

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 406 of 2023 (SB)**

Nilesh Arvind Pande,
Age-44 years, Occ- Service,
R/o Bhivapur Colony, Sai Nagar,
Behind HDFC Bank, Badnera Rd., Amravati.

Applicant.

Versus

1. The State of Maharashtra,
Through Its Secretary,
Department of Medical Education and drugs,
Mantralaya, Mumbai- 32.
2. The State of Maharashtra,
Through Its Secretary,
Department of Animal Husbandry,
Mantralaya, Mumbai-32.
3. The State of Maharashtra,
Through Its Secretary,
Department of General Administration,
Mantralaya, Mumbai-32.
4. Commissioner,
Medical Education and drugs, St. George Hospital,
Beside CST, Fort, Mumbai.
5. Commissioner,
Animal Husbandry, Maharashtra State,
Pune-67, Office at- in front of Spicer Memorial College,
Aundh, Pune-411067.
6. Vasantnao Naik Govt. Medical College,
Yawatmal, Through its Dean.

Respondents.

S/Shri N.S. Warulkar, Swaroop Bhattacharya, Advs. for applicant.

Shri A.M. Khadatkhar, learned P.O. for respondents.

**Coram :- Hon'ble Shri M.A. Lovekar,
Member (J).**

Date of Reserving for Judgment : 12th December,2023.

Date of Pronouncement of Judgment : 21st December,2023.

JUDGMENT

(Delivered on this 21st day of December, 2023)

Heard Shri N.S. Warulkar, learned counsel for the applicant and Shri A.M. Khadatkar, learned P.O. for the respondents.

2. Case of the applicant is as follows –

On 15/05/2020 he was working on the establishment of respondent no.6 as a Stenographer (Lower Grade). His wife was serving in Collector Office at Amravati. As per G.R. dated 15/05/2019 (Annex-A-3) he applied for permanent absorption on the establishment of Deputy Commissioner, Animal Husbandry, Amravati (Annex-A-2). By letter dated 08/07/2021 (Annex-A-8) respondent no.5 communicated his "No Objection" to respondent no.4 for such absorption. By order dated 04/02/2022 (Annex-A-9) respondent no.4 relieved the applicant to join the establishment on which he was going to be absorbed. On 10/02/2022 respondent no.6 passed consequential order (Annex-A-10) relieving the applicant. On 14/02/2022 the applicant submitted application (Annex-A-11) before respondent no.5 that he be permitted to join on the vacant post on the

establishment of respondent no.5. On 16/02/2022 respondent no.5 passed the following order (Annex-A-12) –

“ उपरोक्त संदर्भीय विषयान्वये आपणास कळविण्यात येते की, श्री निलेश अरविंद पांडे, निम्न श्रेणी, लघुलेखक, श्री. वसंतराव नाईक, शासकीय वैद्यकीय महाविद्यालय, यवतमाळ यांना कायमस्वरूपी समावेशन अर्जाच्या संदर्भात शासन निर्णय दिनांक १५.०५.२०१९ मधील मुद्दा नं. ५ (३) नुसार "राज्यस्तरावर जेष्ठता यादी ठेवली जात असल्यास सदर धोरणानुसार कायमस्वरूपी समावेशन करता येणार नाही असे नमूद आहे"

पशुसंवर्धन खात्यांतर्गत गट-क या संवर्गातील कर्मचारी यांची सेवा जेष्ठता सुची राज्यस्तरावर ठेवली जाते व गट-क या संवर्गातील सर्व पदे राज्यस्तरीय असल्याने राज्यस्तरावर सर्व कर्मचारी नियतकालीन बदल्या व पदोन्नतीसाठी पात्र ठरतात. त्यामुळे ठरावीक एका जिल्ह्यासाठी (अमरावती) श्री निलेश अरविंद पांडे, निम्न श्रेणी, लघुलेखक, यांचे कायमस्वरूपी समावेशन करण्याची विनंती उक्त शासन निर्णयानुसार मान्य करता येणार नाही.

त्यानुसार श्री निलेश अरविंद पांडे, निम्न श्रेणी, लघुलेखक, यांना आयुक्त पशुसंवर्धन कार्यालयातून आज दिनांक-१६.०२.२०२२ (म.उ.) कार्यमुक्त करण्यात येत आहे. श्री निलेश अरविंद पांडे, निम्न श्रेणी लघुलेखक, यांना आपले मूळ आस्थापनेवर श्री. वसंतराव नाईक, शासकीय वैद्यकीय महाविद्यालय, यवतमाळ येथे हजर करून घेणे त यावे.

पशुसंवर्धन खात्याचे संदर्भीय पत्र क्र.३ दिनांक ०८.०७.२०२१ अन्वये देण्यात आलेले "नाहरकत प्रमाणपत्र" याद्वारे रद्द करण्यात येत असून संदर्भीय १ सामान्य प्रशासन विभागाचे शासन निर्णयातील मुद्दा क्र.५ च्या (३) मधील तरतुदी नुसार श्री निलेश अरविंद पांडे, निम्न श्रेणी, लघुलेखक, यांचे पशुसंवर्धन विभागात कायमस्वरूपी समावेशन करता येणार नाही."

