

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 658 OF 2016
[Shri Mahendra Eknath Mali Vs. The State of Maha. & Others.]
WITH
ORIGINAL APPLICATION NO. 659 OF 2016
[Shri Deepak Santosh Patil Vs. The State of Maharashtra &
Others.]
WITH
ORIGINAL APPLICATION NO. 660 OF 2016
[Shri Namdeo Ramchandra Patil Vs. The State of Maharashtra
& Others.]
WITH
ORIGINAL APPLICATION NO. 693 OF 2016
[Shri. Dattatraya M. Borude Vs. The State of Maha. & Others.]
WITH
ORIGINAL APPLICATION NO. 721 OF 2016
[Shri Pradeep V. Marwale Vs. The State of Maha. & Others.]

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J)

DATE : 17.01. 2017.

ORAL ORDER:

1. Heard Shri S.B. Talekar, learned Advocate holding for Shri V.B. Wagh – learned Advocate for the Applicants in all these cases and S/Shri M.S. Mahajan, I.S. Thorat & Mrs. Priya R. Bharaswadkar – learned Chief Presenting Officer and learned Presenting Officers for the respective respondents in respective cases.

2. In O.A. No. 658/2016, the applicant viz. Shri Mahendra Eknath Mali, is working as Tahsildar at Parola Dist. Jalgaon and vide impugned order dated 20.8.2016 he has been transferred to the post of Tahsildar, Shrigonda, Dist. Ahmednagar.

In O.A. No. 659/2016, the applicant viz. Shri Deepak Santosh Patil, is also working as Tahsildar at Pachora Dist. Jalgaon and vide impugned order dated 20.8.2016 he has been transferred to the post of Tahsildar, Shevgaon, Dist. Ahmednagar.

In O.A. No. 660/2016, the applicant viz. Shri Namdeo Ramchandra Patil, is also working as Tahsildar SGY, at Jalgaon City, Dist. Jalgaon and vide impugned order dated 20.8.2016 he has been transferred to the post of Tahsildar, Pathardi, Dist. Ahmednagar.

In O.A. No. 693/2016, the applicant viz. Shri Dattatraya Maruti Borude, is working as Deputy Collector, Ahmednagar Dist. Ahmednagar, and vide impugned order dated 20.8.2016 he has been transferred to the post of District Supply Officer, Dhule, dist. Dhule.

In O.A. No. 721/2016, the applicant viz. Shri Pradeep Vishwambharrao Marwale, is working as Deputy Collector (Rehabilitation) at Latur and vide impugned order dated 6.9.2016 he has been transferred to the post of Deputy Collector (E.G.S.), Nanded, Dist. Nanded.

3. According to the applicants, their respective orders of transfer are midterm and mid-tenure and they have not completed their tenure at their respective places and, therefore, the applicants are claiming that such orders shall be quashed and set aside and they be allowed to continue to work at their respective posts/places.

4. It is material to note that the respective impugned orders have been passed by the Competent Authority under Section 4 (4) & 4 (5) r/w Section 6 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delayed In Discharge of Official Duties Act, 2005 (for short 'the Transfer Act, 2005'). In all the transfer orders, it has been mentioned that the directions have been issued by the Election Commission to transfer the Officers and the

impugned orders of transfer have been issued in view of such directions.

5. The applicants have stated that in Writ Petition Nos. 7035, 8276, 8421, 8804, 8004 & 8592 all of 2016, the Hon'ble High Court of Judicature at Bombay (Civil Appellate Jurisdiction) has directed not to relieve the respective applicants. It is also admitted fact that the applicants are not parties to such Writ Petitions. This Tribunal was pleased to observe in the order dated 22.8.2016 passed in O.A. Nos. 658 & 659 & 660 all of 2016 as under: -

**“2. -- -- -- -- -- -- -- --
-- -- -- -- -- -- -- -- Thus, all these 3 applicants have not completed their normal tenure at their respective places and by the impugned transfer order dated 20.8.2016 they have been transferred within the span of 3 to 9 months at their respective places. The impugned transfer order is passed on 20.8.2016 and thus it is not passed in the month of April or May. The learned Counsel for the applicants also stated that the impugned transfer order is midtenure as well as midterm transfer order and there seems to be no doubt about this.**

3. In the impugned order of transfer a reference has been given to the policy decision taken by the State Election Commission to transfer the Officers out of District even at the time of election of Z.P. and Panchaysamiti. The learned Counsel for the applicants has invited my attention to various writ petitions filed before Hon'ble High Court at Bombay and its Bench at Aurangabad challenging the said policy decision of the State Election Commission.

4. It seems that whosoever approached the Hon'ble High Court challenging the policy

decision are protected by granting interim relief to their respective transfer orders.

