

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.335, 384 to 389 & 524 OF 2013

DISTRICT : NASHIK

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ORIGINAL APPLICATION NO.335 OF 2013

Shri Subhash Kashiram Marsale. )  
Working as Full Time Instructor )  
(Scooter Motorcycle Servicing), )  
Government Technical High School, )  
Malegaon Camp, District Nashik. )...**Applicant**

**Versus**

The Joint Director of Vocational Education)  
& Training, Regional Office Tryambak )  
Naka, Old Agra Road, Nashik - 2. )...**Respondent**

**WITH**

ORIGINAL APPLICATION NO.384 OF 2013

Shri Sanjay Changdeo Mhaske. )  
Working as Craft Instructor, )  
Government Industrial Training Institute, )  
Kolhapur Phata Kalwan, District Nashik. )...**Applicant**

  
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**Versus**

The Joint Director of Vocational Education)  
 & Training, Regional Office Tryambak )  
 Naka, Old Agra Road, Nashik - 2. )...**Respondent**

**WITH****ORIGINAL APPLICATION NO.385 OF 2013**


Shri Vasant Anant Balel. )  
 Working as Craft Instructor, )  
 Government Technical High School & )  
 Junior College, Varangaon. )...**Applicant**

**Versus**

The Joint Director of Vocational Education)  
 & Training, Regional Office Tryambak )  
 Naka, Old Agra Road, Nashik - 2. )...**Respondent**

**WITH****ORIGINAL APPLICATION NO.386 OF 2013**

Shri Suresh Suka Deore. )  
 Working as Craft Instructor, )  
 Government Industrial Training Institute, )  
 Bodwad. )...**Applicant**

**Versus**


The Joint Director of Vocational Education)  
 & Training, Regional Office Tryambak )  
 Naka, Old Agra Road, Nashik – 2. )...**Respondent**

**WITH**

**ORIGINAL APPLICATION NO.387 OF 2013**

Shri Deelip Hiranman Desale. )  
 Working as Craft Instructor, )  
 Government Industrial Training Institute, )  
 Kalamsare. )...**Applicant**

**Versus**

The Joint Director of Vocational Education)  
 & Training, Regional Office Tryambak )  
 Naka, Old Agra Road, Nashik – 2. )...**Respondent**


**WITH**

**ORIGINAL APPLICATION NO.388 OF 2013**

Shri Pandurang Amruta Pawar. )  
 Working as Craft Instructor, )  
 Government Industrial Training Institute, )  
 Kolhapur Phata Kalwan, Dist : Nashik. )...**Applicant**

**Versus**

The Joint Director of Vocational Education)  
 & Training, Regional Office Tryambak )

  
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Naka, Old Agra Road, Nashik – 2. )...**Respondent**

**WITH**

**ORIGINAL APPLICATION NO.389 OF 2013**

Shri Dattatraya Dhanaji Tambe. )  
 Working as Craft Instructor, )  
 Government Industrial Training Institute, )  
 Bhusawal. )...**Applicant**

**Versus**

The Joint Director of Vocational Education)  
 & Training, Regional Office Tryambak )  
 Naka, Old Agra Road, Nashik – 2. )...**Respondent**

**WITH**

**ORIGINAL APPLICATION NO.524 OF 2013**

Shri Ramesh Ananda Patil. )  
 Working as Craft Instructor, )  
 Government Industrial Training Institute, )  
 Dindori, Dist : Nashik. )  
**Address of Service of Notice :** )  
 Shri A.V. Bandiwadekar, Advocate, )  
 Having Office at 9, "Ram-Krishna", )  
 Lt. Dilip Gupte Marg, Mahim, )  
 Mumbai 400 016. )...**Applicant**



**Versus**

The Joint Director of Vocational Education)  
 & Training, Regional Office Tryambak )  
 Naka, Old Agra Road, Nashik - 2. )...**Respondent**

**Shri A.V. Bandiwadekar, Advocate for Applicants.**

**Shri K.B. Bhise, Presenting Officer for Respondent.**

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)**

**R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 29.07.2016**

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

**JUDGMENT**

1. The eight Original Applicants in this fasciculus of Original Applications (OAs) suffered an identical order dated 21.3.2013 of reversion and withdrawal of monetary benefits. Aggrieved, they are up before us to challenge that order made by the Respondent - Joint Director of Vocational Education and Training. All these OAs admit to disposal by this common determination. The basic facts are the same barring the individual details, which will not affect the ultimate outcome. For the purposes hereof, the



O.A.No.335 of 2013 brought by Shri Subhash Kashiram Marsale shall be taken as representative O.A.

