

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 629 OF 2017  
(Subject – Repatriation)**

**DISTRICT : NANDURBAR.**

**Shri Vijay Nivrutti Lokhande,** )  
Age : 47 years, Occu. : Service as )  
Registrar, Government Polytechnic, )  
Nandurbar. )

.. **APPLICANT**

**V E R S U S**

**1) The State of Maharashtra,** )  
Through : its Secretary, )  
Higher & Technical Education )  
Department, Mantralaya, )  
Mumbai- 400 032. )

**2) The Secretary,** )  
Women & Child Development )  
Department, Mantralaya, )  
Mumbai – 400 032. )

**3) The Director,** )  
Higher & Technical Education )  
Department, Maharashtra State, )  
3, Mahapalika Marg, Mumbai. )

**4) The Joint Director,** )  
Technical Education, )  
Divisional Office, Nasik. )

**5) The Principal,** )  
Government Polytechnic, )  
Jalgaon. )

**6) The Commissioner,** )  
Women & Child Development )  
Department, )  
28, Queen's Garden, Pune )

.. **RESPONDENTS**

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**APPEARANCE** : Shri J.B. Choudhary, learned Advocate for the applicant.

: Shri B.S. Deokar, learned Presenting Officer for the respondents.

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**CORAM** : **B.P. PATIL, ACTING CHAIRMAN.**

**RESERVED ON** : **09.03.2020**

**PRONOUNCED ON** : **12.03.2020.**  
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### **ORDER**

1. The applicant has challenged the impugned order dated 28.10.2016 issued by respondent No. 1 rejecting his request for relieving him from the post of Registrar, Government Polytechnic, Jalgaon and to permit him to join in Women & Child Development Department, Nandurbar, and prayed to quash and set aside the same by allowing the present Original Application and also prayed to direct the respondent Nos. 1 to 3 to relieve him from the post of Registrar, Government Polytechnic, Jalgaon and to permit him to join in his parent Department i.e. Women & Child Development Department, on the post of Probation Officer, Class-III by keeping his seniority intact on the basis of lien kept by him on the said post.

2. The applicant is belonging to Scheduled Caste Category. He was selected as Assistant Inspector / Probation Officer, Class-

III in Women & Child Development Department on 5.11.1998. Accordingly, he joined the said post on 19.11.1998 and posted at Mumbai. He completed two years' probation period on the post of Probation Officer in Women & Child Development Department on 12.5.2000. Thereafter his services were confirmed in the said Department. While in service, the applicant applied for the post of Registrar in Government Polytechnic through the Maharashtra Public Services Commission (for short "the Commission") by obtaining prior permission of Women & Child Development Department. The applicant thereafter appeared before the Commission and thereafter he was selected for the post of Registrar and posted as Registrar in Government Polytechnic, Jalgaon, by order dated 17.9.2013. He was permanent employee of Women & Child Development Department. He submitted an application to the District Women and Child Development Officer, Nandurbar and requested to relieve him from the post of Probation Officer, Class III to join on the post of Registrar, Polytechnic College, by keeping his lien for the period of 3 years on his original post of Probation Officer, Class III. The Divisional Deputy Commissioner, Women & Child Development Department, Nasik Division, Nasik forwarded the proposal to the Commissioner, Women & Child Development Department, Pune

and requested to pass appropriate orders on the application submitted by the applicant. The Commissioner, Women and Child Development Department, Maharashtra State, Pune, issued the order dated 31.10.2013 and relieved the applicant from the post of Probation Officer, Class III by allowing him to keep lien on the post of Probation Officer, Class III. On the basis of the said relieving letter issued by the respondent No. 6 he was relieved from his parent department to join on the post of Registrar under the respondent No. 1. Accordingly, the applicant was allowed to join on the post of Registrar by the Principal, Government Polytechnic, Jalgaon on dated 1.11.2013.

3. The applicant joined new post by keeping his lien on the post of Probation Officer, Class-III in the Women & Child Development Department for the period of three years.