5. The learned Counsel for the applicants further pointed out that the applicant in O.A. No. 658/2016 Shri Mahendra E. Mali has been posted at Shrigonda in place of Smt. Vandana Kharmale and said Smt. Vandana Kharmale is one of the petitioner before Hon'ble Bombay High Court in W.P. No. 8421/2016 for challenging the policy decision of the State Election Commission and interim protection has been granted to her transfer order. Similarly the applicant in O.A. 659/2016 Shri Deepak Patil is transferred to Shevgaon in place of Shri Dadasaheb Gite and said Shri Gite is one of the petitioner before Hon'ble Bombay High Court in W.P. no. 8421/2016 filed for challenging the decision of State Election Commission and Hon'ble High Court granted interim protection to his transfer.

6. Thus, it seems that in spite of specific stay granted by Hon'ble High Court, the impugned transfer order dated 20.8.2016 has been issued by the respondents. Since, these orders cannot be implemented, since Hon'ble High Court has granted stay as mentioned above.

7. In view thereof, the impugned transfer order dated 20.8.2016 is stayed till further orders, so far as the applicants in O.A. Nos. 658, 659 & 660/2016 are concerned."

6. In O.A. Nos. 693/2016 & 721/2016 this Tribunal has passed the similar orders on 29.8.2016 & 8.9.2016 respectively. It seems that in view of such interim order the applicants seem to have been continued to their respective posts prior to their impugned order of transfer.

7. On 19.12.2016 the learned Presenting Officers have circulated all these cases and orally requested that Writ Petition Nos. 9499, 7035, 8276, 8421, 8804 & 9917 all of 2016 have been disposed of by the Hon'ble Bombay High Court Bench at Bombay (Civil Appellate Jurisdiction) on 7th December, 2016 and vacated the interim relief granted in all the above-mentioned Writ Petitions and, therefore, it is necessary to vacate the said interim relief granted by this Tribunal in all the present Original Applications. On that date it was stated at bar that intimation was given orally to Shri V.B. Wagh, learned Advocate for the applicants and in spite of such intimation Shri V.B. Wagh, learned Advocate did not appear and, therefore, the present Original Applications were kept on the next date i.e. on 20th December, 2016. The learned Advocate for the applicants submits that no application for vacation of interim relief was filed. However, the learned Presenting Officers submit that the application for vacation of stay granted by this Tribunal in all the present Original Applications is not necessary, since the respondents were requesting for vacation of stay in view of the order passed by the Hon'ble Bombay High Court Bench at Bombay while disposing of the Writ Petition Nos. 9499, 7035, 8276, 8421, 8804 & 9917 all of 2016 on 7th December, 2016.

8. It seems from the record that on 09.11.2016 the respective learned Presenting Officers had filed affidavit in reply on behalf of respondent Nos. 1 & 2 in O.A. Nos. 658, 659 & 660 all of 2016.

9. On 20.12.2016 the learned Advocate for the applicants sought permission of this Tribunal to file rejoinder in Original Application Nos. 658, 659 & 660 all of 2016. Permission to file rejoinder in abovementioned Original Applications was granted with a direction

to serve the copy thereof on the learned Chief Presenting Officer well in advance.

10. It seems from the record that accordingly the learned Advocate for the Applicants filed rejoinder affidavit in O.A. Nos. 658, 659 & 660 all of 2016 on 22.12.2016 and copies thereof were served upon the respective learned Presenting Officers and all these cases were kept for hearing on 4th December, 2017.

11. It further seems from the record that additional rejoinder affidavit has been filed by the learned Advocate for the applicant in O.A. No. 693/2016 on 13.1.2017.

12. The learned Advocates for the respective parties were heard on 12th January, 2017 in all these Original Applications at length.

13. According to the learned Presenting Officer, Mrs. Priya R. Bharaswadkar, this tribunal was pleased to pass order granting stay/directions not to relieve the respective applicants in view of the order passed by the Hon'ble High Court of Judicature at Bombay (Civil Appellate Jurisdiction) in Writ Petition Nos. 7035, 8276, 8421, 8804, 8004 & 8592 all of 2016. It is true that the applicants have mentioned in their respective applications that the Hon'ble Bombay High Court has passed various orders granting stay to the orders of transfer in different matters and these Writ Petitions have already been referred earlier. However, it must be noted that none of the applicants were parties in those Writ Petitions. The order/s passed by the Hon'ble Bombay High Court in different Writ Petitions have been placed on record, from which it is clear that the Election Commission was party in those cases and notices have been issued to the Election Commission. Since none of the applicants are parties to those Writ Petitions, the orders passed in those Writ

Petitions except in group of Writ Petition bearing Nos. 7035, 8276, 8421, 8804 & 9917 all of 2016 may not be relevant with the present cases.

