IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.1020 OF 2019

WITH

MISCELLANEOUS APPLICATION NO.31 OF 2020

DISTRICT : PUNE

Shri Navnath Mukund Gavali,)
Age 35 years, Driver (currently services are terminated)))
In the office e of P.W.D., Central Building, Pune Circle,)
Pune and R/at Sahyadri Heights, Flat No.303,)
Manjri-Solapur Road, Shewalwadi, Pune 411230)..Applicant

Versus

1. Government of Maharashtra,)
Through Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400 032)

2. Superintending Engineer,)
Public Works Circle, Pune)

3. Rekha P. Satpute,)
Office Superintendent in the office of)
Superintending Engineer, Public Works Circle,)
Central Building, Pune 411001)..Respondents

Smt. Punam Mahajan – Advocate for the Applicant
Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula R. Bhatkar (Chairperson)
Shri P.N. Dixit, Vice-Chairman (A)
DATE : 24th December, 2020
PER : Shri P.N. Dixit, Vice-Chairman (A)

J U D G M E N T

1. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. The applicant in this OA was appointed on ad hoc basis against the Economic & Socially Backward Class Category (ESBC). However, by impugned order dated 1.10.2019 (Exh.A-7 page 35) his services were terminated and by order dated 6.1.2020 (Exh.M-13 page 28 of MA) his representation was rejected. The same have been challenged by the applicant with a prayer that the impugned orders may be declared as illegal and quashed and set aside.

3. This Tribunal has heard similar matter in OA No.994 of 2019 and given its judgment on 3.11.2020 (Shri Sandip Arjun Narawade Vs. The State of Maharashtra & Ors.). We have read the affidavit in reply dated 26.2.2020 filed by Shri Vijay Ratilal Chavan, Deputy Executive Engineer in the office of Executive Engineer, Pune Public Works Division, Pune on behalf of respondent no.2. Though the applicant is from other department than the department of Shri Sandip Arun Narawade i.e. applicant in OA No.994 of 2019, the facts are quite similar with minor variations in the present case. This matter was clubbed with OA No.994/2019 and the order would have been the same. However, it was heard separately and

therefore we are adopting the same judgment as it is to enable to get a proper perspective of the entire issue. The judgment dated 3.11.2020 reads as under:

> *"1. The Original Application is admitted. Both, the Original Application and Miscellaneous Application are heard finally at the stage of admission with consent of the parties. The Applicant, pursuant to the advertisement in the year 2014, was appointed by the order dated 01.07.2016 as a Peon in the office of Deputy Superintendent of Land Records. Vashi. As per the Government Resolution (G.R.) dated 02.12.2015 his appointment was on adhoc basis i.e. for 11 months or till the decision of the Hon'ble High Court in Writ Petition No.3151 of 2020, whichever is earlier. The Applicant was selected from the Open Category and therefore was appointed on ad hoc basis due to the pendency of the said Writ Petition. His appointment continued time to time till 01.10.2019. He challenges the order dated 1.10.2019 of termination of his service.*
>
> *2. The State of Maharashtra has issued the ordinance on 09.07.2014 for the reservation for the seats for admission in Educational Institutions in the State and appointments or posts in the Public services under the State for Educationally and Socially Backward Category (E.S.B.C.). The said E.S.B.C. Act of 2015 replaced by the passing of Socially and Educationally Backward Category (S.E.B.C.) Act of 2018. The said Act was challenged in the Public Interest Litigation (P.I.L.) No. 719 of 2018 before the Hon'ble High Court of Judicature at Bombay, and by judgment dated 27.06.2019, the Hon'ble Bombay High Court upheld validity of S.E.B.C. Act 2018. Hon'ble Bombay High Court upheld the validity and quota of reservation set out in the said Act for the appointment in the Public service and posts under the State for S.E.B.C. On the basis of the decision of the Hon'ble Bombay High Court, Respondent No.1 i.e. General Administration Department (G.A.D.) issued G.R. dated 11.07.2019 giving directions that the services of the candidates who were selected and appointed from Open Category during the year 2014 should be put to an end by termination order in their places*

the candidates from E.S.B.C. should be given appointment on the basis of select list. Thus pursuant to the implementation of the said G.R. services of present applicant who was appointed as Peon from Open Category is terminated by order dated 01.07.2016 after three years. Hence, this challenge.

3. The services of the Government servants having equivalent posts at Pune, Ahmednagar and Aurangabad continued after the stay granted to the G.R. dated 11.07.2019 till further date, on account of interim order dated 08.11.2019 passed by the Bombay High Court in Writ Petition (W.P.)No.10547/2019. However, the applicant was not given benefit of the said order of the Hon'ble High Court and his application for continuation of the job was rejected by the Government. Hence, this O.A..

