

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.1024/2019

DISTRICT :- BEED

Lata D/o. Sakharam Sanap,
Age : 48 years, Occ. Service,
R/o. Sneh Nagar, C-30, N-4,
Near MIT Hospital, Aurangabad.
Presently working with Zilla Parishad,
Palghar, Tq. & Dist. Palghar.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
School Education and Sports Department,
Mantralaya, Mumbai – 32.
2. The Commissioner,
School Education, Central Building,
Dr. Annie Bezan Road,
Maharashtra State, Pune-411 001.
3. The Director of Education,
Central Building, B.J.Medical College Road,
Maharashtra State, Pune-411 001.
4. The Deputy Director of Education,
Railway Station Road,
Aurangabad Division, Aurangabad.
5. The Chief Executive Officer,
Zilla Parishad, Beed.

...RESPONDENTS

APPEARANCE : Shri Avinash S. Deshmukh, Counsel
h/f. Shri G.K.Kshirsagar, Counsel for
applicant.
: Shri M. B. Bharaswadkar, Chief
Presenting Officer for respondents.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

Date : 09-08-2024

ORAL ORDER

1. Heard Shri Avinash S. Deshmukh learned Counsel holding for Shri G.K.Kshirsagar learned Counsel for applicant and Shri M.B.Bharaswadkar, learned Chief Presenting Officer for respondents.

2. Applicant entered into Government service on the post of Education Officer (Maharashtra Education Services Group-A). Appointment order in that regard was issued in favour of the applicant on 13-06-2013. In the appointment order though there is no reference of any period of probation, in the subsequent order dated 08-08-2013, it was clarified that the applicant will be under probation for the period of 2 years. Training was also prescribed for 40 days. When the period of 2 years was about to be completed, a week before that, order of suspension was issued against the applicant on 04-06-2015 in contemplation of the departmental enquiry. After some period the order of suspension was revoked and the applicant was reinstated in service, Departmental Enquiry contemplated against her, however, did not proceed further.

3. As is revealing from the pleadings, on 10-07-2019 memorandum of charge dated 20-06-2019 was served upon the applicant. It is the grievance of the

applicant that, under the pretext of pendency of departmental enquiry respondents did not terminate her probation period. Consequently, the applicant was deprived from the annual increments and all other service benefits. In the circumstances, applicant approached this Tribunal by filing the present O.A. seeking following prayers (paper book page 21-22 of O.A.):

“B. This Hon'ble Tribunal may be pleased to quash and set aside the impugned Charge Sheet dated 28.06.2019 served on the applicant on 23.07.2019 vide its letter dated 10.07.2019 issued by the respondent no.4 and for that purpose issue necessary orders;

C. This Hon'ble Tribunal may be pleased to issue an appropriate directions to the respondents thereby directing them to issue an order in favour of the applicant in respect of completion of her probation period and for that purpose issue necessary orders;

D. This Hon'ble Tribunal may be pleased to issue an appropriate directions to the respondents thereby directing to consider the claim of the applicant for promotion, as per her entitlement thereby ignoring the pendency of inquiry against the applicant and for that purpose issue necessary orders;.”

4. When the matter is taken up for consideration, learned Counsel for the applicant on instructions submitted that the applicant is not pressing the relief asked in clause (i) of the prayer clauses. Learned Counsel submitted that the applicant is restricting her claim in the present O.A. to

the extent of seeking directions against the respondents to terminate the period of probation and release the consequential benefits in favour of the applicant.

5. Learned Counsel for the applicant has relied upon the judgment delivered by the co-ordinate bench of this Tribunal at the Principal Seat at Mumbai in O.A.No.373/2021 decided on 22-11-2022. Learned Counsel taking us through the facts in the said matter by reading out paragraph 2 of the said order submitted that the facts in the present matter are identical to the facts which existed in the said matter, and in the circumstances, the view taken by the co-ordinate bench in the said matter would squarely apply in the facts of the present matter.

6. Learned Counsel submitted that the respondents did not pass any order extending the period of probation of the applicant. Learned Counsel submitted that under Clause 5 of the G.R. dated 29-02-2016, there is certain time limit stipulated in so far as the period of probation is concerned. Learned Counsel submitted that the said provision has not been followed in case of the present applicant. Learned Counsel submitted that in the garb of the departmental enquiry indicated against the applicant, she has been deprived from benefits after

completion of the period of probation which has resulted in causing monetary loss to the applicant as well as loss of chances of her promotion to the higher post. Learned Counsel in the facts as above has prayed for allowing the present O.A.

