

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 680 OF 2013**

**DISTRICT : NANDED**

1. Vilas s/o Ramrao Gandhane,  
Age: 36 years, Occu.: Service  
R/o: Hanumangad, Nanded,  
Tq. and Dist. Nanded.
2. Manoj s/o Chandulal Hans,  
Age: 38 years, Occu.: Service  
R/o: Vinakr Colony, Choufala,  
Nanded, Tq. and Dist. Nanded.

**.. APPLICANTS**

**V E R S U S**

1. The State of Maharashtra,  
Through its Secretary,  
Health Services Department,  
Mantralaya, Mumbai.
2. The Director of Health Services,  
Maharashtra State, Pune.
3. The Joint Director of Health  
Service (Malaria) Pune.  
Area Development Authority, Beed.
4. The Assistant Director of Health  
Services (Malaria) Aurangabad
5. The District Malaria Officer,  
Health Services, Nanded.

**...RESPONDENTS**

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**APPEARANCE** : Shri Prashant Deshmukh, Advocate holding  
for Shri P.V. Suryawanshi, for the Applicant.

: Shri M.P. Gude, Presenting Office for  
Respondent authorities.

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**CORAM** : **Shri V.D. Dongre, Member (J)**  
**and**  
**Shri Bijay Kumar, Member (A)**  
**Reserved on** : **01.03.2023**  
**Pronounced on** : **06.04.2023**  
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**ORDER**

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

1. This Original Application had been filed by one Vilas s/o Ramrao Gandhane jointly with another, Shri Manoj Chandulal Hans, on 19.10.2013 invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, being aggrieved by the impugned orders dated 26.04.2010 and 27.04.2010 passed by respondent Nos. 4 and 5 respectively terminating selection and appointment of the applicants on the post of Field Workers in Public Health Department from the position of Seasonal Malaria Workers. A Miscellaneous Application No. 322 of 2013 in O.A. No. 680 of 2013 was filed by the applicants on 19.10.2013 to grant permission to sue jointly, which was granted by this Tribunal vide Oral Order dated 24.10.2013.

2. **Facts of the case:-** It is observed at the outset that the original application has been drafted with a lot of ambiguity in respect of critical background facts; events have not been

narrated in chronological order and necessary documents in support of claims made in original application have not been properly annexed. This aspect will be dealt with in details at subsequent stage of analysis of facts. However, the relevant facts have been gathered from various undisputed submissions made and documents brought on record by the two sides to the dispute which are being summed up as follows :-

(a) The State Government had issued a circular dated 31.10.2002 to fill the vacant backlog posts by promotion or nomination, as is applicable. Group D posts were required to be filled up by appointing authorities. In pursuance of the circular issued by the State government that the respondent No. 4 issued circular calling for applications from eligible candidates for filling backlog of reserved posts of Field Workers (Group-D). Seasonal spraying workers who had worked for minimum 90 days as seasonal spraying workers were eligible for promotion as Field Workers as per circular dated 26.08.2003. Respondent No. 5 issued appointment orders as Field Workers in the month of September 2003 to 40 candidates including the two the applicants in the present matter.

(b) The two applicants have not submitted copies of their

initial appointment orders as seasonal malaria workers and also as Field Workers in order to support their claims.

(c) From the copies of appointment orders submitted by the respondents as annexure to their affidavit in reply which is enclosed at page No. 85-86 of the paper-book, it is evident that the two applicants in the present O.A. were appointed as Field Workers vide Orders dated 12.09.2003 and 23.09.2003.

(d) Later on, according to the respondents, the State Government had found that the respondent no. 5 had issued the said appointment orders without being appointing authority. The respondents also claim to have found other serious lacunae in recruitment process of Field Officers from candidates working as seasonal malaria. It is on this ground that two of the selected candidates were not allowed to join as Field Workers despite having been issued appointment orders by the respondent No. 5. Therefore, they filed O.A. No. 1806/2004 and 1807/2004. After hearing the two sides, this Tribunal passed orders dated 05.05.2005 directing respondents to set right the anomalies. Following which the respondents cancelled the selection list and

termination orders were issued on 07.03.2006 in respect of all the persons appointed as Field workers.

