

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**O.A.No.775/2022 with O.A.No.776/2022 with
O.A.No.777/2022 with O.A.No.778/2022 with
O.A.No.779/2022 with O.A.No.790/2022 with
O.A.No.791/2022 with O.A.No.793/2022 with
O.A.No.796/2022 with O.A.No.830/2022**

1. ORIGINAL APPLICATION NO. 775 OF 2022

Vijay R.Sarole)
Occ – Service, R/o: At Post-Andhori,)
Tal-Ahmedpur, Dist-Latur.)...Applicants
Vs.
1. The Superintendent of Police,)
Latur, Dist-Latur.)
2. The Additional Director General)
of Police, [Training and Special Unit])
M.S, Mumbai, having office at)
Director General and Inspector)
General of Police, M.S, Mumbai,)
Old Council Hall, S.B Hall,)
Mumbai 400 039.)
3. Dhanraj D. Shinde)
R/O : At Dagal, Post Sawagi Mali,)
Ta;-Mehkar, Dist-Buldhana.)...Respondents.

2. ORIGINAL APPLICATION NO. 776 OF 2022

Sumit K. Rathod)
Occ – Service, R/o: Mandwa,)
Post-Wanola, Tal-Mahur, Dist-Nanded)...Applicants
Vs.
The State of Maharashtra & Ors)...Respondents.

3. ORIGINAL APPLICATION NO. 777 OF 2022

Shrikrushna N. Damre)
Akola.)...Applicants
Vs.
The State of Maharashtra & Ors)...Respondents.

4. ORIGINAL APPLICATION NO. 778 OF 2022

Shankar B. Survase)
 Parbhani.)...Applicants
 Vs.
 The State of Maharashtra & Ors)...Respondents

5. ORIGINAL APPLICATION NO. 779 OF 2022

Sham L. Takle)
 Nanded.)...Applicants
 Vs.
 The State of Maharashtra & Ors)...Respondents

6. ORIGINAL APPLICATION NO. 793 OF 2022

Mahadeo D. Patil)
 Kolhapur)...Applicants
 Vs.
 The State of Maharashtra & Ors)...Respondents

7. ORIGINAL APPLICATION NO. 796 OF 2022

Vijay A. Bhowad)
 Ratnagiri)...Applicants
 Vs.
 The State of Maharashtra & Ors)...Respondents

8. ORIGINAL APPLICATION NO. 830 OF 2022

A.B Pakhare & Ors)...Applicants
 Vs.
 The State of Maharashtra & Ors)...Respondents

Mr. Akash Reddy, learned Advocate i/b Mr. Talekar, learned Counsel for the Applicants in O.A.No.775/2022, O.A.No.776/2022, O.A.No.777/2022, O.A.No.778/2022, O.A.No.779/2022, O.A.No.793/2022 & O.A.No.796 /2022.

Mr. P. Avhad, learned Advocate along with Ms. Naval, learned Advocate for the Applicants in O.A.No.790/2022 and O.A.No.791 /2022.

Ms. Amrita Chaware, learned Advocate for Respondent No.4 in O.A.No.777/2022.

Mr. Bhushan A. Bandiwadekar, learned Advocate for the Respondent No.3 & 4 in O.A.No.775/2022 & O.A.No.776/2022 and

for Respondents No.4 & 9 in O.A.No.790/2022, and for Respondents No.4 & 5 in O.A.No.791/2022

Mr. S.S. Dere, learned Advocate for Respondents No.4 in O.A.No.778/2022 & O.A.No.779/2022, and for Respondents No.5 & 6 in O.A.No.790/2022.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

**CORAM : JUSTICE MS. MRIDULA BHATKAR, CHAIRPERSON
MS. MEDHA GADGIL, MEMBER(A)**

DATE : 20.12.2022

PER : JUSTICE MS. MRIDULA BHATKAR, CHAIRPERSON

J U D G M E N T

1. The order of termination dated 28.07.2022 passed by the Respondent-State, is challenged wherein two orders i.e., first order of M.A.T. Nagpur Bench dated 31.03.2022 and the second order dated 11.04.2022 passed by M.A.T., Mumbai bench are referred. It is prayed in all these applications that those two orders are to be recalled.

