

O.A. 350/2021 (D.B.)

**Coram: Shri Shree Bhagwan,
Vice-Chairman.**

Dated : 03/05/2021.

Heard Shri S.P. Palshikar, Id. counsel for the applicant and Shri A.P. Potnis, Id. P.O. for the State.

2. As per the Synopsis, the applicant was having education qualification as B.Sc. (CBZ) which is necessary qualification for appointment of X-Ray Scientific Officer. As pointed out by the learned counsel for the applicant, the applicant's name appears in the selection list (A-3,P-35). After completion of all the formalities of appointment, the respondent no.3, the Deputy Director of Health Services Department, Nagpur Region has issued correspondence dated 26/4/2021 (A-7,P-41) from which it appears that this correspondence was issued without giving opportunity of hearing to the applicant. It appears that if the impugned order dated 26/4/2021 (A-7,P-41) is not stayed, then un-repairable damage is caused to the applicant.

3. In view of justice and equity, **the correspondence dated 26/4/2021 (A-7,P-41) is stayed** till filing of reply by the respondents.

4. Issue notices to the respondents returnable **after vacation**. Hamdast allowed.
5. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.
6. 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.
7. This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.
8. The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.
9. In case notice is not collected within **three days** and if service report on affidavit is not filed **three days** before returnable date. Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.

S.O. after vacation.

Steno copy is granted...

Vice-Chairman

dnk.

***O.A. 352/2021 (D.B.)**

**Coram: Shri Shree Bhagwan,
Vice-Chairman.**

Dated : 03/05/2021.

Heard Shri S.N. Gaikwad, Id. counsel for the applicant and Shri S.A. Deo, Id. C.P.O. for the State.

2. The matter pertains to Public Health Department where the advertisement/notification for filling various posts was published and application was to be submitted upto 18/2/2019 (A-1,P-9). In the said advertisement, there are total 17 posts of Senior Clerks have been shown, however no vacancy was shown for ex-serviceman quota (P-18). Now it was revised vide Annex-A-3, Page no.31 and posts of Senior Clerk were decreased to 9 and in this list also no vacancy was shown for ex-serviceman quota. As pleaded by the Id. CPO, the applicant never challenged the advertisement where the post of ex-serviceman has not been mentioned. Subsequently the applicant participated in the selection process and merit list was published on 21/4/2021 (A-6,P-38). As submitted by the learned counsel for the applicant in the selection list dated 21/4/2021 (A-6,P-38) the applicant's name was not shown. However not date is mentioned on the list. Now at the fag end of selection process, after participating in the selection process the applicant is challenging initial advertisement itself that too after becoming unsuccessful in the selection process.

3. In this situation, learned counsel for the applicant is directed to file any other documents showing that post for ex-serviceman was shown in the advertisement itself and subsequently it was changed.

4. Issue notices to the respondents returnable **after vacation**. Hamdast allowed.

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

6. 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.

7. This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

8. The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.

9. In case notice is not collected within **three days** and if service report on affidavit is not filed **three days** before returnable date. Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.

S.O. after vacation.

Vice-Chairman

*dnk.

***O.A. 353/2021 (D.B.)**

(R.D. Kandarkar & Ors. Vs. State of Mah.)

**Coram: Shri Shree Bhagwan,
Vice-Chairman.**

Dated : 03/05/2021.

C.A. No. 128/2021 -

Heard Shri S.N. Gaikwad, Id. counsel for the applicants and Shri S.A. Deo, Id. C.P.O. for the State.

2. For the reasons stated in the application, the C.A.No. 128/2021 for permission to file joint O.A. is allowed.

O.A.No. 353/2021 –

Heard Shri S.N. Gaikwad, Id. counsel for the applicants and Shri S.A. Deo, Id. C.P.O. for the State.

2. The Government has issued G.R. dated 18/2/2021 (A-1,P-10) and in pursuance to that the applicants were promoted from the post of Talathi to Revenue Inspector. Again Government has issued G.R. dated 20/4/2021 and by this G.R. 18/2/2021 was withdrawn and now order to decide whether this G.R. dated 20/4/2021 is legally valid it has to be heard before regular Division Bench. In the promotion order of the applicant dated 9/4/2021 (A-2,P-13) condition no.3 was inserted and it was mentioned that promotion is subject to decision of the Hon'ble Apex Court in SLP No.28306/2017 which is still pending. The said decision is still pending and the applicant has been reverted vide order dated 22/4/2021 (A-4,P-25). Now unless G.R. dated 20/4/2021 is judicially considered null and void, the

applicant cannot be granted relief. Considering all these aspects, **the order dated 22/4/2021 (A-4,P-25) is stayed so far as the applicants are concerned** till filing of the reply if it is not implemented till now.

3. Issue notices to the respondents returnable **after vacation**. Hamdast allowed.

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

5. 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.

6. This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules,1988, and the questions such as limitation and alternate remedy are kept open.

7. The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.

8. In case notice is not collected within **three days** and if service report on affidavit is not filed **three days** before returnable date. Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.

S.O. after vacation.

Steno copy is granted...

Vice-Chairman

*dnk.

***O.A. 354/2021 (D.B.)**

(M.G. Zade Vs. State of Mah. & Ors.)

**Coram: Shri Shree Bhagwan,
Vice-Chairman.**

Dated : 03/05/2021.

Heard Shri S.N. Gaikwad, Id. counsel for the applicant and Shri S.A. Deo, Id. C.P.O. for the State.