14. In the Original Applications the applicants are claiming relief on the ground that their transfer orders have been issued in violation of Transfer Act, 2005 and the said orders are midterm / mid-tenure. Perusal of all the transfer orders passed by the respective authorities in respect of all the applicants, show that the same have been passed in view of the provisions of Section 4 (4) & 4 (5) r/w Section 6 of the Transfer Act, 2005 and in addition to these the direction of the Election Commission has been mentioned in the orders. Even though all the orders have passed, otherwise than in the month of April/May of the year, the reason for transfer has been mentioned in the transfer order.

15. The learned Advocate for the applicants submits that the Election Commission cannot issue any directions to transfer an employee against the provisions of Transfer Act, 2005 and, therefore, the reason that the orders are being passed in view of the directions of the Election Commission cannot be legal.

16. The learned Advocate for the applicants has filed Miscellaneous Applications in all the present Original Applications for making such averments by way of amendment. These MAs will be decided separately, as per its own merits.

17. The question remains that in the impugned order of transfer, there is a specific mention that the orders have been passed as per Section 4 (4) and 4 (5) r/w Section 6 of the Transfer Act, 2005 and there is a reference of the directions given by the Election Commission and, therefore, in any case, it is clear that the provisions of Transfer Act, 2005 for issuing midterm transfers seems to have been followed, prima facie, in the impugned orders

of transfer. Whether such orders are legal or not will have to be considered on merits.

18. The learned Presenting Officer has invited my attention to the judgment passed by the Hon'ble Bombay High Court Bench at Bombay (Civil Appellate Jurisdiction) in Writ Petition Nos. 9499, 7035, 8276, 8421, 8804 & 9917 all of 2016 on 7th December, 2016. In the said Writ Peitions the Hon'ble Bombay High Court has considered the superintendence, direction and control of elections to be vested in an Election Commission. It has been observed in paragraph Nos. 8 to 13 in the said order as under: -

“8. We perused the record and statutory provisions of the Act as also the judgment referred to by the learned Senior Counsel Mr. Khambata in the case of **Union of India Vs. Association for Democratic Reforms and another, 2002 DGLS (SC) 548.**

9. The provisions under Article 324 of the Constitution refers to superintendence, direction and control of elections to be vested in an Election Commission. Such corresponding powers are conferred on the State Election Commission of the State of Maharashtra. We find that for holding free and fair elections, State Election Commission had issued these directions. During the course of hearing, we are informed that many Revenue Officers are posted in the native districts. This aspect needs to be reconsidered by the State Government for effective and fair administration of the State of Maharashtra.

10. It is likely that in some cases, some inconvenience could be caused to the employees who had been transferred due to holding of elections in a particular district or local area, but keeping in view the larger public interest, if the State Election Commission had taken a decision, the State Government would implement the same keeping in view constitutional intent and spirit and

for holding free and fair elections. It is informed that in the State of Maharashtra, election process relating to elections of Corporations, Councils, Panchayats, Zilla Parishad, Village Panchayat is already set in motion.

11. The State Government and the State Election Commission are free to contemplate on the issue of transfer of officers keeping view various aspects for consideration and frame a proper policy for further with sole objective of holding free and fair election.

12. For all these reasons stated above, we are not inclined to continue interim protection. Accordingly, interim relief stands vacated. The Writ Petitions stand disposed of.

13. At this stage, learned Senior Counsel Mr. Kumbhakoni submitted that interim protection granted earlier be continued for a period of 2 to 3 weeks. Request is opposed by learned Counsel for the respondents. We are not convinced with the request. Request stands rejected.”

19. From the aforesaid order passed by the Hon'ble Bombay High Court, Bench at Bombay, it will be clear that the similar transfer orders of the Revenue Officers were given effect in view of the direction of the Election Commission and the Hon'ble Bombay High Court not only vacated the interim relief in the form of interim protection to the transfer orders, but also refused to continue interim protection.

20. The learned Advocate for the applicants submits that the judgment passed in Writ Petition Nos. 9499, 7035, 8276, 8421, 8804 & 9917 all of 2016 as referred above, is not binding precedent.

21. The learned Advocate for the applicants in support of his submission placed reliance on the following cases: -

- (i) Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others reported in (1984) 2 SCC 50;
- (ii) Municipal Corporation Of Delhi Vs. Gurnam Kaur reported in (1989) 1 Supreme Court Cases 101;
- (iii) Director of Settlements, A.P. and Others Vs. M.R. Apparao and another reported in (2002) 4 Supreme Court cases 638;
- (iv) Satrucharla Vijaya Rama Raju Vs. Nimmaka Jaya Raju and others reported in (2006) 1 Supreme Court Cases 212; and
- (v) Shanker Raju Vs. Union of India reported in (2011) 2 Supreme Court Cases 132.

22. I have carefully gone through the said judgments, on which the learned Advocate for the applicants has placed reliance. In my opinion, the facts of the present cases are not analogous to those in the respective citations, on which the learned Advocate for the applicants has placed reliance.

