

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**


ORIGINAL APPLICATION NO.208 OF 2015

DISTRICT : PUNE

Shri Bharat Dattatraya Golellu.)
Age : 42 yrs., Occ. : Nil,)
(Ex. Sr. Clerk) in the office of the Director)
Of A.T.M.A, having office at Krushi)
Bhavan, N.T. Wadi Shivaji Nagar,)
Pune – 5 and residing at Punyadhaam)
Society, Vadgaon, Sheri, Pune – 14.)
Address of Service of Notice :)
Shri A.V. Bandiwadekar, Advocate,)
Having Office at 9, “Ram-Krishna”,)
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)...**Applicant**

Versus

1. The Divisional Joint Director)
Agriculture, Pune Division, Pune)
Having office at “Krushi Bhavan,)
N.T. Wadi Shivaji Nagar, Pune – 5.)
2. The Commissioner for Agriculture,)
(M.S), Pune – 1, having office at)
Agriculture Commissionerate,)
Pune – 1.)...**Respondents**



Shri A.V. Bandiwadekar, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 06.04.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. The services of the Applicant as Senior Clerk came to be terminated (सेवा संपुष्टात आणण्यात येत आहे.) by the order dated 31.7.2014 which order came to be confirmed in the administrative appeal on 19.12.2014. The allegations were that the Applicant failed to submit Caste Validity Certificate. Stung thereby, the Applicant is up before us in this Original Application (OA).

2. We have perused the record and proceedings and heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

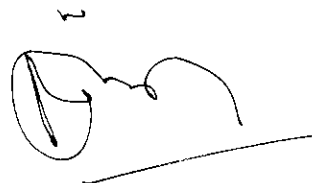
3. The Applicant came to be appointed directly through Regional Sub-Service Selection Board, Pune on the post of Senior Clerk under the Respondent No.2. The order



in that behalf is dated 29.06.1998. He came to be appointed in a post reserved for Scheduled Tribe. The Respondents from time to time asked the Applicant to produce Caste Validity Certificate which according to the Respondents, the Applicant did not comply with. Ultimately, the departmental enquiry came to be initiated and the disciplinary authority accepted the report of the Enquiry Officer and in exercise of the powers conferred on him, the services of the Applicant were terminated in the manner indicated at the outset. The appeal thereagainst was also dismissed.

4. In fact, after having gone through the record in the light of the submissions made at the Bar before us, we find that even as the Applicant may have raised several points, this OA admits to its decision on a very short but momentous point from which we do not think the Respondents have any escape route.

5. A G.R. came to be issued on 18th May, 2013 which was when the DE against the Applicant was still pending, the same having been decided on 31.7.2014. A copy thereof is at Exh. 'D' (Page 34 of the paper book). The said G.R. opens with the preface expressing regret that despite repeated reminders, the employees belonging to the

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reserved category did not submit the relevant documents. The provisions of Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 came into effect from 18.10.2001. In that respect, the G.R. under consideration refers to Section 6 thereof. It was further provided that those employees who had not till then submitted their case for verification by the Scrutiny Committee should do so by 31.07.2013 and should submit the acknowledgement to their Office. Now, by a G.R. of 30th July, 2013, the date came to be extended to 30th September, 2013 for compliance as above. It must, therefore, follow that those employees belonging to Reserved Category, who did not till then submit their cases to the Scrutiny Committee should do so latest by 30th September, 2013. The record shows that the present Applicant did so although he did so almost on the eve of the dead line.

6. That being the state of affairs, legally it was not open to the authorities below to take any extreme action against the Applicant. The record shows further that till date a final outcome of the move of the Applicant before

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the Caste Verification Committee is still pending. It is clear that even the disciplinary authority could not have taken any adverse decision. However, the position with regard to the appellate authority is still clearer as far as we are concerned though adverse to the Applicant. The perusal of the order of the appellate authority (Page 22 of the P.B.) would show that he was made aware of the fact that the case of the Applicant was properly submitted to the said Committee, and therefore, he was told to cancel the order of the disciplinary authority. In a subsequent Paragraph, the appellate authority has quite clearly not applied his mind at all and ritualistically observed that the appointment of the Applicant was after 15.6.1995 and so saying, the formal seal of approval to the order of the disciplinary authority was made. This quite clearly is erroneous.

