

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.346 OF 2017

DISTRICT : SOLAPUR
Sub.:- Reinstatement

Shri Vijay Balbhim Pawar.)
Adult, Occu.: At Present Nil, residing at)
123, South Sadar Bazar, In front of Shree)
Ram Temple, Solapur – 413 003.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Secretary,)
Home Department, Mantralaya,)
Mumbai.)
2. The Director General of Police.)
M.S. Police Head Quarters, Shahid)
Bhagat Singh Marg, Colaba,)
Mumbai.)
3. Superintendent of Police (Rural),)
Solapur District, Solapur.)
4. Shri Manoj Patil.)
Presently serving as Deputy)
Commissioner of Police, Zone-II,)
Bhiwandi, District : Thane.)...**Respondents**

Shri S.G. Panchal, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J
DEBASHISH CHAKRABARTY, MEMBER-A

DATE : 08.08.2023

PER : A.P. KURHEKAR, MEMBER-J

JUDGMENT

1. The Applicant has filed the present O.A. seeking following reliefs :-

“(a) This Hon’ble Tribunal be pleased to hold and declare that Respondent No.2, 3 and 4 have played fraud upon the power by having disobeyed and circumvented the Order dated 3.12.2007 and further be pleased to hold that the action on the part of the respondents in suppressing and deliberately sitting over the Order dated 3.12.2007, causing the applicant be discharged and in issuing the Communication/letter dated 3.4.2012 without referring to Order dated 3.12.2007 is vitiated by the fraud played on power and as such *non-est* and not binding upon the applicant and accordingly, the same be quashed and set aside and the applicant’s case be ordered to be considered as per Order dated 3.12.2007.

(b) This Hon’ble Tribunal be pleased to direct the Respondent No.1 to identify the responsible officers involved in the aforesaid fraud and gross abuse of office and accordingly take stringent action including criminal prosecution for having played fraud on power resulting into ruining the life and career of the applicant, so as to send a strong signal to one and all that such a blatant violation of Rule of Law shall never be tolerated and so as to ensure our rank in Rule of Law Index improves from current post at 66.”

2. This matter has chequered history of litigation and the events giving rise this O.A. are as under :-

(i) The Applicant had applied for the post of Police Constable in the year 1992, but he was not selected. He, therefore, filed O.A.No.298/2001 and sought relief of appointment, but the Tribunal dismissed O.A. on 29.08.2002.

(ii) Being aggrieved by it, the Applicant had filed Writ Petition No.2194/2003 which was allowed by Hon’ble High Court on 24.04.2006 with direction to the Respondents to consider the claim of the Applicant for the appointment as Police Constable within a period of six months, if he is otherwise found eligible by making addition of extra marks in the marks secured by him at the *viva-voce* test as per Departmental Circular dated 01.09.1989.

(iii) In pursuance of directions given by Hon'ble High Court, the Applicant came to be appointed on the post of Police Constable by order dated 20.10.2006.

(iv) The Applicant joined service on 01.11.2006 and was sent for training at Police Head Quarter, Solapur. However, on 08.12.2006, he suffered fracture to his leg resulting into abandoning the training.

(v) The Applicant then filed O.A.53/2007 in the Tribunal to relax and exempt the condition of training, since he was not able to complete the training. However, Tribunal dismissed the O.A. on 01.03.2007.

(vi) Thereafter, the Applicant was discharged from service by Superintendent of Police, Solapur on 08.01.2008.

(vii) The Applicant had filed O.A.No.1518/2009 before this Tribunal challenging discharge from service by order dated 08.01.2008.

(viii) The Tribunal dismissed the O.A. on 06.07.2011 with the finding that it was a case of simplicitor discharge. However, Tribunal observed that Respondents may consider the case of the Applicant for being appointed for the post of Clerk.

(ix) Accordingly, he made representation. But his request for appointment on the post of Clerk was rejected by the Government on 03.04.2012.

(x) Being aggrieved by order dated 03.04.2012, the Applicant made representations in the form of review to the Government, but it was not decided within reasonable time, and therefore, he again filed O.A.140/2015 for direction to the Government to decide the representation.

