

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NOS 723, 724 & 726 OF 2016

DISTRICT : THANE

1) ORIGINAL APPLICATION NO. 723 OF 2016

Shri Sadanand V., Thakurdesai)
Working as Inspector, in the office of)
Respondent no. 1, now transferred to)
The office of Public Trust Registration)
Office, Nasik.)
R/o: 403-A, Shiv Park, Anantnagar,)
Badlapur [E], Thane.)...**Applicant**

Versus

1. The Charity Commissioner, [M.S])
Mumbai, having office at 3,)
Annie Besant Road, Worli,)
Mumbai 400 018.)
2. Smt A.A Haldankar,)
Govt. service as Superintendent,)
Office of the Charity Commissioner,)
M.S, Mumbai.)
office at 3, Annie Besant Road,)
Worli, Mumbai 400 018.)
3. The State of Maharashtra,)
Through Principal Secretary,)
Law & Judiciary Department,)
Having office at Mantralaya,)
Mumbai 400 032.)...**Respondents**

2) ORIGINAL APPLICATION NO. 724 OF 2016

Shri Eknath Jairam Barshinge)
 Working as Inspector, in the office of)
 Charity Commissioner, M.S, Mumbai.)
 3, Annie Besant Road,)
 Worli, Mumbai 400 018.)
 now transferred to the office of Public)
 Public Trust Registration, Pimplake)
 Complex, Sakri Road, Dhule.)
 R/o: 95/55, B.D.D Chawl, Worli,)
 Mumbai 400 018.)...**Applicant**

Versus

1. The Charity Commissioner, [M.S])
 Mumbai, having office at 3,)
 Annie Besant Road, Worli,)
 Mumbai 400 018.)
2. Shri D.T Jagtap ,)
 Govt. service as Superintendent,)
 Office of the Charity Commissioner,)
 M.S, Mumbai.)
 office at 3, Annie Besant Road,)
 Worli, Mumbai 400 018.)
3. The State of Maharashtra,)
 Through Principal Secretary,)
 Law & Judiciary Department,)
 Having office at Mantralaya,)
 Mumbai 400 032.)...**Respondents**

3) ORIGINAL APPLICATION NO. 726 OF 2016

Shri Vijakumar Sadashiv Dhainje)
 Working as Inspector, in the office of)
 Joint Charity Commissioner,)
 Janaki Plaza, Dwarka, Nasik.)
 R/o: Jehan Delight Gulmohar Vihar)
 Colony, Anandwalishivar, Nasik-7.)...**Applicant**

Versus

1. The Charity Commissioner, [M.S])
 Mumbai, having office at 3,)
 Annie Besant Road, Worli,)
 Mumbai 400 018.)
2. Shri A.S Khairkar,)
 Govt. service as Superintendent,)
 Office of the Deputy Charity)
 Commissioner, Office at Lily Apt,)
 Opp. Parsi Agyasi, Tembhi Naka,)
 Thane-1.)
3. The State of Maharashtra,)
 Through Principal Secretary,)
 Law & Judiciary Department,)
 Having office at Mantralaya,)
 Mumbai 400 032.)...**Respondents**

Shri B.A Bandiwadekar, learned advocate for the Applicants.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

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

DATE : 31.07.2023

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. All these matters are of similar nature and therefore they are heard together and disposed of by a common order.

2. The applicants have challenged the order dated 20.5.2016 passed by Respondent no. 1, under which they are all denied the promotion to the post of Superintendent/Public Relation Officer from the post of Accountant/Judicial Clerk/Sheristedar/Inspector. They all pray that they be granted deemed date of promotion with all consequential service benefits. The applicants further pray for upgradation of placement in the seniority in the order of promotion. The applicants also challenge the charge sheet dated 13.5.2016 initiating departmental enquiry and they also pray that the Tribunal be pleased to hold and declare that the Respondent no. 1, be directed to consider the suitability of the applicants for promotion in the D.P.C meeting as on 17.5.2016, to the post of Superintendent/Public Relation Officer as and when they are clear and permanent vacancies.

3. Learned counsel for the applicants have submitted that all the applicants are employees working in the office of the Charity Commissioner, Respondent no. 1, and the applicants were not considered for promotion on the ground that the departmental enquiry was pending against them. Learned counsel further submitted that the charge sheet dated 13.5.2016 was served on the applicants, that is just a week before the date of the meeting of the D.P.C. Thus, the names of the applicants were not

considered. However, earlier there were no departmental enquiry nor any allegations of misconduct against the applicants. Learned counsel submitted that the applicants were entitled to be considered in the D.P.C meeting for promotion. Learned counsel further pointed out that the departmental enquiry involving the applicants was finally concluded on 20.3.2017 and they are held guilty. The learned counsel further argued that though the applicants are held guilty in the department enquiry in the year 2017, the Tribunal should consider the situation erstwhile when the D.P.C meeting was conducted and on the relevant date the case of the applicants were pending. Learned counsel also objected that the decision in the D.P.C meeting is not taken by the competent authority. Learned counsel has relied on the Circular dated 2.4.1976 and G.R dated 22.4.1996.