23. The learned Advocate for the applicants submits that the applicants were not allotted election duty in any of the orders passed by the Competent Authority and, therefore, the directions of the Election Commission are applicant only in respect of those officers, whose services are required for election purposes. I am unable to accept contention raised by the learned Advocate for the applicants, for the simple reason that the service may not be required at particular point, but that does not mean that it will not be required at all. The learned Advocate for the applicants has filed additional rejoinder affidavit in O.A. No. 693/2016 on 13.1.2017 along with some documents. It seems that the elections for Municipal Corporation and Zilla Parishad and Panchayat Samities are to be held in the month of February, 2017

// 11 // O.A.NO. 658/2016 & group

and the respondents have stated that the services of the applicants may be required for such election purpose. This Tribunal has no authority to interfere in the administrative decision taken by the respondent authorities as to whether services of the applicants are necessary or not? It is admitted fact that the applicants belong to the District, where the elections are being held. As per the directives of the Election Commission, the officers shall not be posted in their home district. For such purposes respondents are considering that the applicants shall be transferred out of district, it cannot be said to be illegal and continuation of the stay for such transfer may hamper the election process for which number of officers are required by the administration and, therefore, in such circumstances it will be in the interest of justice and equity to vacate the stay and to allow the respondent authorities to have a free hand in appointing/transferring various officers for election department and it is also necessary in the interest of administration as against an individual interest of the applicant.

24. Prima-facie interest of administration is more valuable than an individual interest of the respective applicants and, therefore, the following order: -

ORDER

- (i) Interim stay/directions not to relieve the applicants, as the case may be granted in favour of the respective applicants stands vacated.
- (ii) Since the reply affidavit has already been filed by the respondent Nos. 1 & 2 in the present cases, the matters are admitted and kept for final hearing after six weeks.

MEMBER (J)

ORAL ORDER 17.01.2017 (hdd)

CHAMBER APPEAL NO. 10 OF 2016

(Smt. Sundarbai Tatarao Kamble & Ors. Vs. The State of Maharashtra and Others.)

CORAM : HON'BLE SHRI J.D. Kulkarni, Member (J)

DATE : 17.01. 2017.

ORAL ORDER:

Heard Shri D.G. Kamble, learned Advocate holding for Shri P.R. Adkine – learned counsel for the applicants.

2. Vide order dated 29.9.2016 the Registrar of this Tribunal was pleased to refuse the registration of O.A. St. No. 1580/2016 & M.A. St. No. 1579/2016 under Rule 5 (4) of Maharashtra Administrative Tribunal (Procedural) Rules, 1988. On 26.8.2016 the office has raised the following office objections: -

- 1) Detail address of Applicant Nos. 11 & 12 not given;
- 2) Amended Notification dated 24.5.2011 not annexed; and
- 3) V.P. not properly filled.

3. The learned Advocate for the applicants appeared today and has removed the office objection Nos. 1 & 3. So far as office objection No. 2 is concerned, the learned Advocate for the applicants submits that he does not want to press this office objection.

4. Technically the Registrar was right in refusing the registration since nobody appeared for the applicant in view of the objection in spite of repeated chances. The learned counsel for the applicant submits that he could not attend the Tribunal due to his personal difficulty and, therefore, the registration was refused. The fact that the O.A. is for payment of arrears with 9% interest till its actual realization and in order to give an opportunity to the applicant to prove his claim on merits, it will be in the interest of justice to allow the appeal as the applicant shall not suffer for the negligence of his Advocate.

5. The learned Advocate for the applicants orally submitted that he wants to delete the prayer clause [B] in the Original Application to the extent of Amended Notification dated 24.5.2011. He further submits that he wants to delete the name of the applicant Nos. 3 & 5 from the array of the applicants in the O.A. and for that purpose he seeks permission of this Tribunal.

6. In view of the above, I pass the following order:

ORDER

- (i) Chamber Appeal No. 10/2016 is allowed as the applicant has removed the office objection Nos. 1 & 3 and he does not press office objection No. 2. The Registrar of this Tribunal Bench at Aurangabad is directed to register the O.A. St. No. 1580/2016 and M.A. St. No. 1579/2016 and place the same before the appropriate Bench for hearing.
- (ii) The learned Advocate for the applicants is permitted to delete the prayer clause [B] in the O.A. to the extent of Amended Notification dated 24.5.2011 and he is also permitted to delete the name of the applicant Nos. 3 & 5 from the array of applicants in the O.A.
- (iii) The learned Advocate for the applicant is directed to carry out the necessary amendment in the O.A. within a period of one week.

MEMBER (J)

ORIGINAL APPLICATION NO. 161/2013

[Shri Siraj R. Deshmukh Vs. the State of Mah. & Ors.]

CORAM :- Hon'ble Shri J. D. Kulkarni, Member (J)

DATE :- 17.1.2017

Oral Order :-

1. None appears for the applicant. Shri V.R. Bhumkar, learned Presenting Officer for the respondent nos. 1 & 2 and Shri A.D. Gadekar, learned Advocate for respondent no. 3 are present.

