

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 311/2022(D.B.)**

Shri Vinayak s/o Bhimrao Lahudkar,
Aged about 35 years, Occu.: Service,
R/o Tahsil Quarter, Civil Lines,
Nandura Road, Khamgaon,
District- Buldana, KHAMGAON-444303.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai 32.
- 2) District Collector Buldana,
Collector office Buldana,
Near S.B.I. square, BULDANA-
- 3) Tahsildar Khamgaon,
Tahsil office Khamgaon,
New Administrative Building,
Tower Square, Khamgaon,
Dist.- Buldana.
Khamgaon – 444303.

Respondents

Shri A.P.Sadavarte, Ld. Counsel for the applicant.

Shri A.P.Potnis, Ld. P.O. for the respondents.

**Coram:-Hon'ble Shri Shree Bhagwan, Vice-Chairman and
Hon'ble Shri M.A.Lovekar, Member (J).**

Dated: - 15th March 2023.

JUDGMENT**Per : Member (J).****Judgment is reserved on 13th March, 2023.****Judgment is pronounced on 15th March, 2023.**

Heard Shri A.P.Sadavarte, learned counsel for the applicant and Shri A.P.Potnis, learned P.O. for the respondents.

2. Case of the applicant is as follows.

His father was serving as Kotwal. He died in harness on 01.06.2006. In response to proclamation dated 09.04.2007 the applicant applied for the post of Kotwal. However, one Amol Shinde was appointed to the post. Amol Shinde died on 06.03.2008. The applicant again submitted an application on 02.04.2008 that he be appointed to the post. On this occasion Bharati Kulkarni, married daughter of a retired Kotwal was illegally appointed to the post. The applicant raised this grievance before the Hon'ble Lokayukta by application dated 31.03.2010 (Annexure A-3). Respondent no.2, by communication dated 12.07.2010 (Annexure A-4) was called upon to submit his say. On 19.04.2012 (Annexure A-5) the Lokayukta closed the file by observing as follows-

वरील वस्तुस्थिती असली तरी त्यावेळी तक्रारदार यांनी त्यांच्या वडिलांच्या निधनानंतर कोतवाल या रिक्त पदावर नेमणूकीची विनंती केली होती व त्यावेळच्या शासन निर्णयातील अटीनुसार त्या पदास आवश्यक असलेली शैक्षणिक पात्रता ते धारण करीत होते. तरीही त्यांना डावलून एका निवृत्त कोतवालाच्या विवाहित मुलीस कोतवाल या रिक्त पदावर नेमणूक देवून महसूल अधिका-यांनी तक्रारदार यांच्यावर अन्याय केला आहे. त्यामुळे महसूल अधिका-यांनी आपल्या अधिकारात चुकीचा निर्णय घेतला ही बाब विचारात घेवून शासनाने संबंधित जबाबदार अधिका-याविरुद्ध योग्य ती कारवाई करावी असे निर्देश शासनास व जिल्हाधिकारी, बुलडाणा यांना देण्यात येत आहेत. सदरची कार्यवाही त्यांनी एक महिन्यात पूर्ण करावी व तसा पूर्तता अहवाल या कार्यालयास सादर करावा.

वरील परिस्थितीत तक्रारदार यांच्यापुरते प्रकरण बंद करून तसे तक्रारदार यांना कळविण्यात यावे.

By communication dated 21.06.2012 (Annexure A-6) respondent no.2 was informed that complaint of the applicant which was closed on 19.04.2012, was revived. As per communication dated 21.07.2012 (Annexure A-7) received from respondent no.1, by order dated 25.10.2012 (Annexure A-8), the applicant was appointed as Kotwal. On 06.02.2017 the applicant made a representation (Annexure A-9) that his case be considered for promotion to Class IV post as per Circular dated 19.07.2001 (Annexure A-10) and G.R. dated 06.02.2019 (Annexure A-12). In communication dated 12.01.2012 (Annexure A-20) respondent no.2 had observed-

