

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**MISCELANEOUS APPLICATION NO.609 OF 2015 IN
ORIGINAL APPLICATION NO.316 OF 2014
WITH
MISCELANEOUS APPLICATION NO.610 OF 2015 IN
ORIGINAL APPLICATION NO.242 OF 2014**

**MISCELANEOUS APPLICATION NO.609 OF 2015
IN
ORIGINAL APPLICATION NO.316 OF 2014**

DISTRICT : MUMBAI

1. Shri Ambadas Hari Gawale)
 2. Shri Sanjay Tukaram Toraskar)
 3. Shri Bhikaji R. Jangle)
 4. Shri Ravindra Ananda Sakpal)
 5. Shri Rajendra B. Kamble.)
 6. Shri Santosh Dinkar Chikane)
 7. Shri Sunil Dnyaneshwar Sapkal)
 8. Shri Santosh B. Kamble,)
 9. Shri Prashant Vitthal Ghadi)
 10. Shri Nitin Ramesh Humbare)
- All aged adult, occ. Nil,)
Ex Peon (Election Department))
in the office of the below)
named Respondent no. 1)



The District Collector, Mumbai,)
Having office at Old Custom House,)
Mumbai 400 001.)
Address for service of notice:)
Shri A.V Bandiwadekar,)
Advocate, having office at 9,)
"Ram Kripa", Lt. Dilip Gupte Marg,)
Mahim, Mumbai 400 016.)...Applicants

Versus

1. The District Collector,)
Mumbai, having office at)
Old Custom House, Mumbai-1.)
2. The State of Maharashtra,)
Through Principal Secretary)
General Administration Department,)
Mantralaya, Mumbai 400 032)
3. The State of Maharashtra,)
Through Principal Secretary,)
[Revenue],)
Revenue and Forest Department,)
Mantralaya, Mumbai 400 032.)...Respondents

WITH



**MISCELANEOUS APPLICATION NO.610 OF 2015
IN
ORIGINAL APPLICATION NO.292 OF 2014**

DISTRICT : MUMBAI

1. Shri Santosh Pandurang Arabatti)
 2. Shri Manohar B. Suryawanshi)
 3. Shri Abhijit R. Kambli)
 4. Shri Arun Dnyanu Kharat)
 5. Shri Manoj Dattaram Rane.)
 6. Shri Pandharinath N. Jadhav)
 7. Smt Prerana Raju Gadekar)
 8. Miss Sharayu Rajaram Lad,)
 9. Smt. Vidya Kashinath Nanavare)
 10. Smt Manshree Rajendra Tambe)
 11. Shri Anil Prabhakar Kasbe)
 12. Ms Manisha Madhukar Salvi)
 13. Smt Arati Chandrashekhar Wadekar)
 14. Shri Dnyaneshwar R. Gaikwad)
 15. Ms Archana Dattaram Valanju)
 16. Shri Sudhakar L. Waghmare)
- All are aged adult, occ. nil,)
(worked till January 2015 as)
Junior Clerks or Enumerators)
Either in the office of the below)



named Respondent no. 1 or in the)
other offices under the administrative)
control of the Respondent no. 1.)
The District Collector, Mumbai,)
Having office at Old Custom House,)
Mumbai 400 001.)
Add for service of notice :)
Shri A.V Bandiwadekar,)
Advocate, having office at 9,)
"Ram Kripa", Lt. Dilip Gupte Marg,)
Mahim, Mumbai 400 016.)...Applicants

Versus

1. The District Collector,)
Mumbai, having office at)
Old Custom House, Mumbai-1.)
2. The State of Maharashtra,)
Through Principal Secretary)
General Administration Department,)
Mantralaya, Mumbai 400 032)
3. The State of Maharashtra,)
Through Principal Secretary,)
[Revenue],)



Revenue and Forest Department,)
Having office at Mantralaya,)
Mumbai 400 032.)...Respondents

Shri A.V Bandiwadekar - Advocate for the Applicants

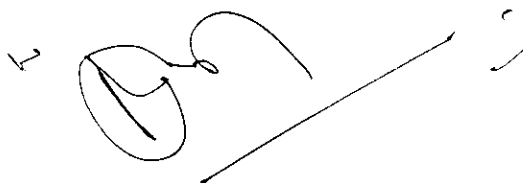
Smt. K.S. Gaikwad - Presenting Officer for the Respondents

CORAM : Rajiv Agarwal, Vice-Chairman
R.B. Malik, Member (J)
DATE : 10th March, 2016
PER : R.B. Malik, Member (J)

ORDER

1. These two MAs have been made in two disposed off OAs complaining inter alia that instead of complying with the directions dated 8.10.2015 of this Tribunal in those two OAs the respondents have placed them in a more disadvantageous position than what they were pending OAs. Their continuation on the temporary basis has also been practically stopped and the payments from the period December, 2014 to February, 2015 have been held up. The applicants seek redressal by way of these MAs.