2. This matter came up for hearing before the Tribunal on 19.8.2016 when none was present for the applicant. Thereafter it came before the Tribunal on 21.9.2016, 24.10.2016 & 28.11.2016 on those dates also none was present for the applicant. From the record, it seems that, though Shri Bharat Gadegaonkar is a Advocate on record appearing for the applicant, all the times somebody was holding for him.

3. In view of above, it seems that the applicant might have lost interest in the litigation and, therefore, this O.A. shall be kept for dismissal on 20.1.2017.

MEMBER (J)

Later On :-

Shri A.A. Khande, learned Advocate holding for Shri B.N. Gadegaonkar, learned Advocate for the applicant appeared.

S.O. to 20.1.2017.

MEMBER (J)

ORIGINAL APPLICATION NO. 556/2015

[Shri Sudhir G. Adhikari Vs. the State of Mah. & Ors.]

CORAM :- Hon'ble Shri J. D. Kulkarni, Member (J)

DATE :- 17.1.2017

Oral Order :-

1. Heard Shri S.D. Dhongde, learned Advocate holding for Shri S.G. Kulkarni, learned Advocate for the applicant and Shri D.R. Patil, learned Presenting Officer for the respondents.

2. At the request of learned Advocate for the applicant, this matter to come up for final hearing in due course of time.

MEMBER (J)

ARJ ORAL ORDERS 16.1.2017

ORIGINAL APPLICATION ST. NO. 34/2017

[Smt. Subhadrabai N. Sonwane Vs. the State of Mah. & Ors.]

CORAM :- Hon'ble Shri J. D. Kulkarni, Member (J)

DATE :- 17.1.2017

Oral Order :-

1. Heard Shri S.K. Mathpati, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.
2. Issue notice before admission to the respondents, returnable on 22nd February, 2017.
3. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.
4. Applicant is authorized and directed to serve on respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondent is 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 question such as limitation and alternate remedy are kept open.
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 22nd February, 2017.
8. Steno copy & hamdust allowed to both the parties.

ARJ ORAL ORDERS 16.1.2017

MEMBER (J)

ORIGINAL APPLICATION NO. 868/2016

[Shri Vishwanath B. Nath Vs. the State of Mah. & Ors.]

CORAM :- Hon'ble Shri J. D. Kulkarni, Member (J)

DATE :- 17.1.2017

Oral Order :-

1. Heard Ms. Preeti Wahkhade, learned Advocate for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent nos. 1 & 2 and Shri Ajay Deshpande, learned Advocate for respondent no. 3.
2. The learned Advocate for the applicant has filed rejoinder and the same is taken on record. She states that copy of the said rejoinder has already been served on other side.
3. By consent of both the sides, S. O. to 20.1.2017.

MEMBER (J)

ARJ ORAL ORDERS 16.1.2017

MA 26/2017 IN OA 472/2016

[the State of Mah. & Ors. Vs. Shri Syed Fahimoddin
Moiuddin]

CORAM :- Hon'ble Shri J. D. Kulkarni, Member (J)
(This matter is placed before the Single
Bench due to non-availability of Division
Bench.)

DATE :- 17.1.2017

Oral Order :-

1. Heard Shri M.P. Gade, learned Presenting Officer for the applicants in M.S. / respondents in O.A.
2. The order to be complied with by the present applicants / respondents is dated 16.12.2016 passed by this Tribunal in O.A. 472/2016. In para 6 of the said order this Tribunal observed as under :-

“6. It appears that the post in which the Applicant was posted at Government College of Arts and Science is not available. There are two other posts available at Aurangabad. The Applicant may be posted to any vacant post in Aurangabad or elsewhere as deemed fit by the Respondent no. 2. This should be done within a period of four weeks from the date of this order. This O.A. is allowed in these terms with no order as to costs.”

3. It seems that there was no other option for the present applicants / respondents in O.A., but to appoint the applicant on any vacant post at Aurangabad or elsewhere as deemed fit by the res. no. 2 within a period of 4 weeks from the date of passing of order by this Tribunal in the O.A.

4. It seems that the present applicants / respondents in O.A. are making prestige issue in not appointing the applicant. It further seems that no writ petition is filed against the order of this Tribunal passed in O.A. and even legal opinion of the Law & Judiciary Department has not been sought till today.

5. In such circumstances, prima-facie, there seems to be no case even for issuance of notices in the present M.A. However, in the interest of justice, with keeping all the avenues open for the applicant in O.A., such as proceeding against the respondents for contempt, issue notices in the present M.A., returnable on 17.2.2017.

6. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.

7. Applicants are authorized and directed to serve on respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of M.A. Respondent is 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 question 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. Applicants are directed to file affidavit of compliance and notice.

