

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
AURANGABAD BENCH AURANGABAD
ORIGINAL APPLICATION NO. 781 of 2013

Sudarshan Daultrao Shinde,
Aged 28 years, Occ : Service as Krishi Sevak,
r/o Dongroji Nagar, Jamner,
Dist. Jalgaon.

Applicant.

Versus

- 1) The State of Maharashtra,
Through P.O., MAT,
Auraganbad Bench.
- 2) The Divisional Joint Director of Agriculture,
Nasik Region, Nasik.
- 3) The Taluka Agriculture Officer,
Jamner, Dist. Jalgaon.

Respondents

Shri Ajay S. Deshpande, Advocate for the applicant.

Shri V.R. Bhumkar, Id. P.O. for the respondents.

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

JUDGEMENT

(Delivered on this 22nd day of September,2017)

Heard Shri Ajay Deshpande, learned Counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents.

2. The applicant Shri Sudarshan Daulatrao Shinde has filed the O.A. claiming direction to respondent no.2, the Divisional Joint Director of Agriculture, Nasik Region, Nasik to regularise his services as Agriculture Assistant w.e.f. 2/1/2012, i.e., from the date the applicant had satisfactorily completed his three years' services as a Krishi Sevak. It is further requested that the respondent no.2 be directed to pay the difference of salary of Agriculture Assistant and Krishi Sevak to the applicant from 20/1/2012 till he is actually brought on regular establishment as Agriculture Assistant.

3. During the pendency of the O.A. the applicant has received notice dated 25/2/2016 whereby he was directed to submit a Caste Validity Certificate and in case of non submission of such certificate why the applicant's services shall not be terminated. The applicant has challenged this notice dated 25/2/2016 and requested that respondent no.2 be directed not to take any action against the applicant on the basis of such notice.

4. The respondent no.2 vide order dated 20/1/2009 appointed the applicant as Krishi Sevak. The applicant had undergone various in-service training programmes from time to time. In all 14 candidates were appointed by respondent no.2 vide order dated 21/1/2009. Out of which 9 were Junior Clerks and 5 were Krishi Sevaks. It is stated that except the applicant, services of rest of the

candidates appointed have been regularised. Even though the applicant has successfully and satisfactorily completed various trainings and completed tenure of more than three years' he has not been regularised. The applicant was therefore constrained to file the O.A.

5. According to the learned counsel for the applicant Shri Ajay Deshpande, the applicant never applied for the post of Krishi Sevak on the basis of his Caste. In fact, the applicant belongs to Maratha caste, but in his School Certificate he was wrongly shown belonging to Kunbi Caste. In fact the applicant was nominated as a legal heir of Freedom Fighter. The applicant's maternal Grandfather Shri Kisan Sukhdeorao Ghadge was Freedom Fighter and said Shri Kisan nominated the applicant for the post. The respondent no.2 accordingly considered the applicant from the quota of Freedom Fighter and not on the basis of Caste.

6. The applicant submitted an application for absorption to respondent no.2. He was appointed accordingly and he never claimed to post on the basis of Caste. His ACRs were 'Outstanding' and his performance was of 'A Grade' and therefore the respondent no.2 ought to have regularised his services. Instead of regularising the services, the respondent no.2 issued a show cause notice dated 25/2/2016 and directed the applicant to produce caste validity

certificate or to face termination. In the reply the respondent nos. 1 to 3 have resisted the claim and submitted that the applicant himself submitted documents and particularly the transfer certificate in which it was shown that the applicant belongs Kunbi caste and therefore he was appointed as Krishi Sevak in OBC category. The respondents have referred to the G.Rs. dated 19/11/2003, 25/8/2005 and 25/10/2005 from which it is clear that the appointment of the applicant was made by backdoor entry and therefore it cannot be continued. The respondents have stated in para-8 as under :-

“ It should be mandatory for the requisitioning authority / establishment to intimate the employment exchange and employment exchange should sponsor the names of the candidate to the requisitioning departments for selection strictly according to seniority and reservation as per requisition. In addition, the appropriate department or undertaking or establishment, should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television an employment news bulletins and then consider the cases of all the candidates who have applied.

