

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.84/2020**

**DISTRICT:- JALGAON**

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Chunilal s/o. Murlidhar Yawalkar,  
Age : 49 years, Occ. Laboratory Assistant,  
R/o. Opp. IDBI Bank, Main Road, Yawal,  
Tq. Yawal, Dist. Jalgaon.

**...APPLICANT**

**V E R S U S**

1. The State of Maharashtra,  
Through the Principal Secretary (Services),  
General Administration Department,  
Mantralaya, Mumbai.
2. The State of Maharashtra,  
Through the Principal Secretary,  
Water Resources Management and  
Command Area Development,  
Mantralaya, Mumbai.
3. The Superintending Engineer,  
Water Resources Department,  
Quality Control Circle, Sinchan Bhavan  
Premises, P.B.No.519, Jalna Road,  
Aurangabad-431 005.
4. The Superintending Engineer (Gates),  
Central Design Unit, Zonal Officer,  
Nashik Zone, Dindori Road, Nashik.
5. The Executive Engineer,  
Quality Control Division,  
Water Resources Division, Dhule. **...RESPONDENTS**

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APPEARANCE : Shri A.D.Sugdare, Counsel for the  
Applicant.

: Shri V.R.Bhumkar, Presenting  
Officer for the respondents.

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

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**Date : 05-02-2024**  
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**ORAL ORDER**

1. Heard Shri A.D.Sugdare, learned Counsel for the Applicant and Shri V.R.Bhumkar, learned Presenting Officer for the respondent authorities.

2. Learned Counsel for the applicant prays for leave to correct the date of dismissal mentioned in prayer clause (C). He also sought leave to correct the date of publication of advertisement in the synopsis. Leave granted. Necessary corrections be carried out forthwith.

3. Aggrieved by the order dated 13-01-2020 applicant has approached this Tribunal seeking quashment of the said order and seeking further directions for his reinstatement in service with all consequential benefits.

4. We have gone through the pleadings of the parties. There is no dispute that the applicant had applied for the post of Laboratory Assistant from the quota of Graduate/Part Time (Anshkalin) category in pursuance of the advertisement dated 31-12-2011. There is further no dispute that the selection committee vide its

recommendation dated 22-06-2012 recommended the applicant for his appointment against the said quota. On 30-07-2012 appointment order was issued in favour of the applicant. Applicant in pursuance of the said order joined duties on 16-08-2012. On 17-10-2017, the applicant was made permanent w.e.f. 15-08-2015. On 20-12-2019, respondent no.2 issued notice to the applicant calling upon him to show cause as to why his services shall not be terminated as he has been illegally given the grace marks on the basis of G.R. dated 19-03-1998, which was subsequently cancelled vide another G.R. dated 29-05-2010. Applicant on 08-01-2020 submitted his reply to the said show cause notice. However, the reply could not find favour and subsequently applicant came to be dismissed from the services vide the impugned order dated 13-01-2020.

5. Shri A.D.Sugdare, learned Counsel appearing for the applicant submitted that vide G.R. dated 19-03-1998, graduate part time employees were entitled for certain grace marks. Accordingly, 9 grace marks were given to the applicant and he was selected and given appointment on the subject post. Learned Counsel submitted that, the fact that G.R. dated 29-05-2010

wherein according to the respondents concession so granted vide G.R. dated 19-03-1998 was withdrawn, was not within the knowledge of the applicant. As such, applicant cannot be blamed and allegation of cheating and misrepresentation cannot be levelled against him. Learned Counsel submitted that even in the subsequent advertisement, the State Government has referred to the said G.R. Learned Counsel for the applicant tendered across the bar one such advertisement published by Social Welfare Department of the State of Maharashtra on 18-08-2014 wherein it is specifically mentioned that for part time employees, benefit of grace marks will be available as provided in the G.R. dated 19-03-1998.

6. Learned Counsel submitted that the committee which selected the applicant at the relevant time has duly considered all relevant circumstances and has accordingly given appointment to the applicant and there was no reason for the applicant to make any misrepresentation. Learned Counsel submitted that thereafter applicant satisfactorily performed his duties and consequently was made permanent vide the order passed in the year 2017 with effect from 15-08-2015. Learned Counsel further submitted that to the show cause notice applicant had

submitted his reply and denied the allegations made against him and in such circumstances, respondents were under an obligation to conduct an enquiry in the matter and without conducting such enquiry could not have dismissed the applicant from service.

