

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.244 OF 2016

DISTRICT : SANGLI

Shri Innus Ramjan Mulla.)
Age : 39 Yrs, Working as Technical)
Laboratory Assistant in Govt. Women)
Residence Polytechnic, Manerajuri Road,)
Tasgaon, District : Sangli and residing at)
C/o. Mujawar Sir, Galli No.6, Datta Mal,)
A/P/T : Tasgaon, District : Sangli.)...**Applicant**

Versus

1. The Incharge Joint Director.)
Technical Education, Divisional)
Office, Pune 412-E, Shivaji Nagar,)
Pune – 16.)
2. The State of Maharashtra.)
Through Principal Secretary,)
Skill Development & Entrepreneurship)
Department, Mantralaya,)
Mumbai – 400 032.)
3. The State of Maharashtra.)
Through Principal Secretary,)
Higher & Technical Department,)
Mantralaya, Mumbai – 400 032.)...**Respondents**

Mr. Arvind V. Bandiwadkar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J
SMT. MEDHA GADGIL, MEMBER-A**

DATE : 17.06.2021

PER : SHRI A.P. KURHEKAR, MEMBER-J

JUDGMENT

1. The challenge is to the termination order dated 17.02.2016 issued by Respondent No.1 – Joint Director, Technical Education thereby terminating the services of the Applicant for suppressing material fact and breach of Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 (hereinafter referred to as 'Rules of 2005' for brevity).

2. In nutshell, the facts giving rise to this O.A. are as under :-

In pursuance of Advertisement for the post of Technical Laboratory Assistant, the Applicant submitted an application for the said post wherein he made declaration that he has two children. As per Advertisement (Item No.99/2020), the Applicant was required to submit declaration in prescribed format as stipulated in 'Rules of 2005' as well as it was further made clear that where declaration made by the Applicant found false or suppressed truth, then his service will be terminated with immediate effect. The Applicant thus participated in recruitment process and was selected for the post of Technical Laboratory Assistant by appointment letter date 21.05.2014. In appointment order also it was made clear that he was to submit declaration of small family in terms of 'Rules of 2005'. His appointment was initially on probation of six months as per condition mentioned in the appointment order. The Applicant accordingly joined the service. Significantly, the Applicant submitted declaration on 02.06.2014 stating that he had three children and one of them is born after 28th March, 2006. Despite this declaration which made him ineligible, surprisingly he was allowed to continue. It is only on 13.01.2016, the Respondent No.1 issued notice to the Applicant that he has third child born after 28.03.2006, and therefore, was not eligible for appointment in Government service and explanation was sought as to why he should not

be terminated from service with immediate effect. The Applicant submitted reply on 27.01.2016 (Page No.25 of P.B.) stating that while submitting online application for the post, he inadvertently mentioned that he has two children. He, therefore, denied the allegation of suppression of material fact. The Respondent No.1 after considering his explanation having found that the Applicant was not eligible for appointment being in breach of 'Rules of 2005', terminated the services of the Applicant w.e.f.16.03.2016 (i.e. after one month from the order). This termination order is under challenge in the present O.A.

3. The Respondents resisted the O.A. by filing Affidavit-in-reply stating that the Applicant has suppressed material fact of having third child born after cut-off date i.e. 28.03.2006, and therefore, not eligible for appointment. The third child was born on 20.05.2006. The Applicant thus played fraud and got the appointment by suppressing material fact. He was, therefore, rightly terminated from service by impugned order dated 17.02.2016.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to challenge the impugned order *inter-alia* contending that termination of service without initiating regular D.E. under M.C.S. (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity) is illegal in view of protection available to a Government servant guaranteed under Article 311(2) of Constitution of India. He further submits that as initial appointment of the Applicant was on probation of six months, after expiration of 6 months' period on probation, he deemed to have been confirmed and had acquired the status of permanency, and therefore, protection under Article 311(2) of Constitution of India cannot be denied to the Applicant.

5. In this behalf, to bolster-up the contention, the learned Advocate for the Applicant sought to rely upon **AIR 1960 SC 689 [State of Bihar Vs. Gopi Kishore Prasad], 2006 SCC (L & S) 1677 [Hari Ram Maurya**

Vs. Union of India & Ors.] and further referred to the decision rendered by this Tribunal in **O.A.No.316/2006 (Ramkishan R. Jadhav Vs. The Superintendent of Police, Thane) decided on 21st February, 2007**, which will be dealt with little later.

6. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer submits that admittedly, the Applicant had three children at the time of appointment and third child being admittedly born on 20.05.2006, the Applicant was not eligible for appointment in Government service since he suppressed material fact from the Respondents. Therefore, the Applicant was rightly terminated from service after issuing show cause notice. As regard protection under Article 311(2) of Constitution of India, she submits that since appointment is obtained by suppressing material fact and by practicing fraud, such appointment is no appointment in law and Article 311(2) of the Constitution of India is not attracted.

7. In view of submission advanced at the Bar, the issue posed for consideration is whether the Applicant was eligible for appointment in terms of 'Rules of 2005' and impugned order of termination can be faulted with and the answer is in emphatic negative.

8. Indisputably, while submitting online application (Page No.46 of O.A.), the Applicant has stated that he has two children. Material to note that as per Item Nos.19 and 20 of Advertisement, the Applicant was required to submit declaration of small family in terms of 'Rules of 2005' and where the information supplied by the candidate found false, such appointment was liable to be terminated with immediate effect. Admittedly, Applicant's third child was born on 20.05.2006. However, while submitting online application, he obviously suppressed this material fact. Since Department was not aware about third child, the Applicant was appointed by order dated 21.05.2014. In terms of order, he was to furnish declaration of small family. Accordingly, on 02.06.2014, admittedly, the Applicant had submitted declaration as

required under Rule 4 of 'Rules of 2005' (Page No.21 of P.B.), which is as under :-

“परिशिष्ट चौदा

महाराष्ट्र नागरी सेवा (लहान कुटुंबाचे प्रतिज्ञापत्र) नियम, २००५ नुसार
अर्जासोबत जोडावयाच्या लहान कुटुंबाच्या प्रतिज्ञापत्राचा नमुना

प्रतिज्ञापत्र

नमुना-अ

(नियम ४ पहा)

श्री. इब्नूस रमजान मुल्ला, श्री रमजान गुडू भाई मुल्ला यांचा मुलगा, वय ३७ वर्षे, राहणार निबंर्गी जि. सोलापूर याद्वारे पुढील प्रमाणे असे जाहीर करतो की,

- (१) मी तांत्रिक प्रयोगशाळा सहाय्यक (अंशकालीन) या पदासाठी माझा अर्ज दाखल केलेला आहे.
- (२) आज रोजी मला तीन (संख्या) इतकी हयात मुले आहेत. त्यापैकी दिनांक २८ मार्च, २००५ नंतर जन्माला आलेल्या मुलांची संख्या एक आहे. (असल्यास, जन्मदिनांक नमूद करावा.)
- (३) हयात असलेल्या मुलांची संख्या दोन पेक्षा अधिक असेल तर दिनांक २८ मार्च २००६ व तदनंतर जन्माला आलेल्या मुलामुळे या पदासाठी मी अनर्ह ठरविण्यास पात्र होईल याची मला जाणीव आहे.”

9. There is no denying that Government of Maharashtra has framed M.C.S. (Declaration of Small Family) Rules, 2005 in exercise of powers conferred under Article 309 of Constitution of India. As per Rule 3, the declaration of small family is an additional essential requirement for appointment in Government service. Whereas, as per Rule 4, a person who desires to apply for any post in Government service is required to submit along with application form of declaration appended to the Rules. As such, the third child being born on 20.05.2006 which was after cut-off date of 28.03.2006, the Applicant was not at all eligible for appointment in Government service. It is thus obvious that Applicant secured an appointment by practicing fraud and in deceitful manner. As such, in so far as factual position is concerned, there is no denying that third child being born on 20.05.2006, the Applicant was not eligible for appointment in Government service in terms of 'Rules of 2005'.

10. Now, next question comes whether the Applicant was entitled to protection under Article 302 of Constitution of India and termination without initiating the D.E. is illegal.

11. True, in terms of appointment order, the probation period was of initial six months. It is also equally true that there is nothing on record to indicate whether Applicant has completed probation period satisfactorily or otherwise. Even assuming that there being no order of extension of probation and Applicant had completed probation period satisfactorily, that hardly matters in the present case since the appointment itself was obtained by playing fraud and suppression of material fact. The Applicant was well aware that he was not eligible for appointment in Government service, but misrepresented the Respondents stating that he had only two children but later in view of declaration submitted to the Department, he admits to have third child which was born on 20.05.2006.

12. While terminating the services of the Applicant by impugned order dated 17.02.2016, the Respondents invoked Rule 5, Explanation (8)(b) of 'Rules of 1979'. As per this provision, the termination of service of a temporary Government servant on the ground unconnected with his conduct does not amount to penalty within the meaning of 'Rules of 1979'. As such, where there is termination of service of a Government servant on ground unconnected with his conduct, such termination does not amount to penalty in terms of 'Rules of 1979'. In other words, it does not require initiation of D.E.