(B) As per G.R. of General Administrative Department, Mantralaya, Mumbai-32 dated 25/8/2005 regarding same matters Hon'ble High Court, Mumbai and Hon'ble Supreme Court in Civil Application No.1413 and other matters give decision on 28th July,2004, which are in brief as follows :-

a. Regularisation cannot be made of recruitment by any State within the meaning of Article 12. It is a settled proposition that the appointment made in violation of the mandatory provision of this statute and in particular ignoring the minimum educational qualification and other qualification would be wholly illegal and such illegality cannot be cured by taking recourse of regulations.

b. Those who come by back door should go through that door.

c. Regularisation further cannot be given to the employees whose services are ad-hoc in nature.

d. No regularisation is permissible in exercise of the Statutory power conferred under Article 12 of the Constitution of India when the appointments are in contravention of the statutory rules.

e. No regularisation is permissible in exercise of the Statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules.

f. It is trite that appointment cannot be made on political considerations and in violation of the Government Direction for reduction of establishment expenditure or filling up vacant posts or creating new posts including regularisation of daily wage employees.

g. There is no scope for regularisation unless the appointments were made on a regular basis.

h. If the employees are appointed for the purpose of a scheme, they do not acquire vested right of continuance after the project is over. It is also submitted that Sr.No.3,4 & 5 in Marathi are also important in the matter.

C) In Circular of General Administrative Department, Mantralaya, Mumbai-32 dated 25/10/2005 sr.no. 6 & 7 is regarding Hon'ble Supreme Court's order detail in Marathi.

7. Since the learned counsel for the applicant submits that the appointment of the applicant was on the basis of his claim as a nominee of Freedom Fighter, it is necessary to see as to whether there is any reservation for Freedom Fighter's nominee. The learned P.O. submits that there is no G.R. issued by the Government at any time whereby the Freedom Fighter has been granted reservation. Even for argument sake if it is accepted that the appointment of the applicant has been made as a nominee of Freedom Fighter, it is necessary for the applicant to place on record the documents to show that there was any reservation marked for Freedom Fighter's nominee. Unfortunately no G.R. has been placed on record to show that like reservation for other caste categories, there is reservation for nominee of the Freedom Fighter.

8. From the pleadings and the reply-affidavit it is clear that there is no dispute that no advertisement was issued for appointing the applicant and other Krishi Sevaks and therefore the appointment is

not through proper channel. The learned P.O. has referred to one G.R. issued by the Government of Maharashtra dated 25/8/2005 which is at Exh-R-4 from which it seems that the Government has issued specific direction in view of the Judgment delivered by the Hon'ble Supreme Court in the case of **A. Umrani Vs. Registrar, Co-operative Societies, Tamil Nadu & Ors.** The following directions have been issued by the Hon'ble Apex Court in the said Judgment :-

*“(a) Regularisation cannot be mode of recruitment by any State within the meaning of Article 12. It is a settled proposition that the appointment made in violation of the mandatory provision of the statute and in particular ignoring the minimum educational qualification and other qualifications would be wholly illegal and such **illegality cannot be cured by taking recourse of regulations.***

(b) Those who come by back door should go through that door.

(c) Regularisation further cannot be given to the employees whose services are ad-hoc in nature.

(d) No regularisation is permissible in exercise of the Statutory power conferred under Article 12 of the Constitution of India when the appointments are in contravention of the statutory rules.

(e) No regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules.

(f) It is trite that appointments cannot be made on political considerations and in violation of the Government Directions for reduction of establishment expenditure or filling up of vacant posts or creating new posts including regularisation of daily wage employees.

(g) There is no scope for regularisation unless the appointments were made on a regular basis.

(h) If the employees are appointed for the purpose of a scheme, they do not acquire vested right of continuance after the project is over.”

