

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.184 OF 2020

DISTRICT:- AHMEDNAGAR

Govardhan Bhujanga Kawale,
Age : 50 years, R/o. At Pimpalgaon Unda,
Post-Nannaj, Tq. Jamkhed,
Dist. Ahmednagar-413205.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through Additional Chief Secretary,
Revenue & Forests Department,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Divisional Commissioner Office, Pune.
3. The Collector,
Collector Office, District Pune.
4. Govardhan Haribhau Pandit,
R/o. At Revle, Tq. Parli, Dist. Beed.
5. The Dist. Employment &
Skill Development Officer,
ITI Campus, Nagar Road, Beed. **... RESPONDENTS**

APPEARANCE : Shri V.V.Gujar, Advocate for the
Applicant.
: Shri V.R.Bhumkar, Presenting
Officer for respondent nos.1 to 3.
: Shri S.J.Salunke, Advocate for
respondent no.4.

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

Reserved on : 06-05-2022
Decided on : 14-06-2022

ORDER
(PER: HON'BLE SHRI BIJAY KUMAR)

1. This Original Application has been filed by one Shri Govardhan Bhujanga Kawale on 11.06.2020 invoking provisions of S.19 of the Administrative Tribunals Act, 1985, thereby challenging the final selection list for the post of Talathi dated 26.02.2020 issued by Respondent No. 3, i.e. the District Collector, Pune and accordingly, issue of appointment order dated 01.06.2020 to respondent No. 4 by him. The applicant claims to have exhausted alternative remedy by making representation to the respondent No.2, i.e. the Divisional Commissioner, Pune vide his letter dated 18.05.2020 who has not responded.

2. **Territorial Jurisdiction:** The applicant has submitted that the cause of action arose under territorial jurisdiction of the Principal Bench of the Tribunal, however, he has further submitted that as per the circular of Hon'ble Registrar, Principal Bench of this Tribunal dated 21.05.2020 and also being resident within jurisdiction of Aurangabad Bench of Tribunal has jurisdiction. Though as per provisions of Rule 6 of the Maharashtra Administrative

Tribunal (Procedure) Rules, 1988 the place of residence of applicant does not determine the place of filing the Original Application, in the present matter, one of the respondents, i.e. respondent No. 4 is ordinarily resident in territorial jurisdiction of Beed district. Moreover, during COVID pandemic, in view of travel restrictions, filing of Original Application at any of the Benches of the Tribunal had been permitted. Therefore, this matter is within territorial jurisdiction of this Bench of Maharashtra Administrative Tribunal.

3. **Limitations U/s 21 of the MAT Act, 1985:** From the dates of arising of cause of action and filing of this Original Application, it is also noticed that the application has been filed within limitation prescribed by S. 21 of the Maharashtra Administrative Tribunal Act, 1985.

4. **Facts of the matter:** Following background facts emerge from the submissions of the applicant and the respondents-

a) The matter relates to process of selection of eligible candidates for the post of Talathis in Parbhani district for which online examination was taken during the period from 02.07.2019 to 26.07.2019. Four types of lists of candidates

had been prepared based on marks secured by candidates, two of them were for Panchayat Extension to Scheduled Areas (PESA) and two lists were prepared for rest of the areas. The said lists were published on website pune.gov.in.

b) It was made clear at the time of publication of merit list of candidates was based on verification of documents relating to educational qualification, Social and Horizontal Reservation etc.

c) The respondent No. 3 issued a public notice in the month of January 2020 calling upon the candidate whose names appeared in the merit list to remain present in the meeting hall No. 4 of the Collectorate, Pune on designated date and time for document verification.

d) It is admittedly that the applicant and respondent No. 4, both belong to OBC category of Social Reservation, both of them had been considered by respondent No. 3 for selection for the post of Talathi under 10% quota for Graduates Part-Time Employees, both of them had secured equal marks in the selection process and the respondent No. 4 being older in age, had been shown as higher in rank in merit list of candidates under this category. Resultantly, respondent No. 4 was given appointment on the post of

Talathi whereas, the applicant's name figured only in the Waiting List.

e) The applicant had taken objection to candidature of respondent No. 4 on following grounds-