7. Learned Counsel pointed out that the decision of the Hon'ble Supreme Court which is referred in the G.R. dated 29-05-2010 has also made exception so far as the applicants in the said matter who were the beneficiaries of such grace marks and it is specifically observed that appointment of such candidates may not be disturbed. Learned Counsel submitted that in the circumstances, respondents could not have dismissed the applicant from services. For the aforesaid reasons learned Counsel prayed for allowing the O.A.

8. Respondents have resisted contentions raised in the O.A. as well as the prayers made therein. Respondent nos.1, 2 and also respondent nos.3 & 5 have filed the joint affidavits in reply. Respondent no.4 has filed its separate affidavit in reply in the matter. The common contention in all these affidavits is that the applicant misrepresented and wrongly got the benefits of 9 grace marks on the basis of

which he was ultimately selected and appointed on the subject post. Respondents in the circumstances have supported the impugned action and have prayed for dismissal of the O.A.

9. Shri Bhumkar, learned P.O. appearing for the respondent authorities submitted that the applicant submitted an application at the relevant time bringing to the notice of the concerned authorities the provisions made in the G.R. dated 19-03-1998 and on the basis of the said G.R. got added 9 marks into marks secured by him in the test. Shri Bhumkar submitted that had the applicant not applied for grace marks, there was no such provision as grace marks in the advertisement and the applicant was, therefore, not liable to be considered for his appointment. Learned P.O. submitted that from the conduct of the applicant, it is writ large that he misrepresented the concerned authorities and made them to rely upon the G.R. which was withdrawn by the subsequent G.R. issued by the Government. Learned P.O. submitted that the applicant cannot take any such defense that he was not aware of the said G.R. since the moment a G.R. is published, it is deemed to be made known to all and no one can say that

he was not aware of the decision so taken by the Government. He therefore prayed for dismissal of the O.A.

10. It is not in dispute that the applicant was given an appointment vide appointment order dated 30-07-2012 and accordingly resumed the duties w.e.f. 16-08-2012. There is further no dispute that vide order passed on 17-10-2017 applicant was made permanent w.e.f. 15-08-2015. On 20-12-2019, respondent no.3 issued a notice to the applicant requiring him to show cause as to why he shall not be dismissed from service. Applicant replied the said notice. However, vide order passed on 13-01-2020 applicant has been dismissed from service.

11. Applicant has been dismissed from services on the ground that at the time of his appointment, he was wrongly given grace marks based on the G.R. dated 19-03-1998 which was in fact not in existence on the said date and was superseded/withdrawn by G.R. dated 29-05-2010. In the G.R. dated 19-03-1998, there was provision for awarding grace marks to the Part Time Workers @ 2% for every year served by them with the maximum limit of 10 marks. Admittedly, applicant was given 9 grace marks on the basis of the aforesaid G.R. dated 19-03-1998. The

aforesaid G.R. was superseded/withdrawn vide subsequent G.R. dated 29-05-2010. Thus, when the grace marks were given to the applicant i.e. in the year 2012, provision as was in the G.R. dated 19-03-1998, was not in existence and was already withdrawn.

12. The show cause notice was issued to the applicant on the aforesaid ground and ultimately he has been dismissed on the same ground. We have carefully perused the contents of the show cause notice as well as the order of dismissal. We deem it appropriate to reproduce hereinbelow the relevant paragraph in the show cause notice (paper book page 28-29 of O.A.), which reads thus:

“आपणास लेखी व प्रात्यक्षिक परिक्षा मिळून 180 गुणापैकी उत्तीर्ण होण्यास जाहिरातीतील मुददा क्रमांक 17 (ड) अन्वये किमान 81 गुण आवश्यक असतांना 72 गुण मिळाले व शासन परिपत्रक क्रमांक. ईएसई-1098/प्र.क्र.(63/99/रो /01 दि 30/03/1999 दि क्र .5 ( )

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If the aforesaid contents are perused it is evident that there is no allegation against the applicant or no blame has been attributed on part of the applicant in respect of grace marks awarded to him at the relevant time.