13. In the present case, the Applicant is terminated from service for suppression of material fact and obtaining employment in deceitful manner. As such, his initial appointment itself was not appointment in the eye of law. The D.E. is required to be initiated in respect of conduct committed by a Government servant during the tenure of his service. Whereas, in the present case, there is no such issue of misconduct

during the tenure of service, and therefore, the question of initiation of D.E. or protection under Article 311(2) of Constitution of India does not arise.

14. In **Gopi Kishore Prasad's** case (cited supra) referred by learned Advocate for the Applicant, the Government while probation was discharged on account of corruption and unsatisfactory work. Such termination order was stigmatic, and therefore, termination order without initiating D.E. was quashed. It is in that context, it has been held that a Government servant had been wrongly deprived of protection afforded by Article 311(2) of the Constitution of India since there was violation of principles of natural justice. Whereas, in the present case, there is no such stigmatic termination which requires initiation of regular D.E.

15. Reliance placed on **Hari Ram Maurya's** case (cited supra) is also misplaced. In that case, admittedly, the Government servant was terminated from service on charge of bribery without holding enquiry. Therefore, the Hon'ble Supreme Court held that termination being punitive, the initiation of enquiry is mandatory. Whereas, in the present case, there is no issue of stigmatic termination, and therefore, this Judgment is of no help to the Applicant.

16. Lastly, reference was made to the decision rendered by this Tribunal in **O.A.No.316/2006 (Ramkishan R. Jadhav Vs. The Superintendent of Police) decided on 21.02.2007**. In that case, Police Constable was terminated from service because of registration of crime against him. Offence under Section 498-A read with 34 of IPC was registered against him and it was the only foundation for termination of service after issuance of show cause notice. It is in that context, this Tribunal held that termination order is not simplicitor termination but it is stigmatic, and therefore, the employee could not have been terminated without holding regular D.E. This Judgment is also of no assistance to

the Applicant in the present case, since there is no such stigmatic termination.

17. It is further rightly pointed out by the learned P.O. that the Applicant was temporary Government servant since admittedly, no permanency certificate was issued as required to be issued in terms of Circular dated 11th September, 2014 on completion of three years' continuous service. As such, he was temporary Government servant and secondly, his appointment itself was not appointment in the eye of law since the Applicant had secured the same by playing fraud.

18. Indeed, the issue that where the appointment is acquired by practicing fraud or suppression of material fact, such appointment is no appointment in law and does not attract Article 311 of Constitution of India is well settled in view of the decision of Hon'ble Supreme Court rendered in **Civil Appeal No.89/2004 [R. Vishwanatha Pillai Vs. State of Kerala & Ors.] decided on 07.01.2004**. In that case, the Petitioner therein obtained the appointment on the basis of false Caste Certificate and raised the issue of protection of Article 311(2) of Constitution of India. The Hon'ble Supreme Court held as under :-

"The appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under the Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Caste. In view of the finding recorded by the Scrutiny Committee and upheld upto this Court he has disqualified himself to hold the post. Appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning

of Article 311 of the Constitution of India. As appellant had obtained the appointment by playing a fraud he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practicing fraud or deceit such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.”

19. As such, it is no more res-integra that where appointment is obtained by practicing fraud and suppression of material fact, such appointment is no appointment in law and Article 311 of Constitution of India is not at all attracted.

20. Now turning to the facts of present case, as stated above, the Applicant has suppressed material fact while obtaining appointment. In terms of 'Rules of 2005', he was not eligible for appointment since he had third child born after the enforcement of 'Rules of 2005'. Therefore, the question of initiation of D.E. does not arise.

21. Lastly, feeble attempt was made by the learned Advocate for the Applicant that Rule 6 of 'Rules of 2005' empowers the Government to relax the provisions of Rules, and therefore, direction be given to the Government to consider the issue of relaxation of Rules. In this behalf, he referred to a decision rendered by this Tribunal in **O.A.Nos.400 to 402/2012 (Sanjay M. Jagtap & 2 Ors. Vs. The Superintendent of Police, Solapur) decided on 10.02.2015** wherein liberty was given to the Applicant to approach the Government for relaxation of Rules. True, the Government may relax the provision of Rules where it appears to be just and reasonable for the reasons to be recorded for any such relaxation. In so far as the issue of relaxation is concerned, the Applicant is guilty of fraud and has secured appointment in deceitful manner. Therefore, the question of relaxation does not arise.

22. The totality of aforesaid discussion leads me to sum-up that the challenge to the termination order is devoid of any merit and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-
(MEDHA GADGIL)
Member-A

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 17.06.2021

Dictation taken by :

S.K. Wamanse.

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