4. On 20.1.2016, the applicant submitted an application to the respondent No. 3 i.e. Director of Technical Education, through proper channel and requested to relieve him from the post of Registrar and to repatriate him to his original post of Probation Officer, Class III in Women & Child Development Department as he had kept lien on the said post. He made the said request in view of his family problems and other difficulties.

His immediate authority i.e. the Principal, Government Polytechnic, Jalgaon, submitted proposal to the Joint Director, Technical Education, Nasik for taking appropriate decision on the request of the applicant for repatriation. Thereafter, the Joint Director of Technical Education, Nasik Division, Nasik, submitted the proposal to the Director of Technical Education, Mumbai on 17.02.2016 for passing appropriate order on the application of the applicant. The Director, Higher & Technical Education had not taken any decision on the said application and, therefore, the applicant made representations to the respondent No. 3 on 14.7.2016 and 10.10.2016 and requested to relieve him in view of his request made in the applications submitted by him, but no orders had been passed by the respondent Nos. 1 to 3.

5. On 21.12.2016, the respondent No. 3 issued the order and informed the Joint Director, Technical Education, Nashik i.e. respondent No. 1 that the respondent No. 1 rejected the request of the applicant by the order dated 28.10.2016. The copy of the said letter was served on the Principal, Government Polytechnic, Jalgaon and the applicant. It was mentioned therein that the rejection order issued by the respondent No. 1 dated 28.10.2016 was enclosed along with the letter dated 21.12.2016, but in fact,

copy of the rejection order dated 28.10.2016 was not enclosed to the letter dated 21.12.2016 and it was not sent to the Principal, Government Polytechnic, Jalgaon. On receiving letter dated 21.12.2016, the applicant made representation to the respondent No. 3 and submitted that he had not received the copy of order dated 28.10.2016 along with the copy of communication dated 21.12.2016 and, therefore, he requested to supply the copy of the order dated 28.10.2016 passed by the respondent No. 1. In response to the representation submitted by him on 3.1.2017, the Principal, Government Polytechnic, Jalgaon served the copy of the order dated 28.10.2016 issued by the respondent No. 1, by which the request of the applicant for relieving him from the Higher Education Department has been rejected. On receiving the copy of the order dated 28.10.2016, the applicant made representation with the respondent No. 1 and requested to reconsider his request for relieving him for joining him in parent Department. The respondent No. 1 had not taken any decision on the representation. Therefore, the applicant approached this Tribunal by filing the present Original Application and prayed to quash and set aside the impugned order by allowing the Original Application and prayed to direct the respondents to relieve him from the post of Registrar, Government Polytechnic, Jalgaon for

joining his parent department on the post of Probation Officer, Class-III. It is his contention that the respondents had not considered his request in view of the provisions of Rule 22 to 28 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. It is his contention that he has kept lien on the post of Probation Officer, Class-III in the department of Women & Child Development Department, Nandurbar, but the respondents had not considered the aforesaid provision and wrongly rejected his claim for repatriation.

6. It is his contention that in case of similarly situated persons the other departments of Government of Maharashtra passed the orders of repatriation of those employees in view of the provisions of Rule 22 to 28 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, but the respondent Nos. 1 to 3 had not considered the said provisions. Therefore, he prayed to quash and set aside the impugned order and prayed to direct the respondents to relieve him from the post of Registrar, Government Polytechnic, Jalgaon for joining his parent department on the post of Probation Officer, Class-III on the basis of lien kept by him.

7. Respondent Nos. 1, 3 to 5 resisted the contentions of the applicant by filing their common affidavit in reply. They admitted

that the applicant has been appointed as a Registrar in the Government Polytechnic, Jalgaon and prior to that he was serving in Women & Child Development Department, Nandurbar, on the post of Probation Officer, Class-III. They have admitted that the applicant filed application for repatriation in his original / parent department and the respondent No. 5 vide letter dated 27.01.2016 sent proposal of repatriation of the applicant to the Joint Director. Thereafter, Joint Director forwarded it to the Director, Technical Education for consideration. It is their contention that in Technical Education Department 97 posts of Class-II officers are sanctioned. Out of those 97 posts, only 49 posts filled and 48 posts are vacant till date. Considering the large vacancy of the posts, the respondent No. 1 rejected the request of the applicant to relieve him from the post of Registrar, Government Polytechnic, Jalgaon and to permit him to join in Women & Child Development Department. It is their contention that due to the administrative exigency, the request of the applicant has not been considered and there is no illegality and, therefore, they justified the impugned order.