13. It is significant to note that in the show cause notice it is stated that the applicant was wrongly given additional marks/grace marks. Even in the order of dismissal also the same phraseology is used that the grace marks were wrongly awarded to the applicant. As such, his appointment was held illegal and the applicant was ultimately dismissed from service.

14. As we have noted above, neither in the show cause notice nor in the order of dismissal, it is alleged against the applicant that, at the relevant time the applicant in any way has misrepresented the facts or has cheated the respondents or has played any fraud. In the circumstances, it is unconscionable that in the affidavit in reply filed on behalf of the respondents such allegations are made against the applicant.

15. During the course of his arguments, learned CPO had pointed out that the applicant had made a written request referring to the G.R. dated 19-03-1998 for grace marks and accordingly, grace marks were given to the applicant. It was, therefore, contention of the learned CPO that applicant misrepresented that he was entitled for grace marks on the basis of G.R. dated 19-03-1998 which was already cancelled/set aside by the subsequent G.R. dated 29-05-2010. We are, however, not convinced with the submission made by the learned CPO. Though, it appears that the applicant had made an application seeking grace marks on the basis of G.R. dated 19-03-1998, the documents on record reveal that, the regional selection committee which consisted of 8 senior officials including the Chief Engineer, Superintending Engineer etc. have awarded the grace marks in view of the said application. If it is the contention of the respondents that the applicant must be held to have knowledge of the G.R. dated 29-05-2010 then the same criteria would apply to the members of the regional selection committee consisting of all higher officials. Thus, the respondent officers cannot take a plea that, it was the duty of the applicant to bring subsequent G.R. also to the notice of the department. In the reply given

to the show cause notice the applicant has explained that he was not aware of the subsequent G.R. dated 29-05-2010.

16. The appointment may be illegal for various reasons. Illegal appointment is one which is made in violation of the mandatory statutory provisions or instructions or whether it has been made *mala fide*. The appointment made without following the appropriate procedure under the rules/circulars and without advertisement or inviting applications from the open market would also amount to an illegal appointment. In the present matter, as we have noted above, though no *mala fides* can be attributed either on part of the applicant or the selection committee which selected the applicant, the fact remains that the applicant was selected by giving 9 grace marks to him on the basis of the G.R. which was subsequently withdrawn by the Government.

17. The question arises whether every such appointment shall mandatorily result in dismissal of the concerned employee? Having considered the facts involved in the present matter, it appears to us that there must be some exceptions and in the matters involving the facts as

are involved in the instant matter, the appointments made in such matters may not result in dismissal of the services of the concerned employee against whom no *mala fides* can be attributed. The words which are employed in the show cause notice as well as in the order of dismissal must be interpreted to mean that grace marks were inadvertently given to the applicant. According to us anything done inadvertently excludes the possibility of *mala fides*. The acts done with *mala fide* intention and acts inadvertently done, thus, cannot be equated with each other and cannot entail in similar consequences.

18. Learned Counsel for the applicant has invited our attention to the advertisement published on 18-08-2014 by the Social Welfare department of the State issued for the recruitment of Junior Clerks, Senior Clerks, Rector, Superintendent, Social Welfare Inspectors etc. In clause 19 of the said advertisement, there is reference of the G.R. dated 19-03-1998 and it is further stated that, the Part Time Employees would be entitled for the benefit provided under the said G.R. Clause 19 of the said advertisement reads thus:

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 त्यांच १  
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Reasonable doubts are created after having read the aforesaid clause in the said advertisement whether effect was given or not to the relevant clause in the subsequent G.R. dated 29-05-2010 and whether the said benefit is continued by the Government? This is also one of the reasons that the order of dismissal passed against the applicant cannot be sustained.

19. In the reply given by him to show cause notice on 08-01-2020, applicant has stated that, at the relevant time he was also selected for the post of Health Worker (Male) in the Health Department of Zilla Parishad, Jalgaon and the present order of appointment had also been issued in favour of the applicant. Applicant had further contended that had he been not selected for the present post, he would have definitely accepted the appointment on the post of Health Worker (Male) in Z.P. Jalgaon. Applicant has further appealed that, he is a differently abled person (दिव्यांग) and has reached to the age of 48 years and in such circumstances if the order of dismissal passed against him is not set aside and if he is not reinstated in service, serious

prejudice will be caused to him and his survival would be difficult.

