

FARAD CONTINUATION SHEET
MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 749 OF 2016

{Sachin Anant Palkhe Vs. The State of Mah. & Ors.}

CORAM :- Shri J. D. Kulkarni, Hon'ble Member (J)
(This matter is placed before the Single Bench due to non-availability of Division Bench.)

DATE :- 01.10.2016

Oral Order :-

1. Heard Shri S.B. Talekar, learned Advocate for the applicant and Shri D.R.Patil, learned Presenting Officer for the respondents.

2. The applicant in this case has claimed that the declaration dated 2.7.2016 issued by the res. no. 3, whereby they have revised the select list and consequential revision of select list of the post of Tax Assistant Examination – 2014 be quashed. He is also claiming stay to the operation, execution and implementation of the revised select list of Tax Assistant Examination – 2014 and also claiming direction to the respondents to issue appointment order in favour of the applicant pursuant to his recommendation for the said post.

3. According to the applicant vide advertisement dated 13.11.2014 published by the res. no. 3, the MPSC, applications were invited for 700 posts of Tax Assistants. The applicant participated in the said selection process from Open category and

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his name was also recommended for appointment. However, the res. no. 3 recommended only 588 posts and 102 posts were kept vacant.

4. The learned Advocate for the applicant has invited my attention to various litigations as regards reversion to Maratha community and to Muslim community. He invited my attention to the order dated 19.11.2014 passed by Hon'ble Bombay High Court in **W.P. (L) No. 2053/2014 {Shri Sanjeet Shukla Vs. State of Maharashtra & Ors.}** along with other matters. Hon'ble High Court was pleased to stay the Maharashtra Ordinance XIV of 2014 dated 9.7.2014 and the G.R. dated 15.7.2014 provided for 16% reservation in favour of Maratha community.

5. Against the order passed by Hon'ble High Court on 14.11.2014 in the aforesaid writ petitions, the State of Maharashtra approached the Hon'ble Supreme Court and Hon'ble Supreme Court vide order dated 18.12.2014 in special leave to appeal (C) Nos. 34335 – 34336 of 2014 was pleased to dismiss the said leave petition.

6. The learned Advocate for the applicant, therefore, submits that the stay granted for reservation to the Maratha community is still in existence, however, in W.P. no. 3151/2014 and other

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connected matters, Hon'ble High Court has passed order on 7.4.2015, wherein it was observed in para 15 as under :-

“15. As far as reservation in educational institutions is concerned, in view of the finding already given by us that Marathas cannot be considered as an educationally and socially backward community, the interim stay of the amended provisions of Maharashtra Act no. 1 of 2015 will also have to be granted.”

7. In the said writ petition following interim order was passed :-

“19. In the result, the following interim order is passed :-

- (a) Till the hearing and final disposal of these petitions, there shall be interim stay of operation and implementation of the provisions of Maharashtra Act No. 1 of 2015 providing for 16% reservation in favour of Marathas.
- (b) In any advertisement for appointment to any post in public services, the State Government shall not provide for any reservation for Marathas on the basis of the provisions of the Maharashtra Act No. 1 of 2015.
- (c) The appointments to 16% posts reserved for Marathas under the above legislation in the

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advertisements already issued shall be made from amongst the open merit candidates on a temporary and ad-hoc basis for a period of 11 months or till final disposal of these petitions, whichever is earlier and the appointments shall be made subject to the outcome of the petitions.

- (d) As far as admissions to educational institutions are concerned, the State Government shall not grant any admission to the educational institutions on the basis of the Maharashtra Act No.1 of 2015.”

8. It seems that, in view of the aforesaid interim order, the respondent no. 3 the MPSC has revised the final select list and passed the impugned order on 2.7.2016.

9. The learned Advocate for the applicant submits that the applicant's name was already recommended and, therefore, the applicant ought to have been appointed to the post of Tax Assistant. He is claiming appointment on the basis of reservation from Open Sportsman category.

