

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 401 OF 2021

DISTRICT : MUMBAI

1. Shri Shrirang P. Paralkar)
Working as Statistical Assistant)
[presently out of service],)
8th floor, Administrative Bldg,)
Government Colony, Bandra [E],)
Residing at Room No. 65,)
2nd floor, Bhakti Bldg, Parel village,)
Parle, Mumbai 400 012.)
2. Shri Keshav N. Deshmukh,)
Working as Research Assistant,)
[presently out of service],)
District Statistical Office,)
New Administrative Bldg, 1st floor,)
8-B, Opp Bus Stand Buldana 443001))
R/o: C/o: Ganesh Raut,)
Macchi Layout, Yeshwant Nagar,)
Near Rameraksha English School,)
Buldana 443 001, MumbAI 400051)...**Applicants**

Versus

1. State of Maharashtra,)
Through Chief Secretary,)
Mantralaya, Madam Cama Road,)
Hut. Rajguru Square,)
Mumbai 400 032)
2. The Addl. Chief Secretary,)
Planning (Development Commissioner))
Mantralaya, Madam Cama Road,)
Hut. Rajguru Square,)
Mumbai 400 032.)
3. The Addl. Chief Secretary,)
Social Development Coordination,)
SEO-II, General Administration Dept,))
Mantralay, Madam Cama Road,)

- Hut. Rajguru Square,)
Mumbai 400 032.)
4. The Director,)
Directorate of Economics & Statistics)
8th floor, Administrative Bldg,)
Government Colony, Bandra [E],)
Mumbai 400 051.)
5. District Statistical Officer,)
New Administrative Bldg,)
1st floor, 8-B, Opp Bus Stand,)
Buldana 443 001.)...**Respondents**

Smt Punam Mahajan, learned advocate for the Applicant.

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

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

DATE : **12.08.2022**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. The applicants pray that the impugned order of termination dated 3.10.2019 be quashed and set aside and the applicant no. 1 be reinstated in service on the post of Statistical Assistant in the office of Director, Directorate of Economics and Statistics, Mumbai and applicant no. 2, to the post of Research Assistant in the office of District Statistical Officer, Buldhana with all consequential service benefits.

2. Applicant no. 1 was appointed to the post of Statistical Assistant in the office of Director, Directorate of Economics and Statistics, Mumbai by order dated 2.5.2016 and applicant no. 2

was appointed as Research Assistant in the office of District Statistical Officer, Buldhana, by order dated 29.6.2016. The services of the applicants were terminated by order dated 3.10.2019. However, after filing of the Original Applications, the applicants were reinstated by order dated 19.7.2021. During the pendency of the Original Applications the G.R dated 11.7.2019 was cancelled by G.R dated 5.7.2021.

3. The issue involved in the Original Application is pertaining to the application of the order of the Hon'ble Supreme Court in the case of Dr Jaishri Laxmanrao Patil Vs. The Chief Minister & Anr, in Civil Appeal No. 3123/2020 arising out of S.L.P (C) No. 15737/2019, which was finally decided on 5.5.2021 thereby striking down the provisions of reservation provided under The Maharashtra State Reservation (of Seats for admission in Educational Institutions in the State and for appointments in the Public Services and posts under the State) for Socially and Educationally Backward Classes (SEBC) Act, 2018 (hereinafter referred to as 'the Act').

4. The learned Presenting Officer while opposing the Original Application especially on the point of back wages and regularization from the initial date of appointment has relied on letter dated 2.2.2022 written by Shri Anand Rayte, Additional Settlement Commissioner and Additional Commissioner, Land Records, Pune to the Addl. Chief Secretary, Revenue & Forest Department, in which the concerned officer has sought the directions/guidance from the State as to what action is to be taken in respect of the service of the applicants in view of the judgment of the Hon'ble Supreme Court dated 5.5.2021 in Dr Jaishri Laxmanrao Patil Vs. The Chief Minister & Anr, in Civil Appeal No. 3123/2020 arising out of S.L.P (C) No. 15737/2019, and also

consider the appointments made by the Respondent-State of S.E.B.C candidates and the termination of the applicants to accommodate them. Learned P.O has submitted that it is a matter of policy decision and therefore, it is to be kept pending.

5. At the outset, we make it clear that it is not a issue of policy decision but it is very much about the implementation of the orders passed by the Hon'ble Supreme Court, when the Hon'ble Supreme Court has struck down the reservation based on the said Act and so also the implementation of the interim order passed interregna. The judgment of the Hon'ble Supreme Court dated 9.9.2020 while referring the matter to the larger Bench and so also the judgment of the Hon'ble Supreme Court dated 5.5.2021 finally deciding the issue is very clear on this point.

6. Earlier similar issue has cropped up before this Tribunal in O.A No 994/2019, Shri Sandeep A. Narawade Vs. State of Maharashtra & Ors, which was allowed by order dated 3.11.2020. We rely on the same judgment. The Hon'ble Supreme Court by order dated 12.7.2019 in the matter of Dr Jaishri Patil (supra) by issuing the interim order directed that the order of the Hon'ble High Court for the reservation in question shall not have any retrospective effect. Admittedly the applicants were appointed on 2.5.2016 and 29.6.2016, prior to the order dated 12.7.2019 of the Hon'ble Supreme Court in Dr Jaishri Patils case (supra) and the services of the applicants were terminated by order dated 3.10.2019, i.e. after the protection granted by the Hon'ble Supreme Court by order dated 12.7.2019.