20. Applicant has admittedly served the Government for more than 7 years. During the said period even a minor misconduct also has not been alleged against him. His service career appears to be completely unblemished. The applicant must have now reached to the age of 52 years. In such facts and circumstances, according to us the order of dismissal passed against the applicant is unjust and arbitrary.

21. Learned Counsel has placed on record, the decision of the Hon'ble Apex Court on the basis of which Government had issued G.R. dated 29-05-2010. We deem it appropriate to reproduce paragraph no.19 of the said judgment hereinbelow, which reads thus:

*“19. Before parting we may mention one submission on behalf of the Telugu medium students. It was submitted that if the weightage given to them in recruitment is to be found fault with, those Telugu medium candidates who have already been appointed may not be disturbed otherwise irreparable injury will be caused to them. It was also submitted that those Telugu medium students whose appointments could not be made on account of the pendency of these proceedings may be given one more chance to compete for future recruitment on such posts and for that purpose suitable age relaxation may be*

*given to them as otherwise they will be out of employment market. In our view this request is quite reasonable and deserves to be, granted. We, therefore, direct that despite our finding that 5 per cent weightage given to the Telugu medium graduates in the present case is violative of Article 14 and 16(1) of the Constitution, those Telugu medium graduates who have already been appointed to the strength of such weightage and who are working on their concerned posts should not be disturbed and their appointments will not be adversely affected by the present judgment. On the other hand, those Telugu medium graduates have been selected on the strength of the weightage but to whom actual appointments have not been given on account of pendency of the present proceedings should be given a chance to complete for such posts as and when future recruitment to such posts is resorted to and for that purpose only once suitable age relaxation may be given to them in case they are otherwise found suitable on merits to be appointed in such future direct recruitment to such posts. In other words, only on account of the fact that they have become age barred, they should not be denied appointments on the strength of their meritorious performance. This will be by way of only one time concession about age relaxation.”*

22. Based on the observations as above, it has been argued by learned Counsel for the applicant that the same course needs to be adopted in the present matter. We find substance in the contention raised by the learned Counsel. It is evident that though the Hon'ble Apex Court recorded a finding that appointments given to the Telugu Medium Graduates by giving them 5% weightage was faulty, did not disturb their appointments by observing that they had been working for last few years.

23. After having consciously considered the facts in the present matter and having regard to the judgment of the Hon'ble Apex Court, *cited supra*, we have no hesitation in holding that the order of dismissal passed against the applicant is wholly unjust, unfair and unsustainable and hence deserves to be quashed and set aside.

24. Quashment of order of dismissal would obviously result in reinstatement of the applicant. The next question arises whether the reinstatement shall be with all consequential benefits or otherwise. Absence of mala fides on part of the applicant has led us to hold the order of his dismissal unjust, unfair and unsustainable. Now, absence of *mala fides* on part of the respondents refrain us from saddling them with the burden of backwages of the intervening period. After having consciously considered all these facts and circumstances involved in the present matter, it appears to us that, though the applicant is certainly entitled for the relief of reinstatement cannot be held entitled for backwages or any monetary benefits of the intervening period. However, there may not be any difficulty in directing the respondents to give him the notional increments of the intervening period and to treat



the entire said period as the continuous service period of the applicant. In the result, following order is passed:

O R D E R

- (i) The impugned order dated 13-01-2020 passed against the applicant by respondent no.3 is quashed and set aside.
- (ii) The respondents shall reinstate the applicant in service within 2 weeks after the copy of the present order is served upon them by the present applicant.
- (iii) Respondents shall give continuity of service to the applicant and also grant him the notional increments for the intervening period.
- (iv) The applicant would not be entitled for any monetary benefit of the intervening period.
- (v) The Original Application stands allowed in the aforesaid terms, however, without any order as to costs.

**(VINAY KARGAONKAR)**  
**MEMBER (A)**

**(P.R.BORA)**  
**VICE CHAIRMAN**

**Place : Aurangabad**  
**Date : 05-02-2024.**