2. Learned Advocates Mr. Dere and Mr. Bandiwadekar have raised objection on the point of jurisdiction and maintainability that the applicants in O.A.No.790/2022 and O.A.No.791/2022 were not given appointment letters therefore they have no locus. These applicants were not appointed and it is not demonstrated how one respondent will go and one applicant will be appointed. Therefore, they cannot have locus to come before the Tribunal. They submit that the order of termination refers to the order of the Nagpur Bench and therefore this issue cannot be dealt with by the Mumbai Bench.

3. Learned Advocate Mr. Talekar on the point of power of the Principal Bench to recall the orders passed by the other Benches. He has submitted that unless both the orders are recalled, the applicants are unable to get the relief regarding termination of the order, when the termination order is passed as a effect of these two orders. Even if one order is cancelled, the other order remains in force, the effect is the same. Mr Talekar further has submitted that the applicants were not heard and they are affected parties and on that ground the order be recalled.

4. Learned Advocate Ms. Chaware has submitted that in O.A.No.777/2022 Applicant and Respondent No.4 both are not from Mumbai. They are covered under the order passed by the Nagpur Bench. They are from Bhandara District. Respondent No.4 was never a party to the litigation. Therefore the issue of maintainability on the point of territorial jurisdiction is raised.

5. At the very outset we make it clear that the applications are not under the review under Section 114 / Order 47 of the Civil Procedure Code, but learned Advocate Mr. Talekar seeks to recall the order dated 11.04.2022 passed by us and also wants to recall the order of the Tribunal of Nagpur Bench dated 31.03.2022. We make it clear that we have no hesitation to hold that we have power to recall the said order under Section 151 of CPC read with Section 22 of the Administrative Act. If, we find that it is necessary to consider it in the interest of justice and so we raised the very important query to Mr. Talekar, whether we have power to call the order passed by the other Bench as we are, from the beginning, of the view that one Bench has no power to recall the order of the other Bench. Learned Advocate Mr. Talekar relied on the judgments of Hon'ble Supreme Court on this issue.

- (a) Budhai Swain & Ors. Versus Gopinath Deb & Ors (1994) 4 SCC 396.
- (b) Asit Kumar Kar Versus State of West Bengal & Ors (2009) 2 SCC 703.
- (c) Malthesh Gudda Pooja Versus State of Karnataka & Ors. (2011) 15 SCC 330.
- (d) Shaikh J. Abbas Versus Union of India & Ors.

6. In the case of **Budhia Swain (supra)**, the Hon'ble Supreme Court held that the Tribunal or Court may recall the earlier order made by it on the ground that the order passed by OEA Collector, recalling the order, that no prior notice was published and no notice was served in accordance with law before settling the land in favour of the Respondent. In this case, the Lordships have relied on the ratio laid down in the case of **A.R Antulay Vs. R.S. Nayak (1998) 2 SCC 602**, and so also relied on the judgment in the case of **Indian Bank Vs. Satyam Fibers (India) (P) Ltd, (1996) 5 SCC 550**. The Hon'ble Supreme Court has held that the courts have inherent power to recall and set aside an order if:-

- (i) obtained by fraud practiced upon the court,
- (ii) when the court is misled by a party; or
- (iii) when the court itself commits a mistake which prejudices a party.

The Hon'ble Supreme Court further in **Budhia Swain's case (supra)** held that no case was made out for recalling the order of settlement. It has laid down following situations under which the order can be recalled:-

“8. *In our opinion a tribunal or a court may recall an order earlier made by it if*

- (i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent.*

(ii) *there exists fraud or collusion in obtaining the judgment.*

(iii) *there has been a mistake of the court prejudicing a party, or*

(iv) *a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died on the estate was not represented.*

The power to recall a judgment will not be exercised when the ground for reopening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of judgment may be lost by waiver, estoppel or acquiescence.”