- i. *Respondent No. 4 had mentioned in the online application submitted that he was not a candidate under "Part-Time Employee" category (page 66 of the paper-book)*
- ii. *Original documents of Respondent No. 4 were not verified by respondent No. 4 on designated date of 17.01.2020 or 18.01.2020 as published through notice issued in January 2020; instead his original documents had been verified on 01.02.2020 i.e. after publication of provisional select list on 29.01.2020*
- iii. *Respondent No. 4 had not registered his experience as a Graduate Part-Time Employee supported by an affidavit as required Notice issued by District Selection Committee, Pune (page 13 of paper-book), in the Government Resolution issued by General Administration Department bearing No. प३क-1005/प्र.क. 36/05/16- , ँ , , dated 26.06.2005 (page 16 of paper-book), Government Resolution issued by General*

Administration Department bearing No. -100595.क. 3200/2009/16- , ँ , , dated 17.10.2009 (page 18 of paper-book) and as per clause 14 of the call letter dated 29.01.2020 requiring candidates called for verification of original documents (page 22 of Paper-book). Despite that the respondent No. 4 was selected and appointed on the post of Talathi by respondent No.3 based on a certificate issued by Tahsildar and that too, without verification by District Employment Office as per prescribed procedure.

f) Finally, respondent No. 3 had published the impugned final selection list on 26.02.2020 and issued impugned appointment order to respondent No. 4 on 01.06.2020. Therefore, the applicant has filed this Original Application.

5. **Relief Prayed For:** The applicant has prayed for relief in terms of para 11 of the Original Application which is being reproduced verbatim for ready reference (page 9 & 9-A of paper book):

“11) **RELIEF SOUGHT:**

In view of the facts mentioned in paragraph (6) above Applicant pray for the following relief:

11.1 *That this Hon'ble Tribunal be pleased to declare provisional and final selection as well as appointment order of Respondent no 4, dated 01/06/2020, as illegal and bad in law and be further pleased to quash and set aside.*

11.1-A. *In view of the above facts and circumstances, this Hon'ble Tribunal would be pleased under Sec.19 of Administrative Tribunal Act, 1985, to quash and set aside the order dated 01/06/2020 issued by respondent Nos.1 to 3 in favor of the respondent No.4 and to direct the respondent Nos.1 to 3 to issue appointment order to the applicant on the said post and grant the all consequential benefits.*

11.2 *That this Hon'ble Tribunal be pleased to direct the respondent authorities to carry on selection process as per the instructions issued by respondent authority in G.R. dated 26/08/2005, 27/10/2009 and Talati recruitment 2019 dated 10th January, 2020.*

11.3 *To direct the respondents to decide the representations filed by applicant dated 18/05/2020, 28/05/2020 and 05/06/2020 within a period of one week.*

11.4 *INTERIM RELIEF: Nil.*

11.5 *Any other just and equitable relief may kindly be granted in favour of applicant.”*

6. **Pleadings:** Learned Presenting Officer filed affidavit in reply on behalf of respondent No. 1 to 3 on 31.08.2020 which was taken on record and copy thereof was supplied on the other side. Affidavit in reply on behalf of respondent no. 5 was filed on 21.09.2020 and the same on behalf of respondent No. 4 was filed on 19.10.2020. In response, the learned Advocate for the applicant filed rejoinder affidavit on 09.09.2021. After pleadings were complete, final hearing took place on 05.05.2022. Learned Advocate for respondent No. 4 who could not be present during final hearing submitted a written note and requested that the same may be treated as argument on his behalf. The written note so submitted was also taken on record. Thereafter, the matter was reserved for orders.

7. **Analysis of Facts:** We examined the three grounds raised by the applicant as mentioned in preceding para No. 4 (e) as follows-

Ground No.1: Respondent No. 4 had mentioned in the online application submitted that he was not a candidate under “Part-Time Employee” category (page 66 of the paper-book).

Analysis and Findings- A copy of online application submitted by the applicant has been enclosed as Exhibit in affidavit in reply filed on behalf of respondent No. 1 to 3 which has not been contested by respondent No. 4. From an entry in the same regarding status of the applicant as “Part-Time Employee” mentioned on page 66 of paper-book, the response of respondent No. 4 corroborates contention of the applicant. For ready reference the relevant query and response thereto given by respondent no. 4 is being reproduced:

Query: 7 ?

Response of respondent No.4: No

Findings: Though the respondent No.1 to 3 in para 3 (page 50 of the paper-book) stated that the respondent No.4 could not correct his status after completing and submitting online application on 07.03.2019. Respondent No. 4 had taken similar plea in para 4 of affidavit in reply filed on his behalf (page 104 of paper-book). The fact remains that *the respondent No. 4 had not claimed status of an applicant under horizontal reservation category of “Part-Time Employee”*. Therefore, the explanations now being advanced by the respondent No.1 to 4 do not, in any manner, create candidature of respondent No.4 under

Horizontal Reservation Category of “Part-Time Employment” at this stage.