2. We have perused the record and proceedings and heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri K.B. Bhise, the learned Presenting Officer (PO) for the Respondents.

3. The Applicant, vide the communication of 17.07.1984 was called for interview by the Respondent at Nashik on 9<sup>th</sup> and 10<sup>th</sup> August 1984 (Exh. 'B', Page 13 of the Paper Book (P.B.)). Exhibit 'C' (Page 15, dated 18<sup>th</sup> November, 1985) would show that the Applicant appeared for an interview during 29<sup>th</sup> and 31<sup>st</sup> October 1985. He was selected for the appointment to the post of Workshop Assistant (Motor Mech.). An order of promotion (Exh. 'D', Page 17 of the P.B.) dated 11.12.1995 came to be issued by the Respondent for Workshop Assistants/ as full time Instructor/ Craft Instructor. Though the names of some of the Applicants were there in that exhibit but it is common ground that all the eight Applicants herein were promoted.

4. Exhibit 'E' (Page 19 of P.B.) would show that vide the order dated 27.02.2009, the Applicant Mr. Marsale and another person Ingle were given the benefit of Time Bound



Promotion after 12 years of service and the benefit of 2 tier pay scales.

5. As the things stood there another event took place. This Tribunal decided **O.A.No.642 of 2007 (Anupkumar Nivrutti Chimkar Vs. Director Training Vocational Education and 4 Others, dated 13.11.2009.** There the Applicant was *a'la* the Applicants herein Workshop Assistant (Welder). He came to this Tribunal with a grievance that the private party Respondents therein though Junior to him were promoted. On those facts he also sought the similar relief. We may have to return to that order presently but at present it may only be noted that the said O.A. was dismissed (Exh. 'IV', Page 41 of the P.B.).

6. Then a negative development took place a couple of months before the order of this Tribunal discussed in Para 5. Government in Higher and Technical Education addressed a communication dated 15.09.2009 to the In-charge Director. That OA was referred to. It was mentioned that it had come to light that during 1995-1997 promotions were given unmindful of the rules and in violation thereof. Therefore, all those that were promoted be reverted. It be brought to the notice of the Tribunal in

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the then pending O.A. that action as per rules would be taken. The director was called upon to explain the basis on which he had recommended regularization of the said promotions as a one-time measure. That letter is at Exh. 'R-II' (Page 38 of the P.B.).

7. The director wrote to the Respondent (Page 39 of the P.B.) on 19.9.2009 summarizing the facts contained in the letter discussed in the preceding Paragraph. A direction was given that the, would be demotees be called upon to show cause etc. as per the principles of natural justice. A copy of such a show cause notice is at Exh. 'R-111' page 40 of the Paper Book. It was dated 9.11.2009.

8. Nothing happened thereafter for about 3 years and more and this delay is so inexplicable and incomprehensible as it is adverse to Respondent's case. It was by the impugned office order dated 21.3.2013 that the promotion and other benefits given to him came to be withdrawn. A reference was there to **Chimkar's** O.A. and the order therein made by this Tribunal. It was mentioned that there were violations of rules etc. in effecting promotions. The Applicant brought this O.A. to get Exh. 'A' quashed and set aside and to restore the status, etc. including financial benefits etc. pre Exh. 'A'.



