

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.92 of 2015

District : Sangali

Shri Bandu Babu Chapribandh ,)
Aged 48 years, Occ. Nil)
R/o. Room No.25, Walmiki Colony, Sangali.)
Address for service of Notice :)
Shri A. V. Bandiwadekar, having office at 9,)
“Ram-Kripa”, Lt.Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)...**Applicant**

Versus

1. The Dean, Civil Hospital, Sangali.)
2. The State of Maharashtra, through Principal)
Secretary, Public Health Department,)
Mantralaya, Mumbai 400 032.) ...**Respondent**

Shri Gaurav A. Bandiwadekar, learned Advocate for the Applicant.
Smt. Archana B. K. holding for Smt. Kranti Gaikwad, learned
Presenting Officer for the Respondent.

CORAM : Shri A.P. Kurhekar, Member-J+-
Smt. Medha Gadgil, Member-A

PER : Shri A. P. Kurhekar, Member-J

DATE : 03.08.2021.

J U D G M E N T

The Applicant has belatedly challenged the communication dated 10.12.2014 and requested for direction to Respondents to appoint him on the post of Wardboy invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated Applicant's case is as under:-

The Applicant was appointed purely on temporary basis on leave vacancy for the period of 29 days initially by order dated 21.11.1989 issued by the Respondent No.1- Dean, Civil Hospital, Sangali. Thereafter, he was again appointed purely on temporary basis for 29 days each time during the leave of some other employees and it was continued up to 1994. Thus, each time the Applicant was purely appointed for 29 days on leave vacancy and after 1995 he was discontinued. According to Applicant, one FIR was registered against him for an offence under Section 381 of IPC and on that ground he was not given further appointment. He came to be acquitted in Criminal Case No.50 of 1995 by judgment dated 29.08.2000. However for the first time, he made representation on 20.05.2010 for appointment. Thereafter, he sought some information under RTI and by communication dated 10.12.2014 he was communicated as under :-

“जा.क्र.पवपाशारुसां/मा.अ./२७५९९/१४,
अधिष्ठता यांचे कार्यालय,
पद्मभूषण वसंतदादा पाटील,
शासकीय रुग्णालय, सांगली,
दिनांक: १०/१२/२०१४.

प्रति,
श्री. बंडू बाबू छपरीबंद,
रा. शिवाजी मंडई, रेवणी रोड,
वाल्मिकी कॉलनी, घर नं. २५, सांगली.

विषय:- माहितीचा अधिकार अधिनियम २००५ खाली माहिती मिळणे बाबत.

संदर्भ:- १) आपला दि.११-११-२०१४ रोजीचा माहिती अधिकारातर्गतचा अर्ज.

आपला उपरोक्त विषय व संदर्भाकित माहितीचा अधिकार नियम २००५ बाबतचा अर्ज या कार्यालयास दिनांक १५-११-२०१४ रोजी प्राप्त झाला आहे. आपण आपले अर्जात अर्जदार हे रुग्णालयात बदली कर्मचारी म्हणून कधीपासून कामावर लागले व त्यांना कधीपासून व कोणत्या कारण्यास्तव कमी केले याबाबतची माहितीची विचारणा केलेली आहे.

आपले अर्जास अनुसरून असे कळविणेत येते की, सा संस्थेतील उपल्बध असणा-या कागदपत्रान्वये आपणास सन १९८९ पासून रजेच्या मुदतीत तांत्रिक सेवाखंडाने २९/२९ दिवस अवधी तत्वावर नियुक्ती देण्यात येत होते. त्यानंतर आपणावर दिनांक २५-०१-१९९५ रोजी चोरीच्या आरोपावरून विश्रामबाग पोलीस स्टेशनमध्ये एफ आय आर दाखल झाल्याने, बदली कर्मचारी म्हणून पुढील नियुक्त्या देण्यात आलेले नाहीत.

सही/-

(श्री. द.ग. कुकळयेकर)
महिती अधिकारी
(प्रशासकीय कामकाजा करिता)
प्रशासकीय अधिकारी,
पद्मभूषण बसंतदादा पाटील,
शासकीय रुग्णालय, सांगली.”

3. The Applicant has challenged the aforesaid impugned communication dated 10.12.2014 in this O.A.
4. Heard Shri Gaurav A. Bandiwadekar, learned Counsel for the Applicant and Smt. Archana B. K. holding for Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.
5. Learned Counsel for the Applicant sought to contend that once the Applicant was acquitted in Criminal Case for which he was discontinued, he is entitled for reappointment on the post of Wardboy. He further submits that his termination was stigmatic and in absence of regular inquiry, he could not have been terminated from service.
6. The Respondents in their reply denied the entitlement of the Applicant for appointment *inter-alia* stating that the Applicant worked purely on temporary basis up to 24.01.1995. Thereafter, he was discontinued. The Respondents further submits that the Applicant was not permanent or regular employee and, therefore, the question of holding an enquiry before discontinuation of his service did not arise.
7. In view of above, the small issue raised for consideration is whether the Applicant is entitled for appointment on the post of Wardboy and the answer is in negative.
8. As stated above, the Applicant was initially appointed by order dated 21.11.1989 (Page No.15 of PB) purely on temporary basis for the period for 29 days in leave vacancy of one employee namely Shri D.B. Arge. Thereafter, he was again reappointed from time to time for the period for 29 days whenever regular employee went on leave. He worked in this manner up to 1995 and thereafter he was discontinued.

9. It is thus explicit from the appointment order that the Applicant was appointed temporarily on leave vacancy and there was no such appointment on substantive regular vacant post by due process of law. In public employment, there has to be appointment by issuing advertisement and by adopting due process of law. As such, appointments are required to be made in terms of Recruitment Rules by adopting due course of law.

10. Whereas in present case, admittedly the Applicant's appointment was purely on temporary basis on leave vacancy and there was no such substantial regular appointment by due process of law. This being the position, mere working of the Applicant for four to five years as temporary employee will not create any legal vested right to continue the appointment or to seek reappointment after his period of appointment had come to an end in 1995 itself.

11. Apart the Applicant did not take any steps to agitate his grievance after his discontinuation in 1995. He remained silent spectator. He was acquitted in Criminal Case on 29.08.2000 but thereafter also he did not take any steps to redress his grievance. He made representation for the first time on 20.05.2010 (Page No.41 of PB). Suffice to say, there are lapses and latches on the part Applicant. On this point also O.A. is liable to be dismissed.

12. In O.A., the Applicant has challenged the communication dated 10.12.2014, whereby he was simply informed that in 1995 he was discontinued due to registration of crime against him. This communication will not revive the cause of action to him to file this O.A. He was discontinued in 1995 and cause of action whatever occurred in 1995, however, he did not take any step within the period of limitation and remained mute spectator.

13. The submission advanced by learned Counsel for the Applicant that the Applicant's termination was stigmatic and was not permissible without due process of law is fallacious and misconceived. Indeed, there

was no such termination order on the ground of registration of crime. He was simply discontinued after the period of his temporary appointment got over. He did not challenge the alleged termination of discontinuation within the period of limitation. Suffice to say, the Applicant has no legal vested right to seek appointment which was purely on temporary basis of leave vacancy and secondly O.A. is hopelessly barred by limitation.

14. In view of above, we pass the following order :-

ORDER

Original Application is dismissed with no order as to costs.

Sd/-

**(MEDHA GADGIL)
MEMBER (A)**

Sd/-

**(A.P. KURHEKAR)
MEMBER (J)**

Date : 03.08.2021
Place : Mumbai
Dictation taken by : VSM
Vaishali Santosh Mane

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