4. Learned C.P.O for the Respondents while opposing the Original Application relied on the affidavit in reply dated 7.9.2016 filed by Sakalesh V. Pimple, Assistant Charity Commissioner, in the office of the Charity Commissioner, M.S, Mumbai and also affidavit in reply dated 20.7.2023 filed by Smt Rani Prabhakar Mukkawar, Assistant Charity Commissioner, in the office of the Charity Commissioner, M.S, Mumbai. Learned C.P.O has submitted that the minutes of the D.P.C meeting dated 17.5.2016 are placed on record and that the D.P.C has taken a conscious decision after considering the case of all the three applicants independently and there is a list of candidates who are not entitled to be granted promotion wherein the names of all the three applicants are mentioned. Thus, the Committee has taken a conscious decision considering the nature of misconduct by the applicants. The Committee consisting of the Competent Authority, i.e., the Charity Commissioner. Learned C.P.O submitted that the Charity Commissioner, as the Competent Authority has acted in a

dual capacity as Chairman of the Departmental Promotion Committee. Learned C.P.O further submitted that at the time of filing the affidavit in reply dated 7.9.2016, the further developments were not mentioned. There is a specific mention of the meeting of the D.P.C. However, now the Disciplinary Authority has concluded in the year 2017 that all the applicants are held guilty and out of the three applicants, Mr S.V Thakurdesai, applicant in O.A 723/2016 is compulsorily retired, Mr E.J Barshinge, applicant in O.A 724/2016 is removed from service and Mr V.S Dhainje, applicant in O.A 726/2016 is reverted and subsequently he retired. Learned C.P.O submitted that the appeal preferred by applicant Mr Thakurdesai in O.A 723/2016 is still pending before the Appellate Authority, appeal filed by applicant Mr Barshinge in O.A 724/2016 is confirmed by the Disciplinary Authority and the Mr Dhainje, applicant in O.A 726/2016 has not filed any appeal.

5. We have considered the relief prayed by the applicants and the further developments. The prayers are related to the promotion. Thus, the reasons for not considering the applicants eligible for promotion as per the minutes of the D.P.C meeting is their involvement in illegal activities like strike, giving slogans, speeches against the establishment. The Circular dated 2.4.1976 was issued by the General Administration Department in respect of the procedure to be followed in the case of persons whose conduct is under investigation and against whom departmental enquiry is pending. Clause no.3, of the Circular is pertaining to interim promotion during the pendency of the proceedings. Thus, in the D.P.C meeting if a person is found fit and his name is included provisionally in the select list and if he or she is under suspension, then such persons shall not be promoted. However, the decision in other cases where the persons are not under suspension, it is

the competent authority who is empowered to take a conscious decision, considering the nature of the charges levelled against the persons. Relevant clause 3(b) of the Circular dated 2.4.1976 is reproduced below:-

“3. Interim promotion during the pendency of the proceedings.

(b) In respect of a person who is not under suspension, the competent authority should take a conscious decision, after taking into consideration the nature of the charge levelled whether the person should be promoted without waiting for the conclusion of the enquiry. If it is decided that he should be so promoted such promotion will be provisional and will be reviewed on the conclusion of the investigation or enquiry.”

6. In the present case, the challenge was given to the competency of the Departmental Promotion Committee as the D.P.C is not the Competent Authority to take decision in view of the Circular dated 2.4.1976. However, as pointed out by the learned C.P.O that the Competent Authority is the Charity Commissioner himself and the name of the Charity Commissioner is appearing as one of the five Members who is the Chairperson himself of the Departmental Promotion Committee. Thus, the Charity Commissioner has acted in a dual capacity as the Competent Authority and also the Chairperson of the Departmental Promotion Committee. Therefore, the opinion of the D.P.C of not considering the name of the applicants for promotion to the post of Superintendent/Public Relation Officer in view of the charges levelled against them cannot be faulted.

7. Moreover, the applicants are held guilty in the departmental enquiry and they are given different punishments which are mentioned above. The appeal filed by applicant Mr Thakurdesai in

O.A 723/2016 is still pending before the Appellate Authority, appeal filed by applicant Mr Barshinge in O.A 724/2016 is confirmed by the Disciplinary Authority and the Mr Dhainje, applicant in O.A 726/2016 has not filed any appeal.

8. Learned counsel for the applicant Mr Bandiwadeakr submitted that applicant Mr Barshinge in O.A 724/2016, has prayed that this bench should recuse from hearing the said matter. We have earlier also come across the same request made in O.A 1064/2016 and he has expressed apprehension that he was harassed by the Charity Commissioner and apprehended the same treatment from the Tribunal. We have considered his grievance and apprehension. However, it does not reveal any bias against the judicial authority and therefore though he may have this apprehension in mind, we do not find that it is a good ground to recuse. Therefore, we refused to recuse from the matter and rejected the same by order dated 13.6.2023.

9. Thus, in view of the fresh developments, we are of the view that the decision of the Respondents in not promoting the applicants to the post of Superintendent/Public Relation Officer on the ground of pending departmental enquiry is correct.

10. We, therefore, do not find any merit in the Original Applications and they stand dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai

Date : 31.07.2023

Dictation taken by : A.K. Nair.