

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.622 OF 2015

DISTRICT : SANGLI

Smt. Meena Shrikant Divekar,)
Clerk in the office of the Tahsildar, Taluka)
Palus, District Sangli)
R/o Devrashtra, Post Kadegaon, Dist. Sangli)
Address for service of notice:)
Shri A.V. Bandiwadekar, Advocate,)
9, 'Ram-Kripa', Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016)..Applicant

Versus

1. The Divisional Commissioner,)
Pune Division, Old Council Hall, Pune-1)
2. The District Collector, Sangli)
3. The State of Maharashtra,)
Through Principal Secretary (Revenue),)
Revenue & Forest Department,)
Mantralaya, Mumbai 400 032)..Respondents

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Shri A.V. Bandiwadekar – Advocate for the Applicant
Shri D.B. Khaire, Special Counsel with
Miss Neelima Gohad – Presenting Officer for the Respondents

CORAM : Shri Rajiv Agarwal, Vice-Chairman
DATE : 12th April, 2016

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri D.B. Khaire, Special Counsel with Miss Neelima Gohad, the learned Presenting Officer for the Respondents.

2. This OA has been filed by the Applicant challenging the order dated 24.3.2015 issued by the Respondent no.1 directing the Respondent No.2 to subject the Applicant to undergo DNA test to prove that she was the daughter-in-law of late Shri Krushnaji Ramchandra Divekar.

3. Learned counsel for the Applicant argued that the Applicant was appointed as a Clerk as a nominee of freedom fighter late Shri Krushnaji Ramchandra Divekar on 22.3.1994. There was a complaint against the Applicant that she was not legally entitled for employment as a nominee of freedom fighter.



The Applicant was placed under suspension on 11.1.2000 and a Departmental Enquiry (DE) was held against the Applicant, and she was dismissed from service by order dated 7.12.2000. The Applicant filed OA No.42 of 2001, and the matter was remanded to the Respondent No.2. The Applicant was reinstated in service on 13.2.2003, but was again suspended. Finally by order dated 16.6.2010 the Applicant was dismissed from service. The Applicant filed appeal, which was dismissed but her Revision Application was allowed on 16.1.2012 and order dated 15.2.2011 in appeal and order dated 16.6.2010 were set aside. A Criminal Case No.RCC 231/2001 was also filed against the Applicant on the same charges and by order dated 27.12.2010, she was acquitted. The Criminal Appeal No.61 of 2011 against the order of acquittal was dismissed on 23.1.2012. As the Applicant was not reinstated in service, she filed OA No.516 of 2013. Thereafter, the Applicant was reinstated in service on 29.7.2013. No decision as regards how to treat the period of suspension was taken. The Applicant filed OA No.93 of 2013. By order dated 21.2.2014, in above OA, the Respondent No.2 was directed to decide the representation of the Applicant in this regard. By order dated 18.3.2014, that period of suspension was treated as such. The Applicant filed OA No.494/2014 against the aforesaid order. The Applicant was directed to exhaust remedy of appeal by order dated 2.12.2014 by this Tribunal. When the matter came up before the Respondent No.1, he directed the Respondent No.2 to

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subject the Applicant to DNA test, by order dated 24.3.2015, which is challenged in the present OA.

4. Learned counsel for the Applicant argued that the order dated 24.3.2015 is totally devoid of any legal authority. There is no provision in the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, which will empower the Respondents to subject the Applicant to DNA test. In any case, the Applicant was given appointment as Clerk as the nominee of her father-in-law Shri Krushnaji Ramchandra Divekar, and she was not related to him by blood. DNA test cannot prove that she was, in fact daughter-in-law of Shri Divekar or not. Learned counsel for the Applicant argued that the order dated 24.3.2015 may be quashed and cost of Rs.1,00,000/- may be imposed on the Respondent No.1.

5. Learned Special Counsel Shri D.B. Khaire along with Learned Presenting Officer (PO) Miss N.G. Gohad appeared for the Respondents. Learned Special Counsel stated that the Applicant was not subjected to any DNA test in view of the order of this Tribunal dated 5.5.2015 in the present OA. Learned Special Counsel stated that only purpose of the impugned order was to arrive at the complete truth. However, now that appeal of the Applicant against order of the Respondent No.2 dated 5.4.2014 has been decided by the

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Respondent No.2 on 2.1.2016, nothing survives in the present OA.

6. It is seen that the Applicant has challenged the order of the Respondent No.1 dated 24.3.2015 in the appeal filed by her before the Respondent No.1 against the order of the Respondent No.2 dated 15.4.2014. The impugned order was regarding DNA test of the Applicant. It is not understood as to how subjecting the Applicant to DNA test would have proved whether she was daughter-in-law of late Shri Krushnaji Ramchandra Divekar or not. The Applicant was not a blood relation of Shri Divekar. Also, the legal authority of the Respondent No.2 to subject any Govt. servant to a DNA test has not been cited by the Respondents. In fact, there is no provision in MCS (Discipline & Appeal) Rules, 1979 regarding the same. The Respondent No.2 does not appear to have the legal authority to pass such an order. The order dated 24.3.2015 is clearly unsustainable and it is quashed and set aside.

7. It is seen that the Respondent No.1 has made references to his order dated 24.3.2015 and tried to justify the said order in the order dated 2.1.2016. All such references to order dated 24.3.2015 and DNA test of the Applicant will be deemed to be treated as deleted from the aforesaid order. This OA is allowed accordingly.

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8. The appeal of the Applicant against order dated 5.4.2014, is already decided by the Respondent no.1 by order dated 2.1.2016. There will be no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman
12.4.2016

Date : 12th April, 2016

Dictation taken by: S.G. Jawalkar.

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