(e) Those Field Workers, who were not party to the O.A. No. 1806 & 1807 of 2004, they had challenged the termination orders by filing W.P. No. 2667 of 2006 before Hon'ble High Court (Aurangabad Bench). *The two original applicants in the present O.A. too, were co-petitioners along with other 20 petitioners in this writ petition.* By judgment dated 03.10.2006, Hon'ble High Court, bench at Aurangabad passed orders operating part of which is in para 11, is quoted below:-

*“11. In the light of our foregoing observations, we set aside the impugned order dated 07.03.2006 and direct the authorities to reinstate the petitioners and thereafter, to hear the petitioners and pass appropriate orders in accordance with law in respect of the termination of the services of the petitioners. Said exercise to be carried out by the authorities within a period of two months from the date of this order.”*

(f) Accordingly, the applicants were given show-cause notices by respondents by letter dated 01.12.2007. After receiving written replies from the applicants, the applicants were given personal hearing vide letter dated 14.01.2008.

Thereafter, the respondents issued impugned termination orders dated 26.04.2010 and 27.04.2010. Similar procedure was followed in other cases of Field Workers too.

(g) The two original applicants in the present O.A., being aggrieved by the termination order, filed Writ Petition No. 8612/2010 before Hon'ble High Court, bench at Aurangabad. The Hon'ble High Court did not grant any interim relief but the petitioners (present applicants) were allowed to withdraw the writ petition with liberty to avail alternate remedies vide order dated 04.09.2013 as quoted below:-

***“PER COURT:***

*Learned Counsel for the petitioners seek leave to withdraw the petition with liberty to avail of alternative remedy.*

*Leave granted. Writ Petition stands disposed of as withdrawn with liberty as prayed for.”*

(h) The termination orders were also challenged by 4 other field workers by filing a Writ Petition No. 4283/2010 and by 29 other field workers by filing another Writ Petition No. 5631/2010 at Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad which passed common orders in the two Writ Petitions, dated 06.08.2012

operating part of which is in terms of para 7 and 8 of the order which is quoted below:-

*“7. We permit petitioners to approach Maharashtra Administrative Tribunal within a period of six weeks from today, by filing appropriate Original Application under Section 19 of the Administrative Tribunals Act, 1985. Interim order/ interim protection granted to them shall continue till the said issue of interim protection is appropriately looked into by Maharashtra Administrative Tribunal.*

*8. With these directions and liberty to the petitioners, we dispose of the petitions. No costs.”*

(i) Thus, all the 35 petitioners, who approached Hon'ble High Court of Judicature at Bombay, bench at Aurangabad were directed to first exhaust remedy available with the Maharashtra Administrative Tribunal. Out of them 29 had filed Original Application No. 721/2012 and 3 had filed O.A. No. 487/2013. The two O.A.s were heard together and a common order dated 16.08.2017 was passed by this Tribunal dismissing both the O.As.

(j) *The two Original Applicants too, had filed the present O.A. on 19.10.2013 which is the subject matter of adjudication in the present O.A..*

**3. Relief Prayed For:** The applicants have prayed for relief in terms of para 8 (A) to 8 (H) which is reproduced verbatim as

follows:-

**“8. PARTICULARS OF FINAL RELIEF SOUGHT:**

- A.** *The original application may kindly be allowed.*
- B.** *The delay if any may kindly be condoned in this original application in the interest of justice.*
- C.** *The impugned termination orders dated 26.04.2010 and 27.04.2010 issued by respondent No. 5 and 5, may kindly be quashed and set aside in the interest of justice.*
- D.** *The respondent No. 4 may kindly be directed to reinstate with continuity in service to the applicants and pay all back wages including the arrears of wages.*
- E.** *The respondents be directed to continue the applicants in service and pay their salary regularly.*
- F.** *Any other relief which deems fit may please be granted in favour of applicants.”*

**4. Pleadings and Final Hearing:**

(a) Affidavit in reply was filed on behalf of respondent Nos. 3 to 5 on 30.06.2014, which was taken on record and copy of the same was served on the other side. Learned Presenting Officer also submitted that affidavit in reply on behalf of respondent No. 1 and 2 were not necessary.

