1) M.A.543/15 IN CP.ST.1721/15 IN O.A. 717/98
2) M.A.544/15 IN CP.ST.1723/15 IN O.A. 522/2000
3) M.A.545/15 IN CP.ST.1727/15 IN O.A. 718/98
4) M.A.546/15 IN CP.ST.1731/15 IN O.A. 1203/99
5) M.A.547/15 IN CP.ST.1725/15 IN O.A. 492/02
6) M.A.548/15 IN CP.ST.1719/15 IN O.A. 493/02
7) M.A.549/15 IN CP.ST.1729/15 IN O.A. 525/02
8) M.A.ST.1328/15 IN CP.ST.1329/15 IN O.A. 705/96
9) M.A.ST.1330/15 IN CP.ST.1331/15 IN O.A. 682/96
10) M.A.ST.1332/15 IN CP.ST.1333/15 IN O.A. 718/96

APPEARANCE : Shri M.H. Patil – learned counsel for the applicants in Sr. Nos. 1 to 7.

: Shri Avinash Deshmukh – learned counsel for the applicants in Sr. Nos. 8 to 10.

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 : 29.11. 2016.

COMMON ORAL ORDER:

Heard S/Shri M.H. Patil & Avinash Deshmukh – learned counsel for the applicants in respective matters and S/Shri M.S. Mahajan, S.K. Shirase, D.R. Patil, Mrs. Priya R. Bharaswadkar, Smt. Sanjivani Deshmukh-Ghate and Mrs. Deepali S. Deshpande – learned Chief Presenting Officer for the respondents in all these matters.

2. S.O. to 11th January, 2017.

MEMBER (J)

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 209 OF 2016
[Shri Sd. Mois Ali 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 : 29.11. 2016.

ORAL ORDER:

Shri V.V. Deshmukh – learned Advocate for the Applicant **(absent)**. Smt. Deepali S. Deshpande – learned Presenting Officer for the respondents, is present.

2. It seems that affidavit in replies on behalf of respondents are already filed on record.

3. Hence, Admit.

4. The Division Bench is not available.

5. O.A. be placed before the D.B. for final hearing as and when it is available, with liberty to both the sides to move the matter for final hearing.

MEMBER (J)

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 314 OF 2016
[Shri Md. Majeed Fakru 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 : 29.11. 2016.

ORAL ORDER:

Heard Shri Ashish Rajkar - learned Advocate holding for Shri S.D. Joshi – learned Advocate for the Applicant and Smt. Sanjivani Deshmukh Ghate – learned Presenting Officer for the respondents.

2. It seems that affidavit in replies on behalf of respondents are already filed on record.

3. Hence, Admit.

4. The Division Bench is not available.

5. O.A. be placed before the D.B. for final hearing as and when it is available, with liberty to both the sides to move the matter for final hearing.

MEMBER (J)

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 456 OF 2016
[Shri Md. Ibrahim Khan 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 : 29.11. 2016.

ORAL ORDER:

Heard Shri Ashish Rajkar - learned Advocate holding for Shri S.D. Joshi – learned Advocate for the Applicant and Shri I.S. Thorat – learned Presenting Officer for the respondents.

2. It seems that affidavit in replies on behalf of respondents are already filed on record.

3. Hence, Admit.

4. The Division Bench is not available.

5. O.A. be placed before the D.B. for final hearing as and when it is available, with liberty to both the sides to move the matter for final hearing.

MEMBER (J)

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 215 OF 2016
[Shri Dattatraya Ratan Parde Vs. The State of Mah. & Ors.]

CORAM : Hon'ble Shri J.D. Kulkarni, Member (J)

DATE : 29.11. 2016.

ORAL ORDER:

Heard Mr. U.M. Maske – learned Advocate for the Applicant and Mrs. Priya R. Bharaswadkar – learned Presenting Officer for the respondents.

2. The learned Presenting Officer seeks time to file affidavit in reply on behalf of the respondents. The learned Advocate for the applicant has strongly opposed for granting further time on the ground that though the respondents have availed almost 7 chances for filing affidavit in reply, they failed to file the same.

3. However, the learned Presenting Officer submits that he will file reply without fail on Friday i.e. on 2nd December, 2016.

4. Hence, time is granted as a most last chance to the respondents to file affidavit in reply, subject to condition that in case the reply is not filed on Friday, heavy costs shall be saddled on them.

5. S.O. to 2nd December, 2016. The Interim order to continue till then.

MEMBER (J)

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD

ORIGINAL APPLICATION ST. NO. 888 OF 2016
[Shri Dattatraya Deoram Parte Vs. The State of Maharashtra & Ors.]

CORAM : Hon'ble Shri J.D. Kulkarni, Member (J)

DATE : 29.11. 2016.

ORAL ORDER:

Heard Shri P.V. Suryawanshi – learned Advocate for the Applicant and Mrs. Priya R. Bharaswadkar – learned Presenting Officer for the respondents.

