

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

MISC APPLICATION NO. 494 OF 2021

IN

ORIGINAL APPLICATION NO 756 OF 2021

WITH

ORIGINAL APPLICATION NO 756 OF 2021

DISTRICT : MUMBAI

Organization for Rights of Human,)
Ratnagiri Branch, Ratnagiri,)
Through its District President,)
Shri Gajendra N. Paunikar,)
Having office at Post-Chikhali,)
Tal-Guhagar, Dist-Ratnagiri 415 724.)...**Applicant**
(Intervener)

In the matter of

Mrs Swapnal Sunil Jopale)
Occ-Service, R/at B-101, Guruvihar Apt,)
TRP, Nachane, Ratnagiri 415 639.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Principal Secretary,)
Public Works Department,)
Mantralaya, Mumbai 400 032.)
2. The Superintending Engineer,)
Public Works Department,)
Ratnagiri Circle, Bandhkam Bhavan,))
Jayastambha, Ratnagiri 415 612.)...**Respondents**

WITH

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Mrs Swapnal Sunil Jopale)
Occ-Service, R/at B-101, Guruvihar Apt,)
TRP, Nachane, Ratnagiri 415 639.)...**Applicant**

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Ratnagiri Circle, Bandhkam Bhavan,)
Jayastambha, Ratnagiri 415 612.)...**Respondents**

Shri M.S Lagu, learned advocate for the Applicant/Intervener.

Shri A.A Desai with Ms Surbhi Agarwal, learned advocate for the Original Applicant.

Ms Archana B.K, learned Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)

DATE : 17.12.2021

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicant has filed Original Application to quash and set aside the impugned order dated 28.6.2021 passed by Respondent no. 2, terminating the service of the applicant and further direct the Respondents to reinstate her in service as Senior Clerk with immediate effect with all consequential benefits.

2. In our order dated 3.12.2021, it was mentioned that the learned counsel for the applicant has requested to expedite the matter as the services of the applicant is terminated after 22 years.

3. However, there is an intervention application moved by the Intervenor, which is an N.G.O. We have noted that we were not inclined to decide the Original Application as we were disposing of the old matters. It was also stated that the Misc Application will be decided first, preferably on 17.12.2021.

4. When the matter was called out, learned counsel for the applicant Mr Lagu, who has moved the Intervention Application was not available and at that time learned counsel for the applicant requested at least to hear him on the point of interim relief. We, therefore, asked the learned counsel for the applicant to continue his arguments as the learned P.O was also available. Affidavit in reply dated 17.12.2021, is filed in the Original Application on behalf of Respondents no 1 & 2 by Mr Tushar A. Burud, Executive Engineer, in the office of Road Project Division, P.W Department, Ratnagiri.

5. It is necessary to mention certain facts in this matter. The Respondents have taken a very harsh action by terminating the services of the applicant. It is the case of the applicant that she was appointed as a Junior Clerk on 17.11.1996 on the basis of the Couple Certificate which is issued for the Caste. Learned counsel for the applicant submitted that as per the policy decision of State of Maharashtra taken on 17.1.2017, Exh. 'T', the Couple Certificate was earlier issued to the couple who have performed marriages. Those couples belonging to different castes were given the Couple Certificate of their Caste. This being patriarchal system, as per G.R dated 9.8.1971, the concession admissible to couple in service was given to husband belonging to a Denotified Tribe/Nomadic Tribe and also to women of all the categories, but who had married to a person belonging to a Denotified Tribe or Nomadic Tribe.

6. In the present case, the applicant belonging to a Brahmin caste, married on 30.8.1995 to a person belonging to Kokana caste, i.e. S.T category. Subsequently, she was appointed on the basis of the Couple Certificate and was given the benefits of Caste of her husband. She was appointed as Junior Clerk on 17.11.1996 as per the policy of the State of Maharashtra as per G.R dated 9.8.1971.

7. The Hon'ble Supreme Court in the case of **VALSAMMA PAUL (Mrs). VS. COCHIN UNIVERSITY & ORS, (1996) 3 SCC 545**, dated 4.1.1996, held that the Caste is always decided on the basis of birth and the status of a person born in a higher caste cannot be changed even though he/she marries to a person belonging to a reserved caste/category. On the basis of the said decision of the Hon'ble Supreme Court, State of Maharashtra issued G.R dated 7.5.1999 and withdrew its earlier policy decision dated 9.8.1971 and all other earlier G.Rs, wherein the benefits was given to the women. However, in the present case, the applicant continued in service and thereafter she was promoted to the post of Senior Clerk on 2.8.2010.

8. Learned counsel for the applicant Mr Desai raised the first point about not issuing show cause notice to the applicant before terminating her services. We do agree that it is valid point raised by the learned counsel for the applicant. We asked the learned Presenting Officer to take instructions from the Officer from the Public Works Department who is present in the Court as to whether show cause notice was issued to the applicant before terminating her services on 28.6.2021. Learned P.O has submitted that the department has given show cause notice on 7.2.2018, on the basis of a complaint filed by one Mr Srinivas Dusane. Learned

P.O pointed out that the applicant has given reply to that notice by letter dated 15.2.2018.

9. We have gone through the letter dated 7.2.2018. We are of the view that this cannot be called a show cause notice. This is a letter calling explanation from the applicant in respect of a complaint by one person, namely, Mr Srinivas Dusane. She has given very detailed explanation on 15.2.2018, which was received by the department and along with explanation, she has attached her Couple Certificate, Marriage Certificate, Caste Validity Certificate and other documents. On query as to whether explanation was accepted or not by the Department, the learned P.O on instructions has submitted that no communication is found further after this explanation. This alleged show cause notice dated 7.2.2018 is not at all show cause notice of termination, which is required to be issued for taking action under Article 311 of the Constitution of India. Termination is very serious action against any Government servant especially after 22 years of service without giving show cause notice. The basic rules of principles of natural justice are completely violated and so also protection granted by the Constitution of India is also breached by the Respondent-State. There is also delay and laches in taking action against the applicant. Further, the applicant was appointed on 17.11.1996, prior to the G.R dated 7.5.1999.

10. There is no merit in the Misc Application seeking intervention and the same is dismissed.

11. As we are granting interim relief, which goes to the root of this matter, the Original Application is allowed in following terms:-

- (a) The order of termination dated 28.6.2021 is hereby quashed and set aside.

- (b) The applicant is to be reinstated in service from the date on which her services were terminated immediately.
- (c) The applicant is entitled for all consequential benefits including pay.
- (d) The said order of reinstating the applicant to be issued by 21.12.2021.

(Medha Gadgil)
Member (A)

(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 17.12.2021
Dictation taken by : A.K. Nair.