(xi) The Tribunal declined to issue any such direction to the Government to decide the application for review. The Tribunal observed that Applicant is claiming employment in total exception rather as a deemed right and rather disregard of entire recruitment procedure and has not shown any law or foundation for consideration of his purported application for review for appointment in contrast with large number of unemployed persons.

3. It is on the above background, the Applicant again filed this O.A. on 21/04/2017 seeking relief as reproduced in the opening of the order.

4. Shri R.G. Panchal, learned Advocate for the Applicant vehemently urged that Respondent Nos.2 and 3 have played fraud and suppressed the letter of Government dated 03.12.2007. According to him, had Respondent No.2 taken action in terms of Government letter dated 03.12.2007, the Applicant would have got posting as a Clerk. The contents of letter dated 03.12.2007 is as under :-

“श्री. विजय बलभीम पवार यांना वैद्यकीय मंडळ, सोलापूर यांनी पात्र ठरविले आहे. त्याबाबतही अर्जदाराचे म्हणणे आहे की, त्यांच्या डाव्या पायात आतील बाजूस चिरलेल्या हाडाच्या सांध्यांमध्ये सूज आहे. श्री. पवार हे पोलीस दलाची कर्तव्य बजावण्यास वैद्यकीय दृष्ट्या पात्र आहेत काय, याची तपासणी संचालक, आरोग्य सेवा संचालनालय, पुणे यांचे कडून करून पोलीस दलातील सेवेत ते वैद्यकीय दृष्ट्या पात्र आहेत किंवा कसे याची शहानिशा करून घ्यावी. जर ते पात्र ठरले तर त्यांना पोलीस दलात ठेवावे. जर ते अपात्र ठरले तर त्यांना अन्य संवर्गात सामावून घेण्याबाबत विचार करावा लागेल. तरी उपरोक्त प्रमाणे वैद्यकीय तपासणी करून त्याचा अहवाल शासनात तात्काळ सादर करावा, ही विनंती.”

5. Thus, according to learned Advocate for the Applicant, there is suppression of direction given by the Government in letter dated 03.12.2007 and to circumvent the said directions, the Applicant was discharged from service arbitrarily. According to him, it amounts to fraud and vitiates the entire action of discharge from service as well as rejection for appointment on the post of Clerk. In this behalf, he referred to the decision of Hon'ble Supreme Court in **(2003) 8 SCC 319 [Ram Chandra Singh Vs. Savitri Devi]** wherein Hon'ble Supreme Court reiterates that fraud vitiates every solemn act and whenever there is fraud, it needs to be viewed seriously.

6. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer opposed the relief claimed in the O.A. *inter-alia* contending that in view of decision rendered by the Tribunal in earlier round of litigation, nothing survives and Applicant is time and again filing O.A. in respect of cause of action, which is already dead and stale. She has further pointed out that the Applicant has not challenged the order dated 03.04.2012 either in earlier round of litigation i.e. in O.A.140/2015 or in this O.A. and all that, Applicant is praying for declaration of playing a fraud and launching of prosecution against all concerned.

7. Admittedly, Applicant did not challenge the order dated 03.04.2012 by filing O.A. within the period of limitation. All that, he kept making representations instead of challenging the order dated 03.04.2012 by availing appropriate legal remedy. He filed O.A.140/2015 simplicitor for direction to the Respondents to decide his representation. While deciding O.A.140/2015, the Tribunal framed following issue :-

“Whether the application titled as Application for Review (copy whereof is at page 47 of the paper book) for invoking the power of the Government for reviewing its decision communicated to the applicant refusing to appoint him on any other post is filed under any provision of any enacted legislation or any rule or relating to a fundamental right ?”

8. While deciding O.A, the Tribunal also made material observation about the claim of the Applicant for appointment to the post of Clerk. Para Nos.11, 12, 13, 14 and 16 are material which as under :-

11. The cause subject matters pertains to recruitment / appointment on compassionate ground on a clerical post on the alleged ground of disability which is not the matter governed by any amongst the provisions contained in Maharashtra Civil Services (General Conditions of Services) Rules, 1981. In any case, the alleged disability is not proved or supported by any documentary proof.