7. We reproduce the relevant paragraphs where these issues were discussed with reference to the order of the Hon'ble Supreme Court and the Hon'ble High Court:-

6. All the facts in the present case are undisputed. The order passed by the Hon'ble High Court dated 27.06.2019 in P.I.L.No.175 of 2019 upholding validity so also the order passed by the Hon'ble Supreme Court on 12.07.2019 and 09.09.2020 in Special Leave to Appeal (C) No(s).15737/2019 in the case of **Jaishri Laxmanrao Patil vs The Chief Minister** staying the said order of the Hon'ble Bombay High Court are well within the knowledge of the Respondents. In view of this, no discussion or decision is required. It is the matter of obeying and implementing the order of the higher and highest judicial authority. The law laid down by the Tribunal and the orders of the Hon'ble High Court and Supreme Court are binding on all authorities including the Government and everybody covered under such orders are statutorily obliged to obey and implement those orders.

7. For the purpose of ready reference the respective orders of the Hon'ble High Court and the Supreme Court which were passed after the judgment dated 27.06.2019 by the Hon'ble High Court in P.I.L.No.175 of 2019 are to be taken into account to make the exact position of the reservation clear in respect of the posts and appointments in the Government service in respect of reservations policy of the State of Maharashtra, in respect of S.E.B.C Act of 2018. The challenge given to the judgment of the Hon'ble High Court upholding the validity of S.E.B.C. Act and the percentage therein is pending. The said judgment is pending before the Hon'ble Supreme Court. However, in between the interim orders are passed by the Hon'ble High Court in Writ petition No.10547 of 2019 dated 11.11.2019. And thereafter the Hon'ble Supreme Court in Special Leave to Appeal (C) No(s).15737/2019 by its order dated 12.07.2019, has passed the following

“We have heard learned counsel for the parties, we make it clear that the action taken pursuant to the order of the High Court shall be subject to the result of the special leave petitions. However, we make it clear that the order of the High Court or the reservation in question shall not have any retrospective effect.”

8. Thereafter the Hon'ble Supreme Court by order dated 09.09.2020 has referred the said Appeals to Larger Bench for the substantial question to law as to the interpretation of the Constitution of India is involved. However, in the said order in operative portion 'C' has passed this order.

“(C) Appointments to public services and posts under the Government shall be made without implementing the reservation as provided in the Act.”

9. In the order dated 12.07.2019 the Hon’ble Supreme Court has especially and unequivocally directed that no retrospective effect to the order of the Hon’ble High Court or the reservation in question be given. Thus, no ambiguity is left by the Hon’ble Supreme Court that the judgment passed by the Hon’ble High Court should not be implemented or is not applicable and has no effect on appointments made or postings given earlier before the date of the judgment of the Hon’ble High Court.

13. Thus, the respondents have completely ignored to obey and implement the interim orders passed by the Hon’ble High Court and the Hon’ble Supreme Court in respect of applicant who is directly covered and is beneficiary of the said order. It is most unfortunate to come across such stark disobedience of the order of the Hon’ble Supreme Court and also the Hon’ble High Court under the pretext of feigned ignorance. The case of the applicant is to be treated at par with the other persons who are working on the same posts of Peon in other Division, because all the respondents cover under one umbrella of Respondent No.1 i.e. State of Maharashtra. There should be equal treatment to the applicant and the other persons who are working as Peons in the other divisions. As the orders and the interim orders of the Hon’ble Supreme Court and the Hon’ble High Court are binding to be interpreted, implemented and obeyed by all the divisions working under the State of Maharashtra, no division can claim exception as everybody is covered under the hierarchy and the rule of law laid down in the Constitution of India. Hence, the Applicant has every right to claim the equal treatment under Article 14 of the Constitution of India and this discrimination is illegal.

8. The applicants further pray that they be granted all pecuniary benefits and the seniority from the initial date of their appointment and they also claim back wages for the period when their services were terminated. On the point of back wages, learned counsel for the applicants relied on the judgment of the Hon’ble

Supreme Court in the case of SHIV NANDAN MAHTO Vs. STATE OF BIHAR & ORS, (2013) 11 SCC 626. The appellant in the said matter who was appointed as Clerk in the School was inadvertently shown as Librarian which post in fact was not approved. The situation occurred that due to lack of vacancy of Clerk the appellant was not posted in any School for some time and he did not receive the salary of some period. So he filed Writ Petition with a prayer of reinstatement in service with consequential benefits. The appeal was dismissed by the Hon'ble High Court in limine on the ground relying on the principle of "no work no pay". The Hon'ble Supreme Court set aside the order of the Hon'ble High Court on the ground that the appellant was kept out of service due to the mistake and he was not kept out of service on account of suspension. It also held that the appellant could not have been denied the benefits of back wages on the ground that he had not worked for the period when he was illegally kept out of service.

9. In the present case, though there was order of the Hon'ble Supreme Court dated 12.7.2019 that the order of the Hon'ble High Court for the reservation in question shall not have any retrospective effect, the services of the applicants were terminated by order dated 3.10.2019, on the ground of G.R dated 11.7.2019. The said G.R was also subsequently cancelled by the Respondent-State as it was erroneously issued. However, the services of the applicants were terminated and they were kept out of service for no fault of them.

10. In view of the above, we pass the following order:-

- (a) The Original Application is allowed.
- (b) The applicants are entitled to back wages when they were not in service. Their services are to be treated as continuous

from the date of their initial appointment for all purposes including pensionary benefits.

- (c) The said order is to be implemented within 3 months from the date of this order.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai

Date : 12.08.2022

Dictation taken by : A.K. Nair.