

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 1129 OF 2022

DISTRICT:- NANDED

Madhukar Lobha Rathod,

Age : 58 Years, Occu. NIL,
R/o Aniket Niwas, Tilak Nagar,
Nanded, Taluka & Dist. Nanded.

... APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**
Through the Secretary,
Agriculture Department,
Mantralaya, Mumbai-400 032.
- 2) **The Agricultural Commissioner,**
Agricultural Commissionerate,
Central Building, 3rd Floor,
Maharashtra State, Pune
- 3) **The Divisional Agricultural Joint Director,**
Latur Division, Latur.
- 4) **Shri S.H. Walsanghkar**
Enquiry Officer,
C/o Divisional Agricultural
Joint Director, Latur Division,
Latur. (DEAD)
- 5) **The District Superintendent,**
Agricultural Officer,
District Agriculture Office,
Nawa Mondha, Nanded.

.. RESPONDENTS

APPEARANCE : Shri Y.R. Barhate, learned counsel for
the applicant.

: Shri V.R. Bhumkar, learned Presenting
Officer for the respondent authorities.

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

DATE : 23.04.2024

ORAL ORDER

(Per : Justice P.R. Bora, Vice Chairman)

Heard Shri Y.R. Barhate, learned counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondent authorities.

2. The Original Application is filed by the applicant seeking following reliefs: -

“A) This original application may kindly be allowed.

B) By appropriate order or direction this Hon’ble Tribunal may kindly be quashed and set aside the impugned order dated 18/11/2021, passed by the Respondent No. 3 i.e. the Divisional Agricultural Joint Director, Latur Division, Latur and the applicant may kindly be reinstated in service on the post of Agricultural Assistant with full back wages and all other consequential benefits.

C) Pending hearing and final disposal of this Original Application by appropriate order or direction this Hon’ble Tribunal may kindly be **stayed** the order dated 18/11/2021, issued by respondent No. 3 thereby dismissal of the applicant from the service and the applicant may kindly be reinstated in service on the post of Agricultural Assistant with full back wages and all other consequential benefits.

D) Pending hearing & final disposal of this Original Application, respondents, may kindly be directed to consider case for further appointment of the applicant,

on ad-hoc/temporary basis finalizing of the same subject to outcome of present application to avoiding starvation of the applicant and his dependent family-members, during the course of pendency of this application.

E) Any other suitable and equitable relief which this Hon'ble High Court may deem fit and proper, may kindly be granted.

INTERIM RELIEF PRAYED FOR:

Pending hearing & final disposal of this Original Application by appropriate order or direction this Hon'ble Tribunal may kindly be **stayed** the order dated 18/11/2021, issued by respondent No. 3 thereby dismissal of the applicant from the service and the applicant may kindly be reinstated in service on the post of Agricultural Assistant with full back-wages and all other consequential benefits."

3. The present applicant was removed from the service by the respondents vide order dated 26.08.2011. Before ordering his removal the departmental enquiry was conducted against him and on the basis of the findings recorded in the said departmental enquiry the decision was taken by the disciplinary authority. The only charge against the applicant was that he was not possessing the requisite qualification for to be appointed on the post on which he was appointed and worked till the date of his removal from service. The said charge is held to have been proved.

4. The applicant being aggrieved by the aforesaid order filed O.A. No. 82/2015 before this Tribunal. The Tribunal vide its order dated 28.06.2016 dismissed the Original Application. Against the order passed by this Tribunal the applicant approached the Hon'ble Bombay High Court by filing W.P. No. 22/2017. The Hon'ble High Court allowed the W.P. filed by the applicant and directed the respondents to reconsider the punishment imposed upon the applicant and it was impliedly suggested by the Hon'ble High Court that considering the nature of charge proved against the applicant and more importantly having regard to the age of the applicant he shall be awarded such punishment that he may sustain for his remaining life. The Hon'ble High Court has also suggested to consider the punishment like compulsory retirement.

5. After the order passed by the Hon'ble High Court the respondents reconsidered the case of the applicant and passed the order on 18.11.2021. The respondents, however, maintained the order previously passed by them. Aggrieved by the said order the applicant has approached this Tribunal.

6. In the meanwhile the respondents passed another order on 28.06.2023 and thereby awarded the punishment of compulsory retirement to the applicant and have also extended

the benefits as provided under Rule 101 (1) of the Maharashtra Civil Services (Pension) Rules, 1982 from the date of his removal i.e. from 26.08.2011. The amount of gratuity is also granted at the same rate i.e. 2/3 of the payable gratuity amount.

7. Learned counsel for the applicant submitted that once the respondents have passed the order of removal even after passing of the judgment by the Hon'ble High Court the respondents had committed contempt of the order of the Hon'ble High Court. It was his further contention that when order of removal from service was already passed, unless the said order is withdrawn the last order dated 28.06.2023 could not have been passed by the respondents. In the circumstances, the applicant has approached this Tribunal with the prayers as aforesaid.

8. There is absolutely no doubt that the respondents went wrong in again imposing the punishment of removal upon the applicant despite the order passed by the Hon'ble High Court directing the respondents to impose a lesser punishment than the punishment of dismissal or removal. As we noted hereinabove in many words the Hon'ble High Court has suggested what type of punishment can be imposed so that the

applicant may sustain for rest of his life. As such, in no case the order passed on 18.11.2021 can be sustained.

9. It was argued by the learned Presenting Officer that by passing the subsequent order on 28.06.2023 the order passed on 18.11.2021 has been impliedly set aside and there was no necessity of formal setting aside the said order. We however, do not agree with the submissions so made. In the subsequent order it is nowhere stated that the said order has been passed in supersession of the earlier order passed by the respondents. In the circumstances, the contention of the applicant deserves to be accepted. The order passed on 18.11.2021 deserves to be quashed and set aside and it is accordingly quashed and set aside.

10. Insofar as the order passed subsequently on 28.06.2023 is concerned, it appears to us that the mandate given by the Hon'ble High Court has been appropriate followed by the respondents. The applicant is held entitled for 2/3 pension and 2/3 amount of the gratuity. According to us, the punishment as has been imposed by the respondents is in accordance with the observations made and the mandate given by the Hon'ble High Court.

11. With the observations as above, the Original Application stands disposed of however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

O.A.NO.1129-2022(DB)-2024-HDD-Dismissal