2. The Government has issued G.R. dated 18/2/2021 (A-1,P-10) and in pursuance to that the applicant was promoted from the post of Junior Clerk to Senior Clerk vide order dated 23/3/2021 (A-2,P-13). In the said promotion order clause no.9 has been mentioned that the promotion is subject to decision of the Hon'ble Apex Court in SLP No.28306/2017 which is still pending. The said decision is still pending and the applicant has been reverted vide order dated 29/4/2021 (A-4,P-19). Now unless G.R. dated 20/4/2021 is judicially considered null and void, the applicant cannot be granted relief. Considering all these aspects, the order dated 29/4/2021 (A-4,P-19) is stayed so far as the applicant is concerned till filing of the reply if it is not implemented till now.

3. Issue notices to the respondents returnable **after vacation**. Hamdast allowed.

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

5. 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.

6. This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

7. The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.

8. In case notice is not collected within **three days** and if service report on affidavit is not filed **three days** before returnable date. Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.

S.O. after vacation.

Steno copy is granted...

Vice-Chairman

*dnk.

***O.A. 342/2021 (S.B.)**

(Shri Ganesh M. Ahire Vs. State of Maharashtra & Ors.)

Coram: Shri Shree Bhagwan, Vice-Chairman.

Dated : 03/05/2021.

ORDER

Heard Shri G.G. Bade, Id. counsel for the applicant and Shri S.A. Deo, Id. C.P.O. for the State.

2. The applicant was suspended by the respondent no.3 vide order dated 28/11/2020 (A-1,P-9). Various Judgments of Hon'ble Apex Court, Hon'ble High Court and Government G.R. dated 9/7/2019 have settled the legal position regarding continuation of suspension period. These are reproduced below—

(i) The Apex Court in Civil Appeal No. 1912 of 2015 (arising out of SLP No.31761 of 2013) in the case of Ajay Kumar Chaudhary Vs. Union of India through its Secretary and another in its Judgment dated 16/02/2015 in para no. 14, it has observed that :-

14 We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.

(ii) The Hon'ble Apex Court in its Judgment in Civil Appeal No. 8427-8428 of 2018 (Arising out of S.L.P. (Civil) No. 12112-12113 of 2017) in the case of **State of Tamil Nadu Vs. Pramod Kumar IPS and Anr. delivered on 21/08/2018** in its para no. 24 had observed as follows:-

*24. This Court in **Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291** has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first Respondent under*

suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellant State has the liberty to appoint the first Respondent in a non sensitive post.

(iii) The Principal Bench of Maharashtra Administrative Tribunal Mumbai Bench in O.A. No. 35/2018 Judgment delivered on 11/09/2018 has also rejected continuation of suspension beyond 90 days.

(v) The Hon'ble High Court of Bombay, Bench at Nagpur in W.P. No. 7506/2018, Judgment delivered on 17.07.2019 was also on same principle. It has observed in para no. 2 that **facts of this case are squarely covered by Government Resolution G.A.D. dated 09/07/2019.**

(ii) fuyfcr 'kkI dh; I o d l k ; k T ; k i d j . h 3 e f g l ; k p k d k y k o / h r f o H k x h ; p k d ' h l q d : u n k s k j k i i = c t k o . ; k r v k y s u l g h] v ' k i d j . h e k - l o k p U ; k ; k y ; k p s v i n s k i k r k i f u y e u l e k r d j . ; k ' k o k ; v U ; i ; k ; j k r u l g h - R ; k e f s f u y f c r ' k k I d h ; I o d k e k r f o H k x h ; p k d ' k p h d k ; b k g h l q d : u n k s k j k i i = c t k o . ; k p h d k ; b k ; h f u y e u k i k l u 90 f n o l k ; k v k r d k v d k j i . l s d y h t k b y ; k p h n { k r k e [k c j n k j h ? s ; k r ; k o h -

(vi) The Government of Maharashtra vide its G.R. G.A.D. 'kkI u fu. k ; d z 118 @ i z d z 11 @ 11 v] f n u k d 09-07-2019 ¼A-4, P-18½ in para nos. **1 (ii)** following decisions have been taken :-

fuyfcr 'kkI dh; I o d l k ; k T ; k i d j . h 3 e f g l ; k p k d k y k o / h r f o H k x h ; p k d ' h l q d : u n k s k j k i i = c t k o . ; k r v k y s u l g h] v ' k i d j . h e k - l o k p U ; k ; k y ; k p s v i n s k i k r k i f u y e u l e k r d j . ; k ' k o k ; v U ; i ; k ; j k r u l g h - R ; k e f s f u y f c r ' k k I d h ; I o d k e k r f o H k x h ; p k d ' k p h d k ; b k g h l q d : u n k s k j k i i = c t k o . ; k p h d k ; b k ; h f u y e u k i k l u 90 f n o l k ; k v k r d k v d k j i . l s d y h t k b y ; k p h n { k r k e [k c j n k j h ? s ; k r ; k o h -

3. This O.A. is squarely covered by Government of Maharashtra G.A.D. 'kkI u fu. k ; d z 118 @ i z d z 11 @ 11 v] f n u k d 09-07-2019 ¼A-4, P-18½.

4. The applicant has made two representations to the respondent no.2, the first representation is dated 12/4/2021 (A-3,P-14) and second representation is dated 22/4/2021 (P-16). In view of discussions in above paras following order –

ORDER

(i) The respondent no.2 is directed to decide the representations of the applicant dated 12/4/2021 (A-3,P-14) and 22/4/2021 (P-16) within 45 days from the date of receipt of this order in the background of Hon'ble Apex Court, Hon'ble High Court order and Government G.R. dated 9/7/2019.

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(ii) The respondents are directed to pay subsistence allowance of suspension period to the applicant as mentioned in the suspension order itself within 45 days from the date of receipt of this order.

(iii) With this direction, the O.A. stands disposed of.

(iv) No order as to costs.

Vice-Chairman

*dnk.**