10. S.O. to 17th February, 2017.

11. Steno copy & hamdust allowed to both the parties.

MEMBER (J)

ORIGINAL APPLICATION NO. 25/2017

[Shri Firoj H. Tamboli Vs. the State of Mah. & Ors.]

CORAM :- Hon'ble Shri J. D. Kulkarni, Member (J)
(This matter is placed before the Single Bench due to non-availability of Division Bench.)

DATE :- 17.1.2017

Oral Order :-

1. Heard Shri N.L. Jadhav, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.
2. Issue notice before admission to the respondents, returnable on 17th February, 2017.
3. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.
4. Applicant is authorized and directed to serve on respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondent is 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 question such as limitation and alternate remedy are kept open.
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 17th February, 2017.
8. Steno copy & hamdust allowed to both the parties.

MEMBER (J)

ARJ ORAL ORDERS 16.1.2017

ORIGINAL APPLICATION ST. NO. 2062/2016

[Shri Bhaskar V. Jaybhaye Vs. the State of Mah. & Ors.]

CORAM :- Hon'ble Shri J. D. Kulkarni, Member (J)
(This matter is placed before the Single Bench due to non-availability of Division Bench.)

DATE :- 17.1.2017

Oral Order :-

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

2. The only prayer in this original application is that the respondents be directed to consider the request of the applicant for appointment on the post of Assistant Gardner (Nursery Assistant) in the office of res. no. 2 from the Open category. For the said prayer the applicant has filed a representation on 10.5.2016 to the res. no. 2 and it is claimed that the res. no. 2 be directed to take decision on the said representation.

3. From the perusal of the document, it seems that, the applicant's earlier claim was rejected by this Tribunal vide its order dated 11.6.2010 passed in T.A. no. 4/2008 (W.P. No. 5353/2008). Thereafter, against the said order of this Tribunal the applicant filed writ petition no. 6145/2010 before the Hon'ble Bombay High Court, Bench at Aurangabad and Hon'ble High Court was pleased to dismiss the said writ petition vide its order dated 15.11.2010. Not only that, but being aggrieved by the order of Hon'ble High Court, the applicant filed Special Leave Appeal (C) No. 2279/2011 before the Hon'ble Supreme Court and vide its order dated 4.7.2014 the Hon'ble Supreme Court has dismissed the said Special Leave Appeal.

4. The learned Advocate for the applicant submits that the post of Assistant Gardner (Nursery Assistant) in the office of res. no. 2 is lying vacant and if the respondents are directed to reschedule the recruitment process, the applicant may find place in Open category. I do not find any reason to reopen the issue once again when it has already reached up to Hon'ble Supreme Court & has been decided by the Hon'ble Apex Court. Only because applicant has filed some representations & the same has not been considered, there is no need to issue notices.

5. In view thereof, the O.A. st. No. 2062/2016 stands dismissed. There shall be no order as to costs.

MEMBER (J)

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**M.A.No.14/2017 IN O.A.No.659/2016,
M.A.No.15/2017 IN O.A.No.658/2016,
M.A.No.16/2017 IN O.A.No.660/2016,
M.A.No.17/2017 IN O.A.No.693/2016, AND
M.A.No.18/2017 IN O.A.No.721/2016.**

(Shri Deepak Patil & 4 Ors. V/s. The State of Mah. & Ors.)

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

DATE : 17-01-2017

ORAL ORDER:

Heard Shri S.B.Talekar learned Advocate holding for Shri V.B.Wagh learned Advocate for the applicants, Smt. Priya Bharaswadkar learned Presenting Officer (M.A.No.14/2017 & M.A.No.16/2017), Shri M.S.Mahajan learned Chief Presenting Officer (CPO) (M.A.No.15/2017 & M.A.No.18/2017), and Shri I.S.Thorat learned Presenting Officer (PO) (M.A.No.17/2017) for respective respondents.

2. All these M.A.Nos.14/2017, 15/2017, 16/2017, 17/2017 and 18/2017 have been filed in respective O.As. bearing no.659/2016, 658/2016, 660/2016, 693/2016 and 721/2016, respectively. Impugned orders of transfer of the respective applicants dated 20-08-2016 and 06-09-2016 have been challenged in O.A.Nos.658/2016, 659/2016, 660/2016, 693/2016 and 721/2016. In all the O.As. applicants are claiming that respective impugned orders of their transfer be quashed and set aside.

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M.A.No.14/2017 IN O.A.No.659/2016 & Ors.

3. By virtue of these M.As., applicants are claiming that instructions of Election Commission of India and Code of Conduct-DOs and DONTs issued by the State Election Commission on 07-01-2017, are not in conformity with the instructions issued by the Election Commission of India. It is further stated that the instructions issued by the Election Commission of India are not confined to recruitment officers and assistant recruitment officers which are general in nature. Therefore, applicants want to bring on record various instructions, and therefore, the applicants want to amend the respective O.As.