Ground No. 2: Original documents of Respondent No. 4 were not verified by respondent No. 4 on designated date of 17.01.2020 or 18.01.2020 as published through notice issued in January 2020; instead his original documents had been verified on 01.02.2020 i.e. after publication of provisional select list on 29.01.2020

Analysis and Findings: Respondent No. 1 to 3 in para No. 6 of affidavit in reply filed on their behalf and the respondent No. 4 too, in para No. 6 of affidavit in reply filed on his behalf have corroborated the contention of the applicant that verification of documents of respondent No. 4 was not done on designated date by way of exception to the relevant provisions in the call letter issued for that purpose by respondent No.3.

Findings: without having any provisions for relaxation in respect of date and time for verification of original documents of the candidates in the merit list may, in our considered opinion, amount to compromise with sanctity of selection process.

Ground No.3: Respondent No. 4 had not registered his experience as a Graduate Part-Time Employee supported by an affidavit as required. Notice issued by District Selection Committee, Pune (page 13 of paper-book), in the Government Resolution issued by General Administration Department bearing No. पअंक-1005/प्र.क्र. 36/05/16- , त्र , , dated 26.06.2005 (page 16 of paper-book), Government Resolution issued by General Administration Department bearing No. -10059प्र.क्र. 3200/2009/16- , त्र , , dated 17.10.2009 (page 18 of paper-book) and as per clause 14 of the call letter dated 29.01.2020 requiring candidates called for verification of original documents (page 22 of Paper-book). Despite that the respondent No. 4 was selected and appointed on the post of Talathi by respondent No.3 based on a certificate issued by Tahsildar and that too, without verification by District Employment Office as per prescribed procedure.

Analysis and Findings-

- i. From the submissions made by the respondents it is admittedly that the respondent No. 4 had not registered his experience as “Part-Time Employee” with the office of the District Skill Development Officer. Instead, the respondent

No. 4 had only submitted experience certificate issued by Tahsildar, Parali, District-Beed. Provisions in this regard is being quoted from Government Resolution issued by General Administration Department bearing No. - 1005/प्र.क्र. 36/05/16- , त्र , , dated 26.06.2005 (page 16 of paper-book) which is as follows:

“ फि क्षि र ा ष
 ा ल मागदशन ञ्द्र ष
 ि ल / ि ा / निमशासकोय
 ि क्त ष क्र. ि च
 शिथलता ष ि . . .
 ष ि ल मर्यादत
 ल च ि ल ि
 ष .”

ii. Now reference is also drawn to the notice issued by District Selection Committee, Pune (page 13 of paper-book) intimating the candidates short-listed for verification of original documents. Relevant clause in the same reads as follows:

“ ा ा प्र त्र ि
 ल र्ठि ष त प्र त्र प्र ष
 ल त ि ष . त प्र त्र

फिल त्र ठरविण्यात ि ते ि
प .”

However, in the present matter, no such verification of experience certificate presented by respondent No. 4 has been got done from the office of District Employment Office.

iii. Now reference is drawn towards instruction sheet dated 29.01.2020 issued by Office of Collector, Pune (clause 14, page 22 of the paper-book), i.e. before the original documents presented by respondent No. 4 had been scrutinized. The same reads as follows:

“जिल्हाधिकारी कार्यालय, पुणे

तलाठी पदभरती—२०१९

या कार्यालयाद्वारे प्रसिध्द करण्यात आलेल्या तलाठी पदभरती—२०१९ नुसार उमेदवारांनी कागदपत्रे पडताळणीस घेऊन यावयाचे कागदपत्रांची यादी.

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१४. अंशकालीन कर्मचारी यांनी त्यांच्या अनुभवाचे सेवायोजन कार्यालयाकडे केलेल्या नोंदणीचे प्रमाणपत्र आणि अंशकालीन कर्मचारी म्हणून कामकाज केले असल्याबाबतचे सक्ष अधिकार्याचे प्रमाणपत्र.”

However, District Selection Committee, for reasons best known to it only, did not insist on presentation of attested copy registration of Experience as Part-Time Employee as got done by respondent No. 4. Instead, the Committee has

depended only on the experience certificate issued by Tahsildar, Prali, District-Beed.

