

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
AURANGABAD BENCH, AURANGABAD**

ORIGINAL APPLICATION NO. 721 OF 2012

WITH

ORIGINAL APPLICATION NO. 487 OF 2013

DISTRICT : NANDED

ORIGINAL APPLICATION NO. 721 OF 2012

1. Avinash Prabhakar Latpate)
2. Malhari Mangalsing Chouphade)
3. Baburao Kishanrao Salve)
4. Bhimrao Jaising Rathod)
5. Devidas Nagnath Pendharkar)
6. Ramrao Baliram Jadhav)
7. Rajusing Gulab Chavan)
8. Kailas baurao Kunturwar)
9. Atmaram Bhiku Jadhav)
10. Indal Kaniram Chavan)
11. Keshav Manchakrao Tandale)
12. Ravindra Noorsing Chavan)
13. Gangadhar Poshetty Pujarwad)
14. Ashok Nivrutti Dhawale)
15. Sadashiv Wamanrao Tupsundre)
16. Smt. Sangeeta Namdeo Thorat)
17. Ganesh Sukhdeo Godam)
18. Madhav Ramrao Katkade)
19. Santosh Dhruv Chauhan)
20. Vijaykumar Vishwanath Sapnar)
21. Premsingh Ramji Rathod)
22. Shriram Mohan Chauhan)
23. Babsaheb Bhanudas Narle)
24. Kailas Dudha Pawar)

25. Shaikh Rais Shaikh Ahmed)
 26. Prakash Shivram Rathod)
 27. Mahadeo Nivrutti Holkar)
 28. Avinash Uttamrao Rathod)
 29. Venkat Kisanrao Badge)
C/o. Adv. Shri A.S. Deshmukh,
M.A.T., Aurangabad.)...Applicant

WITH

ORIGINAL APPLICATION NO. 487 OF 2013

DISTRICT : AURANGABAD

1. Prakash Kaduba Tupe)
 2. Snajay Chokhaji Dabhade)
 3. Satish Balaji Kharote)
C/o. Adv. Shri A.S. Deshmukh,
M.A.T., Aurangabad.)...Applicant

VERSUS

1. State of Maharashtra,)
 (Copy to be served on C.P.O.,)
 M.A.T., Bench at Aurangabad.)
 2. The Director, Health Services,)
 M.S., Mumbai.)
 3. The Joint Director, Health Services)
 (Malaria), Pune.)
 4. The Asstt. Director, Health Services,)
 M.S., Aurangabad.)**Respondents**

Shri A.S. Deshmukh, learned Advocate for the Applicant.
Shri V.R. Bhumkar, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri B.P. Patil (Member) (J)

DATE : _____

PER : Shri Rajiv Agarwal (Vice-Chairman)

J U D G E M E N T

1. Heard Shri A.S. Deshmukh, learned Advocate for the Applicants and Shri V.R. Bhumkar, learned Presenting Officer for the Respondents.

2. This O.As were heard together and are being disposed of by a common order as the issued to be decided are identical.

3. All the Applicants belong to reserved category i.e. Scheduled Caste or Scheduled Tribe. On 31.10.2002, the State Government has issued a Circular to fill the vacant backlog posts which were required to be filled by direct recruitment and by promotion. Group 'D' posts were to be filled by the Appointing authority. Learned Counsel for the Applicants argued that the Respondent No.4 issued a circular on 26.08.2003 calling for applications from eligible candidates for filling in backlog of reserved posts of Field

Workers, Group 'D'. All the Applicant had worked as Filed Workers on daily wages. There were no recruitment rules for the post of Field Workers. However, all the Applicant had passed S.S.C. (10th Standard). Those daily wages spraying workers, who had worked for a minimum of 90 days were eligible to apply for the post of Field Workers as per circular dated 26.08.2003. The Applicants underwent the selection process conducted by the Respondent No.4 who prepared a select list on 13.09.2003 containing 40 names (Annexure 'C'), including the names of the present Applicants. Appointment orders to individual selectors were issued in September 2003. Order to the Applicant No.1 O.A. No. 721 of 2012 was issued on 26.09.2003. Learned Counsel for the Applicants contended that all the Applicants were selected in a due and proper selection process and they were appointed on regular and sanctioned vacancies. Two candidates viz. Shri P.M. Chavan & Shri C.U. Aade had filed O.A. Nos. 1806/2004 and 1807/2004 before this Tribunal claiming that though the Respondent No.4 had issued appointment Letters to them, they were not allowed to join. By order dated 07.03.2005 this Tribunal asked the Respondents to demonstrate how to accommodate the Applicants in those O.As. It was pleaded by the Government that action was contemplated against the Assistant Director of Health Services (Malaria) for issuing appointment orders unauthorisedly, as the appointing authority for the post of Field Worker was Director Malaria Officer. This Tribunal however directed the Respondents to set right the anomaly

by order dated 05.05.2005. When contempt Proceedings were started, for not following the order dated 05.05.2005, the Respondents cancelled the Select list dated 13.09.2003. Learned Counsel for the Applicant argued that the present Applicants were not a party to O.A. No. 1806/2004 and 1807/2004. They were also not represented in the Contempt Applications, which were disposed of after the whole selection list was cancelled and termination orders dated 07.03.2006 were issued to all persons who were appointed as Field Workers. These orders were issued in violation of established procedure, without holding any departmental enquiry.

