

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.1256 of 2009 & 1062 of 2010

DISTRICT : PUNE

ORIGINAL APPLICATION NO.1256 OF 2009

Shri Vasant Baburao Rendale,)
R/at. New Kumbhar Colony, Kadgaon Road,)
Gadinglaj, Dist. Kolhapur.)...Applicant

Versus

1. Government of Maharashtra,)
Through Additional Chief Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai 400 032.)
2. Collector, District Kolhapur.)
3. Accountant General, having his office)
At Maharshi Karve Road, Mumbai.)..Respondents

ORIGINAL APPLICATION NO.1062 OF 2010

Shri Suryakant Rajaram Sonar,)
R/at & Post Channe Kuppi, Taluka Gadinglaj,)
District Kolhapur.)...Applicant

Versus

1. Government of Maharashtra,)
Through Additional Chief Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai 400 032.)
2. Collector, District Kolhapur.)
3. Sub Divisional Officer, Gadinglaj,)
District Kolhapur.)..Respondents



**Shri M.D. Lonkar, Advocate for Applicants.
Smt. Kranti Gaikwad, Presenting Officer for Respondents
(O.A.No.1062/2010) & Shri A.J. Chougule, Presenting
Officer for Respondents (O.A.No.1256/2009)**

**CORAM : RAJIV AGARWAL, (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 26.2.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

ORDER

1. These two Original Applications despite a few minor differences in the matter of details can still be disposed of by this common judgment because the deciding issue is the same. The issue involved is with regard to validity of an action of punitive nature on account of alleged irregular appointments decades ago consequences of which are being sought to be visited upon the applicants after their retirement on superannuation.

2. We have perused the record and proceedings and heard Shri M.D. Lonkar, learned Advocate for the applicants and Smt. Kranti Gaikwad, learned Presenting Officer (P.O.) for the respondents. We have also perused our judgment in **O.A.No.1091/2010 (Shri Vilas D. Patil V/s. State of Maharashtra & 3 others), dated 28.10.2014.** In good measure the determination of the crucial issue in these two Original Applications will be in accordance with **Vilas Patil** (Supra).



3. In so far as O.A.No.1256/2009 is concerned, the first respondent is Government of Maharashtra through Additional Chief Secretary, Revenue and Forest Department. The second respondent is Collector of the Kolhapur and the third respondent is Accountant General, Mumbai. In O.A.No.1062/2010, first two respondents are the same as in the sister O.A. while the third respondent is Sub-Divisional Officer, Gadinglaj, district Kolhapur.

4. In O.A.No.1256/2009 (first O.A. herein after), the applicant was born on 08.07.1948. Therefore, he stood retired on superannuation on 31.7.2006. He was initially appointed as Peon in Tahsil office under the respondent no.2. He was terminated after a few months but then reappointed in Class-IV cadre w.e.f. 27.8.1973. He came to be promoted as a clerk in which cadre he was confirmed on 30.12.1980. He was then promoted in the year 1981. He became Avasthakar and as such retired on the date mentioned above. He has pleaded that he had always being on the role of the Government as any other government employee in every possible manner. After retirement he has been getting regular pension. However, a little more than 3 years after his retirement by a communication, a copy of which is at Exb. 'A' dated 14.8.2009, the applicant and seven others all retired employees and in fact one of them having passed away came to be informed by the second respondent that their initial appointments were irregular and illegal (अनियमित व बेकायदेशिररित्या) and, therefore, in as much as the applicant had retired his



pension would be stopped one month after receipt of the said communication which is impugned in this O.A. The applicant has also sought stay of the operation of the impugned order pending O.A. We were told by Shri Lonkar, learned Advocate for the applicant that the services of the impugned communication notwithstanding the applicant has continued to receive pension. In the meanwhile, the applicant made some representations as well against impugned order.

5. The respondent no.2 filed an affidavit-in-reply through Shri Laxman Balwant Nikam, Revenue Naib Tahsildar. The other respondents have not filed affidavits-in-reply. Reading the said affidavit-in-reply, we find that according to the second respondent the Government took a decision that those whose initial appointment was not according to rules and their services were not regularized, they would not be entitled to any pensionary benefits.