8. Respondent Nos. 2 & 6 have filed their affidavit in reply and resisted the contention of the applicant. They have admitted the fact that the applicant was serving in their department previously



and he had applied for the post of Registrar, Government Polytechnic, Jalgaon, through them and permission was given to him. They have admitted the fact that the applicant was selected as Registrar and thereafter he has been relieved. They have admitted the fact that the respondent No. 6 relieved him and permitted him to keep lien on the post of Probation Officer, Class-III for the period of three years and accordingly relieving order of the applicant has been issued on 31.10.2013 by the respondent No. 6. They have admitted the fact that the applicant had joined on the said post of Registrar on 1.11.2013 and thereafter he made representations on 21.1.2016, 14.7.2016 & 10.10.2016 to the respondent No. 3 for his repatriation. It is their contention that the applicant has not made any correspondence to his parent department i.e. Women & Child Development Department, Nandurbar, in that regard. It is their contention that the applicant has not annexed any document showing that his probation period on the posts of Probation Officer and Registrar has been completed satisfactorily. It is their contention that the applicant has been appointed on probation for the period of two years. It is their contention that they were not aware about the fact that the probation period has

been terminated. Therefore, they prayed to dismiss the Original Application.

9. The applicant has filed rejoinder to the affidavit in reply filed by respondent Nos. 1 & 3 to 5 and resisted their contention regarding the vacancies of the post in the department and rejection of the request of the applicant on that ground. It is his contention that the respondent Nos. 4 & 5 have forwarded his representation, but they have not raised any objection for his repatriation on the basis of vacancies in the department. It is his contention that he has kept lien on the post of Probation Officer and within the stipulated period he made request for repatriation. Therefore, he prayed to allow the Original Application.

10. The respondents have filed sur-rejoinder and resisted the contentions of the applicant. They have reiterated the fact that the request of the applicant has been rejected due to vacancies in the Higher & Technical Department and they justified the rejection of the application. It is their contention that the application of the applicant has been rejected on just ground and, therefore, they justified it and prayed to dismiss the Original Application.

11. I have heard the arguments advanced by Shri J.B. Choudhary, learned Advocate for the applicant and Shri B.S. Deokar, learned Presenting Officer for the respondents. I have perused the application, affidavit, affidavit in reply filed by the respondents. I have also perused the documents placed on record by both the parties.

12. Admittedly, the applicant was initially appointed as Assistant Inspector / Probation Officer, Class III in Women & Child Development Department on 5.11.1998. Accordingly, he joined the said post on 19.11.1998 and posted at Mumbai. Admittedly, the applicant completed his two years' probation on the post of Probation Officer in Women & Child Development Department on 12.5.2000. Thereafter he was confirmed in the service. Admittedly, the applicant moved an application for the post of Registrar in Government Polytechnic through the Commission through proper channel i.e. Women & Child Development Department. He sought permission from his parent department. Accordingly, he was permitted to apply for the said post by the communication dated 27.1.2012. The applicant appeared before the Commission for the post of Registrar, Government Polytechnic, Jalgaon and thereafter he was selected and posted as Registrar by order dated 17.9.2013. Admittedly,

the applicant was permanent employee of Women & Child Development Department. Admittedly, the applicant applied to his parent department i.e. the District Women and Child Development, Nandurbar and requested to relieve him from the post of Probation Officer, Class III to join on the post of Registrar, Government Polytechnic, by keeping his lien for the period of 3 years on his original post of Probation Officer, Class III. Accordingly, the Commissioner, Women & Child Development Department, Maharashtra State, Pune issued order dated 31.10.2013 and relieved the applicant by allowing him to keep lien on the post of Probation Officer for the period of three years. Accordingly, he joined the post of Registrar by the Principal, Government Polytechnic, Jalgaon on 01.11.2013. Before completion of his three years period of lien the applicant submitted an application dated 20.1.2016 to the respondent No. 3 i.e. the Director of Technical Education and requested to relieve him from the post of Registrar and to repatriate him to his original post of Probation Officer in Women & Child Development Department. Thereafter also he made subsequent applications to the respondents. The respondents had not taken decision in reasonable time. On 28.10.2016 the respondent No. 1 took decision and rejected his application and the said decision was