4. The learned Advocate Ms. Punam Mahajan appearing for the Applicant submits that after filing of the Original Application in 06.10.2019 important orders were passed by the Hon'ble High Court & the Hon'ble Supreme Court. The order dated 27.06.2019 in P.I.L.No.175/2018 passed by the Hon'ble High Court is challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court in Special Leave to Appeal (C) No(s).15737/2019 has passed the order on 12.7.2019 stating that the order of the Hon'ble High Court for the reservation in question shall not have any retrospective effect. Similarly, the Hon'ble Supreme Court by order dated 09.09.2020 in the same S.L.P. stayed the effect of S.E.B.C. Act and therefore it is all the more binding on the respondents to continue the services of the applicant by allowing him to join his post. She pointed out the various orders of the Deputy Director of Land Records Pune, Aurangabad and Nagpur region which they have implemented the interim order dated 11.11.2019 issued by the Hon'ble Bombay High Court in ***Writ Petition No.10547/2019 Ranjit Biranje & Anr vs The State Of Maharashtra & Ors.*** *She submitted that the applicant is discriminated by the Respondents and therefore should be treated equally.*

5. The learned P.O. relied on two affidavits filed in the O.A. and one affidavit filed in M.A. She relied on the affidavit dated 03.03.2020 of Shri Chokalingam, Settlement Commissioner and Director of Land Records, State of Maharashtra and another affidavit dated 03.03.2020 of Smt. Geeta Nishikant Deshpande, Superintendent of Land Record, in the office of Deputy Director of Land Record, Konkan Division, Mumbai and the affidavit of Shri Rasik Ambadas Khadse, Under Secretary filed on behalf of Respondent No.1 (State) in O.A. on 22.10.2020. The learned P.O. has submitted that the Respondents have taken the decision of terminating the services of the applicant in pursuance of the order of the Hon'ble Bombay High Court dated 27.06.2019 wherein the reservation policy for S.E.B.C. was upheld and therefore it was necessary for the State to create posts for candidates of S.E.B.C. by removing Government servants who are on adhoc basis and from Open Category. She submitted that the applicant's service was not permanent and therefore the act of the State is fully legal. She further argued that all the Deputy Directors of all Divisions in the State of Maharashtra enjoy autonomous powers in selection and appointment process and therefore the decisions taken by the same authority of other Division is not binding on the Deputy Director of Land Records of Konkan Division. Therefore, the applicant has no case on merit and therefore it is to be dismissed.

6. All the facts in the present case are undisputed. The order passed by the Hon'ble High Court dated 27.06.2019 in P.I.L.No.175 of 2019 upholding validity so also the order passed by the Hon'ble Supreme Court on 12.07.2019 and 09.09.2020 in Special Leave to Appeal (C) No(s).15737/2019 in the case of ***Jaishri Laxmanrao Patil vs The Chief Minister*** *staying the said order of the Hon'ble Bombay High Court are well within the knowledge of the Respondents. In view of this, no discussion or decision is required. It is the matter of obeying and implementing the order of the higher and highest judicial authority. The law laid down by the Tribunal and the orders of the Hon'ble High Court and Supreme Court are binding on all authorities including the Government and everybody covered*

under such orders are statutorily obliged to obey and implement those orders.

7. For the purpose of ready reference the respective orders of the Hon'ble High Court and the Supreme Court which were passed after the judgment dated 27.06.2019 by the Hon'ble High Court in P.I.L.No.175 of 2019 are to be taken into account to make the exact position of the reservation clear in respect of the posts and appointments in the Government service in respect of reservations policy of the State of Maharashtra, in respect of S.E.B.C Act of 2018. The challenge given to the judgment of the Hon'ble High Court upholding the validity of S.E.B.C. Act and the percentage therein is pending. The said judgment is pending before the Hon'ble Supreme Court. However, in between the interim orders are passed by the Hon'ble High Court in Writ petition No.10547 of 2019 dated 11.11.2019. And thereafter the Hon'ble Supreme Court in Special Leave to Appeal (C) No(s).15737/2019 by its order dated 12.07.2019, has passed the following:

> *"We have heard learned counsel for the parties, we make it clear that the action taken pursuant to the order of the High Court shall be subject to the result of the special leave petitions. However, we make it clear that the order of the High Court or the reservation in question shall not have any retrospective effect."*

8. Thereafter the Hon'ble Supreme Court by order dated 09.09.2020 has referred the said Appeals to Larger Bench for the substantial question to law as to the interpretation of the Constitution of India is involved. However, in the said order in operative portion 'C' has passed this order.

> *"(C) Appointments to public services and posts under the Government shall be made without implementing the reservation as provided in the Act."*

9. In the order dated 12.07.2019 the Hon'ble Supreme Court has especially and unequivocally directed that no retrospective effect to the order of the Hon'ble High Court or the reservation in question be given. Thus no ambiguity is left by the Hon'ble Supreme Court that the judgment passed by the Hon'ble High Court should not be implemented or is not applicable and has no effect on appointments made or postings given earlier before the date of the judgment of the Hon'ble High Court.