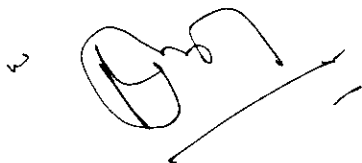
7. In **Writ Petition No.9473/2014 (Mrs. Ruchira M. Bende Vs. The State of Maharashtra and 2 others, dated 13th January, 2015)** (Exh. 'H', Page 78 of the P.B.), a Division Bench of the Hon'ble Bombay High Court decided a matter which was almost like the present one with the difference that there the employer was Zilla Parishad. But then, the principles underlying the conclusions were such as to be fully applicable hereto as



well. Their Lordships referred to an earlier judgment of a Division Bench of the Hon'ble Bombay High Court in Writ Petition No.8133/2014, dated 29th September, 2014 and as a first limb, it was held that the Chief Executive Officer of Zilla Parishad was not empowered to terminate the services of the Petitioner of the Hon'ble High Court. But thereafter it was clearly observed as follows :

“6. The Chief Executive Officer, Zilla Parishad is not conferred with the power to terminate the services of the Petitioner before the Caste Verification Committee exercises its jurisdiction and passes final order on the proposal forwarded to it. As the proposal is still pending before the Committee, the order passed by the Chief Executive Officer, Zilla Parishad requires interference. It seems that as the Petitioner was not co-operating in forwarding necessary documents to the Chief Executive Officer for sending it to the Committee for verification, the Chief Executive Officer, as a last resort had passed an order terminating the services of the Petitioner. But the facts remains that the order needs to be passed in accordance with the power conferred by the statute and in consonance with the settled principles of law. On this touch-stone the impugned order cannot be sustained.”

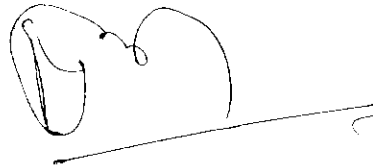
8. The above passage from the judgment of the Hon'ble High Court is fully applicable hereto and it must result in success in so far as the Applicant is concerned. A

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G.R. came to be issued by G.A.D. on 21st October, 2015. That pertains to the employees belonging to the Scheduled Tribes who secured appointment on the basis of what can be described as 'failed certificates'. There is a reference to earlier G.Rs and then in Para 5, the following is provided :

“५. दिनांक ४/३/२०११ च्या शासन निर्णयान्वये तत्कालीन मा. मंत्री (महसूल) यांच्या अध्यक्षतेखाली गठित केलेल्या मंत्रीगटाचा अहवाल प्राप्त झाला आहे. सदर मंत्रीगटाच्या शिफारशीच्या अनुषंगाने कार्यवाही करण्याची बाब शासनाच्या विचाराधीन आहे. यास्तव तत्कालीन महसूल मंत्री, यांच्या अध्यक्षतेखाली नेमलेल्या मंत्री गटाने सादर केलेल्या अहवालासंदर्भात शासनाचा पुढील निर्णय होईपर्यंत, दिनांक १५/६/१९९५ नंतर दिनांक १७/१०/२००१ पर्यंत, या कालावधीत अनुसूचित जमातीच्या प्रमाणपत्राच्या आधारे शासन सेवेत नियुक्त झालेल्या ज्या कर्मचा-यांचे जात प्रमाणपत्र अवैध ठरले आहे किंवा ज्या कर्मचा-यांनी जात वैधता प्रमाणपत्र अद्यापपर्यंत सादर केलेले नाही, अशा कर्मचा-यांना शासन सेवेतून निलंबित करण्यात येऊ नये अथवा त्यांच्या सेवा समाप्त करण्यात येऊ नये.”

9. Thus, examine it from any angle and it is very clear that the action against the Applicant by both the orders herein impugned is unsustainable. Had we decided to hold that some action in accordance with our findings should be taken by the authorities below, then maybe it would have been necessary for us to remit the matter back. However, now that the impugned orders just cannot stand in view of the provisions of the G.Rs above quoted and the



judgment of the Hon'ble Bombay High Court, we do not consider it necessary to adopt that course of action.

10. We may, however, make it very clear that we are deciding this OA at this stage, when the case of the Applicant is still under consideration of the Caste Verification Committee. In case, the Certificate of the Applicant were to fail, the Respondents will no doubt have a power to proceed in accordance with the Rules bearing in mind, the principles of natural justice.

11. In view of the foregoing, both the orders herein impugned are quashed and set aside. For the reasons mentioned above, the Applicant is directed to be reinstated to the post from which he was terminated by the impugned order within a period of six weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
06.04.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
06.04.2016

Mumbai

Date : 06.04.2016

Dictation taken by :

S.K. Wamanse.