communicated to him by the respondent No. 3 by the communication dated 21.12.2016. Admittedly, the applicant made representation to the respondent No. 1 to reconsider his request for repatriation, but the respondent No. 1 had not taken any decision thereon.

13. Learned Advocate for the applicant has submitted that the applicant had obtained the permission of his parent department while applying for the post of Registrar in Higher & Technical Education Department and on the basis of permission granted by his parent department i.e. Women & Child Development Department, he appeared before the Commission and thereafter he was selected and appointed on the post of Registrar. He has submitted that the applicant relieved from his parent department i.e. Women & Child Development Department on the basis of his request by allowing him to keep lien on the post of Probation Officer for the period of three years. He has submitted that on the basis of the said order passed by his parent department, he joined the post of Registrar on 01.11.2013. Thereafter, he worked there. The has submitted that before completion of lien period the applicant applied for repatriation in his parent department i.e. Women & Child Development Department, but the respondent No. 1 illegally rejected his request. He has

submitted that the provisions of Rule 22 to 28 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 deal with the provision of lien, restriction on it, suspension of lien and its termination, transfer of it to another post etc. He has submitted that the applicant has not acquired permanency in the post of Registrar when he moved the application and, therefore, he is entitled to get repatriation to his parent department in view of the aforesaid provision of Maharashtra Civil Services (General Conditions of Services) Rules, 1981. He has submitted that the respondent No. 1 wrongly rejected his application without considering the provisions of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and, therefore, he prayed to quash and set aside the impugned order.

14. Learned Advocate for the applicant has further submitted that the respondent Nos. 1, 3 to 5 never raised objection to his request for repatriation while sending his proposal to the respondent No. 1, but they have wrongly contended in their affidavit-in-reply that because of the vacancy in the department they could not relieve the applicant. He has submitted that vacancy in the department of Higher and Technical Education Department has nothing to do with the repatriation of the

applicant. It is the right of the applicant to claim repatriation to his parent department on the basis of lien kept by him on the post of Probation Officer, Class-III, but the respondents had not considered the request of the applicant. Therefore, he prayed to quash and set aside the impugned order issued by the respondent No. 1 and also prayed to direct the respondent Nos. 1, 3 to 5 to repatriate him to his parent department i.e. Women & Child Development Department by allowing the O.A.

15. Learned Presenting Officer has submitted that the applicant was appointed on the post of Registrar in Government Polytechnic Department, which is an administrative post. Administration and Finance Departments are attached with the said post. He has submitted that in the department of Higher and Technical Education 97 Technical posts are sanctioned. Out of these 97 posts 49 posts have been filled, 48 posts are vacant. Considering the huge vacancies in the department the request of the applicant, to repatriate to him to his parent department on the post of Probation Officer, Class-III in Women & Child Development Department, has been rejected. He has submitted that the request of the applicant has been rejected on account of administrative reason. Therefore, he justified the impugned

order passed by the respondent No. 1 and prayed to reject the Original Application.