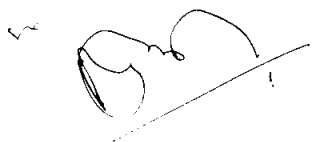


9. Turning to the contentious aspects now, in the above background read each and every word of the case of the Respondent, the way he would like it to be read and one would find not even the ritualistic allegations against the Applicant for being a part of any scheme or collusion. The allegations are all against those that were managing the affairs. It is not even remotely suggested that the Applicant was in *pari-delicto* with them. There was no material to indicate his complicity, and therefore, it was absolutely essential to give to him a real and meaningful opportunity of being heard rather than to just condemn him on the basis of a show cause notice sent more than three years before he was made to face music. Now even that letter did not show why he should pay for someone else's follies. We must hasten to mention that we draw no conclusion of guilt even against the authorities. It is just that we examine the worth of Respondent's case as it is. This is not a minor infirmity. It makes the case of the Respondent vulnerable.

10. The tenor of the impugned order as well as a few documents of contemporaneous vintage would show that the action of the Respondents were supposedly influenced by the decision of this Tribunal in **Anupkumar Chimkar** (supra). We have already touched upon this particular



matter in Para 5 above and at that time, we indicated that we may have to return to it presently. Now, to actually return to the said OA, we find in continuation of the discussion in Para 5 above that the Tribunal took note of the facts emanating from the various Affidavits filed before it in that matter. It appears that the Respondents themselves took a stand (Para 8) that the post of Workshop Assistant was a non-teaching one, and therefore, this Tribunal's Applicant was not entitled for promotion. In Para 9, the Tribunal recorded that the policy for promotion to the post of Craft Instructor came to be decided vide the Recruitment Rules framed on 18.11.1983 as per the proviso to Article 309 of the Constitution of India. The post of the Applicant in that matter being that of Workshop Assistant was treated as surplus and in accordance with a certain Resolution of Finance Department dated 30.9.2006, such employees were absorbed on the post having the same scale or a lower post, subject to their holding the required qualification, and therefore, the Applicant was absorbed on the post of Senior Clerk at ITI, Chiplun, District Ratnagiri. Now, quite pertinently, the influencing Rules of 1983 and a peculiar fact of that matter was therefor the just mentioned reason that the Applicant was absorbed on the post of Senior Clerk. He was still claiming entitlement to the promotion to the post which




the present Applicants are already working on, even for a little more than 15 years. In our view, subject to the further discussion, this is a very significant distinguishing feature and the whole thing cannot be dismissed as of, no significance just because the Applicant therein was seeking promotion and the Applicants herein have already secured it long ago. In fact, it is a matter of great significance.

11. In Para 10, the stand of the Government was apparently noted that the Workshop Assistant did not fulfill the criteria for promotion as Craft Instructor, "which is one-step promotion of the post of Instructor". A total of 10 Workshop Assistants were promoted as Craft Instructors during 1995-96 and 1996-97 by the then authorities. The promotions were wrong and not in accordance with the Recruitment Rules. The Government instructed by letter of 18.1.2009 that action be taken in accordance with the Rules and necessary corrective measures needed to be taken. In Para 11, it was recorded that in additional Affidavit-in-reply of 2<sup>nd</sup> Respondent here viz. the Deputy Director, Vocational Education & Training, it was mentioned that in the order of 15.9.2009, directions were already given. It may be recalled that we have a short while ago discussed that aspect of the matter. In Para 12 of the **Chimkar's** OA, the Tribunal observed that it had



carefully considered the arguments at the Bar and then in Para 13, it apparently held that the Applicant therein having been recruited as Workshop Assistant was not eligible for promotion to the post of Craft Instructor as per the Recruitment Rules of 1983. Further, it had been admitted by the Government that 10 Workshop Assistants were wrongly promoted by the authorities and necessary orders had been issued and on this reasoning, the OA seeking promotion was dismissed.

