

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 474 OF 2018

DISTRICT :- NANDED

Prashant Purushottam Vaidya,

Age : 52 years, Occ. Service

R/o. 86, Yashwant Nagar, Nanded.

... **APPLICANT**

V E R S U S

1. The State of Maharashtra,
Through the Principal Secretary,
Social Justice and Special Assistance Dept.,
Mantralaya, Mumbai 400 032.
2. The Director of Social Welfare,
Maharashtra State,
3, Church Road,
Pune – 411 001.
3. The District Social Welfare Officer,
Zilla Parishad, Nanded.
4. The District Social Welfare Officer,
Zilla Parishad, Latur.
5. The District Social Welfare Officer,
Zilla Parishad, Jalna.
6. Commissioner for Persons with
Disabilities, M.S. 3, Church Road,
Pune-411001.

.. RESPONDENTS

APPEARANCE : Shri Ajay S. Deshpande, Advocate for the
Applicant.

: Smt. M.S. Patni, Presenting Officer for
respondent Nos. 1, 2 & 6.

: None present on behalf of respondent Nos.
3 to 5, though duly served.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI BIJAY KUMAR, MEMBER (A)**

RESERVED ON : 28.04.2022
REHEARING ON : 11.08.2022
PRONOUNCED ON : 23.08.2022

ORDER

[Per : Hon'ble Shri Bijay Kumar, Member (A)]

The O.A. (St.) No. 41/2016 was filed by one Shri Prashant Purushottam Vaidya on 12.01.2016. Registry recorded its office objection on the point of Limitation U/s. 21 of the Administrative Tribunals Act, 1985. The applicant filed Miscellaneous Application No. 117 of 2016 of condonation of delay in filing this Original Application which was dismissed by this Tribunal on 21.03.2016. Thereafter, the applicant, being aggrieved by order of this Tribunal of dismissing in M.A. No. 117/2016, filed a Writ Petition No. 5471/2017 before Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad which, by judgment dated 11.1.2018, allowed condonation of delay by setting aside order of this Tribunal in M.A. No. 117/2016. The O.A. was registered as No. 474/2018.

2. Substitution of O.A. No. 474/2018 was permitted vide Tribunal's order dated 16.8.2018 which was dismissed in default on 10.9.2018 by an order of this Tribunal. Subsequently, this Tribunal allowed restoration of this O.A. by order dated 21.9.2018.

3. On 05.02.2019, the learned senior counsel for the applicant sought leave to delete names of respondent Nos. 3 to 5 on the stated ground that R-3 to 5 have no role whatsoever which was granted. Endorsement to the effect is made on the original application, though no reference of order of the Tribunal granting permission for deletion has been noted on the O.A., which is being treated as oversight on the part of the applicant.

4. Affidavit in reply on behalf of respondent Nos. 1 & 2 was filed on 27.9.2019, which was taken on record and a copy thereof supplied to the other side. Learned counsel for the applicant filed rejoinder affidavit on 07.03.2022 which was also taken on record and a copy thereof supplied to respondents. No affidavit in reply was filed on behalf of respondent Nos. 3 to 5, even though they were duly served with notice. With consent of the two sides the matter was fixed for final hearing on 28.4.2022. The two sides argued the matter on the designated date and matter was reserved for order.

5. However, while drafting orders in this case, it was noted that the establishment of the applicant has been transferred to the newly created office of the Commissioner for Persons with Disabilities which has not been impleaded as respondent and respondent No. 3 to 5 were proper and necessary party responsible to put service records of the applicant in order, whose deletion from the list of respondents may leave the applicant without effective remedy therefore; the matter was reopened and the applicant was granted leave to carry out amendments in title clause and restore the names of respondent No. 3 to 5. In addition, in view of the fact that establishment of the applicant was brought under administrative control of Commissioner for Persons with Disabilities, M.S., the applicant was granted leave to join the Commissioner for Persons with Disabilities, M.S. as respondent No. 6. These amendments had been allowed in the interest of justice as otherwise, the matter could have been technically disposed of without resolving the issue which would have cropped up at a later stage of retirement of the applicant.

6. Affidavit in reply on behalf of the Commissioner for Persons with Disabilities, M.S. Pune was submitted on 11.08.2022 which was taken on record. As the learned senior counsel for the

applicant did not wish to file additional affidavit/ rejoinder to affidavit in reply submitted on behalf of respondent No. 6 and the two sides did not wish to argue the matter again, with consent of the two sides, the matter was again reserved for orders.