10. Admittedly, the appointment of applicant is way back on 01.07.2016. Though it was adhoc appointment but he has put in services for three years continuously with technical break. His case is squarely covered under the interim order passed by the Hon'ble Supreme Court. It is paramount obligation on the Government to obey and implement the said order and act accordingly. We have gone through the affidavits filed by the Respondents. Shri Chokalingam, Settlement Commissioner and Director of Land Records, while responding the order passed by this Tribunal on 13.02.2020 in this O.A. has stated that -

> *"All the Deputy Directors of Land Records are the "appointing authorities" and also "competent authorities" to take decision on the representation of the applicant."*

In his letter dated 02.03.2020 written to the Government/G.A.D he has asked for guidance regarding the correct implement of G.R. dated 03.11.2018 and 11.07.2019. Copy of the said letter is also placed on record, wherein his office has mentioned about the decision dated 08.11.2019 in Writ Petition No.10547/2019 that the G.R. dated 11.07.2019 is stayed till 05.12.2019 and it continued time to time. It also referred the earlier decision of the Government regarding continuation of service of ad hoc employees like the applicant.

11. In the affidavit dated 03.03.2020 of Smt. Geeta N. Deshpande, Superintendent of Land Record, in the office of Deputy Director of Land Record, the stand of the Respondents of not continuing the services of the

applicant is justified on the basis of the judgment of the Hon'ble Bombay High Court dated 27.06.2019 in P.I.L.No.175 of 2018. There is no whisper about the challenge given to that judgment before the Hon'ble Supreme Court or about the interim order passed by the Hon'ble Supreme Court in S.L.P.

12. In the affidavit dated 22.10.2020 of Shri Rasik Ambadas Khadse, Under Secretary in paragraph 6 the order dated 12.07.2019 of the Hon'ble Supreme Court in Special Leave to Appeal (C) No(s).15737/2019, is reproduced. The interim order dated 19.11.2019 noting of the appearances of the Counsels and their submissions are also reproduced. It further referred the G.R. dated 11.07.2019 i.e. the said G.R. was issued one day before the interim order passed by the Hon'ble Supreme Court dated 12.07.2019 by which the retrospective effect / implementation of the order of the Hon'ble High Court is stayed. However, in all the subsequent paragraphs of this affidavit, Respondent no.1 is conspicuously silent about the implementation of the interim order of the Hon'ble Supreme Court about non applicability of the order of the Hon'ble Bombay High Court retrospectively. In paragraph 9 of the affidavit it referred the order passed in Writ Petition No.11165/2019 and the order of the Hon'ble Bombay High Court dated 17.10.2019 which states,

> *"Mr. Shinde, on instructions from the officer of the General Administration Department, Government of Maharashtra makes a statement that till next date, the Respondents will not give effect to the Pensioners termination order. Statement accepted."*

In paragraph 11, it is subsequently mentioned that the G.R. dated 11.07.2019 which is stayed by the Hon'ble High Court in interim order dated 08.11.2019 in Writ Petition No.10547/2019 is stayed continuous as on today.

13. Thus the respondents have completely ignored to obey and implement the interim orders passed by the Hon'ble High Court and the Hon'ble Supreme Court in respect of applicant who is directly covered and is beneficiary of the said order. It is most unfortunate to come across such stark disobedience of the order of the Hon'ble Supreme Court and also the Hon'ble High Court under the pretext of feigned ignorance. The case of the applicant is to be treated at par with the other persons who are working on the same posts of Peon in other Division, because all the respondents are covered under one umbrella of Respondent No.1 i.e. State of Maharashtra. There should be equal treatment to the applicant and the other persons who are working as Peons in the other divisions. As the orders and the interim orders of the Hon'ble Supreme Court and the Hon'ble High Court are binding & to be interpreted, implemented and obeyed by all the divisions working under the State of Maharashtra, no division can claim exception as everybody is covered under the hierarchy and the rule of law laid down in the Constitution of India. Hence, the Applicant has every right to claim the equal treatment under Article 14 of the Constitution of India and this discrimination is illegal.

14. The impugned order dated 1.10.2019 is hereby quashed and set aside.

15. Thus we hereby direct the Respondents to implement the interim order of the Hon'ble Supreme Court dated 12.07.2019.

16. With the above, directions, the present Original Application and Miscellaneous Application are allowed."

4. As the present matter is on the same issue we adopt the same judgment as quoted above as the grounds as well as facts mentioned in the present case are similar to the judgment referred above. Hence, we pass the following order:

(a) We direct that the impugned orders dated 1.10.2019 and 6.1.2020 are quashed and set aside.

(b) We direct the respondents to implement the interim relief of the Hon'ble Supreme Court dated 12.7.2019.

(c) With the above directions the present OA along with MA is disposed off.

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
24.12.2020

Sd/-

(Mridula R. Bhatkar, J.)
Chairperson
24.12.2020

Dictation taken by: S.G. Jawalkar.

G:\JAWALKAR\Judgements\2020\12 December 2020\OA.1020.2019.J.12.2020-NMGavali-Termination.doc