

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**CONTEMPT APPLICATION NO.02 OF 2022
IN
ORIGINAL APPLICATION NO.1047 OF 2016**

DISTRICT : THANE

Pramod Prakash Birajdar,)
Age 34 years, Occ. Nil)
Sanskriti Apartment, Rambaug-4,)
Kalyan (W) 421304.)... **Applicant**

Versus

1. Shri Debashish Chakrabarty)
The State of Maharashtra,)
Through Chief Secretary, Mantralaya,)
Mumbai, Maharashtra 400 032.)
2. Shri Aashish Kumar Singh)
the Chief Secretary,)
Home Department (Transport),)
Mantralaya, Mumbai 400 032.)
3. Shri Avinash Dhakane)
Commissioner of Transport,)
Fountain Telecom 1, 7th Floor,)
Mahatma Gandhi Road, Azad Maidan,)
Fort, Mumbai, Maharashtra 400 001.)...**Respondents**

Shri Sandeep S. Dere, learned Advocate for the Applicant.

Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

**CORAM : JUSTICE MRIDULA R. BHATKAR (CHAIRPERSON)
MEDHA GADGIL, MEMBER (A)**

DATE : 20.01.2023

PER : JUSTICE MRIDULA R. BHATKAR (CHAIRPERSON)

JUDGMENT

1. Heard Shri S.S. Dere, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. This C.A. is filed for the implementation of the order dated 14.06.2019. O.A. was pertaining to the Appointment of the Applicant on the post of Assistant Motor Vehicles Inspector. Relevant paragraph by which direction were given by this Tribunal in the order of 14.06.2019 and operative order is reproduced as follows:-

“13. In view of the above background as a matter of fact this situation arose due to the error committed by the Applicant and no other person is responsible for it. It is the submission of the Ld. Advocate for the Applicant that the error committed is not deliberate. The Applicant would cross the age for the Government service and it will be grave punishment to him. Even after hearing the submissions of the Ld. Advocate for the Applicant it is not permissible to give him any relief in this matter for the reasons that now all posts are filled in by the Government and no post is vacant. The recruitment process is completely exhausted and, therefore, only when someone is removed from service, mandatory direction cannot be given to the Government to appoint the Applicant. But this peculiar situation wants that as the situation is caused due to error in writing while filling in the form and, therefore, we are of the view that case of the Applicant be referred to the Government for sympathetic consideration. The Government is authorized to give appointment to the Applicant if any post is vacant. In view of the above, we pass the following order:

ORDER

Original Application is partly allowed. The Respondent no.1 to consider the case of the Applicant with sympathy and may adjust him by issuing him appointment order, if there exists vacancy. No order as to costs.”

3. Learned Advocate for the Applicant submits that the proposal was sent on 10.10.2019 stating that at the relevant time 368 post of Assistant Motor Vehicles Inspector were vacant and in view of the order passed by the Tribunal the issue of giving appointment to the Applicant on that post is to be considered, and therefore that particular proposal was sent to G.A.D. Learned Advocate for the Applicant has pointed out that the proposal was also sent to Law & Judiciary Department (L&JD) and Law & Judiciary Department by noting dated 10.07.2020 sent

opinion provided by Assistant Legal Advisor-cum-Under Secretary, wherein then L&JD has expressed its view that Judgment of the Tribunal is not challenged before the Hon'ble High Court and the concerned Department is required to take its call to implement the said Judgment. Learned Advocate for the Applicant has submitted that in view of the opinion of L&JD the Government has no option but to give the Appointment to the Applicant in this remaining vacant post but he has further submitted that the file was also sent to G.A.D. and G.A.D. has given different opinion as if sitting in appeal for the order passed by the Tribunal by stating that the decision given by Tribunal is not in consonance with the ratio laid by Hon'ble Supreme Court and the G.A.D. has no such power. Learned Advocate for the Applicant has further submitted that in such circumstances when the Tribunal was fully aware and expressed view that the posts which were advertised in 2016 and 215 posts were filled in and yet the Government was directed to consider the case of the Applicant for Appointment in the vacant post on the same cadre and it was duty of the Government to join the Applicant and comply with the order of the Tribunal.

4. Learned P.O. by way of Reply has submitted that Government has considered the case of the Applicant and the Government cannot give the Appointment to the Applicant as ratio laid in "मा. सर्वोच्च न्यायालयाच्या राखी रे व इतर विरुद्ध उच्च न्यायालय, दिल्ली व इतर (CC १४८५२-१४८५४/२००८ मधील विशेष हक्क याचिका) याप्रकरणी दि.०१.०२.२०२० रोजी परि. क्र.९ मध्ये खालीलप्रमाणे निरीक्षण नोंदविले असून त्या अधारे सदर विशेष हक्क याचिका फेटाळण्यात आली आहे. "It is settled legal position proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article १४ read with Article १६ (१) of the constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification vacancies."

She has further relied on the reasons given by the G.A.D. for not considering the case of the Applicant to give Appointment. Thus, they have complied with the order.

5. The order passed by the Tribunal is mentioned above. The Tribunal has directed Respondent No.1 to consider the case of the Applicant with sympathy and asked them to issue his Appointment order if a vacancy exists. We have perused the noting of Home Department, L&JD and also G.A.D. which are pointed out by learned Advocate and learned P.O. It is true that the said Judgment is not challenged by the Respondents – State before the Hon'ble High Court. However, after going through all these notings we understand that Respondent No.1 has definitely considered the case of the Applicant and the order of rejecting the case is passed with reasons. It is true that G.A.D. cannot sit in appeal on a judicial order. However, the ratio laid down by Hon'ble Supreme Court was not shown to the Tribunal at the relevant time. Further there were no specific directions of the Tribunal that the Applicant should be appointed or the Respondent shall serve the order of the Appointment to the Applicant. Thus, the Tribunal has left this issue for consideration with sympathy and the Government has thus implemented the order of the Tribunal and hence, C.A. is disposed of.

Sd/-

**(Medha Gadgil)
Member (A)**

Sd/-

**(Mridula R. Bhatkar, J.)
Chairperson**

Place: Mumbai
Date: 20.01.2023
Dictation taken by: N.M. Naik.

Uploaded on: _____