2. The facts are such that these two MAs can be disposed off by this common order. We have perused the



record and proceedings and heard Shri A.V Bandiwadekar, the learned Advocate for the Applicants and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

3. In this order we will have to deal with the question of tenability of the MAs in disposed off OAs and we will also have to decide these MAs on merit depending upon our findings on the first issue. But it may not be possible to practically segregate the discussion of these two issues because the facts are such that they may get intertwined.

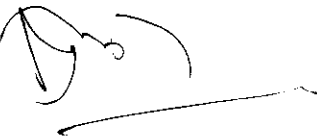
4. MA No.609 of 2015 arises out of the disposed off OA No.316 of 2014 (first MA). MA No.610 of 2015 arises out of disposed off OA No.292 of 2014 (second MA). Both the said OAs came to be disposed off by this Bench by a common order dated 8.10.2015. The applicants in OA No.292 of 2014 who are the applicants in second MA were working as Junior Clerk/Enumerators on the establishment of the District Collector, Mumbai being the respondent no.1 though they were appointed on what can be described as temporary basis on 18.7.1994 on the posts created in 1993. But they continued to work in that very capacity for more than 22 years and were working as such when they brought the said OA. They had been seeking the regularization of their services and in fact the first respondent District Collector had sent a proposal to the State of Maharashtra in GAD and also to the Principal

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Secretary, Revenue & Forest Department for regularization. It seems that they were engaged in the election related work a part of which was door to door visits for the purpose of enumeration.

5. In so far as the sister OA is concerned those applicants had been working for more than 15-22 years on the temporary basis in Group 'D' post. They also had been longing for regularization unsuccessfully and they also brought the OA.

6. At this stage it will be appropriate to peruse our judgment in the disposed off OAs because that would facilitate the further discussion and make it focused. In Para 6 four issues were raised. They were as to whether the applicants were appointed on daily wages/ad hoc basis and as to whether those posts were permanent in nature or were created only for election related work. In so far as the OA of the Clerks are concerned the issue was as to whether those posts were within the purview of MPSC and the third issue was as to whether the said Clerks were covered by a certain GR dated 8.3.1999 regarding the regularization of services of Group 'C' employees that were not regularly appointed. The last issue was as to whether the applicants in both the OAs could be regularized by reason of the fact that they continued for more than 10 years without the intervention of the courts in view of the judgment of the Hon'ble Supreme Court in **STATE OF KARNATAKA AND**

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OTHERS VERSUS UMADEVI AND OTHERS, 2006 AIR SCW 1991. The discussion then progressed and certain passage from the affidavit in reply on behalf of the respondents were extracted in Para 7 of the said order. It was held that the appointments may have been temporary but the posts were regular. The other aspects of the matter were discussed in the context of the submissions advanced at the bar which it is not necessary to closely examine herein. We, from Para 9 onwards in that common order relied upon **STATE OF KARNATAKA AND OTHERS VERSUS M.L. KESARI AND OTHERS (2010) 9 SCC 247** and applied the principles laid down by the Hon'ble Supreme Court to the facts of the two OAs and quoting therefrom we held ultimately in Para 10 that the cases of the applicants would have to be considered in the light of the judgment in M.L. Kesari supra and in Para 11 which was the concluding Para the final order was made. It reads as follows:

"11. Having regard to the aforesaid facts and circumstances of the case, the Respondent no. 3 is directed to consider the cases of the Applicants for regularization in the light of above observations, within a period of 3 months from the date of this order. As regards regularization of applicants in OA No.316 of 2014, reference may be made to our observation in Para 7(ii) of this judgment. These Original Applications are disposed of accordingly with no order as to costs. As the Original



Applications have been disposed of, nothing survives in the Misc Applications, which are also disposed of.”

7. Quite pertinently nowhere in our order did we either expressly or by implication give any direction against continuing the applicants on the then obtaining temporary status. As a matter of fact the said order was based on the premise that the applicants were working on temporary basis and that therefore having worked in that precarious conditions for more than two decades their regularization should be considered. We are, therefore, at a complete loss to understand as to where from the respondents got the justification for their action of putting to peril the above temporary status of the applicants and to withhold their salaries.

8. Shri Deepak Narayan Jadhav, Tahsildar and Organization and Method Officer in the office of Collector, Mumbai has filed common affidavit in reply to these MAs. It is not quite clear as to how a Tahsildar could file affidavit on behalf of the State with regard to such vital aspect. Even at the cost of defaulting on the need to be brief as much as possible we still would like to fully reproduce the affidavit in reply of the said Shri Jadhav which runs into a little more than one page because we do not want to paraphrase anything therein:



"1. I say that I have perused the copy of Misc. Application as well as other relevant records of the case. I crave leave of this Hon'ble Tribunal to further add or amend the affidavit and/or file additional affidavit if so found necessary. I say that I have been authorized to file this affidavit on behalf of the respondent nos.1 to 3.

2. I say and submit that the applicant has submitted the present OA for the necessary direction to the pay and allowances from December 2014 to February 2015 to petitioner.