4. By the proposed amendment, applicants wish to bring on record following common points from paragraph nos.12-A to 12-H. in all the M.As.:

*12-A)The Applicant submits that the Election Commission of India has issued the instructions from time to time. The first instructions were issued on 04.02.2009 on posting of officers. The said instructions issued on 04.02.2009 were clarified from time to time vide the instructions dated 18.02.2009, 09.01.2014, 31.05.2014 and so on. The copies of instructions Nos. 96, 97, 98 and 99 issued by the Election Commission of India are annexed herewith and marked at **ANNEXURE "A-4" (Colly.)**.*

12-B)A close scrutiny of the instructions issued by the Election Commission of India and the State Election Commission, discloses that the instructions issued by the State Election Commission traverse beyond the limits outlined by the Election Commission of India.

As a result, there would be conflict of instructions issued by the State Election Commission and the Election Commission of India.

12-C) *The Applicant submits that no doubt, both the Election Commission of India and the State Election Commission have powers to issue instructions for the purpose of conducting free and fair elections. The Applicant does not intend to question the powers of the State Election Commission to issue instructions so as to hold the elections in free and fair manner. However, the instructions issued by the State Election Commission need to be in conformity with the instructions issued by the Election Commission of India. The instructions issued by the State Election Commission shall be ultra-vires or without authority and therefore, non-est in case such instructions are not in conformity with the instructions issued by the Election Commission of India. The Applicant submits that the State Election Commission published the election programme on 11.01.2017, the copy of which is annexed herewith and marked at **ANNEXURE "A-5"**.*

12-D) *The Applicant submits that as per the instructions issued by the Election Commission of India on 07.01.2007, the ban on transfer of officers/officials is confined to those officers/officials who are connected with the conduct of the elections. Clause (vi) of the instructions under the heading "On Transfers and Postings of Officials" issued on 07.01.2007 reads thus:-*

"(vi) The transfer orders issued in respect of the above categories of officers prior to the date of announcement, but not implemented till the time when the model Code came into

effect, should not be given effect to without obtaining specific permission of the Commission.”

12-E) The Applicant submits that if the transfer orders were not implemented for whatever reason, the same are not liable to be given an effect without specific permission from the Commission. The Applicant submits that his transfer order is not implemented by virtue of the interim order passed by this Hon’ble Tribunal. Meanwhile, the Code of Conduct is again imposed on account of the Zilla Parishad elections in Maharashtra on 11.01.2017. If at all, the transfer order dated 20.08.2016 is to be implemented, it is not possible to implement the same without obtaining specific permission from the State Election Commission.

12-F)The Applicant submits that the Applicant does not mean that this Hon’ble Tribunal shall leave it to the State Election Commission to effect transfer after obtaining specific permission from the Commission. The issue of transfer needs to be decided once for all in this Original Application by this Hon’ble Tribunal.

12-G)The Applicant submits that the judgment of the Hon’ble High Court in Writ Petition No. 9499/2016 with several other petitions rendered on 07.12.2016 (Annexure R-6 filed along with the affidavit in reply of the Respondent No.2) is not a judgment in rem. The judgment is consensual and not rendered on merits. The judgment did not hold that the directives of the Election Commission of India or the State Election Commission will prevail over the Act of 2005 passed by the State Legislature. As such, the judgment does not constitute the ratio decidendi. The judgment rendered on

concession given by the parties, does not lay down ration decidendi and therefore, is not binding either on the parties or this Hon'ble Tribunal.

12-H)The Applicant submits that the instructions issued by the State Election Commission need to be read down to the extent they are repugnant with the instructions issued by the Election Commission of India. The instructions issued by the State Election Commission cannot be inconsistent with the instructions issued by the election Commission of India having regard to the principle of propriety as well as discipline between the State Election Commission and the Election Commission of India. In order to maintain the discipline and propriety, it is necessary that the instructions issued by the State Election Commission are to be declared ultra-vire or non-est and in any case to be ignored to the extent they are inconsistent with the instructions issued by the Election Commission of India.”

[Reproduced as it is from page no.7-A (proposed amendment) of the M.A.No.14/2017.]

5. Learned Advocate for the applicants Shri S.B.Talekar submits that it is necessary to bring these facts on record, and therefore, it is prayed that M.As. be allowed and proposed amendment be allowed to be incorporated in the O.A.

6. Learned CPO as well as the P.Os. submitted that the proposed amendment will change the nature of the litigation as well as the claim for which the O.As. are filed.

7. Perusal of the aforesaid amendments clearly shows that the applicants want to challenge the instructions issued by the State Election Commission/Election Commission of India. Vide paragraph no.12-G, aforesaid applicants want to make amendment to that effect that the judgment passed by the Hon'ble Bombay High Court in Writ Petition No.9499/2016 with several other petitions on 07-12-2016 does not constitute *ratio-desidendi*, and therefore, is not binding on the applicants.