4. The Applicants challenged the termination order by filing **W.P. No. 2667 of 2006 before Hon'ble High Court (Aurangabad Bench)**. By judgement dated 03.10.2006, Hon'ble High Court set aside the order dated 07.03.2006 and directed the Respondents to reinstate the Applicants. After that the Respondent No.4 issued fresh orders dated 26.04.2010, after giving opportunity of being heard to the Applicants. Those orders are challenged on the present O.A. by the Applicants as they were not back door entrants and were selected after following due procedure and could not have been removed from service simply by giving show cause notices. Proceedings under M.C.S. (Discipline & Appeal) Rules were required to be conducted before they could be removed. Learned Counsel for the Applicants prayed that the orders dated 26.04.2010 may, therefore be quashed and set aside.

5. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that Field Workers are appointed as per G.R. dated 31.01.1964 and the appointing authority is the District Malaria Officer. Then Assistant Director of Health Services (Malaria), Aurangabad Shri B.L. Chavan without having any powers, appointed the Applicants as Filed Workers. The appointment orders issued in September 2003 were illegal and against the provision of law. There were complaints of illegalities in the selection process and a Departmental Enquiry was held against the then Assistant Director on the charge of holding assets disproportionate to his known sources of income. The selection process was conducted by Shri B.L. Chavan for extraneous reasons, and the appointment orders issued to the Applicants were illegal. The same were accordingly cancelled by order dated 07.03.2006 Hon'ble High Court set aside the orders dated 07.03.2006 on the ground that the Applicants were not given opportunity of being heard. The orders dated 26.04.2010 have been issued after giving opportunity to the Applicants of being heard, and these orders are legal and proper. Learned P.O. relied on various judgements which are discussed subsequently.

6. We find that the basic issue involved in this O.A. is who is the appointing authority for the post of Filed Workers. The Respondents have annexed copy of G.R. dated 30.01.1964 (Annexure-R.4 to affidavit dated 01.03.2017 filed by the Respondent nos. 3&4). This G.R. reads.

RESOLUTION: Government was pleased to delegate to the Malaria Officers Incharge of the National Malaria Eradication Units the Powers of appointing Malaria Sureveillance Workers under Government Resolution, Urban development and Public Health Department No. HDO 1861/91/D, dated 17th February 1962 The Malaria Officers are now further delegated with the powers of appointment of Superior field workers and the Insect Collectors.”

7. There appears to be no doubt that the appointing authority for the post of Field Worker is the District Malaria Officer and not the Assistant Director of Health Services (Malaria). The question then arises, whether a superior officer can exercised the powers of a junior officer, who is the appointing authority. There are instances, where the Selection Committee is headed by a superior officer, who prepares the select list. However, actual appointment orders are issued by the Appointing authority only. The Applicants have stated that they were selected in a proper selection process, which was transparent. However, even if the selection process was transparent, whether it would be valid, if it was conducted by an authority, which was not the appointing authority is the root question. The Applicants have admitted in para 7 (ii) of the O.A. that for class IV/Group 'D' posts, there was no selection Committee and the appointing authority was required to take action to select

and appoint suitable candidates. Extracts from Para 7 (ii) are reproduced below:

“Most pertinently, as far as the backlog posts of reserved category from class IV/Group-D were concerned, the State Government has specifically directed that the (respective) Appointing Authorities shall take appropriate steps/measures in the direction of filling-in the backlog.”

8. It is clear that the action of the Respondent No.4 in conducting the selection process himself and issuing appointment letters was in violation of G.R. dated 30.01.1964 and Circular dated 31.10.2003, which was issued by the Government for filling backlog posts. Any action against the express provisions of Government Resolution/ Circular can hardly be termed as legal. The selection list prepared by the Respondent No.4 on 13.09.2003 and appointment letters issued to the Applicants in September 2003 (in Annexure 'D' of O.A.) are to be viewed in this light.

9. The services of the Applicants were terminated by order dated 07.03.2006. This order has not been placed on record by the Applicants. However, it was challenged before **Hon'ble High Court in W.P. No. 2667 of 2006.** By judgement dated 03.10.2006 the order dated 07.03.2006 was quashed and set aside. Hon'ble High Court observed that:-

“We are also aware that the principles of natural justice have not to be put in straight jacket formula so as to import them in every action of the State. As laid down by the Apex Court in various judgement, the standard would differ from case to case. However, in the instant case, though the petitioners were issued a show cause notice and thereafter, their services were terminated. The said action was merely mechanical or that the state authorities were merely going through the motions as they had already committed to the Tribunal that the services of the said 39 employees would be terminated. In the facts of the present case, we are, therefore of the view that the interest of justice required that the petitioners should, at least, be heard, where in either party could put its case and then final order could be passed.