7. Respondent nos.1 to 4 have jointly filed their affidavit in reply and have thereby resisted the contentions raised by the applicant in the O.A. as well as the prayers made therein. It is the contention of the respondents that the G.R. issued by the General Administration Department dated 29-02-2016 clearly lays down that in the event criminal prosecution or departmental proceedings are pending against an employee, his probation period cannot be terminated. The reference is also given of the G.R. dated 15-12-2017. However, no further information is provided as about actions taken by the respondents regarding the probation period of the applicant.

8. In paragraph 13 of their affidavit in reply respondents have alleged that the applicant did attempt to bring pressure from the Hon'ble Minister in her matter. It is further contended that the period of probation of the applicant increased because of departmental enquiry initiated against her. However, no document is placed on

record evidencing that the order extending probation period of the applicant was ever passed by the respondents. Respondents have also contended that the preliminary enquiry was conducted by Commissioner of Education, Pune and in the said enquiry substance was found in the allegations raised against the applicant. It is further contended that the applicant was found guilty of giving illegal approvals and thereby causing revenue loss to the Government in Crores of rupees. It is further contended that the enquiry is being conducted in that regard and the statement of charge has been served upon the applicant. As contended in the affidavit in reply, loss allegedly caused because of the misdeeds of the applicant is to the tune of Rs.1,79,22,440/-. It is further contended that since the action was initiated against the applicant before she completed the period of probation, respondents cannot be blamed for acting illegally or arbitrarily. On all these grounds respondents have prayed for dismissal of the O.A.

9. Shri M.B.Bharaswadkar, learned Chief Presenting Officer (CPO) appearing for the said authorities submitted that, since the conduct of the applicant during the period of probation was found not befitting to the Government servant and instances were noticed of granting

illegal approvals by the applicant, respondents were required to suspend the applicant even before completing the period of probation. Learned CPO further argued that the law is well settled in so far as the termination of the period of probation is concerned. He submitted that, if the criminal case is pending against the Government employee or departmental proceedings are initiated against such an employee, respondents do not consider such employee for issuing certificate of completing the probation period. Learned CPO submitted that, enquiry against the applicant and the departmental enquiry proceedings are on the verge of conclusion and in the circumstances according to him it would be unjust and unfair to consider the request made by the applicant in the present O.A. Learned CPO, therefore, prayed for dismissal of the O.A.

10. We have duly considered the submissions of the learned Counsel appearing for the applicant as well as the learned CPO appearing for the State authorities. We have perused the documents placed on record. In so far as the factual aspects are concerned there seems no much dispute. The facts in respect of the date of appointment of the applicant as well as the date of suspension order, its revocation and the date of serving statement of charge

against the applicant are undisputed. Though the respondents in their affidavit in reply had contended that the period of probation was extended, no document or any other evidence was produced to substantiate the said contention. As against it, it is assertion of the applicant that no such communication was ever issued to her. In absence of any document from the side of the respondents it has to be assumed that the respondents did not extend probation period of the applicant at any point of time.

11. We have gone through the facts in the O.A.No.373/2021 decided by the Principal Bench of this Tribunal on 22-11-2022. As has been contended by the learned Counsel appearing for the applicant, identical facts are existing in the present matter. Learned Principal Bench in paragraph 2 of its order has referred to the G.R. dated 29-02-2016 and more particularly clause 5 thereof. We deem it appropriate to reproduce hereinbelow the entire said paragraph 2 wherein material observations regarding similar facts involved in the matter are made by the learned Principal Bench:

“2. The applicant was appointed on 10.4.2006 as Project Officer, Tribal Development Department. Thus, he was supposed to have completed his probation period on 10.4.2008. If at all it is not completed and no order is passed in respect of

extension of the period of probation of 2 years, then as per clause 5 of the G.R dated 29.2.2016, within 3 months the Government should take decision and issue the orders either of completion of the probation period or to extend the probation period. We note that there is no such deeming provision mentioned in the G.R, though it is contended by the learned counsel for the applicant about the deeming provision. The Respondent-State was thus supposed to pass the order either of extension of the probation period or satisfactory completion of the probation period on or before 10.7.2008. However, the said order was not passed. Learned counsel for the applicant submits that one of his colleague Mr Hariram Madhavi, who was also Project Officer was facing the criminal offence under the Prevention of Corruption Act and his probation was not completed for many years. However, after he superannuated on 28.2.2017, the probation period was terminated by order dated 27.1.2020. Learned counsel for the applicant prays for parity.”