10. The learned Advocate for the applicant has referred to one order passed by Hon'ble Bombay High Court, Bench at Aurangabad in **writ petition No. 115/2015 {ABHAY G. SANAP VS. THE STATE OF MAH. & ORS}** on 15.1.2016, wherein one

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Shri Sanap claimed appointment on the post of Tax Assistant Group –C from Open Sportsman category in view of advertisement no. 209/2014, which is also a subject matter in this O.A. Hon'ble High Court was pleased to direct the respondents therein to keep one post of Tax Assistant from Open Sportsman category vacant. It seems that, this writ petition was subsequently transferred by Hon'ble High Court to this Tribunal and this Tribunal renumbered it as T.A. no. 1/2016.

11. The learned Advocate for the applicant invited my attention to the order passed by this Tribunal on 18.3.2016 in T.A. No. 01/2016 and submitted that the interim order granted by Hon'ble High Court stood continued vide that order till next date and next date in the said O.A. was 11.4.2016. He submitted that on 11.4.2016 the applicant and his Counsel were absent and, therefore, the matter was posted on 15.6.2016 and there was no extension to the said interim stay order after 18.3.2016. In view of above, one post which was kept vacant for petitioner Shri Sanap is vacant and the applicant in the present O.A. can be considered for appointment on such post. It is material to note that, no official documents are placed on record in this regard, nor the record was called by following due procedure before this Tribunal. The applicant is not party in said T.A. no. 1/2016 and, therefore,

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making such reference without following due procedure cannot be accepted and it will be prejudicial to the petitioner in T.A. no. 1/2016 to consider the order passed in T.A. no. 1/2016 without giving him any opportunity of hearing. The learned Advocate submits that as an officer of Court he can refer to any order passed by this Court. I am not in agreement with the learned Advocate. He cannot pick-up any case before Tribunal all of a sudden and refer to orders passed therein without filing certified copies of the orders and without calling for record as per procedure to be followed.

12. Admittedly, the petitioner Shri Sanap in T.A. no. 1/2016 is also not a party in this O.A. It is material to note that the interim order passed by Hon'ble High Court was continued till next date as per the order dated 18.3.2016 and though there was no specific order of continuation of interim order on 11.4.2016, there was no specific order in respect of vacating the said interim order. It is material to note that vide subsequent orders dated 15.6.2016 and 7.9.2016 interim order granted to the applicant Shri Sanap in T.A. no. 1/2016 is still continued. In such circumstances, no reference of the order in T.A. no. 1/2016 can be given without following due process of law and the interim order granted in the said matter by Hon'ble High Court is still in existence.

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13. I have perused the impugned communication dated 2.7.2016 and it seems from the said letter that in view of the interim order of Hon'ble High Court in writ petition No. 3151/2014, the res. no. 3, the MPSC, has revised the final select list and now they have taken steps to appoint 699 candidates to the post of Tax Assistant. It seems that one post is kept vacant for Open Sportsman category in view of the order passed in writ petition no. 115/2016 dated 15.1.2016, which was subsequently transferred to this Tribunal and it is renumbered as T.A. no. 1/2016.

14. I have also perused the advertisement dated 13.11.2014 and it seems that the reservation from Sportsman for various categories is mentioned in the said advertisement and the reserved posts from sportsman category are in all 34. The applicant himself has placed on record the category-wise details of number of posts advertised and recommendation as per their original category (revised). The said chart is at paper book page 45-A and 45-B from which it seems that, out of 700 posts, 699 posts are recommended and as already stated, one post is kept vacant in view of the interim order passed in W.P. no. 115/2016 on 15.1.2016, which is continued by this Tribunal in T.A. no.

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1/2016. From the said chart it is clear that in all 33 posts from Sportsman category including all casts categories of candidates are recommended and only one post is kept vacant. From the decision dated 2.7.2016 of res. no. 3, the MPSC, it seems that the applicant is not recommended in the revised list.

15. In such circumstances, merely because the applicant is recommended when list was earlier prepared, which was subsequently revised in view of the decision of Hon'ble High Court, the applicant cannot get right of appointment. In any case, I do not find any prima-facie case to grant interim stay or interim relief in farour of the applicant.

