PRB & BK 2022 Promotion