

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.1100 OF 2013

(Subject : Termination)

- 1) Smt. Rohini Madhusudan Nirmale, )
- 2) Ms. Shubhangi Vitthal Pawar, )
- 3) Smt. Shaila Prabhakar Dhumal, )
- 4) Ms. Shubhangi Shankar Shingate, )
- 5) Smt. Manisha Deepak Jadhav, )
- 6) Ms. Anita Keraba Kolekar, )
- 7) Smt. Madhavi Vijay Mane, )
- 8) Ms. Seema Rajaram Pujari, )
- 9) Ms. Pallavi Dhananjay Gawas, )
- 10) Ms. Sushila Shankar Kirtikar (Kirtawade), )
- 11) Ms. Dipali Shivaji Misal, )
- 12) Ms. Seema Tatyaram Inkar, )
- 13) Smt. Rekha Gulab Ghorpade, )
- 14) Smt. Rakhee Narayan Jadhav )
- 15) Smt. Manisha Vishnu Rawal, )
- 16) Smt. Kalpana Deepak Ambavale, )
- 17) Ms. Swati Subhash Pathade, )
- 18) Smt. Nilima Ramesh Kore, )
- 19) Smt. Anita Ramdas Kamble, )
- 20) Smt. Sujita Shivaji Magar, )
- 21) Ms. Menaka Manohar Mane, )
- 22) Ms. Pravinabanu Rahiman Tadavi, )
- 23) Ms. Vaishali Dinkar Chaudhari, )
- 24) Smt. Haleemabi Lal Khan, )
- 25) Smt. Seema Baburao Desai. )

All are working as Mukhya Sevika (Anganwadi Supervisor) )

In the offices of Child Development Project Officer in )

Different Districts such as Solapur, Kolhapur, Mumbai, )

Pune, Thane, Ratnagiri, etc. )

Address for service of notice : )

Shri G.A. Bandiwadekar, Advocate having office at )

9, "Ram-kripa", Lt. Dilip Gupte Marg, Mahim, )

Mumbai 400 016 )

..... Applicants

**Versus**

- |    |  |                                 |                     |
|----|--|---------------------------------|---------------------|
| 1. | The Commissioner,<br>Women and Child Development Commissionerate,<br>M.S., Pune -1.  | )<br>)<br>)                     |                     |
| 2. | The State of Maharashtra,<br>Principal Secretary,<br>Women and Child Development Department,<br>Mantralaya, Mumbai 32  | )<br>)<br>)<br>)                |                     |
| 3. | The Commissioner of Integrated Child<br>Development of Services Scheme,<br>(Maharashtra State),<br>Having office at Raigad Bhawan,<br>1 <sup>st</sup> floor, Rear Wing, C.B.D.<br>Belapur, Navi Mumbai 400 614 | )<br>)<br>)<br>)<br>)<br>)<br>) | ) ..... Respondents |

Shri A.V. Bandiwadekar, the learned Advocate for the Applicant.

Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

**CORAM** : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

**RESERVED ON** : 08.05.2019

**PRONOUNCED ON** : 10.06.2019

**JUDGMENT**

1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicants and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.
2. In all 25 Applicants have filed the present Original Application.
3. Facts which are common to all the Applicants are as follows :-
  - (a) Applicants were eligible and qualified being candidates for appointment for the posts of Mukhya Sevika under the control of Respondent No.3.

- (b) Applicants were appointed by different orders in 2009.
- (c) Certificates of the Applicants who were claiming in the category of Specified Ex-servicemens' dependant / ward / nominee, were sent for scrutiny.
- (d) Order of probation contained important conditions namely :-

