

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**REVIEW APPLICATION NO.10 OF 2020
IN
ORIGINAL APPLICATION NO.837 OF 2019**

Smt. Disha Kesharao Pajai.)
Age : 42 Yrs., Working as Assistant)
Charity Commissioner being transferred)
to Dhule [Nashik Division] from)
Brihanmumbai office of the belownamed)
Respondent No.1, R/o. C/o. Smt/[Dr.])
Pratibha Bind, Flat No.1203,)
Siddhivinayak Mahima, Sector-34,)
Kamothe, Manasarovar, Panvel,)
Navi Mumbai.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary)
and Law Advisor, Law & Judiciary)
Department, Mantralaya,)
Mumbai – 400 032.)
2. The Charity Commissioner.)
[M.S], Mumbai and having office at)
Charity Commission Bhavan,)
3rd Floor, 83, Dr. Annie Besant Road,)
Worli, Mumbai – 400 018.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 15.02.2021

JUDGMENT

1. This is an application for review in O.A.No.837/2019 which was dismissed on 15.09.2020 invoking Rule 22(3)(f) of Administrative Tribunals Act, 1985 read with order 47 Rule 1 of Civil Procedure Code.

2. Shortly stated facts giving rise to the present Review Application are as under :-

The Applicant was appointed as Assistant Charity Commissioner by order dated 07.10.2014 and at the relevant time posted at Mumbai. The Respondent No.1 – Government by communication dated 07.08.2018 has withdrawn her quasi-judicial powers attributing certain misconduct to her and later by order dated 15.06.2019, she was not allowed to do quasi-judicial work till completion of D.E. initiated against her. The said communication dated 07.08.2018 and 15.06.2019 was challenged in O.A. which was resisted mainly on the ground that by impugned communication, only quasi-judicial work was withdrawn leaving administrative work untouched and she was doing the same. Besides, the D.E. was also initiated which was on the verge of completion. The Tribunal dismissed the O.A. by order dated 15.09.2020.

3. The perusal of Judgment in O.A.837/2019 reveals that O.A. was dismissed mainly on following two grounds :-

(i) The impugned communication was withdrawal of quasi-judicial work only and administrative work was retained with the Applicant. It is on this premises, the Tribunal held that it is innocuous order of withdrawal of quasi-judicial work only and in view of completion of D.E. which was on the verge of completion, the Tribunal opined that interference in such administrative order

of temporary nature without affecting salary, etc. need not be interfere with.

(ii) While deciding O.A, the Tribunal observed that the Applicant is still on probation and in case of probationary employee, even services can be terminated by simple discharge notice. Whereas in the present case, it was a case of withdrawal of quasi-judicial work only, and therefore, the Tribunal thought it appropriate not to interfere with the same.

4. Now this review is filed contending that while deciding O.A. certain facts were not clarified as in fact even administrative work was not allotted to the Applicant, and therefore, the impugned order cannot be said innocuous order as observed by the Tribunal. Furthermore, the issue of probation was not matter in issue in O.A. nor argued or referred to by the parties including Respondents, and therefore, the observation made in this behalf by the Tribunal for the first time in Judgment is incorrect in view of settled position of law that even in case of temporary employee who was on probation, even order of terminating the services on the ground of unsatisfactory work is stigmatic and no such termination is permissible in absence of regular enquiry and opportunity of hearing. Whereas, in the present case, admittedly, before passing of impugned communication dated 07.08.2018, no such opportunity of hearing or show cause notice was given to the Applicant.

5. In Review Application, the Applicant contends that she could not remain present in the Tribunal during the hearing of O.A. in view of Circular issued by this Tribunal whereby restrictions were placed on the presence of clients in the Court due to Covid-19 pandemic situation. Otherwise, she would have remained present in the Tribunal and could have assisted her Advocate to point out that no such administrative work was in fact given to her. Thus, according to Applicant, the stand taken by the Respondents in O.A. that only quasi-judicial work was withdrawn

and she was allowed to continue administrative work is factually incorrect. On 15.09.2020, she gave letter to Charity Commissioner stating that she was not given any administrative work and requested for exemption in the office in view of spread of Carona Virus and consequent pandemic situation. Material to note that the Joint Charity Commissioner, Mumbai by letter dated 17.09.2020 unequivocally admits that no administrative work was given to the Applicant and it is a matter of record. The Joint Charity Commissioner, Mumbai accordingly gave no objection for exemption from physical appearance of the Applicant. However, the Respondent No.2 – Charity Commissioner rejected the request for exemption from physical appearance stating that in view of subsequent G.R, 100% attendance of Government servants is compulsory. As such, there is no denying that in letter dated 17.09.2020, the Joint Charity Commissioner, Mumbai under whom Applicant was working has clearly admitted that any kind of administrative work was not given to the Applicant.

