

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,**  
**BENCH AT AURANGABAD.**

**ORIGINAL APPLICATION NO. 851 OF 2022**

DIST. : PARBHANI

**Prashant s/o Bhagwansingh Kachhawa,** )  
 Age 49 years, Occu. Service as )  
 Sub-Divisional Conservation Officer, Parbhani)  
 R/o C/o Water Conservation Department, )  
 Parbhani, Tq. & Dist. Parbhani. ).. **APPLICANT**

**V E R S U S**

- 1) **The State of Maharashtra,** )  
 Through its Secretary, )  
 Water Resources Department, )  
 Maharashtra State, 3<sup>rd</sup> Floor, )  
 Mantralaya, Mumbai – 32. )
- 2) **The Secretary,** )  
**Soil & Water Conservation Department)**  
 Maharashtra State, 1<sup>st</sup> Floor, Mantralaya,) )  
 Mumbai – 32. )
- 3) **Regional Soil & Water Conservation** )  
**Officer, Aurangabad Region,** )  
 Snehanagar, Adalat Road, Aurangabad,) )  
 Tq. & Dist. Aurangabad. )
4. **Shri Vasant s/o Baburao Galfade,** )  
 Age. Major, Occ. Service as, )  
 Regional Soil and Water Conservation )  
 Officer, Aurangabad Region, )  
 Snehanagar, Adalat Road, Aurangabad.).. **RESPONDENTS**

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APPEARANCE : Shri K.G. Salunke, learned Advocate for  
 the applicant.

: Shri S.B. Mene, learned special counsel  
 for the respondent No. 01.

: Mahesh B. Bharaswadkar, learned Chief  
 Presenting Officer for respondent nos. 02  
 & 03

: None appears for respondent no. 04.

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**CORAM** : **Hon'ble Shri Justice P.R. Bora,**  
**Vice Chairman**  
**and**  
**Hon'ble Shri Vinay Kargaonkar,**  
**Member (A)**  
  
**RESERVED ON** : **26.06.2024**  
**PRONOUNCED ON** : **21.10.2024**  
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**ORDER**

*(Justice P.R. Bora, Vice Chairman)*

1. Heard Shri K.G. Salunke, learned counsel for the applicant and Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officer for respondent authorities. By way of amendment respondent no. 04 was added as party respondent. None appears for respondent no. 04.

2. The applicant entered into the Government services on the post of Sub-Divisional Conservation Officer in the Water Resources Department of the State in the year 2009 through Maharashtra Public Service Commission (for short 'the Commission'). Vide Government Resolution dated 31.05.2017 it was resolved to create an independent Commissionerate at Aurangabad for the purposes of Soil and Water Conservation work. The department was named as Soil and Water Conservation Department. Vide the said resolution itself the employees and the officers working in the Water Resources

Department were called upon to exercise their options whether they want to continue with the Water Resources Department or desire to be absorbed on the newly created establishment of Soil and Water Conservation Department. It was further resolved that the employees, who will submit their options on or before 15<sup>th</sup> July, 2017, their inter se seniority will be maintained. It was further clarified that the officers and employees who will submit their options beyond the cutoff date i.e. 15<sup>th</sup> July, 2017 will however, lose their seniority and they will be placed below the officers and employees who have exercised the options of being absorbed on the establishment of Soil and Water Conservation Department before 15<sup>th</sup> July, 2017.

3. The applicant admittedly did not record his option in writing within stipulated period i.e. before 15<sup>th</sup> July, 2017. It is contention of the applicant that at the relevant time since he was working on deputation in the Soil and Water Conservation Department itself, it was his belief that he need not to submit any separate option. As stated, the applicant subsequently on 23.08.2017 recorded his option in the requisite form i.e. form No. 1 and convey his desire to be permanently absorbed in the Soil and Water Conservation Department.

4. As further stated, duly filled in option form was submitted by the applicant to respondent no. 03. It is the further contention of the applicant that in the meanwhile the applicant continued to work on deputation in Soil & Water Conservation Department. It is the further contention of the applicant that though respondent no. 03 was expected to forward the option form submitted by the applicant immediately to respondent No. 2, he forwarded the said option form almost after 04 years i.e. on 14.12.2021 and since the respondents did not take any decision on the said proposal, the applicant filed the present O.A. seeking directions against respondent No. 2 to take decision on the application/option dated 23.08.2017 submitted by the applicant and forwarded by respondent No. 3 along with his covering letter dated 14.12.2021, at the earliest and thereafter to give him proper placement in the seniority list.

5. During pendency of the present O.A. certain material events happened and certain orders came to be passed. All these subsequent events are brought on record by the applicant by way of amendment and he also added contextual prayers in the column 'relief sought for'. During pendency of the present O.A. G.R. dated 30.11.2022 came to be issued whereby the applicant is absorbed in Soil and Water Conservation

Department on the terms and conditions incorporated therein. Subsequent to said resolution one more resolution came to be passed on 15.02.2023 whereby the respondents cancelled the absorption of the applicant effected vide G.R. dated 30.11.2022. By way of amendment the applicant has added the contextual prayers. The applicant has sought quashment of the order/resolution dated 15.02.2023 and has also prayed for proper placement in the seniority list of the Assistant Engineers, Grade-I in order of merit.