2. Perused the office note of the Registrar of this Tribunal Bench at Aurangabad dated 28.11.2016. It seems from the said office note that the issue involved in the present Original Application St. No. 888/2016 has already been decided by this Tribunal Bench at Aurangabad vide its order dated 22.7.2016 that too in favour of the applicant in O.A. No. 500/2014 and applicant has an option to file contempt petition, if necessary.

3. In view of the above, the learned Advocate for applicant submits that he may be allowed to withdraw the present Original Application with liberty to file Contempt Petition.

4. In view of the aforesaid submission made by the learned Advocate for the applicant, leave granted and the present O.A. stands disposed of as withdrawn with liberty to the applicant as prayed for. There shall be no order as to costs.

MEMBER (J)

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD

ORIGINAL APPLICATION ST. NO. 1966 OF 2016
[Shri Vyankat Lalba Nilawar 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 : 29.11. 2016.

ORAL ORDER:

Heard Shri Kiran G. Salunke – learned Advocate for the Applicant and Mrs. Priya R. Bharaswadkar – learned Presenting Officer for the respondents.

2. The applicant is claiming grant of promotion from 19.10.2010, when the Departmental Promotion Committee was held and the applicant was found fit.

3. Admittedly, the applicant has retired on superannuation before the promotion order is issued. It seems that the applicant has filed representation for deemed date of promotion and his representation is forwarded to the Principal Secretary, Higher Education Department, Mantralaya, Mumbai, on 19th March, 2016, as per Annexure 'A-8' pages-52 & 53 of the paper book. It is not known as to what happened with that proposal.

4. The learned Presenting Officer shall take instructions in this regard. In the meantime, issue notices to the respondents keeping open point of limitation, returnable on 10th January, 2017.

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

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

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

8. 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.

9. S.O.to 10th January, 2017.

10. Steno copy and Hamdast is allowed to both parties.

MEMBER (J)

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 894 OF 2016
[Dr. Narhari Rambhau Shelke Vs. The State of Mah. & Ors.]

CORAM : Hon'ble Shri J.D. Kulkarni, Member (J)

DATE : 29.11. 2016.

ORAL ORDER:

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

2. The applicant has challenged the impugned order of his transfer dated 23.11.2016; whereby he has been transferred from the post of Deputy Collector (General), Jalna to the post of Special Land Acquisition Officer, UPP-3, Hingoli, which is a vacant post. The copy of the impugned transfer order has been placed on record at Annexure 'A-1' page-14 of the paper book.

3. It is stated that the said designation is not correct as no such post as Special Land Acquisition Officer, UPP-3 is inexistence. This seems to have some force as the Divisional Commissioner vide order dated 24.11.2016 has directed the applicant to join at Hingoli on the post of Special Land Acquisition Officer, UPP-3 in stead of getting clarification from the competent authority i.e. the State.

4. According to the applicant, he was transferred to Jalna vide order dated 8th August, 2014 from Bhokardan and taken charge of his post of Deputy Collector (General) at Jalna on

19th August, 2014. The applicant, therefore, has not competed three years of his tenure as Deputy Collector, Jalna.

5. The learned Advocate for the applicant has invited my attention to one order dated 2.7.2016, from which it seems that the applicant has been appointed as Nodal Officer for Zilla Parishad and Panchayat Samiti Election. The said order is at Annexure 'R-4' page-21 of paper book.

6. The learned Advocate for the applicant also invited my attention to some instructions issued by the Election Commission of Maharashtra State vide order dated 19.1.2016; whereby it has been specifically stated in instruction No. 2.2 (ii) as under : -

> *"२.२. या सर्व स्थानिक स्वराज्य संस्थांच्या निवडणूका लोकसभा व विधानसभा निवडणुकांप्रमाणेच निर्भय, मुक्त व पारदर्शक वातावरणात व्हाव्यात याकरिता राज्य निवडणूक आयोगाने वेळोवेळी अनेक आदेश निर्गमित केले आहेत. त्यापैकी काही खालीलप्रमाणे आहेत:-*
>
> ***(i)*** .. ..
>
> ***(ii)*** *स्थानिक स्वराज्य संस्थांच्या निवडणुकांचे तीन मुख्य टप्पे (प्रभाग रचना, विधानसभा मतदार यादीचे विभाजन व प्रत्यक्ष मतदानाची प्रक्रिया) असल्याने त्यांची मुदत संपण्यास सहा महिन्यांपेक्षा कमी कालावधी शिल्लक असताना त्यांच्या क्षेत्र व हददीमध्ये कोणताही बदल करण्यात येऊ नये.*
>
> ***(iii)*** .. ..