9. Similar reservation has been passed by Government of Maharashtra on 19/11/2003. The copy of which is placed at Exh-R-4 at P.B. page nos. 59 to 60 and 25/10/2005 at Exh-R-4 at P.B. Page nos. 63 to 65 (both inclusive).

10. The learned P.O. has invited my attention to the appointment order issued in respect of the applicant and other persons. The said order is at Exh-A, P.B. page nos. 6 to 10. It is dated 23/12/2008. It seems that vide said order three persons have been appointed as Agriculture Assistant and applicant's stand at sr.no.1 and in his appointment order it is specifically stated that he belongs to OBC. In condition no.25 of the said order, it has been specifically stated that those belonging to reserved category were required to file Caste Validity Certificate within three months from the date of appointment. In the same condition, it was stated that in case

the Caste Validity Certificate was not supplied within three months, the services of the candidate will come to an end. Thus prima facie the applicant seems to have been appointed as a candidate belonging to OBC. The learned counsel for the applicant submitted that the applicant has objected for his appointment and specifically mentioned that he belongs to the category of nominee of Freedom Fighter and not as OBC. He invited my attention to Exh-R-2 in which the applicant has requested for appointing him as a nominee of Freedom Fighter. As already stated the applicant could not place on record any documentary evidence to show that there is special reservation for nominee of the Freedom Fighter. There are certain G.Rs. which only gives preferential treatment to the nominee of Freedom Fighter in case the candidates got equal marks but there is no specific reservation for the nominee of Freedom Fighter. The documents submitted by the applicant, i.e., his transfer certificate of the School shows that the applicant was shown as belonging to Kunbi Caste.

11. It seems that the applicant for first time has taken objection to his appointment on 15/10/2012. The copy of the said objection is at P.B. page no. 31A in which it is stated that he belongs to Maratha caste and that he has been wrongly shown as belonging to Kunbi Caste and therefore the applicant requested for correction of his caste in the service record. This application is filed along with

affidavit. It is not known as to why the applicant was required to file such application for the first time on 15/10/2012. The applicant was appointed vide order dated 20/1/2009 as Krishi Sevak and in the said appointment order he was shown as belonging to OBC category. It is not known as to why the applicant never objected for such appointment on the caste basis till 15/10/2012. In fact the applicant's appointment order should have come to an end after three months since the applicant could not produce the Caste Validity Certificate. It cannot be said that the applicant was not known the fact that he was to submit Caste Validity Certificate and it was specifically mentioned in his appointment order in Clause-25 as under :-

¼25½ 'kkl u fu.kz] I kelftd U; k;] I kldfrd dk;] fdMk o fo'ksk I gk; ; foHkx] dz I hchl h&10@2003@izdz 91@ekod&5@fnukd 28 tkukjh 2004 o fnukd 6 Qcphj]2004 ud kj ekxkl oxlz kl kBh Eg.ktp vuul fpr tkrh] foedr tkrh] HRVD; k tekrh] brj ekxkl oxz o fo'ksk ekxkl ioxz I kBh ¼vuul fpr tekrh oxGu½ jk[kho vl yS; k tkxoj fu; Dr djko; kP; k menokj; k tkrh iæk.ki=kph i MrkG.kh d#u ?ks; kl kBh vko'; d rs dxni=s I ca/kr tkr iæk.ki= i MrkG.kh I ferhdMs Rojhr I knj djkohr o R; kurj I ferh vki yk fu.kz 3 efgU; k; k vkr ; k dk; kÿ; kdMs i kBfoy-Fk&D; kr fu; Dr menokjkuh rhu efgU; kP; k vkr tkr oSkrk iæk.ki= ; k dk; kÿ; kdMsI knj dj.kk vko'; d jkghy- R; kps tkr oSkrk iæk.ki= I ca/kr foHkxkP; k tkr i MrkG.kh I ferhdMu rsgtj >kY; kP; k fnukdki kl u rhu efgU; kr i klr >kysukgh rj R; k; k d'k I od inkohy I ok I eklr dj.; kr ; rhy-