7. **Facts of the matter:** The background facts stated by the applicant being sketchy, the same have been gathered from the facts of the matter stated in affidavit in reply submitted by the respondents and not contested by the applicant; which are as follows: -

(a) The applicant was appointed by the Director, Women and Child Welfare, M.S. Pune as Assistant Counsellor vide order dated 02.09.1993. He was posted firstly in the office of District Women and Child Welfare Officer, Nanded. Thereafter, he was transferred to office of District Social Welfare Officer Chandrapur vide order of Director, Social Welfare, M.S., Pune dated 10.7.2000.

(b) The applicant was placed under suspension vide order of Director, Social Welfare, M.S., Pune on 11.07.2000 as a departmental proceedings was proposed against him in the process of compliance of order of Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in W.P. No. 4666/1997 by which Hon'ble High Court had ordered to

inquire into irregularities committed by concerned while granting of permission to start new school of mentally retarded children by NGO in Nanded district. The suspension order was revoked by the Director, Social welfare vide order dated 23.12.2000 and the applicant was reinstated on the post of Assistant Counsellor in the office of District Social Welfare Officer Chandrapur.

(c) The applicant was transferred from Chandrapur to Latur as Assistant Counselor, Chandrapur vide order dated 02.05.2001 issued by Director, Social Welfare, M.S. Pune. Thereafter, by an order of Regional Social Welfare Office dated 30.06.2003 the applicant was transferred as Assistant Counselor, Group-A, Z.P. Jalna.

(d) The applicant was posted to office of District Social Welfare Officer, Z.P. Latur as a '*Request Transfer*' by order of Commissioner for Persons with Disability, M.S. Pune by order dated 15.6.2009, where he joined on 06.07.2009.

(e) The applicant was issued charge-sheet of charge vide memorandum dated 31.5.2005 issued under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Inquiry report was submitted by departmental

enquiry officer on 18.12.2010. The applicant was supplied with a copy of enquiry report on 23.12.2010, upon which the applicant submitted his say on 07.01.2011. Finally a penalty was inflicted by order of Government of Maharashtra vide Order No. सं.क.अ-२०१०/प्र.क. ४७३/आस्था-२१३/Mantralya (Annex.), dated 07.06.2011 whereby, one annual increment of the applicant was withheld for one year without any future effect.

(f) From the entry in service-book page No. 38, it is learnt that the Chief Executive Officer, Zilla Parishad, Latur had ordered withholding of two annual increments of the applicant without future effect vide order No. १०/साप्रवि/कार्या-८/वै.स./एसआय-२/कावि-४५६, dated, 21.05.2010 about which the applicant has pleaded ignorance.

(g) From yet another entry in service-book of the applicant dated 07.11.2012, it appears that pay scale of the applicant was revised as per recommendation of 6th Pay Commission. However, his suspension period was not regularized on the pretext that the date of next increment and pay of the applicant had not been decided.

(h) From a communication from Commissioner for Persons with Disability, M.S. Pune, dated 03.01.2019 addressed to the District Social Welfare Office, Z.P. Nanded, it appears that District Social Welfare Office, Z.P. Nanded had relieved the applicant one-sidedly on the ground of being irregular on duty. However, Commissioner for Persons with Disability, M.S. Pune had directed District Social Welfare Officer, Z.P. Nanded to allow the applicant to join the duty again in order to avoid complication in salary payment to the applicant.

(i) Finally, Commissioner for Persons with Disability, M.S. Pune vide his office order dated 28.5.2019 transferred the applicant to the office of District Social Welfare Office, Chandrapur. The applicant joined at Chandrapur on 10.6.2019 as directed but also applied for transfer back to Nanded or Hingoli vide application dated 26.7.2019. Thereafter, the applicant remained absent from duty from 1.7.2019 to 30.9.2019 and reported for joining on 4.10.2019. Copy of medical certificate and fitness certificate both appear to have been issued on 1.7.2019 for period 1.7.2019 to 30.9.2019 and fitness on 1.10.2019.

(j) Applicant could not be paid salary as the post of Assistant Counselor was not created on “Sevarth” portal of Directorate of Accounts & Treasury for establishment of District Social Welfare Officer, Z.P. Chandrapur.

(k) Applicant has registered protest against his transfer to Z.P. Chandrapur by a number of representations.

8. **Relief prayed for** – It is in terms of paragraph 17 of the Original Application, which is being reproduced verbatim for ready reference :-

“(A) Original Application may kindly be allowed.

(B) The respondents may kindly be directed to release yearly increments of the applicant from 2000 and onwards, by treating his suspension period as a duty period and to determine his pay accordingly, by making payment of arrears of due and drawn salary on account of release of yearly increments from 2000 and onwards.