- “१. ....
२. ....
३. उमेदवारांची नेमणुक झाल्यावर ते ज्या दिवशी सादर पदावर हजर होतील त्या दिवसापासून त्यांचा परिविक्षा कालावधी एक वर्षाचा राहिल. प्रशिक्षणाचा कालावधी परिविक्षा कालावधीत अंतर्भूत राहिल.
४. ....
५. ....
६. ....
७. ....
८. ....
९. त्यांच्या नेमणुका तात्पुरत्या स्वरूपात असल्याने शासनाच्या आदेशानुसार त्यांना पूर्व सुचना न देता कोणत्याही क्षणी कोणतेही कारण न देता त्यांच्या सेवा खांडत / समाप्त करण्यांत येतील.
१०. वरील उमेदवारांची नियुक्ती ही त्यांनी सादर केलेल्या कागदपत्रांच्या व प्रमाणपत्रांच्या आधारे व अर्हता विचारात घेऊन केलेली असल्याने त्यांनी सादर केलेली कागदत्रे वा माहिती खोटी आढळून आल्यास त्यांच्या नियुक्त्या रद्द करण्यांत येतील.
११. ....
१२. ....
१३. ....
१४. ....
१५. आरक्षणाच्या कोटयातील उमेदवारांच्या नियुक्त्या या जात पडताळणी समितीच्या वैधतेच्या अधिन राहून करण्यांत येत आहेत. उमेदवाराने जाती प्रमाणपत्राची वैधता (६) सहा महिन्यात सादर करणे आवश्यक राहिल. जात पडताळणी समितीने प्रतिकूल मत नोंदविल्यास किंवा जातीचा दावा फेटाळल्यास त्यांच्या सेवा समाप्त करण्यांत येतील.”
- (Quoted from page 142 & 143 of the paper book of O.A.)

- (e) Some of the appointment orders also contain conditions which are as follows :-

“अट क्र.१९. - माजीसैनिकांच्या समांतर आरक्षणामध्ये युद्धात /सैन्यदलातील सेवेत मृत्यु पावलेल्या किंवा अपंग झालेल्या सैनिकांच्या कुटुंबियास (फक्त पत्र महिला सदस्य) प्राधान्य दिले जाईल.

अट क्र.१२. - निवड प्रक्रिया सुरु झाल्यानंतर किंवा नियुक्तीनंतर कोणत्याही क्षणी उमेदवाराने अर्जात व अर्जासोबत दिलेली माहिती / अगर कागदपत्रे खोटी सादर केल्याचे किंवा खरी माहिती दडवून ठेवल्याचे निदर्शनास आल्यास त्या उमेदवाराची उमेदवारी / नियुक्ती कोणत्याही टप्प्यावर रद्द करण्यात येईल.”

(Quoted from page 41, Exhibit –A of the paper book of O.A.)

- (f) The District Sainik Board has declared that though the concerned applicants are related to Ex-servicemen, they do not withstand to the eligibility.
- (g) In view of the fact that the certificates of various appointees as dependant / ward / nominee of Ex-servicemen were invalidated, separate show cause notice dated 31.08.2013 were issued to each applicant.
- (h) The notice contained imputations namely :-
- (i) Since the appointment of applicants were conditional and if the conditions were not fulfilled, appointments would be revoked.
  - (ii) Vacancies against which Applicants were appointed were to be filled-in by appointing candidates who are eligible as laid down by the Government Resolution No. आस्टीए-१०८२. ३५०२-सीआर- १०० - १६ अ, dated 02.09.1983.
  - (iii) Applicants does not fulfill the conditions as laid down in said Government Resolution dated 02.09.1983.
- (i) Applicants were called to show cause as to why criminal case should not be filled against them for furnishing false/ wrong information/ submission of application for securing employment.
- (j) Applicants were called to show cause as to why disciplinary proceedings for misconduct should not be initiated against the Applicant in Rule 5(1)(8) of Applicant and Appeal Rules 1979.
- (k) Applicants replied the show cause notice, denied allegations and claimed as follows :-
- (i) They did not mis-represent that they are heir/ward of the dependent of Ex-servicemen.
  - (ii) They have gained permanency as they had completed probation period.

- (iii) Since Applicants have gained permanency by virtue of completion of probation, their service cannot be terminated without full-fledged disciplinary enquiry.
- (iv) Since the show cause notice attaches stigma no action should be taken without full-fledged information.
- (v) By virtue of Government Resolution dated 12.10.1993, [Exhibit P, page 274 of the paper book of O.A.] in absence of enquiry under Rule, their services cannot be terminated.
- (vi) The Applicants nos 1 to 20 applied through category of heirs of Ex-servicemen.
- (vii) The Applicant no. 21 applied through VJ(A) category.
- (viii) The applicant no. 22 applied through (S.T) category.  
Note : Father of Applicant no.s 21 & 22 is Ex-Servicemen.
- (ix) The Applicants no 23 & 24 applied through Special Category of Nominee of Freedom Fighter.
- (x) The Applicant no. 25 applied through Part Time Employee category.
- (xi) The applicant in O.A 204/2012 [Smt. S.M Bansode] applied through S.C Reserved category.
- (xii) Applicants are already overaged and now their services should not be terminated.