In the said matter, it was the contention raised on behalf of the State that two FIRs were registered against the applicant therein, first for the offences punishable under section 409 and 467 of IPC and second for the offences punishable under section 420 and 468 of IPC. The departmental enquiries were also initiated against the applicant therein based on the criminal case registered against him. Said applicant was excluded from charges raised against him in the departmental enquiry. However, criminal cases remained pending. It was contention of the respondents in the said matter that the cases against the said applicant and offences allegedly committed by him

were of serious nature i.e. of cheating and forgery. In such circumstances, it was in the fitness of things that his probation period was not terminated.

12. After having considered the objections raised as above, learned Principal Bench has allowed the O.A.No.373/2021 with the following observations, we deem it appropriate to reproduce the paragraph 5 as it is, which reads thus:

“5. We are of the view that the State has power to pass order regarding completion, rejection or extension of the probation period. However, as per clause 5 of the G.R dated 29.2.2016, a specific period is laid down to take decision either completion of the probation period or extension of the probation period. Thus, the two years’ probation period of the applicant was over on 10.4.2008. Hence, three months thereafter on or before 10.7.2008 the applicant should have been informed in writing whether his period of probation was extended or not. On our query it was informed that the Respondent-State did not communicate in writing to the applicant that his period of probation is extended for whatever reasons available. If such a communication has taken place from the Respondent-State, the copy of the said letter should have been produced before the Tribunal. However, such communication is not produced before us. Hence, we infer and conclude that the provision of clause 5 of the G.R dated 29.2.2016 is not followed by the Respondent-State. Admittedly, two criminal cases of serious nature are pending against the applicant. However, so far as the probation period is concerned the Respondent-State has not terminated the services of the applicant after two years on account of unsatisfactory service and allowed him to work for

more than 17 years, i.e., till today. In view of the above, we pass the following order:-

O R D E R

(a) The Original Application is allowed.

(b) As the applicant has availed leave of 31 days during his probation period, we direct the Respondent-State to issue the order of completion of his probation period by counting the period of 31 days which may extend the period of probation by 31 days.

(c) The order of satisfactory completion of the probation period should be issued by the Respondent-State within a week.

(c) In view of the order passed in the Original Application, Misc Application No. 104/2022 does not survive and is disposed of."

13. Nothing is brought to our notice whether the order passed in the aforesaid O.A. has been challenged before the Hon'ble High Court and whether any order staying effect and operation of order passed therein or any order taking any contrary view has been passed by the Hon'ble High Court. In the circumstances, in view of the law laid down by the Hon'ble Apex Court in the case of **State of Bihar V/s. Kalika Kuer @ Kalika Singh & Ors. [2003 (5) SCC 448]**, we are bound by the view taken by the co-ordinate bench of the Tribunal. Even otherwise in the facts and circumstances of the case, it does not appear to us that any other view is possible than taken by the Principal Bench in the judgment and order cited by the applicant.

14. It was incumbent on the part of the respondents, as has been observed by the Tribunal in O.A.No.373/2021 (supra) to pass express orders in compliance with Rule 5 of the G.R. dated 29-02-2016. It further appears to us that, it is too unjust and unfair to deprive the applicant from the service benefits for which she is entitled, on the pretext of pendency of departmental enquiry against her, that too, for the period more than 4 years. It was pointed out by the learned Counsel appearing for the applicant that in the statement of charge submitted in the year 2019, the misconduct alleged against the applicant is pertaining to the year 2013 to 2015. Thus, the applicant is being deprived from all those benefits by not terminating her probation period on the ground of pendency of departmental enquiry against her for the misconduct allegedly of the period prior to six years. Moreover, it is undisputed that so far as the probation period is concerned, respondent State has not terminated services of the applicant after 2 years on account of unsatisfactory services and allowed her to work till date i.e. for more than 11 years.

15. In the facts and circumstances discussed above, it appears to us that the applicant has made out a case

identical with the applicant in O.A.No.373/2021 decided by the Principal Bench of the Tribunal and hence deserves to be granted the same relief as has been granted to the applicant in O.A.No.373/2021. In view of the law laid down by the Hon'ble Apex Court in the case of **State of Bihar V/s. Kalika Kuer @ Kalika Singh & Ors.** (cited supra), we are bound to take the view taken by the co-ordinate bench in the identical matter. Hence, the following order is passed:

O R D E R

- [i] Original Application is allowed.
- [ii] We direct the respondent State to issue order of completion of her probation period by taking into account the leaves etc. taken by the applicant during the said period within 6 weeks from the date of this order.
- [iii] There shall be no order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 09-08-2024.