11. In the light of our foregoing observations, we set aside the impugned order dated 07.03.2006 and direct the authorities to reinstate the petitioners and thereafter to hear the petitioner and pass appropriate order in accordance with law in respect of the terminated of the services of the petitioner. Said exercise to be carried out by the authorities within a period of two months from the date of this order.”

10. Though the show cause notice were issued to the Applicants before order dated 07.03.2006 was passed, that

exercise was not held meaningful by Hon'ble High Court. The respondents were directed to personally hear the petitioners and thereafter pass appropriate orders. Accordingly the Applicants were heard and thereafter orders dated 26.04.2010 were passed terminating services of the Applicants from 28.04.2010.

11. Learned Counsel for the Applicants drew our attention to the observation of para 6 of the judgement of **Hon'ble High Court in W.P. No. 2667/2006** which reads as follows:

“During the course of arguments, we sought to know from learned Assistant Government Pleader Shri Ghadge as to what is the normal procedure followed while appointing the employees of Class IV. We regret that Shri Ghadge was not able to give us an answer, one way or the other, as to what is the normal procedure. It was only faintly sought to be suggested that the person who has issued the appointment letter is an higher officer in the hierarchy that the person who is normally authorized to issue the said appointment letters i.e. District Malaria Officer and therefore, the said appointments were illegal. Prima facie, we are of the view that the appointment letter cannot be faulted on the said count, as an higher authority can always issue appointment letters. It is also significant that the said appointment letters were

unquestioned till the filing of the proceedings before the Tribunal.”

12. It was argued by Learned Counsel for the Applicants that Hon'ble High Court has held that appointment orders could be issued by a superior officer. However, the Respondent Nos. 3&4 in affidavit filed on 07.01.2014 have stated that the Respondent No.3 had issued instructions on 29.08.2003 (page 131 of the Paper Book) to fill only 50% of the vacant posts from the list of ad-hoc spraying workers (like the present Applicants). 10% post were to be filled by promotion of Class IV field workers and 40% posts were to be filled from Muster-Assistants working on E.G.S. works, whose names were to be obtained from respective Collectors. It is clear that the Respondent No.4 did not follow the instructions issued by the Respondent No.3. He not only violated provision of G.R. dated 30.01.1964, circular dated 31.10.2002, but also the instructions of the Respondent No. 3 regarding percentage of post to be filled from difference categories. Taking into account wholesale violation of all these instructions by the Respondents No.4, the question naturally arises as to why he did it. Hon'ble High Court had made only prima-facie observation in regard to legality of issuing appointment letters by the Respondent No.4. However, considering all the material which is placed on record now, we have no hesitation in holding that selection list dated 13.09.2006 prepared by the Respondent No.4 was prepared in violation of various G.R./Circular/ Instructions

of higher authorities. The contention of Learned Counsel for the Applicant that this observation of Hon'ble High Court would amount to upholding the validity of appointment of the Applicants as Filed Workers cannot be accepted. If that was the case, Hon'ble High Court would not have given liberty to take appropriate action after hearing the petitioners.

13. Learned P.O. has relied on the judgement of Hon'ble Supreme Court in the case of **A. Umarani Vs. Registrar, Co-operative Societies & Others in S.L.P. No. 1413 of 2003 (28.07.2004)** has wherein it has been observed that:-

“a) **Regularisation** can not be mode of recruitment by any state within the meaning of article 12. It is settled position that appointment made in violation of the mandatory provision of the statue and in particular in ignoring the minimum educational qualification and other qualifications would be wholly illegal and such illegibly can not be cured by taking recourse of regularisation.”

14. In the present case, the Applicants were selected in violation of a host of Government instructions given by Government G.Rs and Government Circulars. Such appointments can not be regularized. The Respondent No.4 had personally heard the applicants from 01.12.2007 to 31.01.2008 as directed by the Hon'ble High Court and thereafter the orders dated 26.04.2010 were issued. In the circumstances, we are of the opinion that the orders dated

26.04.2010 are legal and proper. There was no need to be start proceedings under M.C.S. (Disciple & Appeal) Rules, 1979 to remove the Applicants from service when the initial appointment were not in accordance with G.Rs/Circulars.

15. The facts in O.A. no. 487/2013 are identical. Having regard to the aforesaid facts and circumstances of the case, both the O.As are dismissed with no orders as to costs.

Sd/-

(B.P. PATIL)
MEMBER (J)
16.08.2017

Sd/-

(RAJIV AGARWAL)
(VICE-CHAIRMAN)
16.08.2017

Date : 16.08.2017

Place : Aurangabad

Dictation by : NMN

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