4. After receiving reply from the Competent Authority i.e. Respondent No.3 has issued the impugned order and terminated the services of the applicants.

5. Admittedly, full-fledged departmental enquiry as contemplated by Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, was not conducted.

6. The State has justified its action by filing detailed affidavit-in-reply by maintaining its stand, as taken in the show cause notice.

7. Applicants have challenged the show cause notice and termination, by a detailed and a long drawn O.A. The grounds on which the impugned order is challenged were summarized by submitting written note of arguments. Summary thereof is as follows:-

- (i) The applications of the applicants were scrutinized and on the same being found in order they were allowed to participate in the entire selection process. The examination consisted of written examination of 75 marks and the Interview Test of 25 marks which they passed successfully. This was followed by orders of appointment issued on 31.10.2009 and 18.11.2009 on the terms and conditions as mentioned therein with probation period of 1 year.
- (ii) 19 applicants out of 25 have left employment in the public posts and then joined the present post.
- (iii) One of the applicant by name Smt. Dhumal who was practicing Advocate left the private practice.
- (iv) Applicants are holding the posts substantively and therefore, they are protected under Article 311 of the Constitution of India, even if they are still considered by the Respondents as the temporary Government servants.
- (v) Even if the applicants are considered as temporary Government servant even then on completion of the services of 3 years that they became permanent Government servant as per the G.R dated 19.9.1975 irrespective of whether they were formally issued the permanency certificate. Hence the applicants are deemed to be permanent Government servants on completion of 3 years of service in view of judgment of the Hon'ble Bombay High Court by Hon'ble Justice S.H Kantharia, reported in 1990 [3] B.C.R 721.
- (vi) That while allowing the Review application no. 236 of 2016 in Writ Petition no. 11576 of 2014 filed by the colleague of the applicants by name Smt Kiran C. Pawar before the Hon'ble Bombay High Court at Aurangabad Bench, on 18.7.2017, recorded in para 5 of the judgment which supports the aforesaid contention of the

applicants about the Respondents requiring to initiate the disciplinary proceedings against the applicants under Rule 8 thereof.

- (vii) Since the impugned show cause notices recite that the Applicants are accused of giving wrong / false information and suppressing true information and threatening criminal proceedings against them and to remove them from service by way of punishment contemplated under Rule 5[1][viii] of the M.C.S (Discipline & Appeal) Rules, 1979. Hence impugned action is admittedly the removal from service which is a 'major penalty' and therefore the Departmental Enquiry against the applicants under Rule 8 of the said Rules is imperative. This is more so, when the aforesaid imputations constitute stigma and hence punitive in nature, in view of para 31 of judgment of the Hon'ble Supreme Court reported in 2006 S.C.C [L & S], [Page 1677], Hariram Maurya Vs. The Union of India, followed in O.A 316 of 2006, decided on 21.2.2007]. R.R Jadhav Vs. The S.P, Thane [R].
- (viii) The law is well settled in such matters where the Hon'ble Tribunal can lift the veil so as to find out whether the impugned show cause notice is founded on the alleged misconduct of the applicants.
- (ix) The applicants have not breached the condition no. 21 of the advertisement since they have not given any incorrect information or suppressed any material information while filling up the application form.

8. Learned Advocate has placed reliance on the following judgments :-

- (1) Judgment of this Tribunal dated 29.7.2016 in O.A 335/13 & Ors, Shri Subhash K. Marsale Vs. The Joint Director of Vocational Education & Training, Nasik.
- (2) Judgment of this Tribunal dated 6.8.2016 in O.A 873/2014 & Ors, Shri M.K Pokale Vs. The State of Maharashtra & Ors.
- (3) Judgment of Hon'ble Supreme Court in Shri Krishan Vs. The Kurukshetra University, Kurukshetra, AIR 1976 SC. 376.