(C) The respondents may kindly be directed to extend both the benefits under Time Scale Promotion Scheme upon completing 12 years and 24 years’ service respectively from September 2005 and September 2017 to sub serve the ends of justice.

(D) Any other suitable and equitable relief to which the petitioner is entitled to, and this Hon’ble Court deems it fit and proper, may kindly be granted in his favour.”

9. **Analysis of facts :-**

(a) Background facts in the present matter are mostly admitted by the two contesting sides except about an entry on page 38 of the Service Book of the applicant regarding withholding of his two annual increments by the Chief Executive Officer, Zilla Parishad, Latur, about which the applicant has pleaded ignorance in his re-joinder affidavit. However, the applicant has, as yet, not preferred administrative appeal against the same before competent authority, therefore, is not admissible at this stage in the process of the present adjudication.

(b) It is also noticed that the applicant has not submitted any evidence of having made representation to the Commissioner for Persons with Disability, M.S. Pune regarding the grievances raised in the present matter, except relating to his posting back to Nanded / Hingoli. Even, the Commissioner for Persons with Disabilities, M.S. Pune had not been initially impleaded as respondent in the present matter, which has been done on having been pointed out non-joinder of proper and necessary party as respondent.

(c) It is also noticed that the applicant had been on deputation to respective Zilla Parishads as per provisions of S. 253 BB of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, which is being quoted for ready reference as follows:-

“S. 253BB. (1) Where on the transfer or entrustment of powers and functions of the State Government to the Zilla Parishads or Panchayat Samitis by or under this Act with a view to give effect to article 243-G read with the Eleventh Schedule of the Constitution of India, any posts in a cadre of Class III or Class IV service of the State Government have been or are rendered surplus to the requirements of the State Government, the State Government or the authorised officer may, depute from time to time, persons holding posts in the Class III or Class IV service of the State Government in such cadres, to the Zilla Parishads initially for the period of three years from the date of order of deputation, which may be extended by Government if necessary, and the Zilla Parishads shall take them on deputation : Provided that— (a) no person so deputed shall be entitled to any deputation allowance or to be repatriated to service under the State Government during his deputation; (b) save as aforesaid, the terms and conditions of service shall not be less advantageous than those applicable to such persons immediately before such deputation. (2) The Cadres of such Class III and Class IV Government employees deputed along with the transfer of the Schemes to the Zilla Parishads, shall be maintained independently. (3) In the event of any vacancy on account of resignation, death, retirement, etc., in such Class III and Class IV employees, such vacancy shall be filled up by the Zilla Parishads concerned only from the feeder cadre of the Government employees on deputation: Provided that, if no such Government employee is available from the feeder cadre for promotion or filling of the vacancy, the concerned Zilla Parishad may fill up such vacancy from amongst its employees.”

In spite of this legal position, the applicant had deleted the names of District Social Welfare Officers of respective Zilla Parishad from the list of respondents who were initially impleaded as respondent No. 3 to 5. The

applicant has given reason for such deletion as follows- "*R-3 to R-4 have no role to play whatsoever and as such petitioner seeks to delete them.*" This shows that the applicant has not been serious in respect of getting his service matters streamlined and put to order.

(d) The two Respondents have taken plea that they can take appropriate decision on the reliefs prayed for by the applicant only after receiving report/ proposal from District Social Welfare Officers of corresponding Zilla Parishads.

(e) In the present matter, from the facts on record and oral submissions made, it is admittedly, that the original applicant was placed under suspension and reinstated by Spl. District Social Welfare Officer, Zilla Parishad, Chandrapur, in compliance of the order passed by Director, Social Welfare, M.S. Pune. As the role and responsibilities of Directorate of Social Welfare has been transferred to the Commissioner for Persons with Disabilities, M.S. Pune, the latter is competent to take decision regarding suspension period of the applicant. It is after being pointed out the issue of non-joinder of the Commissioner for Persons with Disabilities, M.S. Pune as respondent by this Tribunal that the applicant has impleaded the Commissioner for Persons

with Disabilities, M.S. Pune as respondent who has submitted affidavit in reply on 11.08.2022.

(f) As per provisions of S. 14 of the Maharashtra Civil Service (Disciplinary & Appeal) Rules, 1979 (in short, “MCS (D & A) Rules”) the applicant, who has been on deputation to respective Zilla Parishads, the latter gets powers of a disciplinary authority for the purpose of conducting disciplinary proceedings against an employee on deputation and also for imposing minor penalty in consultation with the lending/ parent department. The applicant has not filed appeal against minor penalty of withholding two annual increments for one year each (temporarily) without future effect, as imposed by the Chief Executive Officer, Zilla Parishad Latur and also against the minor penalty of withholding one annual increment for a period of one year without future effect, as imposed by the order of respondent no. 1, the two orders can be given effect while deciding claims of the applicant.