(b) Learned Advocate for the applicants was given opportunity to file rejoinder affidavit, if he so wished. However, no rejoinder affidavit was filed. Therefore, the



matter was fixed for final hearing which was postponed for multiple reasons including non-availability of Division Bench and also on the learned Advocate for the applicants pointing out that a Writ Petition No. 10547 of 2017 with similar issue was pending for judgment before Hon'ble High Court, Bench at Aurangabad. This Tribunal had observed in para 3 of Oral Orders dated 12.12.2018 that-

*“3. In the circumstances, the present matter is removed from the Board with liberty to both the sides to circulate the matter as and when a decision of Hon'ble High Court in above writ petition would be reported.”*

(c) However, after lapse of considerable time during which no progress was seen in W.P. No. 10547 of 2017, the matter was reopened for final hearing by Oral Orders dated 05.01.2022 with consent of parties, which finally took place on 01.03.2023. Written Notes of Arguments was submitted by learned Advocate for the applicants on 01.03.2023 and the matter was reserved for orders.

**5. Analysis of Facts on Record and oral Submissions Made:**

(a) The applicant has been permitted to bring on record a subsequent development that order passed by this Tribunal in O.A. No. 721/2012 with 487/2013 had been challenged

by 29 applicants in the O.A. No. 721/2012 by filing Writ Petition No. 10547/2017 before Hon'ble High Court of Judicature at Bombay, bench at Aurangabad. Hon'ble High Court has passed interim order dated 23.08.2017 which is quoted below for ready reference:-

*“The applicants had sought relief prayed in the present matter on ground that their case is similar to the case of petitioners in W.P. No. 4283/2010 & W.P. No. 5631/2010. However, during the course of hearings that took place from time to time that the applicants have advanced claim that their cases are similar to that in W.P. No. 10547/2017.*

(b) It has been informed by learned Advocate for applicant as well as by the learned Presenting Officer that the said Writ Petition is still awaiting final orders from Hon'ble High Court and there is no change in status of hearing of the matter after 23.08.2017.

(c) In the present case, the applicants were given opportunity of being heard by the respondents on show cause notice issued to them, as ordered by Hon'ble High Court and thereafter termination orders have been passed. *It is noteworthy that the applicants have not disputed the*

*facts constituting irregularities in their selection process during the hearing given to them by the respondents.*

(d) However, the applicants have relied on rules and contended by raising the point on para 7 (iv) of the present O.A. that the impugned order of cancellation of selection and appointments of the applicants by the respondents were in violation of provisions of the Maharashtra Civil Services (Discipline & Appeal) Rules 1979 as no enquiry under rule 8 of the said Rules had been conducted before passing impugned orders. In our considered opinion, the applicants' services were not terminated on the ground of their misconduct as defined in Maharashtra Civil Services (Conduct) Rules, 1979 but the same were terminated as their initial selection itself was in violation of a host of Government Circulars, which cannot be regularized. In this context, citation of a judgment by Hon'ble Supreme Court in A. Umarani Vs Registrar Cooperative Societies & Ors in S.L.P. No. 1413 of 2003 (28.07.2004) is being relied. the relevant part of which is quoted below-

***a) Regularisation** cannot be a mode of recruitment by any state within the meaning of article 12. It is settled position that appointment made in violation of the mandatory provisions of the statute and in particular in ignoring the minimum educational*

*qualification and other qualifications would be wholly illegal and such illegality cannot be cured by taking recourse of regularization.”*

(e) During stage of arguments, learned Advocate for the applicants relied on interim orders passed by Hon'ble High Court in W.P. No. 10547/2017 and sought the same to be treated as precedent for them as they are similarly situated. It is observed that the firstly, the applicants were not the petitioners in the said Writ Petition and interim orders may not constitute as precedent, *secondly*, the Writ Petitioner may be in employment on the day of passing interim orders and therefore, they may be continuing in service in compliance with the interim orders whereas, the applicants stood terminated from service on the date of passing interim orders by Hon'ble High Court i.e. on 23.08.2017. Therefore, this argument does not help the applicants in getting relief by extending cloak of protection of interim relief to them.