6. Shri Bandiwadekar, learned Advocate for the Applicant further submits that this aspect of non-allotment of any kind of administrative work is further fortified in view of Affidavit filed by Respondent No.2 – Charity Commissioner in which he has clearly stated that the Applicant was not given any kind of administrative work during her tenure at Mumbai.

7. As regard observation made by this Tribunal about probation, Shri Bandiwadekar, learned Advocate for the Applicant submits that since the aspect of probation was not in issue nor argued or referred by the authorities, the Tribunal ought not to have considered this issue in the Judgment. He has further pointed out that, in terms of G.R. dated 29.02.2016, the probation period could be extended maximum one year but in the present case, there being no such order of extension of probation, the Applicant is deemed to have been completed the probation period satisfactorily and she acquires the status of permanent and

regular employee. According to him, in any event, even if case of probationary employee, the services cannot be terminated without regular enquiry and opportunity of hearing. Whereas, in the present case, quasi-judicial as well as administrative work is withdrawn without affording any opportunity of hearing. He, therefore, submits that there is apparent error on the face of record and situation squarely falls within the scope of order 47 Rule 1 of CPC and review deserves to be allowed by quashing the impugned communication date 07.08.2015 and 15.06.2019.

8. Shri Bandiwadekar, learned Advocate for the Applicant referred the decision of Hon'ble Supreme Court in **2005 AIR SCW 230 (Board of Control for Cricket, India & Anr. Vs. Netaji Cricket Club & Ors)**. In Para No.90 in respect of powers of Court for review, it has been held as under :-

"90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

9. As regard opportunity of hearing to the probationer employee before termination of service, he placed reliance on **AIR 2000 SC 1080 (V.P. Ahuja Vs. State of Punjab & Ors.)** and **2000(4) MH.L.J. 609 (Prakash Dabhade Vs. Zilla Parishad)**. The conspectus of these decisions is that the order of termination of service of probationer on the ground of unsatisfactory work is stigmatic and law applicable to temporary servant regarding holding D.E. in case of allegation of misconduct or misbehavior applies to temporary Government servant as well. In other words, the probationer is entitled to the same protection which is given to the permanent servant when there are allegations of misconduct.

10. Per contra, Ms. S.P. Manchekar, learned C.P.O. sought to contend that the issues raised by the Applicant does not fall within the parameters of review. As regard allotment of administrative work, she fairly concede that during the tenure of Applicant at Mumbai, no administrative work was allotted to her. However, she sought to contend that during tenure of Applicant at Dhule, she was doing some administrative work, and therefore, it cannot be said that she was not allowed to do administrative work. As regard D.E. which was on the verge of completion at the time of decision of O.A, subsequent development she has pointed out that the enquiry conducted by the then Joint Charity Commissioner, Pune found flawed, since the Enquiry Officer has based his conclusion upon the evidence of witnesses for which no opportunity of cross-examination was afforded to the Applicant. The Respondent No.1, therefore, did not accept the enquiry report and initiated *denovo* enquiry for the same charges.

11. In view of submission advanced at the Bar, the question posed for consideration as to whether there is apparent error or mistake on the face of record which called for review of the decision rendered by the Tribunal on 15.09.2020 in O.A.No.837/2019.

12. As stated earlier, the Tribunal dismissed the O.A. mainly on the ground that the impugned communication dated 07.08.2018 was of withdrawal of quasi-judicial work only and other administrative work was left untouched. The Tribunal, therefore, opined that it is innocuous order and need not be interfered with in view of certain allegation of lapses in judicial while doing quasi-judicial work. Since the D.E. was also on the verge of completion, the Tribunal felt that the impugned communication was temporary in nature restricted to withdrawal of quasi-judicial work, and therefore, it need not be interfered with. Accordingly, directions were also given to complete the D.E. within two months from the date of order.