6. They have placed heavy reliance on a judgment of this tribunal in a fasciculus of 10 O.A.s starting from **O.A.No.661/2007 & 9 others (Ramchandra G. Kamble V/s. State of Maharashtra & 2 others, and other O.A.s), dated 30.3.2009.** A Division Bench of this Tribunal speaking through the learned Judicial Member dealt with more or less with the same facts and dismissed all those Original Applications. There against a **W.P.No.7395/2009 (Shri Shivaji S. Shelke V/s. State of Maharashtra & others) was carried to the Hon'ble High Court.** By an interim order of 1.9.2009, the Hon'ble High Court was pleased to stay the



operation of above referred order of this Tribunal and directed that W.P. be heard along with W.P.No.4458/2009.

7. Returning to affidavit-in-reply of the second respondent, it is pleaded that there was no provision to grant pension to those who were not regular appointees as the said respondent put it. The various facts with regard to service benefits etc. including the promotion etc. have not been disputed. It is also admitted that the applicant was duly sponsored by the Employment Exchange.

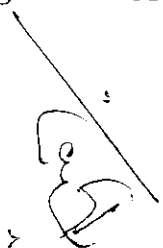
8. It is, however, very clear that from the record of O.A.No.1256/2009, one cannot find the exact reason as to why the initial appointment of the applicant was sought to be assailed as irregular. It is also very clear that the applicant not only completed his entire service in all those years (35 years or more) but he had retired also and that too three years before the impugned communication was served on him.

9. Turning to O.A.No.1062/2010, the applicant came to be appointed as a Peon by the order dated 06.05.1969. It seems, however, that according to the respondent as against the date of birth recorded as 08.06.1951, his actual date of birth was 14.09.1950 or at any rate there was some lapse with regard to his date of birth. He came to be appointed on compassionate ground after the demise of his father. The age limit was 18 years but it was informed ultimately that there would be no relaxation given to the applicant. Further while

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the applicant was appointed on 06.05.1969, the scheme of compassionate appointment was noticed on 23.04.1976 and it was on these grounds that vide Exb. 'A' dated 03.09.2010, it was informed that due to initial irregularity in appointment his service would be terminated within seven days of receipt thereof.

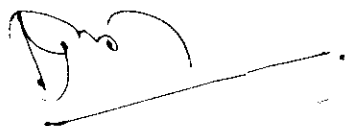
10. It however appears that the applicant in the meanwhile having attained the age of retirement on superannuation, has to prosecute this O.A. on pains of losing the retirement benefits. The Respondent no.1 filed an affidavit-in-reply of Shri Sarjerao Jagdale, Section Officer in Revenue & Forest Department, Mantralaya. It is not disputed that the applicant came to be appointed on 06.05.1969 and he was under-aged at that time. The office of the Collector, Kolhapur forwarded the proposal to the Government on 17.02.1999 for relaxing the age limit. There is a reference to a Government circular of 03.03.1998 mandating that change of date in the record could be made within five years of joining of Government service and not thereafter. At this stage itself, we think that we must clearly mention that it is inapposite to rely upon that circular because the present facts did not fall within the said circular. It is not as if the applicant wanted any change made in his date of birth. It so happens that the date of birth recorded was such as to indicate that the applicant was under-aged and the issue was as to whether concession could be given. There is a reference to the judgment of the Tribunal in O.A.No.661/2007 & 9 others



detailed above which as already mentioned above has been stayed by the Hon'ble High Court.

11. Affidavit-in-reply of respondent no.2 and 3 has been filed by Ms Neelima G. Dhayagude, S.D.O., Gadinglaj. In addition to the facts of the appointment being compassionate etc. it is pleaded that in the year 1991, Officer of Collector, Kolhapur had made enquiry on whether there were any government servants whose appointments were irregular. The case of the applicant was mentioned in paragraph no.3.2. and 3.3. It is mentioned inter-alia that the case of the applicant was processed. It was on 29.7.2008 that the letter was received from Mantralaya requiring papers to be produced. His case was not accepted because the age limit could not be relaxed. Pertinently, one Shri. Shivaram More and Shri Ramchandra Kesarkar were exactly so similarly placed as the applicant was and in paragraph no.3.6 of this affidavit, it is mentioned that their cases were favorably considered "on humanity grounds".

12. Before proceeding further in so far as O.A.No.1062/2010 is concerned, in our view the last mentioned fact by itself will be sufficient to draw a conclusion in favour of the applicant because along with all other facts and circumstances on which some more discussion may follow the constitutional guarantee against hostile discrimination between two similarly placed set of employees would by itself be sufficient for the applicant to carry the day.