(f) It has been observed earlier in para 2 of this order that original application has been drafted with a lot of ambiguity in respect of critical background facts; events have not been narrated in chronological order and necessary documents in support of claims made in original

application have not been properly annexed. In that context, major shortcomings are being mentioned as below:-

(i) No details of appointment of the two applicants as seasonal malaria workers has been mentioned in the O.A.. However, it has been mentioned in the first para of *Written Notes of Arguments* that the applicants had been working as seasonal spraying workers since 1994 in the office of respondent no. 5 i.e. District Malaria Officer, Nanded. But, the learned Advocate for the applicant has enclosed at page no. 6 of the *Written Notes of Arguments*, a copy of order of appointment of applicant no. 1 dated 23.04.1999, as Sweeper (स्वच्छक वर्ग-४) issued by Deputy Director, Health Services Nashik for the office of District Malarial Officer, Dhule; which shows that the applicant No. 1 was appointed as Sweeper, (Class-IV) for a period of 60 days in the year 1999 which is altogether different from the post of seasonal spraying worker.

(ii) Copy of other document annexed at page No. 5 of *Written Notes of Arguments* is, in fact, a letter of

experience dated 31.03.1996 issued in favour of applicant No. 2 for working with intermittent break as Spraying-Worker during period 15.10.1994 to 03.11.1995 only.

(iii) Learned Advocate for applicant has mentioned in para 3 of the *written notes of arguments* that the applicants were appointed as field workers on 26.09.2003. However, copies of any appointment order dated 26.09.2003 have not been submitted to substantiate this claim. To the contrary, dates of appointment of the two applicants have been shown as 12.09.2003 and 23.09.2003 on the appointment orders submitted by the respondents as annexure to their affidavit in reply which is enclosed at page No. 85-86 of the paper-book.

**6. Conclusions:-** After analyzing facts on record and oral submissions made, in our considered opinion, following conclusions may be drawn :-

(I) The respondents have justified issuance of termination of selection & appointment of applicant on the ground of major lacunae in the selection

process in the light of provisions of a Circular issued by Government in General Administrative Department, bearing number as संकीर्ण-१००३/प्रक-९६/२००३/१३-अ, मंत्रालय, मुंबई-३२, dated 19.11.2003, communication issued by office of Director General, Health Services, dated 11.08.2003 and addressed to Joint Directors, Health Services and, a Government Circular issued by GAD bearing No. SRV-2003/file No. 3/03/12, Mantralaya, Mumbai, dated 01.08.2003. Copies of the three circulars/ communications have been annexed by the respondents as Annexure R<sub>1</sub> and R<sub>2</sub> of their affidavit in reply. *Applicants have not disputed this ground of their termination, in their O.A. or later on, while filing rejoinder affidavit or during final hearing of the matter.*

- (II) It is evident from admitted facts that the respondents had complied with the orders of Hon'ble High Court, Bench at Aurangabad in W.P. No. 2667/2006, dated 03.10.2006 and the petitioners (*applicants in the present matter*) were given reasonable opportunity to be heard before passing impugned orders.
- (III) As the present applicants could not get interim relief

from Hon'ble High Court in W. P. No. 8612/2010, they started banking on interim relief granted by Hon'ble High Court to the petitioners in W.P. No. 10547/2017 passed on 23.08.2017 which, in our opinion, does not help them as the applicants stood terminated from service as on date of passing of interim order by Hon'ble High Court.

- (IV) After considering all the facts on record and oral submissions made, in our considered opinion, the applicants have not been able to establish merit in the present O.A. Hence, the following order:-

**ORDER**

- (A) Original Application No. 680 of 2013 is dismissed, being devoid of merit.
- (B) This order is subject to order which may be passed by Hon'ble High Court, Bench at Aurangabad in W.P. No. 10547/2017.
- (C) Nothing in this order should be construed to restrict / prohibit the respondents from appointing the applicants and similarly situated other seasonal



spraying workers on the post of Regular Field Workers under Public Health Department, as per their eligibility and merit under extant recruitment rules.

(D) No Order as to Costs.

**MEMBER (A)**

**MEMBER (J)**

**Kpb**/D.B. O.A. No. 680/2013 Termination