

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

**REVIEW APPLICATION NO.04/2016 IN
ORIGINAL APPLICATION NO.306/2014**

AND

**REVIEW APPLICATION NO.05/2016 IN
ORIGINAL APPLICATION NO.345/2014**

DISTRICT: BEED

**1. REVIEW APPLICATION NO.04/2016 IN
ORIGINAL APPLICATION NO.306/2014**

1. Sopan s/o Arjunrao Wanve,
Age : 40 years, Occ : Nil,
R/o. Khapar-Pangri, Post : Pargaon (Shi),
Tq. & Dist. Beed.

2. Devidas s/o Babasaheb Bangar,
Age : 32 years, Occ : Nil,
R/o. At Khamba, Post : Khalapuri,
Tq. Shirur (Kasar), Dist. Beed.

3. Balu s/o Janrao Misal,
Age : 31 years, Occ : Nil,
R/o. At Post Khokarmoha,
Tq. Shirur (Kasar), Dist. Beed. ..APPLICANT

V/s.

1] The State of Maharashtra
(Copy to be served on C.P.O.,
MAT Bench at Aurangabad).

2] The Divisional Joint Director
of Agriculture, Aurangabad. ...RESPONDENTS

**2. REVIEW APPLICATION NO.05/2016 IN
ORIGINAL APPLICATION NO.345/2014**

Narayan s/o Ramrao Nagargoje,
Age : 44 years, Occ : Nil,
R/o. Sawargaon (Sone),
Tq. Patoda, Dist. Beed.

..APPLICANT

V/s.

1] The State of Maharashtra
(Copy to be served on C.P.O.,
MAT Bench at Aurangabad).

2] The District Malaria Officer,
Jalgaon.

...RESPONDENTS

APPEARANCE: Shri A.S.Deshmukh learned Advocate
for the applicants.

Shri V.R.Bhumkar learned Presenting
Officer for the respondents in
R.A.No.04/16 in O.A.No.306/14.

Smt. R.S.Deshmukh learned Presenting
Officer for the respondents in
R.A.No.05/16 in O.A.No.345/14.

CORAM: Hon'ble Shri Justice A.H.Joshi, Chairman
A N D
Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)

DATE : 04-08-2017

ORDER**[PER: CHAIRMAN]**

Heard Shri A.S.Deshmukh learned Advocate for the applicants, Shri V.R.Bhumkar learned Presenting Officer for the respondents in R.A.No.04/16 in O.A.No.306/14, and Smt. R.S.Deshmukh learned Presenting Officer for the respondents in R.A.No.05/16 in O.A.No.345/14.

2. Learned Advocate for the applicant has focused as grounds of review, on 2 grounds averred in the review applications, which read as follows:

"6. II. That, this Hon'ble Tribunal committed an apparent & patent error in proceeding on the premise that the judgment and order dtd. 17/04/2014 relied upon by the applicants was delivered by the Hon'ble High Court in a group of Writ Petitions filed by similarly placed nominees of the Freedom Fighters and not by the applicants, when in fact the said judgment dtd. 17/04/2014 was delivered by the Hon'ble High Court in a group of Writ Petitions which included Writ Petition Nos.2867/2014 and 2669/2014 filed by the applicants

themselves challenging the G.R. dtd. 11/02/2014.

IV. That, while coming to the conclusion that the applicants could not get benefit of the order dtd. 22/04/2014 passed by the Principal Bench of this Tribunal in O.A. Nos. 364 & 365 of 2014 on the ground that the applicants were not confirmed in service, this Hon'ble Tribunal committed an error in failing to appreciate the fact that the applicants in O.A. Nos.364 & 365 of 2014 before the Principal Bench were most identically placed as like the present applicants inasmuch as they were also not confirmed in service, but were regularized therein as like the present applicants."

(Quoted from paper book page no.3 to 5 of the Review Application No.04/2016)

3. We have examined the aspects argued by learned Advocate for the applicant, who has placed fervent reliance on the text contained in paragraph 20 of the common judgment of the Hon'ble High Court rendered in Writ Petition Nos.2867/2014 and 2869/2014, as a part of thrust on ground 6.II, supra. Said paragraph no.20 of the judgment in W.P.No.2867/2014 reads as follows:

"20. Drawing parallel analogy to the case of A.P. Ramtekkar (supra), petitioners contend that since they are in employment since years together, their services need to be protected subject to imposition of certain order conditions, which the appointing authority may deem fit in the facts of the case. It would be open for the petitioners to claim entitlement to service protection and it would be open for the concerned authorities to consider the contentions of the petitioners in the light of submissions made before the appointing authority in reply to the notices issued to each of the petitioners. The appointing authority as well as State Government would be entitled to take appropriate decision in the matter in the light of the facts and submissions of the petitioners."

[Quoted from paper book page no.76-77 of the O.A.No.306/14 (R.A.No.04/2016)]

4. Upon cross-matching the text contained in the ground and text contained in para 20 of the judgment of the Hon'ble High Court quoted in the foregoing paragraphs, we find that applicants' submission is far-fetched. It does not reveal that the direction

contained in the judgment was not adverted to by this Tribunal while deciding the O.A. Even now, it is not shown that any particular adjudication done by Hon'ble High Court is disobeyed/disregarded or any principle of law enunciated by Hon'ble High Court in said judgment is not followed.

5. In regard to ground 6.IV., which is second plank of submission, the applicant has urged that the judgment of this Tribunal is erroneous because this Tribunal has not followed the decision rendered by this Tribunal's Division Bench [comprising of Mr. Rajiv Agarwal, Vice-Chairman (A) and Mr. Malik, Member (J)], which order practically governs the issues involved in present Original Applications.

6. It is necessary to advert to the order passed by this Tribunal's Principal Seat in O.A.Nos.364 and 365 of 2014. We have perused the order passed by this Tribunal in the aforesaid O.As., copy whereof is at page 45 to 50. In the case before this Tribunal at Mumbai in said Original Applications, notices of show cause were issued and this Tribunal took a view that the permanent

Government employee cannot be removed, dismissed etc. from service without holding departmental enquiry under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. This Tribunal further held that the notices issued to the applicants were treated as prelude to the departmental enquiry and if the applicants do not admit the contents, further action to hold the departmental enquiry may be taken against them.

7. Applicants plead that their services were regularized as were the services of applicants in O.A.Nos.364/2014 and 365/2014 too were regularized.

8. It is nowhere applicants' case that their services were confirmed.

9. In the present cases, the fact of falsehood of certificates of Freedom Fighter has attained finality, is an admitted position.

10. Applicants' appointment in the category of nominee presupposed valid and legal Freedom Fighters Certificate. When the Certificate as Freedom Fighter relied upon by

applicants was found to be untrue, the condition precedent of appointment remained unfulfilled.

11. In present O.As., what is under challenge is a final order and not show cause notice, as was in the O.A.Nos.364 and 365 of 2014 at Mumbai.

12. The judgment delivered at Mumbai in O.As. supra does not serve as simile or as Res-judicata and not at all as a precedent, and it does not come to the help of the applicants.

13. Applicants' contention that orders under review are passed without advertng or without correctly advertng to the order passed in O.A.Nos.364 and 365 of 2014 is factually incorrect and does not conform to the test of the "error apparent on the face of record" to constitute it to be a ground for review.

14. We, therefore, find no merit in the present review applications and those are dismissed. No costs.

(Rajiv Agarwal)
Vice-Chairman (A)

(A. H. Joshi)
Chairman

PLACE : AURANGABAD

DATE : 04-08-2017

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