Findings: Relaxation given by respondent No.3 as elaborated above is in violation of relevant provisions of advertisement issued notifying vacancies on the post of Talathis in Pune district and inviting application for the recruitment process 2019 relevant provision of which reads as follows (page 138 of paper-book):

“३. पदवीधर/पदविकाधारक अंशकालीन उमेदवार आरक्षण — शासन निर्णय, सामान्य प्रशासन विभाग क्र.पअंक-१००९/प्र.क्र. २००/२००९/१६-अ, दि. २७.१०.२००९ व क्र. अशंका-१९१३/प्र.क्र.५७/२०१३/१६-अ, दि.१९.९.२०१३ नुसार शासकीय कार्यालयामध्ये ३ वर्षापर्यंत दरमहा मानधनावर काम केलेल्या व सदरच्या अनुभवाची रोजगार मार्गदर्शन केंद्रामध्ये नोंद असणे आवश्यक आहे. निवड झालेल्या अंशकालीन कर्मचा-यांनी त्यांच्या अनुभवाचे सेवायोजन कार्यालयाकडील मुळ प्रमाणपत्र व तहसिलदार यांचेकडील प्रमाणपत्र कागदपत्रांच्या तपासणीच्या वेळी सादर करणे आवश्यक राहिल.”

8. **Conclusion:** Based on above analysis of facts we are of considered opinion that the respondent No. 3 has acted arbitrarily and in violation of terms & conditions stipulated in the advertisement notifying vacancy for undertaking recruitment process for the post of Talathis in Pune district. Therefore, following order is passed:

O R D E R

- A. Original Application No. 184 of 2020 is allowed in terms of prayer clause 11.1 A.
- B. No order as to costs.

**(BIJAY KUMAR)
MEMBER (A)**

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

**Place : Aurangabad
Date : 14-06-2022.**

LATER ON

9. Few minutes after pronouncement of the order in the present matter, learned Counsel appearing for respondent no.4 prayed for staying the effect and operation of the order passed in the present O.A., stating that respondent no.4 intends to challenge the present order before the Hon'ble High Court. Learned Counsel for the applicant is absent. The judgment was pronounced by learned Member (A) through video conferencing. By the time learned Counsel made request as aforesaid, link provided for such video conferencing was discontinued. Moreover, the Counsel for the applicant is also not before the Tribunal.

10. For the aforesaid reasons, present matter be kept on tomorrow at 2.15 p.m. for considering the request made on behalf of respondent no.4.

**(BIJAY KUMAR)
MEMBER (A)**

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

ORIGINAL APPLICATION NO.184/2020
(Govardhan Bhujanga Kawale Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri P.R. Bora, Vice Chairman

AND

Hon'ble Shri Bijay Kumar, Member (A)
(Virtually present through Video Conference)

DATE : 15.06.2022

ORAL ORDER :

Heard Shri V.V.Gujar, learned Advocate for the applicant, Shri V.R.Bhumkar, learned Presenting Officer for the respondent nos.1 to 3 and Shri S.J.Salunke, learned Advocate for respondent no.4.

2. Though final order is already passed on 14-06-2022, learned Counsel for respondent no.4 has prayed for stay to the implementation of the order passed in this O.A. stating that respondent no.4 is already working on the subject post for last more than two years. Learned Counsel further submitted that the respondent no.4 intends to challenge the order dated 14-06-2022 passed by this Tribunal before Hon'ble High Court. In the circumstances, request is made for staying effect and operation of the order passed by this Tribunal for four weeks.

3. Learned Counsel for the applicant has strongly opposed for granting any stay to the order passed. Learned Counsel submitted that having regard to the findings recorded by this Tribunal, there appears no case for

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respondent no.4. Learned Counsel further submitted that the applicant is nearing the age of superannuation. He has already lost two years of his service. In the circumstances, learned Counsel has prayed for rejecting the request for stay.

4. Learned P.O. has submitted for passing appropriate order.

5. It is true that, the Tribunal has recorded a finding that the respondent no.4 was illegally selected and appointed. It, however, cannot be lost sight of that the respondent no.4 is working on the subject post for more than 2 years, and he has right to challenge the order passed by this Tribunal. In the circumstances, we deem it appropriate to pass the following order:

ORDER

Implementation of the order passed by this Tribunal in the present O.A. shall stand stayed for four weeks.

MEMBER (A)

VICE CHAIRMAN