तत्कालीन तहसिलदार यांनी सन २००७ मध्ये कोतवाल भरती प्रक्रीया अंतर्गत मुलाखती घेऊन सेवानिवृत्त कोतवालाची विवाहीत मुलगी सौ.भारती मधुकर कुळकर्णी हया सेवानिवृत्त कोतवालाच्या मुलीस खामगांव सज्यावर नेमणूक दिली आहे. व तेव्हापासून ती खामगांव सज्यावर कार्यरत आहे. दि.२३/११/२०११ रोजी झालेल्या सुनावणीत नायब तहसिलदार यांनी सौ.भारती मधुकर कुळकर्णी यांची सेवानिवृत्त कोतवालाची वारस म्हणून नेमणूक केल्याचे मान्य केले. शासनाच्या धोरणानुसार कोतवाल पदावर नेमणूकीकरीता प्राधान्यक्रम सेवेत असतांना निधन पावलेल्या कर्मवा-यांच्या पाल्यास देणे आहे. ही वस्तुस्थिती विचारात घेता तक्रारदार यांचेवर अन्याय झालेला आहे हे स्पष्ट होते.

In communication dated 10.02.2012 (Annexure A-22) respondent no.3 had observed –

सदर प्रकरणी दिनांक १३/०१/२०१२ रोजी मा.लोक आयुक्त महोदय यांचे कार्यालयात सुनावणी झाली आहे. सुनावणी दरम्यान तक्रारदार हे सन २००७ चे कोतवाल भरती प्रक्रियेमध्ये पात्र असूनही त्यांची नेमणूक झाली नाही त्यामुळे एक विशेष बाब म्हणून तक्रारदार यांना रिक्त सज्यावर कोतवाल पदावर नेमणूक देण्याबाबत शासन मंजुरात प्राप्त करण्यात यावे असे निर्देश झालेले आहेत.

Considering all these circumstances the O.A. deserves to be allowed in terms of prayer clauses (i) to (iii) which read as under –

- (i) direct the Respondents to consider the candidature of the applicant for appointment to Class-IV, post from the year 2007-08 for the post of Kotwal;**

- (ii) hold and declare that the applicant was prosecuting the case of his appointment as Kotwal since year 2007-08 and resultantly he was appointed as Kotwal vide order dated 25.10.2012 (Annexure-A-8) by Respondent No.3. Therefore, applicant is entitled to consider his candidature from year 2007-08 to appoint him on Class-IV post from Kotwal post;**
- (iii) grant any other reliefs, which will be deemed fit and proper in the facts and circumstances of the case;**

3. In their reply at pp.80 to 86 respondent nos.2 and 3 have averred that seniority of the applicant has been rightly fixed keeping in mind his date of appointment i.e. 25.10.2012, and Recruitment Rules for Kotwals dated 07.05.1959 (Annexure R-2-1).

4. In his rejoinder at pp.116 to 125 the applicant has reiterated what has been pleaded in the O.A.

5. I have quoted prayers made in the O.A. The applicant desires that declaration be granted that he was appointed in 2007 - 2008, and his candidature for Class IV post be accordingly directed to be considered. The applicant was appointed on 25.10.2012. It is well settled that appointment cannot be made retrospectively. In support of this

conclusion reliance may be placed on **R.N.Nanjundappa Vs.. T. Thimmaih, (1972) 1 SCC 409 : AIR 1972 SC 1767** and **Ramendra Singh Vs. Jaqdish Prasad, 1984 (1) Serv LR 520 (SC) : 1984 (Supp) SCC 142 : AIR 1984 SC 885.** Considering this legal position prayers made by the applicant cannot be granted. These prayers are ex-facie misconceived. However, it may be observed that the respondents will have to consider eligibility of the applicant for promotion to Class IV post on its own merits. The O.A. is accordingly dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated – 15/03/2023
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman &
Court of Hon'ble Member (J) .
Judgment signed on : 15/03/2023.
and pronounced on