

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 513/2008**

Dnyaneshwar Natthu prasad Shuklawar,  
Aged about 41 years, Occ. Service,  
r/o Shiraspeth Umred Road,  
Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Sales Tax Department, Mantralaya,  
Mumbai.
- 2) Additional Commissioner,  
Sales Tax Department, M.S. Majgaon,  
Vikrikar Bhawan, Mumbai.
- 3) Additional Commissioner,  
Nagpur Region, Sales Tax Department,  
Behind High Court, Civil Lines, Nagpur.

**Respondents**

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**Shri Ku. K.K.Pathak, S.A. Pathak, Advocates for the applicant.**

**Smt. M.A. Barabde, P.O. for respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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**JUDGEMENT**

**(Delivered on this day 20<sup>th</sup> of June,2017)**

Heard Shri S.A. Pathak, Id. Counsel for the applicant and

Smt. M.A. Barabde, Id. P.O. for the respondents.

2. The applicant Dnyaneshwar Natthu prasad Shuklawar is claiming a declaration that the action of respondents in not regularising his service as a Sweeper as Clause-IV category is illegal, arbitrary and violative of Article 14 & 16 of the Constitution of India and that respondents be directed to regularise his services. He is also claiming that the communication dated 23/11/2007 whereby his appointment order has been cancelled be quashed and set aside.

3. One complaint before Labour Court was pending when the application was filed. This ULPA No. 145/1999 was finally disposed of during pendency of the O.A. The said order matter was challenged upto the level of Hon'ble High Court and ultimately Writ Petition was filed by the applicant was dismissed. In view thereof the application was amended so as to bring all these subsequent developments on record.

4. According to the applicant, he was appointed by respondent no.2 as Sweeper on daily wage basis in the year 1990. In the year 1998, his services came to be terminated along with other employees. The applicant therefore filed ULPA No.145/1999 before the Labour Court and the Labour Court directed the respondent no.3 not to terminate the services of the applicant. The said order was challenged by the Government before the Industrial Court by filing revision bearing No. ULPA No.135/2000. The Industrial Court vide

order dated 31/7/2000 allowed the revision. The applicant therefore approached the Hon'ble High Court by filing W.P.No.3614/2000 in which interim relief was granted and the services of the applicant were protected. However, as already stated the W.P. came to be dismissed.

5. According to the applicant, the applicant vide communication dated 8/11/2007 was appointed against the vacant post of Sweeper. It was a conditional order and he worked as a Sweeper in pursuance of the said order. However on 23/11/2007 the respondent no.3 cancelled the appointment order on the ground that the applicant was not fulfilling the conditions required for appointment and the said cancellation of order is challenged in this O.A.

6. The respondent no.3 filed the reply-affidavit and stated that the age of the applicant on the date of appointment was above 41 years and as per the Circular dated 17/8/2004 the age limit for the appointment in Government service is 33 years for general candidates and 38 years for reserved candidates. When it was noticed that the applicant was age barred, his appointment order came to be cancelled.

7. It is submitted that proposal for regularizing the services of 728 candidates has been submitted. However the applicant cannot be appointed.

8. I have perused the order of appointment of the applicant which is at P.B. page nos. 15 & 16 ( Annex-A-2). The condition no.1 of the appointment order reads as under :-

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dkskR; kgh {k.kh dkggh dkj.k u nk[kfork I oru deh dj.; kr ; by-\*\**

9. The applicant has placed on record the representation dated 28/11/2007 (A-5,P-19) in which he has stated that his age was 41 years and that the said age limit be relaxed. The respondent no.3 however found that as per Recruitment Rules the applicant should not have been appointed since he was age barred and therefore the appointment order has been cancelled. The order of the applicant was temporary in nature and it was nothing but an Ad-hoc and conditional order. As already stated it is clearly mentioned in the said order that the applicant can be removed from service at any time without issuing even show cause notice. Since the applicant was over age the respondents have to cancel his order and I do not find any illegality in such cancellation.

10. It seems that the applicant has already raised his grievance before the Labour Court and Industrial Court and thereafter before the Hon'ble High Court. In the said proceeding also he claimed permanency to the post of Sweeper. His claim has been rejected by the Industrial Court and by the Hon'ble High Court and in such circumstances, in fact there was no reason to approach before this Tribunal since the applicant has exhausted his remedy before the competent courts.

11. In view of above discussion in forgoing paras, it is crystal clear that there is no merit in the O.A. The learned counsel for the applicant submits that in fact the applicant was appointed in 1990 as a Sweeper and then his services were terminated in the year 1998, but he continued to work as a Sweeper. He submitted that the order of appointment in 1990 as well as the order of termination in 1998 was oral. Such submission cannot be accepted. In view of above discussion in forgoing paras, I pass the following order.

**ORDER**

The O.A. stands dismissed with no order as to costs.

**(J.D. Kulkarni)**  
**Vice-Chairman (J).**

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