This was followed by following communication dated 11/03/2022 (Annex-A-13) from respondent no.4 to respondent no.5.

“४. श्री निलेश पांडे यांनी पती-पत्नी एकत्रिकरण या कारणास्तव उप आयुक्त, जिल्हा पशुसंवर्धन कार्यालय, अमरावती येथे कायमस्वरूपी समावेशनाने बदली करण्याची विनंती केली होती. श्री. निलेश पांडे हे शासन निर्णय दिनांक १५.०५.२०१९ मधील अटी व शर्तीची पूर्तता करीत असल्यामुळे तसेच शासन निर्णय दिनांक १५.०५.२०१९ मधील ५ (३) बाबत सामान्य प्रशासन विभागाच्या मार्गदर्शनानुसार श्री. निलेश पांडे यांना या संचालनालयाच्या दिनांक ०४.०२.२०२२ च्या आदेशान्वये मा. आयुक्त, पशुसंवर्धन, महाराष्ट्र राज्य, पुणे यांच्या अंतर्गत उप आयुक्त, जिल्हा पशुसंवर्धन कार्यालय, अमरावती यांच्याकडे कायमस्वरूपी समावेशन करण्यासाठी कार्यमुक्त करण्यात आलेले आहे.

तरी श्री. निलेश पांडे यांना आपल्या विभागातर्गत कायमस्वरूपी समावेशनाने पदस्थापना करण्यात यावी, हि विनंती.”

By communication dated 28/04/2022 (Annex-A-14) addressed to respondent no.4, respondent no.5 reiterated his stand that absorption as sought by the applicant was not permissible in view of Clause 5 (3) of G.R. dated 15/05/2019, which reads as under –

“५ (३) राज्यस्तरावर ज्येष्ठता यादी ठेवली जात असल्यास, सदर धोरणानुसार कायमस्वरूपी समावेशन करता येणार नाही.”

Since the applicant was kept in a state of suspended animation, he filed appeal (Annex-A-16) before respondent no.1, but since no order was passed in appeal for more than 250 days, he withdrew the same on 02/01/2023 (Annex-A-18) and filed this O.A. on 27/04/2023 for following reliefs –

“(i) allow the present Original Application and quash and set aside the impugned letter dated 16.02.2022 and communications dated 28/04/2022 issued by respondent No.5 (Annexure A-12 and Annexure A-14) respectively, as illegal and bad in law;

ii) further be pleased to direct the respondent no. 5 to absorb the applicant in their department under the husband and wife Unification scheme as per the provisions of the government resolution dated 15/05/2019

or in the alternate

direct the respondent no. 4 and 6 to join the applicant on his former post of Lower Grade Stenographer in their Vasantarao Naik Govt. College at Yawatmal and continue him on his post with continuity in service and all

other consequential and ancillary benefits arising therefrom in the interest of justice;

iii) direct the respondents to pay the arrears of salary to the applicant with interest from the date of reliving the applicant from his former post of Lower Grade Stenographer of Vasantarao Naik Govt. College at Yawatmal to till the date of his reinstatement in the interest of justice;

iv) grant any other relief which this Hon'ble Tribunal may deem fit and proper in the facts of the case.”

In their reply respondent nos.2 and 5, in addition to narrating undisputed chronology, have averred that request for absorption made by the applicant was opposed to Clause 5 (3) of G.R. dated 15/05/2019 and when this became clear, “No Objection” given earlier by respondent no.5 was revoked.

3. It was submitted by Shri N.S. Warulkar, learned Advocate for the applicant that respondent no.5 had initially given “No Objection” for absorption of the applicant, there was no need to revoke the same and at any rate such revocation was impermissible without giving hearing to the applicant. It is apparent that issuing “No Objection” could not have estopped respondent no.5 from revoking the same if there were grounds to do so. In the instant case Clause-5 (3) of G.R. dated 15/05/2019 clearly came in the way of considering request for absorption made by the applicant. Therefore, order of revocation cannot be interfered with.

4. It is a matter of record that the applicant was relieved by respondent no.4 / respondent no.6. He has remained in a state of suspended animation because he was not permitted to join on the post on which he was to be absorbed. This state of affairs cannot be allowed to continue. In these facts and circumstances relief claimed by the applicant in the alternative deserves to be granted, and following order shall meet ends of justice.

ORDER

- (i) O.A. is allowed in the following terms.
- (ii) **Respondent nos.4 and 6 are directed to allow the applicant to join on the post of Stenographer (Lower Grade) in respondent no.6 College within two weeks from today.** The applicant shall be at liberty to apply before the respondents for granting him continuity of service and consequential benefits. Such application to be made by the applicant shall be decided within two months from the date of its receipt.
- (iii) No order as to costs.

(M.A.Lovekar)
Member (J).

Dated :- 21/12/2023.
dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 21/12/2023.