

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.690/2017

DISTRICT - NANDED

Datta s/o Arjun Tumram,
Age : 42 years, Occ : Government Service,
R/o. At Miniki, Post: Pimpalgaon,
Tq. Kinwat, Dist. Nanded.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through Deputy Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.

2. The Additional Commissioner,
Tribal Development Department,
Behind T.B. Hospital,
Amravati, District Amravati.

3. The Project Officer,
Integrated Tribal Development,
Project Office, Kinwat,
Tq. Kinwat, Dist. Nanded.

...RESPONDENTS

APPEARANCE : Shri Sanjay N. Pagare Advocate for the
applicant

Shri M.S.Mahajan Chief Presenting Officer
for respondents.

CORAM: Justice A.H.Joshi, Chairman

Delivered on : 16th August, 2018.

O R A L O R D E R
(Delivered on 16th day of August, 2018)

1. Heard Shri Sanjay N. Pagare learned Advocate for the applicant and Shri M.S.Mahajan learned Chief Presenting Officer for respondents. Perused the record.
2. The applicant came to be appointed as Primary Teacher in Tribal Welfare Department by order dated 31-12-1994. While in service, applicant has acquired higher qualification and then he came to be appointed as Secondary School Teacher in Tribal Welfare Department.
3. Applicant applied for selection to the post of Education Officer Group-A (Administration Branch) through proper channel. He was selected and was appointed by order dated 13-06-2013.
4. Applicant was relieved for joining by order dated 28-06-2013, copy whereof is at paper book page 17, Annexure A-2 of the O.A.
5. Applicant served as Education Officer (Group-A) for about 3 years. According to the applicant he faced various personal and domestic difficulties. Therefore, applicant

represented his difficulties and submitted applications on 25-09-2013, 29-10-2013, 28-11-2013, 17-01-2014 and 30-07-2014.

6. Applicant's request for repatriation has been declined through communication dated 27-10-2014. A copy whereof is at paper book page 37 which is marked as Annexure A-6.

7. Applicant has challenged the communication dated 27-10-2014 by the present O.A. O.A. is contested by filing affidavit in reply by respondent nos.2 and 3. Respondent no.1 has chosen to remain without contest.

8. Applicant has shown from Annexure A-2, paper book page 17 that applicant had applied for higher post through proper channel. His application was duly forwarded by the respondents and upon selection he was relieved to join new post. Text of Annexure A-2 reads as follows (paper book page 17 of the O.A.):

"okpk

*1- vlfnokl h fodkl foHkkx] 'kkl u fu.kz dzvklFkk&1089@jzdz
799@dk-15 fn-15 tkudkj 1992-*

*2- vlfnokl h fodkl foHkkx] 'kkl u fu.kz dzvklFkk&1092@jzdz
155@dk-15 fn-31 tyS1992-*

*3- I keW; izkkl u foHkkx] 'kkl u fu.kz dz, I vkjOgh&
1092@1033@jzdz33@92@8] fn-2 fml ej 1997-*

4- ed[; k/; ki d] 'kkl dh; vkJe'kkGk] cks'kMh ; kps i= fn-15-11-2010-

5- vij vk; Ør] vkfnokl h fodkl] vejkorh dk; kzy; kps i= dz vKLfk-2012@izdz@dk-1%1%236@2012 fn-18-1-12-

6- 'kky; f'k{k.k o fdMk foHkkx] 'kkl u fu.kz; dækad&l fd.kl3904@iz dz:103@13@izkk&2 fn-13 tµ 2013-

7- idYi vf/kdjh] , dkfRed vkfnokl h fodkl idYi] ; kps i= dz vKLfk 13@izdz@dk-1%1%3460@2013] fn-21@6@2013-

vkns'k

dz vKLfk&11%dk; Ør]@izdz8@dk-1%d%5402@2013
dk; kzy; & vij vk; Ør] vkfnokl h fodkl] vejkorh
fnukad & 28@06@2013

mijkØr I jukek dækad 6 vUo; s Jh ræjke nRrk vtµ
%ek/; fed f'k{kld½ 'kkl dh; vkJe'kkGk] cks'kMh %cæp rk- fduov ft-
uknM ; kph egkjk"V" f'k{k.k I ok xV&v %i z kkl u 'kk[kk½ e/khy
f'k{k.k.kf/kdjh o rRI e I dxkz- fuoM >kyh vkgs I nHkZ dækad 5 vUo; s
I nj ifj{kd cl.; kl ijokuxh fnysyh vkgs

rØgk Jh- ræjke nRrk vtµ ; kauk [kkyhy vVh o 'krtz; k
vf/ku jkgu egkjk"V" f'k{k.k I ok xV&v %i z kkl u 'kk[kk½ e/khy
f'k{k.k.kf/kdjh o rRI e I dxkz-hy inkoj : twgls; kl kBh dk; Ør
dj.; kl ijokuxh ns; kr ; s vkgs I ækhrkdMuu vVh eku; vl Y; kps
y[th?kÅu dk; bkgh djkoh rl k vgoky ; k dk; kzy; kl I knj djkok-

vVh o 'krtz

1- 'kkl ukps dkgh ; sks ckdh vl Y; kl i Fke ol gyh dj.; kr ; kos vlf.k
Hkfo"; kr ol gyh vFkok ; sks ckdh vl Y; kl rs vnk dj.k s R; kauk
Ck/kudkj d jkghy-