13. In the context of the above discussion pertaining to both the O.A.s it must have become very clear that the applicants did not at all contribute to continuation of their services. There cannot be any question of there being even an improper conduct much less anything which can be called criminal. The facts have been stated and this aspect of the matter must become very clear. Both the applicants spent all the years of their lives in discharging their duties as any other government servant would do. There is a possibility of there being some hitch in their case which in fact kept on coming to the fore intermittently and that too from the period of 20 years and more but no adverse step was taken against them. It is very clear however that there is simply no question of there being any back-door entry as such. In case of the applicant in O.A.No.1062/2010 granting all latitude to the respondents the institution of compassionate appointment may have been documented for the first time in 1976 but there is nothing to show that the applicant was the only beneficiary of this scheme in actual practice pre 1976. On one hand, it will be a case of the applicants having played no questionable game much less any criminal act in securing the employment and secondly, ultimately it was for the respondents to take a call and if they decided to appoint them then to continue them. But in the evening of their careers they cannot be put to peril.

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14. The facts of both these Original Applications are like Vilas Patil's case (Supra) as already mentioned above. We decided that O.A. on 28.10.2014. It will not be out of place to mention that on 23.09.2014, in these Original Applications an order was made wherein the earlier judgment of the Division Bench of this Tribunal in O.A.No.661/2007 and 9 others was noticed. It was also noticed that Hon'ble High Court was pleased to stay the operation thereof. Shri Lonkar, learned Advocate had then requested that since similar matters were pending before the Hon'ble High Court these O.A.s be kept in sine-die list with necessary liberty to the parties allowing them to mention the matter if need be. Both these O.A.s were directed to be heard together.

15. At this stage itself be it noted that as far as these two Original Applications are concerned, there is no stay of the Hon'ble High Court for their hearing and final disposal.

16. In the meanwhile, we decided Vilas Patil's case (Supra). It will be appropriate to take a bird eye view of that particular judgment because therein we tackled the issue of the earlier judgment of this Tribunal in O.A.s above referred to which order is under stay of the Hon'ble High Court. That was also a matter where the applicants came to be selected in the normal course but the Government took a stand that he and 39 others were irregularly appointed. There also the issue of age was involved. We noted the total absence of any vice like fraud, deceit etc. which is also the state of affair obtaining



here. Then the judgments of the Hon'ble Supreme Court in **A. Umarani Vs. State of Tamilnadu (2004) S.C.C. 112** and **Secretary, State of Karnataka & Ors Vs. Umadevi (3) and ors. (2006) 4 S.C.C.1** came to be noted for guidance. That was done while dealing with the decision of this Tribunal in earlier group of 10 O.A.s on 30.03.2009 to which there has been repeated reference herein above. It was then noted that the said judgment of this Tribunal had been stayed by the Hon'ble High Court implying thereby that there was no hitch in our hearing and deciding Vilas Patil's O.A. finally. In fact in a restrained manner though, we had also indicated that we may not have agreed with the judgment of this Tribunal above referred to even otherwise. But that occasion does not arise for the reason just mentioned. We then referred to the judgment of **M/s Motilal Padampat Sugar Limited Vs. The State of U.P., AIR 1979 SC 621** and **Sadan Petrochemical Industries Vs. Electricity Inspector 2007 AIR SCW 3752 (J) (K)** in so far as the principle of promissory estoppel was concerned. In the light of that discussion, we concluded for the applicants and allowed the Original Applications.

17. The above discussion must have made it clear that facts in these two Original Applications are such as to be governed by the same principles. There is no reason why after having spent long periods of more than 30 years in service, the applicants should have been made to suffer for no fault of theirs. We would therefore conclude by holding that the

impugned orders cry for being interfered with and we think we must readily oblige.

18. The applicants in both these O.A.s are hereby declared to be entitled to all pensionary and post retiral benefits that any other government employees so similarly placed as them would be entitled to. The actions herein impugned culminating into the impugned orders are all quashed and set aside. The respondents are directed to act in accordance herewith. Compliance to commence forthwith and be completed within a period of three months from today. The Respondents shall make sure that apart from pension all other benefits like gratuity, insurance etc. are also paid to the applicants. These two Original Applications are allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
26.02.2016

Sd/-
(Rajiv Agarwal)
Vice-Chairman
26.02.2016