16. On perusal of the document, it reveals that the applicant was initially appointed as Probation Officer in Women & Child Development Department. Thereafter, he applied for the post of Registrar in Higher & Technical Education Department through proper channel. He was selected as Registrar, in Higher & Technical Education Department. Thereafter, he was relieved by the respondent No. 6 on 31.10.2013 to join the post of Registrar in Higher & Technical Education Department by keeping his lien on the post of Probation Officer, Class-II in Women and Child Development Department for the period of three years. Accordingly, the applicant joined the Government Polytechnic, Jalgaon on 1.11.2013. The applicant was not confirmed or made permanent on the post of Registrar when he submitted application on 20.1.2016 to the respondent No. 3 and other respondents for relieving him from the post of Registrar and to repatriate him to his original / parent department on the post of Probation Officer, Class-III. In view of the rule 23 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, the Government servant can keep / retain lien for the period of three years on the post held by him. The applicant



has applied for termination of lien before completion of three years. He was not holding the substantively permanent post in Higher & Technical Department while submitting the application for repatriation. The respondents ought to have considered the provisions of Rule 22 to 26 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, which are relevant in this regard while deciding the application of the applicant. The said rules are material and, therefore, it would be appropriate to reproduce those rules. The said rules read as under: -

**“22. Retention of a lien :** - *Unless his lien is suspended under Rule 23, or transfer under Rule 26, a Government servant holding substantively a permanent post retains a lien on that post : -*

*(a) while performing the duties of that post;*

*(b) while on foreign service or holding a temporary post, or officiating in another post, or holding a post the pay of which is charged to works or contingencies;*

*(c) during joining time on transfer to another post, unless he is transferred substantively to a post on lower pay, in which case lien is transferred to the new post from the date on which he is relieved of his duties in the old post;*

(d) while on leave other than refused leave granted after the date of retirement;

(e) while under suspension;

Note: - A Government servant confirmed in a permanent post, which is subsequently held in abeyance (because it is not required for active duty) continues to hold a lien on that post during the period the post is held in abeyance.

**23. Suspension of lien :-** (1) A competent authority shall suspend the lien of a Government servant on a permanent post which he holds substantively if he is appointed in a substantive capacity.

(a) to a tenure post, or

(b) provisionally, to a post on which another Government servant would hold lien had his lien not been suspended under this sub-rule.

(2) A competent authority may, at its option, suspend the lien of a Government servant on a permanent post which he holds substantively if he is deputed out of India or transferred to foreign service or in circumstances not covered by sub-rule (1) of this rule is transferred, whether in a substantive or in a officiating capacity, to a post in another cadre, and if in any of these cases there is reason to believe that he will remain absent from the post on which he holds a lien for a period of not less than three years.

*Note :When it is known that a Government servant on transfer to a post outside his cadre is due to retire on superannuation within three years of his transfer, his lien on his cadre post cannot be suspended.*

*(3) Notwithstanding anything contained in sub-rule (1) or (2) of this rule, a Government servant's lien on a tenure post may in no circumstances be suspended. If he is appointed substantively to another permanent post, his lien on the tenure post must be terminated.*

*(4) If a Government servant's lien on the post is suspended under sub-rule (1) or (2) of this rule, the post may be filled substantively and the Government servant appointed to hold it substantively shall acquire a lien on it, provided that the arrangements shall be reversed as soon as the suspended lien revives.*

*Note 1: - This sub-rule also applies if the post concerned is a post in a selection grade of a cadre.*

*Note 2 : - When a post is filled substantively under this sub-rule, the appointment will be termed a provisional appointment, the Government servant appointed will hold a provisional lien on the post, and that lien will be liable to suspension under sub-rule (1), but not under sub-rule (2) of this rule.*

*(5) A Government servant's lien which has been suspended under sub-rule (1) of this rule shall revive as*

*soon as he ceases to hold a lien on a post of the nature specified in sub-rule 1 (b).*

*(6) A Government servant's lien which has been suspended under sub-rule (2) of this rule shall revive as soon as he ceases to be on deputation out of India or on foreign service or to hold a post in another cadre, provided that a suspended lien shall not revise because the Government servant takes leave if there is reason to believe that he will, on return from leave, continue to be on deputation out of India or on foreign service or to hold a post in another cadre and the total period of absence on duty will not fall short of three years or that he will hold substantively a post of the nature specified in clause (a) or (b), of sub-rule (1).*

*Instruction: Under the existing provisions of this rule, it is possible for more than one person to be appointed in a provisional substantive capacity against a single post. The operation of this rule should, however, be restricted so as to permit only one provisional substantive appointment against one post. Accordingly, the lien acquired by a Government servant on his appointment in a provisionally substantive capacity under sub-rule (4) of this rule, should not be suspended if he is deputed out of India or is transferred to a post of the nature specified in sub-rule (2) of this rule.*