12. The learned counsel for the applicant submits that except the applicant all other persons who are appointed with the applicant have been regularised. The learned P.O. has placed on record the communication dated 27/7/2017 which marked at Exh-X, from which it was communicated to the Court as under :-

^mi jkDr fo"k; kUo; sojhy I nfHkz ¼1½ ps ek- U; k; kf/kdj .kkps vkns kkuu kj I fou; I knj dj.; ; rsdh] eG vtldz781@2013 idj.kh vtzhkj Jh-I q'kU f'kns; kps g brj 13 depk&; kauk fu; ekud kj fu; Drh ns; kr vkysyh ukgh- I nj idj.kh >kyV; k vf; ferrskcr I a/khrk; k I ok I ektr dj.kskcr i Lrko ojhy I nfHkz ¼2½ ud kj I foLrj fvi .khl g foghreks'kkl ukl I knj dj.; ; kr vkyk vkgs

I nj idj.kh ojhy I nfHkz ¼3½ ps 'kkl u vkns kkuu kj >kyV; k vf; ferrskcr tckcnkj vf/kdkjh o depkjh ; kph foHkxh; pkd'kaps vkns k fuxfer dj.; ; kr vkys vkgs- nskkjki kph pkd'kh dj.; ; kdfjrk 'kkl ukpsojhy I nfHkz ¼4½ ps vkns kkuu kj pkd'kh vf/kdkjh o I knjdrkz vf/kdkjh ; kph ue.kud dj.; ; kr vkyh vkgs foHkxh; pkd'kph dk; ; bkg h i wkz >ky; ; kuarj 'kkl u vkns kkuu kj i why dk; ; bkg h dj.; ; kr ; bzy- I nj 'kkl u vkns kph i r ek- U; k; kf/kdj .kkpsfun'kukl vk.kau I ?kLFkrh voxr djkoh gh fourh vkgs**

13. From the aforesaid communication it is clear that the Government has decided to take action against the persons who were responsible for issuing appointment order in respect of 14 candidates including the applicant for appointing them without following the directions of the Hon'ble Apex Court and also the Government has decided to take action against the persons appointed. In such

circumstances, it cannot be said that any discriminatory action has been taken by the respondents.

14. The respondent no.2 has issued notice dated 25/2/2016. The copy of which is placed on record at P.B. page nos. 31D whereby the applicant was directed to produce Caste Validity Certificate or to face action. The said notice seems to be in view of the appointment order issued in favour of the applicant on the basis of his caste and I do not find any reason as to why the applicant shall not answer that notice. In fact the applicant was given opportunity to put his case before the Competent Authority.

15. The learned counsel for the applicant submits that the applicant is claiming reservation on the basis of special ground, i.e., on the ground that he belongs to the category of nominee of Freedom Fighter and therefore there is no question of submitting Caste Validity Certificate by the applicant. The nominee of Freedom Fighter may belong to any caste and therefore his nominee cannot be asked to prove his caste validity. As already discussed the applicant could not place on record any G.R. or document to show that there is a special reservation for the category of nominee of Freedom Fighter and therefore the question of regularisation of the services of the applicant will not arise. As per the terms and conditions of the order, the applicant was appointed temporarily and as already stated the said

appointment also is not legal. The Government has taken appropriate steps against the persons who appointed the applicant and others and if the action of Government is illegal, the applicant cannot claim exception to it.

16. In view of the discussion in forgoing paras, I am satisfied that no direction can be issued to respondent no.2 to regularise the services of the applicant as Agriculture Assistant w.e.f. 2/1/2012 on the basis of appointment order as Krishi Sevak dated 20/1/2009 and the consequent relief thereon.

17. There is no force in the claim to quash and set aside the notice dated 25/2/2016. Hence, the following order :-

ORDER

- i) The O.A. stands dismissed with no order as to costs.
- ii) The applicant however is granted liberty to reply to the notice dated 25/2/2016, if not yet replied. After considering the reply to the said notice, the respondent no.2 will be at liberty to take appropriate action as may be deemed fit in the circumstances. The respondent no.2 shall however take such action if any without being influenced by any of the observations made in this order.

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