3. I say and submit that since the petitioners were given temporary appointment, therefore they were not eligible for the scale of pay which is applicable only to permanent employees. The decision on the payment of salary/honorarium/wages to these employees during that period can be decided only after obtaining the guidance from Government, which was made very clear in the order of temporary appointment itself. The petitioners were specifically instructed to join on a temporary basis only if they accept the condition that the decision regarding payment will be taken after obtaining the guidance from the General Administration Department, Mantralaya, Mumbai. Accordingly, this office has issued a letter dated 5.1.2015 to Chief Election Office, Maharashtra State,

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General Administration Department - Desk 33, Mantralaya, Mumbai and asked for the guidance whether to disburse the payment to petitioners.

4. Further I say and submit that, the issue of regularization of the petitioner is related with respondent no.3. This office has submitted a letter on 17.12.2015 and on 7.1.2016 on behalf of respondent no.3 for filing MA requested for extension of time for three months to consider the matter in OA No.292/2014 and OA No.316/2014. So after consideration of the said issue by respondent no.3, necessary action will be taken. The copies of the said communications dated 30.8.2014, 5.1.2015 and 22.5.2015 are enclosed and marked as an Exhibit R-1 collectively.”

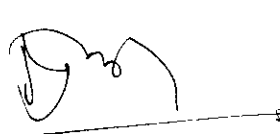
9. We are a little dismayed and disappointed at the tenor of the said affidavit. We may as well note that the State filed MA No.34 of 2016 in OA No.292 of 2014 and by an order dated 8.2.2016 made by one of us (Shri Rajiv Agarwal, Hon'ble Vice-Chairman) it was made clear by the State that the State had decided to implement our order implying thereby that they did not want to challenge it on the judicial side. Still the affidavit in reply in Para 3 had the audacity to repeat that the State could proceed on the basis of the temporary appointments of the applicants. No doubt, the said affidavit



was filed before the order of the Hon'ble Vice-Chairman above referred to but even then so long as our order on the OAs stood the State really had no scope, reason or any business to make averments that had the tendency to stand in contest with the order in the concluded OAs.

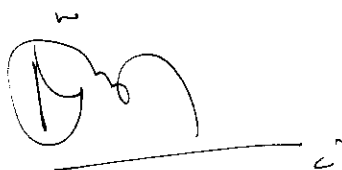
10. It is very clear from the above affidavit in reply that the State was so minded as to do what has been complained against by the applicants and that they quite clearly cannot be allowed to do. We do not think that any further discussion is necessary to justify these observations. The whole thing is quite explicitly clear. If therefore we ultimately find that we have the jurisdiction to entertain these MAs in the facts and circumstances such as they obtain to be given directions even in disposed off OAs then the respondents have no answer to these MAs. We shall, therefore, now turn to what we have carved out as the first issue hereinabove.

11. One of the arguments could be that in a disposed off OA after having signed the final order the judicial forum would become functus officio and, therefore, any application therein would not be tenable. Now, this is only one aspect of the matter and in our view a narrow understanding of the whole thing. After all every application seeking contempt action generally originates from the disposed off OA only although such an action could lie also for the violation of interim orders.

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Now, the strict rules of procedure are not applicable to the proceedings before the Administrative Tribunal. The Tribunal exercises the jurisdiction which till the Administrative Tribunals Act, 1985 was brought into force was exercised by the High Courts. Therefore, when it is brought to the notice of the Tribunal that the response of the allmighty State to the orders made by the Tribunal is a blending of arrogance and disdain then there is no reason why the Tribunal should feel hidebound by the narrow consideration of procedure. In fact if the State could be allowed to mock at the orders of the Tribunal in the manner the respondents have done in this instance the very institution of constitutional protection to the employees would be threatened and no consideration would be more sacrosanct and paramount than upholding of the constitutional mandate.

12. In this particular matter for no rhyme or reason whatsoever the respondents have almost unnecessarily created complications and have ended up thumbing the nose of this Tribunal by doing what they have done. That being the state of affairs we are very clearly of the view that once the Tribunal is apprised of the blatant violation of its orders and also a clear attempt to defy the same then it would amount to abdication of judicial and constitutional duty were the Tribunal to still insist on narrow procedural technicality. That is more so because an elaborate procedure the like of which is enshrined inter alia in

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Sections 96, 100, 104 and Order 21 of the Code of Civil Procedure has not been enacted in relation to the order made by this Tribunal.

13. For all the above reasons we find that there is no procedural hitch in making sure that the arbitrary exercise of powers by the State the status quo such as it was at the time of disposal of the two OAs by common order has been altered and the mindset of the respondents is more than adequately manifested by the affidavit in reply which has been fully quoted hereinabove. We make it clear that till such time as a final decision is taken in accordance with our orders in the disposed off OAs the status of the applicants such as it was on that date would continue and after a decision is taken in accordance with our directions by the respondents strictly as per the observations made therein till such time neither the applicants would be discontinued nor will their salary withheld. The entire withheld salary, if it continues to be withheld, be paid over to each of the applicants within four weeks from today. These MAs are disposed off in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member (J)
10.3.2016

Sd/-
(Rajiv Agarwal)
Vice-Chairman
10.3.2016

Dictation taken by: S.G. Jawalkar.