**24. Suspension of the lien retrospectively and consequential promotion: -** *When suspension of*

*the lien of a Government servant is sanctioned under sub-rule (2) of rule 23, it is permissible retrospectively from the date he is deputed out of India or transferred to foreign service, or is transferred in an officiating capacity to a post either permanent or temporary in another cadre or from any subsequent date; but whether provisional substantive promotions should be given from that date or from any subsequent date is a matter which is entirely at the discretion of the authority whose duty is to fill up the post if permanently vacant.*

**25. When a lien or a suspended lien cannot be terminated:** - (1) *Except as provided in sub-rule (2) below, a Government servant's lien on a post may in no circumstances be terminated even with his consequent, if the result will be to leave him without a lien or a suspended lien upon a permanent post.*

(2) *A Government servant's lien on a post shall stand terminated on his acquiring a lien on a permanent post (whether under the Central Government or State Government) outside the cadre on which he is borne.*

**26. Transfer of the lien to another post :** - *Subject to the provisions of the Rule 27, a competent authority may transfer to another permanent post in the same cadre the lien of a Government servant who is not performing the duties of the post to which the lien relates, even if that lien has been suspended."*

17. Respondent No. 1 has not considered the said rules with proper perspective and rejected the request of the applicant. While rejecting the request of the applicant by order dated 28.10.2016, the respondent No. 1 has not recorded just and proper reasons. It shows that the respondent No. 1 has not applied his mind properly while rejecting the request of the applicant. The respondents had not considered the provisions of rules 20 to 26 of Maharashtra Civil Services (General Conditions of Services) Rules, 1981, and arbitrarily rejected the application of the applicant for repatriation. Admittedly, the applicant has kept lien on the post of Probation Officer, Class-III for the period of three years. He has every right to claim repatriation during the period of lien. Accordingly, he exercised his right by filing the application. Respondent No. 1 ought to have considered the request and permitted him to join his parent department by terminating his lien, but respondent No. 3 had not considered the said aspect. It would be appropriate to mention here that other departments of Government of Maharashtra have accepted the request of similarly situated employees and accordingly they permitted them to exercise their right of lien and repatriated them to their own parent departments. This fact is evident from the orders passed by the concerned departments, which are

placed on record at page Nos. 60 to 64 (Annexure "A-16" and Annexure "A-17").

18. The respondents had not considered the provisions of rules 20 to 26 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, which governs the right of the Government servant to keep lien on the substantively post and, therefore, wrongly rejected the request of the applicant. Therefore, in my view, the impugned order dated 28.10.2016 rejecting the request of the applicant by the respondent No. 1 is illegal, against the provisions of rule 20 to 26 of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and not sustainable in law. Therefore, it requires to be quashed and set aside by allowing the Original Application.

19. In view of the discussions in the foregoing paragraphs, the Original Application is allowed. The impugned order dated 28.10.2016 rejecting the request of the applicant to repatriate him to his parent department i.e. Women & Child Development Department, on the post of Probation Officer is hereby quashed and set aside.

Respondent Nos. 1 & 3 are directed to issue orders to repatriate the applicant to his parent department i.e. Women &

Child Development Department on the post of Probation Officer, Class-III on the basis of lien retained by the applicant on that post, immediately and to relieve him from the post of Registrar, Government Polytechnic, Jalgaon to join the post of Probation Officer, Class-III in Women & Child Development Department, Government of Maharashtra.

On issuing the order of repatriation by the respondent Nos. 1 & 3 the respondent Nos. 2 & 5 shall issue the necessary orders giving the posting to the applicant on the post of Probation Officer, Class-III in Women & Child Development Department. This exercise shall be done by the concerned respondents within a reasonable period.

There shall be no order as to costs.

**(B.P. PATIL)**  
**ACTING CHAIRMAN**

**PLACE : AURANGABAD.**  
**DATE : 12.03.2020.**