12. Applicant is claiming employment in total exception and rather disregard of entire recruitment procedure and rather as a deemed right. Applicant has not shown any on Law or foundation on constitutional guarantee, either for consideration of his purported application for review for appointment in contrast with a large number of unemployed persons.

13. We, therefore, hold that the applicant's claim to for review through application at page 47 of paper book could be a petition submitted by him to the Government claiming mercy or largesse, by invoking Government's routine executive business. However, it is without any specific reference and / or source of a statutory duty and obligation on the part of the State Government to decide said application for Review.

14. By merely titling an application as one filed under Section 114 of C.P.C. r/w O.47 thereof, would not cast any obligation on the Government power to review every executive action. Executive actions cannot be left open-ended for review thereof in perpetuity or for an indefinite period.

16. We hold that in the absence of any statutory duty fastened to State under any statutory enactment or Rule of law, an application for issue of direction or to issue mandamus to decide a self-styled application for Review, ought not be entertained, simply because it has been sought."

9. Thus, the Tribunal while deciding O.A.140/2015, not only declined to issue any kind of direction to the Respondents to decide Review Application, but also commented upon non-entitlement of the Applicant for the post of Clerk as a vested right, since it is against statutory Rules. This Judgment delivered by the Tribunal in O.A.140/2015 also attained finality.

10. It is on the above background, now we need to see whether there is any merit in the present O.A. for the relief claimed as reproduced above. All that, Applicant sought declaration that Respondent Nos.2, 3 and 4 have played fraud to circumvent the communication dated 03.12.2007.

11. Indeed, by this communication dated 03.12.2007, all that Government directed Director General of Police to ascertain the medical fitness and if he is found unfit, in that event, the issue of absorption in another cadre could be considered. Later by order dated 08.01.1998, the Applicant was discharged from service and that order had attained finality in O.A.1518/2009. The perusal of order of the Tribunal reveals that Applicant failed to undergo necessary Police Training, and therefore, he was discharged from service. Later, Government also considered Applicant's claim for appointment to the post of Clerk, but rejected the

same. Thus, it cannot be termed suppression of facts or fraud. The Applicant was discharged from service because of his failure to complete the Police Training, which is mandatory for appointment to the post of Police Constable. In such situation, he cannot claim absorption in another cadre of Clerk as of right, much less legally enforceable right. The Government considered the issue for appointment to the post of Clerk, but rejected the same and the said order had attained finality being not challenged by filing appropriate O.A.

12. True, it is well settled that if any order is vitiated by fraud, it cannot be allowed to stand as held by Hon'ble Supreme Court in **Ram Chandra Singh's** case (cited supra). However, burden is on the party who alleges that the order is vitiated by fraud. In the present case, we do not see any such element of fraud on the part of Respondents 2, 3 and 4 in issuance of order dated 03.04.2012. All that learned Advocate for the Applicant was harping upon not taking steps as per letter of Government dated 03.12.2007. He tried to contend that instead of taking appropriate action on the letter dated 03.12.2007, Respondent No.3 – Superintendent of Police, Solapur discharged the Applicant from service by order dated 08.01.2008. Notably, he challenged the order dated 08.01.2008 in O.A.1518/2009 which was dismissed by the Tribunal. Interestingly, he did not raise any such plea of fraud in O.A.1518/2009. Now, after lapse of more than decade, he comes with a plea of fraud which is nothing but cooked-up story only to raise the issue which has already attained finality. This is nothing but abuse of process of law. We see no substance in the allegation of fraud.

13. For the aforesaid reason, we conclude that O.A. is devoid of any merit and liable to be dismissed. Hence, the order.

ORDER

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

Sd/-
(DEBASHISH CHAKRABARTI)
Member-A

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

Mumbai

Date : 08.08.2023

Dictation taken by :

S.K. Wamanse.

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