(g) The Commissioner for Persons with Disabilities, M.S. Pune, being competent authority, may also decide the matters raised in this original application taking into account provisions of Acts/ statues/ Government

Resolutions and provisions of Rehabilitation Council of India Act, 1992, as are applicable.

(h) It is evident that the applicant has sought relief without coming clean on background facts which are of critical nature. Therefore, this is Original Application deserved to be dismissed for want of proper prosecution by the applicant but the same would have resulted into further complications with passage of time as these matters would not have permitted deciding the issues of post-retirement entitlements of the applicant; therefore, in order to bring applicant's service matters in order, the Respondent No. 6, the Commissioner for Persons with Disability, M.S. Pune may play pivotal role and take following actions with help of respondent nos. 2 to 5 and with active cooperation from the applicant : -

- (i) First of all, to decide the suspension period of the applicant, which extended from 11.07.2000 to 23.12.2000, as per merit of the case,
- (ii) To get the entries in service book of the applicant updated starting from the date of applicant's appointment order issued by the office of Director, Women & Child Welfare, M.S. Pune and covering different establishments of

postings of the applicant till date in sequence of postings. The applicant may also be called upon to submit duplicate copy of service book, if the same had been issued to him and if the same is needed for the purpose. For this purpose of updating entries in the service book, issue of regularization of period of unauthorized absence of the applicant, issue of concluding departmental proceedings, if any be pending and the issue of release of annual increments may be decided as per provisions of applicable service rules and government orders/ guidelines,

- (iii) Benefits of time-bound promotion/ Assured Career Progression Scheme/ Modified Assured Career Progression Scheme, as the case may be, granted as per merit of the case based on facts on record. In case, the applicant has not submitted self-assessment reports for relevant period, suitable view may be taken by competent authority taking into account gross negligence on part of the applicant in this regard.
- (iv) To get the issue relating to Sevarth System resolved with intervention of respondent No. 1 and release the amount of salary due but not paid.

10. Hence, the following order :-

ORDER

The Original Application No. 474/2018 is partly allowed in following terms :-

(A) After considering facts on record and oral submissions made, we are of the considered opinion that the original application in original form suffered from a number of technical infirmities; including non-joinder of necessary parties, which have been permitted to be cured by allowing amendments in title clause of the Original Application. It is also observed that the applicant has sought relief for grant of annual increments and benefits of non-functional, time-scale promotions without coming clean in respect of critical background facts. However, in order to bring the service matters of the applicant in order before the same get stale and further complicated with passage of time, the Respondent No. 6 is directed to take following steps, preferably within a period of four months from the date of receipt of this order :-

(i) First of all, to decide the suspension period of the applicant, which extended from 11.07.2000 to 23.12.2000, as per merit of the case,

(ii) To get the entries in service book of the applicant updated starting from the date of applicant's appointment order issued by the office of Director, Women & Child Welfare, M.S. Pune and thereafter, covering different establishments of

postings of the applicant till date in sequence of his places of postings. The applicant may also be called upon to submit duplicate copy of service book, if the same had been issued to him and if the same is needed for the purpose. For this purpose of updating entries in the service book, issue of regularization of period of unauthorized absence of the applicant, issue of concluding departmental proceedings, if any be pending and the issue of release of annual increments may be decided as per provisions of applicable service rules and government orders/ guidelines,

(iii) Benefits of time-bound promotion/ Assured Career Progression Scheme/ Modified Assured Career Progression Scheme, as the case may be, granted as per merit of the case based on facts on record. In case, the applicant has not submitted self-assessment reports for relevant period, suitable view may be taken by competent authority taking into account gross negligence on part of the applicant in this regard.

(iv) To get the issue relating to "Sevarth System" resolved with intervention of respondent No. 1 and release the amount of salary due but not paid. The respondent No. 1 to ensure necessary coordination with respective administrative departments to facilitate compliance of this action points.

(v) The Commissioner for Persons with Disabilities, M.S. Pune, being competent authority, may also

decide any other issue raised by the applicant in this original application, attracting application of provisions of the Rehabilitation Council of India Act, 1992, if any.

(vi) The respondent Nos. 3 to 5 to take necessary steps within time schedule as prescribed by the respondent Nos. 1, 2 and 6.

(B) No Order as to Costs

MEMBER (A)

VICE CHAIRMAN