2- Hkfo"; kr R; kØ; k I os kh I ækhr dksR; kgh idj.kkr foHkkxh; pkæd'kh
>kY; kl R; kauk cækudkj d jkghy-

3- dk; Ør dY; kurj R; kØk %ek/; fed f'k{kld½ inkoj ukdjhpk
vf/kdkj jkg.kkj ukgh-

LFK irtojek vij vk; Ør ; kph Lok{kjh vkgs

I gh&
vij vk; Ør]
vkfnokl h fodkl] vejkorh djhrk

ifr]

i dYi vf/kdljh]
, dkrRed vkfnokl hfodkl i dYi] fduoV
Rkk- fduoV] ft- ukmM

ir

1- eq; k; ki d]

'kkI dh; vkJe'kkGk] cks'kMh ½cφrk- fduoV ft- ukmM-

2-Jh røjke nRrk vtū ½ek/; fed f'k{k d½ 'kkI dh; vkJe'kkGk]
cks'kMh ½cφrk- fduoV ft- ukmM

LFIG irtoj ek vij vk; φr; lphLokljhvlgs

I gh&

vij vk; φr]

vkfnokl hfodkl] vejkorh djhrk"

(Quoted from paper book page 17 of O.A.)

9. For challenging the impugned order, the applicant has averred in paragraph VIII in the O.A. to the following effect (paper book pages 7 & 8 of the O.A.):

"VIII) That, the applicant further submits that, the reference of Government Resolution dated 02/12/1997 made by the respondent No.2 authority while passing order dated 27/10/2014 is not a proper and said Government Resolution cannot be made applicable to the applicant since the said Government Resolution specifically provides for guidelines in respect of acceptance of resignation tendered by the Government officer/employees. The applicant also further submits that, he has not tendered resignation after his selection through M.P.S.C. to the post of Education Officer and equivalent post Group A (Administration Br.). The applicant was relieved from the post of secondary teacher vide order dated 28/06/2013 passed by the Respondent No.2 so as to enable him to join on the post of Education Officer. It is therefore, submitted that, the G.R. dated 02/12/1997 is not applicable to the present case of applicant. The copy of

*Government Resolution dated 02/12/1997 is annexed hereto and marked as **Annexure A-7.** "*

(Emphasis supplied by underlining relevant portion)

(Quoted from paper book pages 7 & 8 of O.A.)

10. Averment of the applicant contained in paragraph VIII of the O.A. has been replied by respondent nos.2 and 3 in an evasive manner. Relevant text of the reply is at paper book page 46 & 47 of the O.A., which read as follows:

"05. As regards para no. VIII of the application, I say and submit that, it is pertinent to note that, here in the present case the respondent no.2 by letter dated 27.10.2014 communicated to the applicant that as per the government resolution dated 2.12.1997 if any employee tendered the resignation then from the date of acceptance of said resignation the employee loose his right over the post and hence considering this fact the respondent no.2 made clear to the applicant that his request to reinstate in the service is not acceptable."

(Emphasis supplied by underlining relevant portion)

(Quoted from paper book pages 46 & 47 of O.A.)

11. Person affirming the affidavit in reply for respondent nos.2 and 3 is Shri Dilip s/o. Narayan Khokle, Assistant Project, Officer, Integrated Tribal Development Project, Aurangabad. In this affidavit, interestingly enough and in ludicrous manner reliance is placed on communication dated 28-06-2013, copy whereof is at paper book page 52

(which is already on record as Annexure A-7), and quoted the same language/words which is quoted in foregoing paragraph no.8.

12. This Tribunal has no reason to hesitate to record that the letter dated 27-10-2014 (Annexure A-6, paper book page 37) as ludicrous, is that the impugned communication runs in diagonally opposite direction to which, that is contained in letter dated 28-06-2013 (Annexure A-2, paper book page 17) by which the applicant has been relieved for joining on the post of Education Officer (Group-A).

13. The officer who has affirmed the affidavit and all those who have approved it also failed in the line of the same error of not reading the record.

14. From the manner in which the impugned communication is crafted and text thereof is contrary to the record, leads to creation of impressions, viz. (1) the officer signing the letter dated 27-10-2014 has not read the papers and whatever was put before him by the Clerical Staff, he has blindly signed it, (2) the officer wanted to be gratified which applicant did not do and the result is that the impugned communication dated 27-10-2014, Annexure A-6

(paper book page 37) turns out to be a citation of the contents thereof being perverse or attitude being perverted.

15. It is to be noted that the concept of resignation introduced in the impugned communication is figment of imagination of the officer and he has not bothered to refer to the record. This letter itself depicts the attitude of people in whose hand the Government is functioning.

16. In the result, the O.A. succeeds. The impugned order dated 27-10-2014 (paper book page 37, Annexure A-6) issued by the respondent no.2 is hereby quashed and set aside with further direction to relieve the applicant for joining as Secondary School Teacher under the control of respondent no.2 within 30 days of receipt of the order.

17. Parties are directed to bear their own costs.

(A.H. JOSHI)
CHAIRMAN

Place : Aurangabad
Date : 16-08-2018.