

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.1170 OF 2022**

**DISTRICT : THANE  
SUBJECT : PAY AND  
ALLOWANCES**

Yogesh Pandharinath Bhoi, )  
Age: 40 years, Occ. Service, )  
Residing at Sai Sansar Residency, Building No.2, )  
Flat No.003, Kalyan Road, Devgaon, Taluka; Murbad, )  
District: Thane. ) ... **Applicant**

**Versus**

- 1) The State of Maharashtra, )  
(Through the Secretary, )  
Tribal Development Department, )  
Mantralaya, Mumbai - 400 032. )
- 2) The Additional Tribal Development Commissioner,)  
Having Office at Mahanagar Telephone Nigam )  
Limited Premises, Wagale Estate, Road No.9, )  
Thane (West). )
- 3) Project Officer, )  
Integral Tribal Development Project, Shahapur )  
Having office at Dhumal Residency, First Floor, )  
Gotheghar, Shahapur, Taluka: Shahapur, )  
District: Thane. )...**Respondents**

**Shri Laxman S. Deshmukh, learned Advocate for the Applicant.**

**Shri Ashok J. Chougule, learned Presenting Officer for the Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER (J)**

**DATE : 29.03.2023.**

**JUDGMENT**

1. The Applicant has challenged order dated 23.03.2022 issued by Respondent No.2 – The Additional Tribal Development Commissioner whereby representation made by the Applicant for pay and allowances for the period from 29.09.2021 to 29.11.2021 for 62 days was rejected and it was treated as compulsory waiting period.

2. Shortly stated undisputed facts giving rise to this O.A. are as under:-

- A) While the Applicant was serving as Teacher at Government Ashram school at Khutal, Tal. Murbad, Dist. Thane he was transferred to Government Ashram school at Mal, Tal. Murbad, Dist. Thane by order dated 09.08.2021.
- B) Accordingly the Applicant was relieved from Khutal and went to Government Ashram school at Mal for joining but Headmaster of Ashram school, Mal did not allow him to join on the ground that there was no vacant post in the said Ashram school.
- C) The Applicant further immediately reported to the Respondent No.2 by representation dated 17.08.2021 that he was transferred at Mal where there is no vacancy and he is kept in abeyance for no fault on his part. (Pg 25 of P.B.)
- D) Respondent No.2 thereafter by order dated 30.08.2021 modified transfer order dated 09.08.2021 and changed his posting from Ashram school Mal to Ashram school Vangani.
- E) The Applicant had challenged order dated 30.08.2021 by filing O.A. No.720/2021 in this Tribunal, in which interim relief was granted with specific direction that the Applicant shall be allowed to continue at Khutal till further order by order dated 24.09.2021. The Applicant however was relieved by Principal, Ashram school, Khutal on 28.09.2021 despite interim relief dated 24.09.2021 was brought to his notice, and therefore Tribunal proposed to issue Contempt Notice against Principal Shri Kishor R. Patil.

- F) When O.A. No.720/2021 was taken up for hearing, learned P.O. made statement that one post of Teacher is vacant at Ashram Ambivali. It was accepted by the Applicant. Accordingly, O.A. No.720/2021 was disposed of by giving one week time to the Respondent No.2 to pass appropriate posting order of Ambivali and explanation submitted by Shri Kishor R. Patil was accepted.
- G) Accordingly, Respondent No.2 by order dated 26.11.2021 issued posting order of the Applicant at Ambivali were be joined on 30.11.2021.
- H) After joining he made representation on 08.02.2022 for pay and allowances for the period from 29.09.2021 to 29.11.2021 but it came to be rejected by order dated 23.03.2022 which is challenged in the present O.A.

3. Heard Shri L.S. Deshmukh, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

4. At the very outset it needs to be stated that by impugned order dated 23.03.2022 issued by Respondent No.2 though he rejected the claim of the Applicant for pay & allowances stating that there was no such administrative delay on his part notably he treated the said period as compulsory waiting period. This being so, the Applicant ought to have been granted pay and allowance for the period from 29.09.2021 to 29.11.2021.

5. The facts as narrated above are not in dispute. The Applicant was transferred from Khutal to Mal in haphazard manner without verifying vacancy at Mal and when the Applicant went to join he was not allowed for the want of vacancy. As such, it was clearly administrative lapse on the part of the Respondents. Thereafter the Applicant himself made representation to the Commissioner and on receipt of it transfer order dated 09.08.2021 was modified giving posting to the Applicant at Vangani which was challenged by him by filing O.A. No.720/2021. In the said O.A. taking note of all the event and administrative lapses,

Tribunal granted interim relief and the implementation of the modified order dated 30.08.2021 was stayed with specific direction that the Applicant shall continue to work at Khutal till further orders. Despite the stay order, Principal of the Ashram school relieved the Applicant on 09.08.2021, in receipt of which cognizance was taken by the Tribunal and later O.A. No.720/2021 was disposed of in view of fresh posting given to the Applicant at Ambivali where he joined on 30.11.2021. This being so, the period from 29.09.2021 to 29.11.2021 ought to have been treated as duty period for all purposes. Once Tribunal has granted interim relief with specific direction that the Applicant shall be allowed to continue at Khutal, the question of non-joining of the Applicant at Vangani does not survive. All these happened because of sheer negligence on the part of Respondents. They ought to have taken care of the vacancy while transferring him from Khutal to Mal but without verifying vacancy position transfer order was issued which resulted in such mess.

6. Suffice to say, the Applicant was unnecessarily kept in abeyance without any fault on his part. It is only because of administrative lapses his service could not be utilized properly from 29.09.2021 to 29.11.2021. At any rate the Applicant cannot be blamed for it.

7. Totality of the aforesaid discussions leads me to sum up that rejection of the claim of the Applicant for pay and allowances from 29.09.2021 to 29.11.2021 is clearly unsustainable in law and O.A. therefore deserves to be allowed. Hence, the order.

**ORDER**

- A) The Original Application is allowed.
- B) Respondents are directed to treat the Applicant's period from 29.09.2021 to 29.11.2021 as duty period for all purposes and pay and allowances of the said period be paid within one month from today.

C) No order as to costs.

**Sd/-**  
**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai  
Date: 29.03.2023  
Dictation taken by: N.M. Naik.

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