16. The matter will have to be given serious consideration on merits and therefore, interim relief is refused.

17. Issue notice before admission to the respondents, returnable after four weeks.

18. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.

19. Applicant is authorized and directed to serve on respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondent is

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put to notice that the case would be taken up for final disposal at the stage of admission hearing.

20. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the question such as limitation and alternate remedy are kept open.

21. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

22. S.O. after four weeks.

23. Steno copy & hamdust allowed to both the parties.

MEMBER (J)

ARJ 01.10.2016 (D.B.)

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M.A.NO.377/2016 IN O.A.ST.NO. 1693/2016

[Ajay Bhimrao Pawar & Ors. Vs. The State of Mah. & Ors.]

CORAM : Hon'ble Shri J.D. Kulkarni, Member (J)
(This matter is placed before the Single Bench
due to non-availability of Division Bench.)

DATE : 01.10. 2016.

ORAL ORDER:

Shri M.G. Deokate – learned Advocate for the Applicants
(**absent**). Shri S.K. Shirase – learned Presenting Officer for the
respondents, present.

2. Since nobody appears for the applicant, S.O. to 6th October,
2016.

MEMBER (J)

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M.A.384/2016 IN C.P.ST. 1763/16 IN O.A. 573/16

[Dr. Gopal Babulal Kuril Ors. Vs. The State of Mah. & Ors.]

CORAM : Hon'ble Shri J.D. Kulkarni, Member (J)
(This matter is placed before the Single Bench
due to non-availability of Division Bench.)

DATE : 01.10.2016.

ORAL ORDER:

Heard Shri S.N. Pagare – learned Advocate for the Applicant and Mrs. Priya R. Bharaswadkar – learned Presenting Officer for the respondents.

2. Vide impugned order dated 14th July, 2016, the respondent was directed to reconsider the applicant's representation dated 9.9.2015 coupled with the fact that the applicant has been acquitted of criminal charges and was due to retire in near future. Decision was to be taken within one month from the date of that order. However, till today no steps are taken by the respondents. Hence, prima facie it appears that there is contempt.

3. However before initiating contempt petition, issue notices to the respondents in M.A. No. 384/2016 filed for permission to file contempt petition, returnable on 25th October, 2016.

MEMBER (J)

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M.A.339/2016 WITH M.A. 224/2016 IN O.A.NO. 401/2016

[Bhaskar Madhavrao Kulkarni Vs. The State of Mah. & Ors.]

CORAM : Hon'ble Shri J.D. Kulkarni, Member (J)
(This matter is placed before the Single Bench
due to non-availability of Division Bench.)

DATE : 01.10.2016.

ORAL ORDER:

Heard Shri C.D. Birdar – learned Advocate for the Intervenor, Shri M.S. Mahajan – learned Chief Presenting Officer for the respondent Nos. 1 to 3 and Shri S.D. Dhongde – learned Advocate for respondent No. 4/ original applicant.

2. Learned Advocate for Intervenor seeks time to take instructions from his client. Time granted.

4. S.O. to 3rd October, 2016.

MEMBER (J)

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M.A.NO. 224/2016 IN O.A.NO. 401/2016

[Jalamsingh Davanji Valvi Vs. The State of Mah. & Ors.]

CORAM : Hon'ble Shri J.D. Kulkarni, Member (J)
(This matter is placed before the Single Bench
due to non-availability of Division Bench.)

DATE : 01.10.2016.

ORAL ORDER:

Heard Shri C.D. Birdar – learned Advocate for the Intervenor, Shri M.S. Mahajan – learned Chief Presenting Officer for the respondent Nos. 1 to 3 and Shri S.D. Dhongde – learned Advocate for respondent No. 4/ original applicant.

2. Learned Chief Presenting Officer has filed affidavit in reply on behalf of respondent No.2 in M.A. No. 224/2016 and the same has been taken on record and the copy thereof has been served upon the learned Advocate for the original applicant.

3. S.O. to 3rd October, 2016.

MEMBER (J)

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