13. Now turning to R.A, what turned out that the Applicant was not even allotted any administrative work except very few work for a short period during her tenure at Dhule. Material to note that at the time of impugned communication dated 07.08.2018, the Applicant was serving at Mumbai. Later, she was transferred to Dhule by order dated 11.03.2019 and joined there on 12.03.2019. Admittedly, she had challenged the transfer order by filing O.A.No.668/2019 which was allowed on 20.02.2020 and transfer order was quashed. The said Judgment was implemented. The Applicant resumed the work at Mumbai on 13.03.2020. This factual aspects are not in dispute.

14. Thus, there are two spells of tenure at Mumbai as well as at Dhule after passing the impugned order dated 07.08.2018. In so far as non-allotment of administrative work at Mumbai is concerned, there is clear admission in the Affidavit of Charity Commissioner that no administrative work was given to her during her tenure at Mumbai. The Affidavit was filed on the basis of information called from Joint Charity Commissioner, Greater Mumbai Region. In Affidavit, the Charity Commissioner has stated that, "the Joint Charity Commissioner, Greater Mumbai in her letter mentioned that before and after joining of Smt. Pajai in this office, there was no administrative work assigned to Assistant Charity Commissioner-8 (Applicant). He again reiterated that "there was no particular administrative work assigned to Smt. Disha Pajai during her tenure in the office of Greater Mumbai Region from 07.08.2018 to 11.03.2019". Indeed, the learned P.O. fairly concede that during the tenure of Applicant in Mumbai even before transfer to Dhule and after resuming at Mumbai (after cancellation of transfer order) no administrative work was allotted to her. Suffice to say, there is no denying that no administrative work was given to the Applicant during her tenure at Mumbai. This being the position, the contention earlier raised by the Respondents in the O.A. that only quasi-judicial work was withdrawn and she was doing other administrative work is totally incorrect.

15. As a matter of fact, in reply filed on Affidavit what is stated is interesting, which is as under :-

“With reference to contents of paragraph No.6(D) of R.A., I say that the contentions regarding the duty chart of A.C.C. includes administrative work in addition to quasi judicial work is correct. However, such administrative work is mostly related to the quasi judicial proceedings pending before concerned Authority and, therefore, even such administrative work is required to be performed by the respective A.C.C. dealing with quasi judicial proceedings and such administrative work cannot be separated from those quasi judicial proceedings. Under such circumstances, as any quasi judicial proceeding was not assigned to the Applicant, such ancillary administrative work could not be kept with the Applicant separately.”

16. As regard tenure at Dhule, the perusal of letter of Assistant Charity Commissioner, Dhule addressed to Charity Commissioner dated 24.12.2020 (Page Nos.189 to 192) reveals that no Office Order was passed for giving any administrative work to the Applicant. However, it appears from the said letter that occasionally, the Applicant had attended some meetings pertaining to meetings conducted by Hospital Branch and inspected quarterly report on 18.12.2019 and 20.12.2019. In addition to it, she appears to have attended some work relating to registration of trust under the provisions of Maharashtra Public Trust Act, 1950. Thus, there are sporadic occasions to show some kind of administrative work done by the Applicant at Dhule. However, admittedly, no administrative work was given during her tenure at Mumbai, which is large one. As such, sporadic occasions showing some administrative work attended by Applicant is not enough. Indeed, in view of Para No.6 of reply as reproduced above, it is stated that quasi-judicial work and administrative work cannot be separated and as quasi-judicial work could not be kept with the Applicant separately. As such, it is crystal clear that the impugned order dated 07.08.2018 had effect of withdrawing quasi-judicial work as well as administrative work and the contention raised while deciding the O.A. that administrative work was left untouched is nothing but eye-wash.

17. Thus, it cannot be said that the impugned order dated 07.08.2018 was innocuous order. There is apparent error on the face of record in such finding, which was based upon the contention raised by the Respondents that administrative work was not withdrawn.

18. As regard aspect of probation, now what transpires that though the Applicant was appointed in 2014, no such order for extension of probation has been passed in terms of G.R. dated 28.03.1995, which *inter-alia* provides time limit of passing such orders of extension of probation within three months from expiration of probation period. Whereas, as per G.R. dated 15.03.1969, the probation can be extended up to one year. By G.R. dated 29.02.2016, the conditions and stipulations mentioned in G.Rs. dated 15.03.1969 and 28.03.1995 are reiterated.