12. Now, it is very clear that neither expressly not by implication, any specific direction came to be given by the Tribunal in **Chimkar's** OA against the present Applicants or any of them. Therefore, the rights of the Applicants to save their promoted posts and position has not been taken away although as one fact component, the order of the Tribunal will have to be read and if need be implemented. It, however, quite clearly appears that the peculiarities of the present OA were not at all involved in **Chimkar's** OA and there was no question of the same having been brought to the notice of the Tribunal. It was recorded that the Government was moving in the matter, but a detailed consideration of the stand of the Government with regard to the so called eligibility of the Workshop Assistants for the post of Craft Instructors was not put on anvil. This is



something which we must take note of. In as much as this aspect was not put on judicial anvil and there are significant distinguishing factual features including the Applicants' holding the post of Craft Instructors for long, we do not consider it necessary to even record our dissent with **Chimkar's** conclusions, and therefore, the need to take any further step with regard to referring the matter to a Larger Bench is still the lesser.

13. However, every aspect of the matter will be set at rest, once we discuss the fact that the 1983 Rules legally speaking were not notified and this aspect of the matter has been agitated by the Applicant, especially in the Affidavits filed later. In the reply Affidavits thereto, initially the Respondent for quite some time tried to duck under the issue by saying that the Government framed those Rules and all were bound by those Rules, etc. They did not quite categorically mention that the said Rules were not gazette notified. For had it been so, the simplest of the course of action was to just produce a gazette notification itself. That is the requirement of the Indian Evidence Act as well as commonly known administrative procedure and even common sense procedure because unless the authoritative force is provided to an instrument, it can hardly become effective.

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14. On 4.7.2016, when this OA had become part-heard, we made an order on the Farad. We recorded that an issue of great moment related to whether the Rules of 18<sup>th</sup> November, 1983 were gazette notified. That would require a categorical answer for the action of the Respondents. That was because even on the face of it, the precursor of 1983 Rules were ex-facie superseded thereby. There were still documents to show that the promotions were being given under 1959 Rules, and therefore, we directed that a gazette notification of 1983 Rules must be submitted or an Affidavit be submitted that they were not gazette notified. On 7.7.2016, Shri Rajaram G. Jadhav, A Joint Secretary in the Department of Skill Development & Entrepreneurship Department, Mantralaya, Mumbai filed an Affidavit and we reproduce the entire Para 3 therefrom, which would then obviate the necessity of adding anything thereto of our own.

“I say that I have verified the record and it has come to notice that a letter dated 18.11.1983 was addressed to the Manager, Government Central Press, Mumbai-4 alongwith Notification dated 18.11.1983 to publish the same in Government Gazette. However, the notified Gazette copy is not traceable. Therefore, on 7.7.2016, I deputed



Shri D.M. Ujjainkar, Assistant Director alongwith letter dated 5.7.2016, addressed to the Manager, Government Central Press, Mumbai to ascertain the said Gazette Notification from record of Government Central Press. Hence, I pray this Hon'ble Tribunal to grant an additional time for filing Affidavit in respect of Government Gazette Notification of 1983."

15. It is, therefore, quite clear that behind a very thin veil, it has practically been accepted that there was no gazette notification, and therefore, it goes without saying that the 1983 Rules had not become effective at all and if that was so, then this fact of the matter having not been brought to the notice of this Tribunal in **Chimkar's** matter, the entire stuffing gets knocked out from the case of the Respondent. Had it been brought to the notice of the Tribunal all likelihood, the outcome would have been different. It is, therefore, very clear that the Respondent's actions are unsustainable.

16. The learned Advocate for the Applicants brought certain other facts to our notice including that the posts that the Applicants were promoted from, no more existed, and therefore, the order impugned herein is bad for



impossibility. However, when on a most formidable point, the OA is destined to succeed, we do not think it necessary to examine certain other incidental points. The order of reversion, therefore, will have to be quashed and set aside and the status quo such as it obtained on 21<sup>st</sup> March, 2013 which was the date on which the said impugned communication was issued will have to be restored with all the consequential benefits to the Applicants including the Applicant Shri S.K. Marsale, who has since retired.

17. The order herein impugned is quashed and set aside. The Respondents are directed to act in accordance with our directions contained in the preceding Paragraph within a period of three months from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-  
**(R.B. Malik)**  
**Member-J**  
**29.07.2016**

Sd/-  
**(Rajiv Agarwal)**  
**Vice-Chairman**  
**29.07.2016**

Mumbai  
Date : 29.07.2016  
Dictation taken by :  
S.K. Wamanse.