

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 200/2014

DIST.: AURANGABAD

Anil S/o Baburao Kirtikar,
 Age: 32 years, Occu. Service (Sweeper),
 R/o Chaudhari Colony, Chikalthana,
 Tq. & Dist. Aurangabad.

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APPLICANT

V E R S U S

1. The State of Maharashtra,
 Through its Secretary for Home
 Department, Mantralaya, Mumbai-32.

(Copy to be served on C.P.O.
 M.A.T., Bench at Aurangabad)

2. The Commissioner of Police,
 Aurangabad Region, Aurangabad.

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RESPONDENTS

APPEARANCE : Shri P.V. Suryawanshi, learned Advocate
 for the Applicant.

: Shri N.U. Yadav, Learned Presenting
 Officer for the Respondents.

CORAM: HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)
AND
HON'BLE SHRI J.D. KULKARNI, MEMBER (J)

DATE : 20.10.2016.

J U D G M E N T

[PER- HON'BLE SHRI J.D. KULKARNI, MEMBER (J)]

The applicant was appointed as a Sweeper on daily wages on 18.05.2002 and as part time sweeper vide order dated

2.9.2011. On 5.4.2011, the Commissioner of Police, Aurangabad i.e. respondent no. 2 received information from the concerned Police Inspector as regards list of daily wages employee. In the said list, the name of the applicant was at Sr. No. 2.

2. On 10.04.2013, the applicant's father was hospitalized and therefore, he could not attend duty. He had taken oral permission for such absence. Thereafter, the applicant met the respondent authorities on 26.07.2013, 27.11.2013, 13.01.2014 and finally issued notice on 12.02.2014. However, his claim was not considered. The applicant was not allowed to join duty and therefore, the applicant was constrained to file this Original Application, in which he has claimed direction to the respondents to allow him to join on duty regularly as expeditious as possible as a Sweeper.

3. From perusal of the reply affidavit filed by the respondent no. 2, it seems that the respondent has admitted that the applicant was engaged as temporary part time sweeper for specific period, which was extended from time to time. It is stated that the applicant himself remained absent without

intimation to the authority and therefore, there is no question of allowing him to join. It is stated that the applicant has no right to claim appointment.

4. We have heard Shri P.V. Suryawanshi, learned Advocate for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondents. We have also perused the application, affidavit, affidavit in reply and various documents placed on record by the respective parties.

5. The only material point to be considered is whether the applicant has right to claim continuation in the post of Part Time Sweeper ?

6. We have perused the application and the various documents placed on record. It seems from the pleadings that the applicant was earlier appointed as a sweeper on daily wages with the respondent no. 2 and thereafter, as a part time sweeper but there is nothing on the record to show that he was appointed on a substantive post or even temporary or permanent post. The only documents to show that the applicant was appointed as part time sweeper at Exhibit-A collectively at paper book page nos. 11 to 15 respectively.

7. Vide letter dated 5.4.2011 at paper book page nos. 11 & 12, the Police Inspector, Police Headquarter, Aurangabad (City) has informed the Police Commissioner, Aurangabad (City) that his department was having 24 sweepers on daily wages, out of which 13 sweepers have left the work since remuneration was less and therefore, he sought permission to appoint 13 more sweepers on daily wages. Accompanying list, with this letter shows applicant's name at Sr. No. 2.

8. Another letter dated 2.9.2011 at paper book page nos. 13 and 14 (both inclusive) from which it seems that the 30 persons were appointed as part time sweeper, who were to work for four hours daily and were to get remuneration as stated in the said order. The conditions for appointed in the said letter are material, from which it seems that the post was temporary on daily wages, and part time and it was specifically mentioned that the part time sweeper will not have right to regular appointment. The said conditions are as under:-

“कामावर ठेवुन घेण्याच्या अटी :

- १) अंशकालीन सफाई कामगार (पार्ट टाईम) म्हणून तात्पुरत्या स्वरूपी कामावर ठेवून घेण्यात येत असल्याने त्यांचा या किंवा अशाच इतर पदावर स्थाई स्वरूपी नेमणूक मिळण्याचा हक्क राहणार नाही.

- २) कामावर ठेवून घेतल्याच्या मोबदला म्हणून शासनाचे सध्याचे प्रचलीत नियमानुसार दरमहा रूपये १६६४/- (अक्षरी रूपये एक हजार साहाशे चौसष्ठ फक्त) मोबदला देण्यात येतील. या रक्कमेवर कोणत्याही प्रकारचे भत्ते किंवा इतर रक्कम देय राहणार नाही.
- ३) महाराष्ट्र नागरी सेवा (रजा) नियम १९८१ मधील नमुद रजेचा फायदा मिळणार नाही.
- ४) उपरोक्त अंशकालीन सफाई कामगार राखीव पोलीस निरीक्षक, पोलीस मुख्यालय औरंगाबाद यांचे देखरेख खाली नेमूण दिलेल्या ठिकाणी दररोज ४ तास साफसफाईचे कामकाज करतील.
- ५) राखीव पोलीस निरीक्षक पोलीस मुख्यालय यांनी सदर अंशकालीन सफाई कामगारांचे मासिक हजेरी अहवाल दरमहा लेखा शाखेत सादर करावा. त्या शिवाय त्यांना देय अलेला मोबदला देण्यात येणार नाही.

(मा. पोलीस आयुक्त यांचे मान्यतेने)”

From the aforesaid papers placed on record by the applicant himself it will be clear that the applicant was not appointed on any substantive post and he was doing work for four hours only on daily wages basis. It seems to be admitted fact on record that the applicant himself remained absent from duty. It is stated that the applicant's father was sick and was hospitalized. The applicant has placed on record discharge card of Pargaonkar Hospital and ICCU, from which it seems that his father Mr. Baburao Kirtikar, was admitted in the hospital from 11.4.2013 to 15.04.2013. However, that itself will not mean that the applicant is entitled to claim appointment on regular post.

Even for argument sake, it is accepted that the applicant remained absent because of illness of his father, since the applicant was appointed for part time post, the applicant cannot get any right on the said post, particularly considering the terms and conditions of the appointment. It is the discretion of the respondent no. 2 whether to allow the applicant to work as part time sweeper or not? If the respondent authorities require the service of the applicant, they could have considered as per their need but they cannot be forced to allow the applicant to work. As already stated, the applicant could not place on record any evidence to show that he has acquired any legal right to ask for continuation in the part time sweeper's post. We, therefore, do not find any merits in the present O.A. and hence, we pass following order:-

ORDER

The Original Application stands dismissed with no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)