19. Now turning to the present case, the Applicant was appointed initially by order dated 07.10.2014 and probation period was two years. As such, in view of G.Rs. dated 15.03.1969 and 28.03.1975, the probation could have been extended upto maximum one year and order for extension of probation was also required to be passed within three months from the date of completion of probation period, which is admittedly not done in the present case.

20. Shri Bandiwadekar, learned Advocate for the Applicant relying on the decision of Hon'ble Supreme Court in **1998 SCC (L & S) 840 (Wasim Beg Vs State of Uttar Pradesh & Ors.)** submitted that probation can be extended subject to further provision in Rules or as per appointment order and in the present case, there being no such specific provision or Rule governing the probation period, the Applicant is deemed to have been completed the probation period. So far this aspect is concerned, the Applicant had already filed O.A.No.590/2018 for declaration of deemed confirmation. Therefore, it is not appropriate on the part of this Tribunal to make any further comment in this behalf.

However, fact remains that there is no compliance of G.R. dated 15.03.1969 as well as 28.03.1995 and it seems to be the case of deemed confirmation.

21. As stated above, the O.A. was dismissed with finding that the impugned order dated 07.08.2018 was innocuous order since administrative work was not withdrawn. However, now it transpires that the said order has effect of withdrawing administrative work also. This being the position, such order could not have been passed without affording opportunity of hearing, as held by the Hon'ble Supreme Court in **V.P. Ahuja's** case (cited supra) and Hon'ble Bombay High Court in **Prakash Dabhade's** case (cited supra).

22. There is one more aspect which needs to be looked into, which pertained to the D.E, which was on the verge of completion at the time of decision in O.A.No.837/2019. While deciding the O.A, the directions were given to complete the DE within two months from the date of order. However, now what transpires that the report furnished by the Enquiry Officer was not accepted being seriously flawed and *denovo* enquiry has been ordered. For more than 30 months, the Applicant is deprived of discharging her duties on the basis of impugned order dated 07.08.2018 which turned out not so innocuous. In such situation, there is no alternative except to conclude that the impugned order having severe consequences is untenable in law and facts.

23. The Hon'ble Supreme Court in **AIR 2006 SC 75 (Rajender Singh Vs. Lt. Governor, Andaman & Nicobar Islands & Ors.)** in Para No.16 held as under :-

“16. The power, in our opinion, extends to correct all errors to prevent miscarriage of justice. The courts should not hesitate to review its own earlier order when there exists an error on the face of the record and the interest of the justice so demands in appropriate cases. The grievance of the appellant is that though several vital issues were raised and documents placed, the High Court has not considered the same in its

review jurisdiction. In our opinion, the High Court's order in the revision petition is not correct which really necessitates our interference.”

24. Shri Bandiwadekar, learned Advocate for the Applicant further referred to **(2017) SCC (L & S) 514 (Chairman and Managing Director, Central Bank of India & Ors. Vs. Central Bank of India Scheduled Castes/Scheduled Tribes Employees Welfare Association & Ors.)** wherein Hon'ble Supreme Court held that once error is found which is apparent on the face of record, the same must be corrected and Court while adopting such course, is guided by doctrine of *ex debito justitiae* as well as fundamental principles of administration of justice that no one should suffer because of Court's mistake.

25. In view of above, I have no hesitation to conclude that there is apparent error on the face of record and it needs to be corrected by exercising powers of review.

26. The totality of aforesaid discussion leads me to sum-up that while concluding O.A.No.837/2019, the finding recorded by this Tribunal that impugned order is innocuous was based upon incorrect factual position, but now it is turned out that the said order cannot be said innocuous order. It was passed without giving any opportunity of hearing. As such, this error which is apparent on the face of record needs to be corrected exercising powers of review and review deserves to be allowed. Hence, the following order.

ORDER

- (A) The Review Application is allowed.
- (B) Consequently, O.A.No.837/19 is allowed and impugned communication dated 07.08.2018 and 15.06.2019 are quashed and set aside.

- (C) The Applicant shall be allowed to resume her duties within two weeks from today.
- (D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 15.02.2021

Dictation taken by :

S.K. Wamanse.

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