7. In the case of **Asit Kumar Kar (supra)**, where the Hon'ble Supreme Court held that:-

“It is a basic principle of justice that no adverse orders should be passed against a party without hearing him”.

8. Mr Talekar, learned counsel for the applicants in respect of reviewing the order of one Bench passed by other bench, relied on the decision of the Hon'ble Supreme Court in the case of **Malthesh Gudda Pooja (supra)**. It is not supporting the case of Mr Talekar, because firstly the present application moved by Mr Talekar is not a review application under Section 11, Order 47 of the CPC. It is an application for recalling. The Hon'ble Supreme Court in the said case have specifically held that the bench which has heard the matter earlier, the same Judges of the said Bench heard the review application or at least it should be heard by a Bench consisting of one of the previous judges and it is in the interest of justice and consistency in judicial pronouncement and maintaining judicial traditions.

In ***Shaikh J. Abbas Vs. Union of India***, the Hon'ble Supreme Court held that whenever an application under Section 19 of the Administrative Tribunals Act is filed and question involved in the said application is concluded by earlier decision of the Tribunal, then the law of precedent is applicable. If at all Tribunal is descending with the earlier judgment, then the matter can be referred to the larger bench to examine the correctness of the earlier decision.

9. None of these judgments answered our query. In these judgments of Hon'ble Supreme Court has stated that the power of recall vests in the Court who passes the order, therefore in all these cases we are going to deal with the order dated 11.04.2022 which was passed by this Division Bench at Mumbai and we are not going to deal with the order dated 31.03.2022 passed by the Nagpur Bench. True that the order of termination which is under challenge has made reference of both the orders and therefore even if one order is recalled other order is in existence, so it will not be able to fetch the same relief which is expected by the applicants. However, legally we do not have power to recall the order passed by the other Bench. We can deal with the order passed by us only. So applicants will have to approach the Division Bench of the Tribunal at Nagpur for the purpose of recalling the order.

10. Learned Advocate Mr Awhad with Ms. Naval submits that though the applicants in O.A.No.790/2022 and O.A.No.791/2022 were not appointed but their names appeared in the select list and the Respondents who have appeared in two places were given appointment orders, thus these applicants were deprived of their appointments though they were in merit. The Respondents have deliberately given different information while filling up two applications.

11. Learned Advocate Ms. Chaware pointed out that in O.A.No.777/2022 there is only one applicant and he is against Respondent No.4. She submits that the case of the applicant is covered by order dated 31.03.2022 passed by the M.A.T. Nagpur Bench.

12. There are in all 10 matters in this Group of matters on the ground of maintainability on territorial jurisdiction. The applicants in O.A.Nos.776, 777, 778 & 779/2022 are covered under the territorial jurisdiction of Nagpur.

13. Learned C.P.O. submits that O.A.Nos.775, 790, 791, 793, 796 & 830 of 2022 are maintainable as they are within the jurisdiction of the Tribunal at Mumbai. Learned C.P.O. filed short affidavit-in-reply dated 16.12.2022 in O.A.No.790/2022 & O.A.No.791/2022 on behalf of Respondent through Mr. Mahendra Balkrishna Pednekar, working as Sr. Office Superintendent in the office of Director General of Training and Special Units, Mumbai thereby stating the names of the applicants who are within the jurisdiction of this Tribunal.

14. Now the judgment and order dated 5.5.2022 in O.A nos 411/2022 & Ors passed by the Maharashtra Administrative Tribunal, Aurangabad Bench, in a group of matter addressing the same issue is also placed before us.

15. From the submissions made by the learned counsel for the applicants, undoubtedly the applicants were not party in the earlier matters, in O.A 144/2022 and ors. Thus, in view of the principles of natural justice i.e., audi alterm partem, we need to hear the applications and in the interest of justice, we are of the view that it is necessary to recall the order passed in all these matters.

16. Hence, we pass the following order:-

- (a) The order dated 11.4.2022 in O.A 144/2022 and ors is recalled and all the matters are restored to the original file.

Sd/-
(Medha Gadgil)
Member(A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

akn/prk