8. Learned CPO and POs submitted that that the Original Applications before this Tribunal are filed challenging the impugned orders of transfer of the respective applicants. No other relief has been claimed except quashing and setting aside the said transfer orders, whereas the pleadings in the proposed amendment are totally different and are based on different causes of action. Such amendment cannot be allowed for the simple reason that such proposed amendment does not fall within the jurisdiction of this Tribunal. If the proposed amendment is allowed, it will change the nature of the claim in O.As. It will as such change the entire of the O.As. Such amendment, therefore, cannot be allowed.

9. Learned Advocate further submits that the applicants are not claiming any relief against the State Election Commission. Applicants only want to say that the directions of Election Commission of India have not been

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M.A.No.14/2017 IN O.A.No.659/2016 & Ors.

followed by the State Election Commission and also that the findings given by Hon'ble Bombay High Court in Writ Petition No.9499/2016 are not binding on this Tribunal.

10. Perusal of the proposed amendment clearly shows that the applicants want to challenge the directives of the State Election Commission without impleading it as party respondent and that too before the Administrative Tribunal. The applicants also want to challenge the findings given by Hon'ble the Bombay High Court by hook or by crook before this Tribunal, which is not permissible.

11. I agree with the submissions made by the learned CPO and POs. Hence, I pass following order:

ORDER

All these M.As. are dismissed with no order as to costs.

MEMBER (J)

YUK ORAL ORDER 17-01-2017

M.A. NO. 13/2017 IN OA NO. 928/2016

[Shri Govind J. Dhole Vs. the State of Mah. & Ors.]

CORAM :- Hon'ble Shri J. D. Kulkarni, Member (J)
(This matter is placed before the Single Bench due to non-availability of Division Bench.)

DATE :- 17.1.2017

Oral Order :-

1. Heard Shri S.D. Dhongde, learned Advocate for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent nos. 1 & 2 and Shri P.S. Paranjape, learned Advocate for respondent no. 3.

2. The learned P.O. and learned Advocate for res. no. 3 seek time to file affidavit in reply in the misc. application. Time granted. The learned Counsels agreed to argue this misc. application on merits along with O.A. no. 928/2016 on the next date.

3. S.O. to 27.1.2017.

MEMBER (J)

ARJ ORAL ORDERS 16.1.2017

OA NO. 928/2016

[Shri Govind J. Dhole Vs. the State of Mah. & Ors.]

CORAM :- Hon'ble Shri J. D. Kulkarni, Member (J)
(This matter is placed before the Single Bench due to non-availability of Division Bench.)

DATE :- 17.1.2017

Oral Order :-

1. Heard Shri S.D. Dhongde, learned Advocate for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent nos. 1 & 2 and Shri P.S. Paranjape, learned Advocate for respondent no. 3.

2. The learned C.P.O. has filed affidavit in reply on behalf of res. no. 2. So also, the learned Advocate Shri Paranjape has filed reply of res. no. 3. Both the replies are taken on record and copies thereof are served upon the learned Advocate for the applicant.

3. Shri Dhongde, learned Advocate for the applicant, the learned C.P.O. for res. nos. 1 & 2 and learned Advocate for res. no. 3 consented to argue and dispose of the M.A. as well as O.A. no. 928/2016 on merits on 27.1.2017 by this Single Bench dealing with the matters of the Division Bench, in the absence of Division Bench, as per the Office Order bearing no. MAT/MUM/ESTT/898/2015, dated 3.3.2015, issued by Hon'ble the Chairman, M. A. T., Mumbai.

4. In view thereof, S.O. to 27.1.2017.

MEMBER (J)

ARJ ORAL ORDERS 16.1.2017

M.A. ST. NO. 43/2017 IN CP ST. NO. 44/17 IN OA NO. 928/16

[Shri Govind J. Dhole Vs. the State of Mah. & Ors.]

CORAM :- Hon'ble Shri J. D. Kulkarni, Member (J)
(This matter is placed before the Single Bench due to non-availability of Division Bench.)

DATE :- 17.1.2017

Oral Order :-

1. Heard Shri S.D. Dhongde, learned Advocate for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent nos. 1 & 2 and Shri P.S. Paranjape, learned Advocate for respondent no. 3.

2. The learned Advocate for the applicant states that he is ready to argue the O.A. no. 928/2017. He further states that he is not pressing the M.A. St. No. 43/2017, which is filed for seeking permission of this Tribunal to prosecute the respondents for non compliance of the order passed by this Tribunal dated 19.12.2016 in O.A. no. 928/2016.

3. In view of the above statement of the learned Advocate for the applicant the M.A. ST. NO. 43/2017 stands disposed of being not pressed. In view of disposal of M.A. st. No. 43/2017, nothing survives in the CP ST. NO. 44/17 and, therefore, the same also stands disposed of. There shall be no order as to costs.

MEMBER (J)

ARJ ORAL ORDERS 16.1.2017