(iv) *.. .. ..”*

7. The learned Advocate for the applicant further invited my attention to instruction No. 4 (iii), which states about the situation under which the employees can be transferred or retained during the election period. The said instruction No. 4 (iii) reads as under: -

“४. वरील बाबी लक्षात घेता मी आपल्याला विनंती करु इच्छितो की, शासनाच्या संबंधित विभागांनीसुध्दा या निवडणुकांच्या सर्व पूर्वतयारीची सुरुवात आतापासूनच करावी. यामध्ये पुढील बाबींचा प्रामुख्याने समावेशन असेल :-

(i) *.. .. ..*

(ii) *.. .. ..*

(iii) *अधिकारी /कर्मचारी यांच्या बदली/पदस्थापनेबाबत-शासनाने निवडणुकांशी निगडित सर्व अधिकारी उदा. महानगरपालिका आयुक्त, जिल्हाधिकारी, पोलीस आयुक्त, पोलीस अधिक्षक, मुख्याधिकारी, तहसिलदार, इत्यादी हयांचा आढावा घेऊन आयोगाने वेळोवेळी दिलेल्या आदेशांप्रमाणे त्यांची बदली/पदस्थापनेबाबत कार्यवाही करावी उदा.*

(अ) दिनांक १ जुन, २०१६ रोजी ज्या अधिका-यांना सध्याच्या पदावर तीन वर्षे पूर्ण होत असतील त्यांची बदली करण्यात यावी.

(ब) याव्यतिरिक्त स्थानिक स्वराज्य संस्थांच्या निवडणुकीचे कार्यक्रम माहे नोव्हेंबर, २०१६ ते फेब्रुवारी, २०१७ या कालावधीत सुरु राहणार असल्याने या कालावधीत ज्या अधिका-यांना सध्याच्या पदावर तीन वर्ष पूर्ण होणार असतील अशा अधिका-यांच्याही बदल्या करण्यात याव्यात.

(क) ज्या स्थानिक स्वराज्य संस्थेची निवडणूक असेल त्या ठिकाणचे स्थानिक रहिवाशी अधिकारी असू नयेत.

(ड) कर्तव्यरदक्ष, निष्पक्ष असणारे अधिकारी नियुक्त करावेत, जेणेकरुन कोणत्याही तक्रारी उभ्वणार नाहीत."

8. The learned Advocate for the applicant submits that the applicant is resident of Aurangabad and not of Jalna and he has yet to be completed three years tenure at the present posting at Jalna and since he has been appointed as Nodal Officer, he cannot be transferred without permission of the Election Commission.

9. The learned Presenting Officer submits that the applicant has been relieved from the post at Jalna and in his place one Shri Sandeep Patil, Deputy Collector, who is respondent No. 4 in the present matter, has taken charge of the applicant on 28.11.2016 (B.N.). The copy of the said order is placed on record at page Nos. 28 & 29 and marked as document 'X' for the purposes of identification. However, relieving order in respect of the applicant has not been placed on record.

10. The learned Advocate for the applicant submits that there are three posts of Deputy Collector (Non-executive) lying vacant in Jalna District and the respondent No. 4, who is transferred in place of the applicant is facing departmental enquiry and it has been specifically ordered that he shall be posted on non-executive post only and in spite of such direction the applicant has been shown to be relieved from the post of Deputy Collector, Jalna, in fact he has not at all relieved.

11. Prima-facie, the order of the applicant seems to be midterm and mid-tenure. It also seems to be against the directions issued by the Election Commissioner as already referred to. In case, respondent No. 4 is to be posted at Jalna, he could have been posted in any of the three vacant post at Jalna.

12. Considering all these aspects, I feel that it will be in the interest of justice and equity to protect the applicant. Whether respondent No. 4 has joined and whether the applicant has been legally relived or not will have to be considered on merits. Since three vacant posts are available, respondent No. 4 can be accommodated on any of the vacant posts, if on merits it is noticed that the order is with ulterior motive.

13. The applicant has claimed that he be retained on the present post and station as Deputy Collector (General), Jalna till completion of his normal tenure on the said post.

14. In view of the above situation and as the applicant is claiming limited prayer that he shall not be transferred till completion of his normal tenure which is to be expired in the month of April/May, 2017, the impugned transfer order dated 23.11.2016, whereby the applicant has transferred from the post of Deputy Collector (General), Jalna to the post of Special Land Acquisition Officer, UPP-3, Hingoli, on a vacant post, is stayed till filing of the affidavit in reply by the respondents.

15. In the meantime, issue notices to the respondents, returnable on 14th December, 2016.

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

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

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

19. 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.

20. The respondents shall file their affidavit in reply on or before the next date.

21. S.O.to 14th December, 2016.

22. Steno copy and Hamdast is allowed to both parties.

MEMBER (J)

29.11.2016-HDD(SB).doc

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD

ORIGINAL APPLICATION ST. NO. 758 OF 2016
[Shri Jagdish Mohanrao Kale Vs. The State of Maharashtra & Ors.]

CORAM : Hon'ble Shri J.D. Kulkarni, Member (J)

DATE : 29.11. 2016.

ORAL ORDER:

Heard Smt. Vidya Taksal, learned Advocate holding for Shri A.S. Deshmukh – learned Advocate for the Applicant and Mrs. Priya R. Bharaswadkar – learned Presenting Officer for the respondents.

2. The learned Presenting Officer has filed affidavit in reply on behalf of respondent Nos. 1 to 4 and the same has been taken on record and the copy thereof has been served upon the learned Advocate for the applicant.

3. S.O. to 21st December, 2016. The interim relief granted earlier to continue till then.

MEMBER (J)