- (4) Judgment of this Tribunal dated 20.4.2012 in O.A 62/2012, Shri Vikash K. Musale & Ors Vs. The Commissioner of Police, Pune & Ors.
- (5) Judgment of this Tribunal dated 15.4.2013 in O.A 906/2011 & Ors, Shri N.P Shendkar Vs. The State of Maharashtra & Ors.
- (6) Judgment of Hon'ble Supreme Court in G. Jayalal Vs. Union of India & Ors (2013) 2 SCC (L & S) 643.
- (7) Judgment of Hon'ble Supreme Court in B. Ramakichenin alias Balagandhi Vs. Union of India & Ors (2008) 1 SCC (L & S) 177.
- (8) Judgment of Hon'ble Supreme Court in Union of India & Ors Vs. K.P Tiwari, 2003 SCC (L & S) 1233.
- (9) Judgment of Hon'ble Supreme Court in Subhash D. Patole Vs. State of Maharashtra, Civil Appeal No 995 of 1989.
- (10) Judgment of Hon'ble Supreme Court in Abhay Kumar Singh & Ors Vs. State of Bihar & Ors, (2015) 1 SCC (L & S) 13.
- (11) Judgment of Hon'ble Supreme Court in Buddhi Nath Chaudhary & Ors Vs. Abahi Kumar & Ors, Appeal (Civil) 1397 of 2001.
- (12) Judgment of Hon'ble Supreme Court in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, JT 1989 (4) SC 541.
- (13) Judgment of Hon'ble Supreme Court in Dr M.S Mudhol & Ors Vs. S.D Halegkar & Ors 1993 SCC (L & S) 986.
- (14) Judgment of Hon'ble Supreme Court in Md. Zamil Ahmed Vs. State of Bihar & Ors (2017) SCC (L & S) 396.
- (15) Judgment of Hon'ble High Court of Judicature at Bombay, bench at Aurangabad in Machindra N. Kanade Vs. stae of Maharashtra & Ors, W.P 7195/2006.
- (16) Judgment of Hon'ble High Court of Judicature of Bombay, bench at Aurangabad in Tukaram N. Satpute & Ors Vs. State of Maharashtra & Ors, W.P 710/1983.



- (17) Judgment of Hon'ble High Court of Judicature of Bombay, bench at Aurangabad in Vivekanand G. Kare Vs State of Maharashtra & Ors, W.PO 2567/2012.
- (18) Judgment of this Tribunal dated 27.7.2015 in O.A 270/2012, Savita N. Salve Vs. M.P.S.C & Ors.
- (19) Judgment of this Tribunal dated 22.12.2014 in O.A 881/2011, Shri Pradeep A. Ambi Vs. State of Maharashtra & Ors.
- (20) Judgment of this Tribunal dated 27.8.2014 in O.A 736/2009, Shri Bhagwan A. Mahanwar Vs. The State of Maharashtra & Ors.
- (21) Judgment of Rajasthan High Court (Jodhpur) in Manish Thakur Vs. Rajasthan Public Service Commission (Raj.), S.B Civil W.PO 4742/2002.
- (22) Judgment of this Tribunal dated 8.12.2014 in O.A 653 of 2013, Ku. Kiran C. Pawar Vs. State of Maharashtra & Ors.
- (23) Judgment of Hon'ble High Court of Judicature at Bombay, bench at Aurangabad in Ms Kiran C. Pawar Vs State of Maharashtra & Ors, W.P 11576/2014.
- (24) Judgment of Hon'ble Court of Judicature at Bombay in State of Maharashtra & Ors Vs. Vasant Anant Balel, W.P 2260/2018.
- (25) Judgment of this Tribunal dated 16.3.2017 in O.A 705/2016, Smt Meena B. Sonawane Vs. The State of Maharashtra & Ors.
- (26) Judgment of Hon'ble High Court in Vaidya B. P Shah Vs. The State of Maharashtra & Ors 1990 (3) Bom. C.R 721.
- (27) Judgment of this Tribunal dated 25.9.2014 in O.A 457/2012, Shri P.P Walke Vs. The Superintending Engineer & Zonal Office, Irrigation Dept, Mumbai.
- (28) Judgment of Hon'ble Supreme Court in Hari Ram Maurya Vs. Union of India & Ors 2006 SCC (L & S) 1677.
- (29) Judgment of this Tribunal dated 21.2.2007 in O.A 316/2006, Shri R.R Jadhav Vs. The Superintendent of Police, Thane & Ors.

(30) Judgment of Hon'ble Supreme Court in Jarnail Singh & Ors Vs. State of Punjab & Ors, 1986 S.C.C (L & S) 524.

(31) Judgment of Hon'ble Supreme Court in Rekha Chaturvedi Vs. University of Rajasthan & Ors, 1993 S.C.C (L & S) 951.

9. What transpires after scrutiny of rival pleadings, is as follows :-

(a) Applicants namely:- Smt Kalpana D. Ambavale (Applicant no. 16), Ms Vaishali D. Chaudhari, (Applicant no. 23), Smt. Hallemabi Lal Khan, (Applicant no. 24) & Smt Seema B. Desai (Applicant no. 25), have not claimed as Ward/dependent of Ex-Servicemen, within the bracket as laid down in Government Resolution dated 02.09.1983.

(b) Though Respondents have strongly opposed the O.A., specific denial of various averments is not emerging from record.

10. Perused rival pleadings, written submissions and the precedents and judgments cited at bar.

11. Considering the submissions of learned Advocate for the Applicant and reply of the State which is in the nature of bare and bold denial, what transpired is as follows:-

(a) Since the applicants have gained permanency having put more than 3 years' service, and even if they are considered temporary now their services cannot be terminated by attaching stigma, without following procedure laid down in Rule 8 of Maharashtra Civil Services (Discipline and Appeal Rules) as laid down in Government Resolution dated 22.10.1983.

(b) Admittedly, though show cause notices were issued, full-fledge enquiry is not conducted.

(c) Applicants no 16, 23, 24 & 24 do not come in the category of dependent / ward / nominee of Ex-servicemen as prescribed / required in the Government decision dated 02-09-1983, yet order is passed terminating their services. Lack of advertence to these facts shows gross lack of application of mind.

(d) The facts that applicants have put in long tenure of service is not taken into account nor eloquent and reasoned order is passed.

(e) Impugned order is vitiated, since it is unreasonable on the ground that it is not eloquent as regards finding of guilt leading to stigma preceded by an enquiry being cryptic and findings on the objections raised by the Applicants are not recorded.

(f) Impugned order is contrary to law, since, it is stigmatic, yet it is passed without conducting enquiry and recording findings of facts based on proof regarding stigma.

(g) Thus by lifting veil it is liable to be held and we do it and hold that the impugned order is bad being issued without show cause notice, however, the impugned order turn out to be punitive in nature.

(h) Few amongst the Applicants no 16, 23, 24 & 25 claim that they have never applied in the quota for being dependent /ward/ nominee of Ex-servicemen of particular category. However, Respondents did not apply mind to the facts as involved and grounds as were raised by the applicants.

(i) In case it is found that the Applicants' claim cannot be considered in horizontal reservation, they could have been considered in open category, and in respective reservations on their own merit, and other vertical reservation, is totally ignored.

(j) The fact that Applicants have been deprived of fair chance of contest, in the present employment as well as elsewhere cannot lost sight of.

(k) Fact that Applicants have rendered long service i.e. about 4 years prior to the show cause notice and almost 5 more years till the O.A. came up for hearing cannot be ignored and lost sight. Hence, the Applicants are entitled for the relief.

(l) Fact that many applicants have left their employment for joining present posting would weigh in favour of protecting them on the point of view of equity.

(m) Totality of facts of case outweigh deficiencies if any in the process of appointment of applicants and equity requires that applicants' services be protected as one time measure.

12. In the result, Original Application is allowed. Applicants to be dealt with, as if they have gained permanency in view of passage of time and various other factors found and recorded in foregoing para. All show cause notices as well as impugned and termination orders are quashed and set aside.

13. Applicants be deemed to be regularly, duly and legally appointed and in continuous service.

14. Parties are directed to bear own costs.

**(A.H. Joshi, J.)**  
**Chairman**  
**10.06.2019**