6. Respondent nos. 02 and 03 have filed their joint affidavit in reply. These respondents have contended that the applicant did not exercise the option before the cut-off date i.e. 15.07.2017. It is further contended that the applicant submitted his option form on 23.08.2017, whereby he had opted to go to his parent department i.e. Water Resources Department and accordingly his name was included in the list annexed to G.R. dated 07.06.2018 at sr. no. 06 of the candidates, who have opted the Water Resources Department. It is further contended that the applicant submitted another option form in which he opted for Soil & Water Conservation Department. It is further contended that according to the option exercised by the officers, they have been absorbed in the

Soil & Water Conservation Department or on the establishment of Water Resources Department. As further contended by respondent nos. 02 & 03 the name of the applicant was there in the list annexed with the G.R. dated 07.06.2018 of the candidates, who have opted for Water Resources Department. These respondents have admitted that respondent no. 03 vide letter dated 14.12.2021 has forwarded the applicant's option form along with 02 others option forms to the Government. It was further contended that in the Circular dated 31.05.2017 it was specifically mentioned that once the option is exercised, the candidate concerned may not be permitted to withdraw the said consent given for his absorption in the said department. It is further stated that the proposal dated 14.12.2021 forwarded by respondent no. 03 to respondent no. 02 is under consideration with respondent no. 02. As such, according to these respondents there is no case for the applicant for grant of any relief as prayed by him.

7. Respondent no. 03 filed additional affidavit on 12.01.2023 alleging that earlier the applicant had submitted his option for Water Resources Department and was unwilling to get absorbed in Soil & Water Conservation Department. The said fact was specifically recorded in the lists published on

22.09.2017 and 07.06.2018. Respondent No. 4 has further alleged that somebody removed the original option exercised by the applicant from original file and the said option was replaced by bunch of papers wherein new option form of the applicant has been placed. It is further alleged that the option to be absorbed in Soil and Water Conservation Department was exercised by the applicant antedated upon coming to know the conditions mentioned in the proclamation dated 22.09.2017. Respondent reiterated the prayer for dismissal of the O.A. filed by the applicant.

8. To the additional affidavit in reply submitted by respondent No. 3 the applicant submitted an affidavit in rejoinder denying the allegations made in the said additional affidavit against him. In the rejoinder the applicant has contended that respondent No. 3 himself has forwarded the proposal of the applicant and other 02 for absorption under respondent No. 2 i.e. Soil and Water Conservation Department. Applicant has alleged that under political pressure respondent No. 3 has subsequently changed his stand. Applicant has further contended that after issuance of order dated 30.11.2022 respondent No. 3 cannot take a different stand and opposed for absorption of the applicant in Soil and Water Conservation

Department. Applicant has stated that along with him 07 other officers have also been absorbed by order dated 30.11.2022, but, objection has been raised only about absorption of the applicant. Applicant has further contended that name of Shri Vasant Baburao Galphade appears at Sr. No. 23 in the list annexed to the publication dated 22.09.2017, wherein in column No. 09 it is shown that said Galphade exercised the option to get absorbed in Soil and Water Conservation Department and in the list his name appeared at Sr. No. 304. It is further contended that subsequently in the list forwarded by respondent No. 3 to respondent No. 2 it was shown that said Galphade has preferred to remain in Water Resources Department.

9. In the argument advanced by the learned counsel appearing for the respective parties they have reiterated the contentions raised by them in their respective pleadings. When the O.A. was filed, the only relief which was claimed by the applicant was to direct respondent No. 2 to take decision on the option form dated 23.08.2017 submitted by the applicant for his absorption in the Soil and Water Conservation Department, which was forwarded by respondent No. 3 with his covering letter dated 14.12.2021 to respondent No. 2 for absorption of



the applicant in the Soil and Water Conservation Department and to give him proper placement in the seniority list in view of the provisions of G.R. dated 31.05.2017 issued by respondent No. 2. As noted above, during pendency of the O.A. order dated 30.11.2022 came to be issued whereby the applicant was absorbed in Soil and Water Conservation Department. Subsequently, order dated 15.02.2023 came to be passed whereby the absorption of the applicant in the Soil and Water Conservation Department was cancelled. In view of the subsequent events so occurred the O.A. was amended by the applicant with contextual prayers. After amendment the prayer made by the applicant is regarding quashment of the order dated 15.02.2023 and further directions against respondent No. 2 to give proper placement to the applicant in the seniority in the cadre of Assistant Engineers, Grade-A as per the guidelines issued by respondent No. 2 vide G.R. dated 31.05.2017.

10. It is not in dispute that vide G.R. dated 31.05.2017 issued by Water Resources Department a new department was created named as Soil and Water Conservation Department and the officers and the employees working in the Water Resources Department were called upon to exercise their options whether they want to get absorbed in Soil and Water Conservation

Department or intend to be retained in Water Resources Department. For exercising such option the last date was prescribed as 15.07.2017. It is not in dispute that the applicant did not submit his option before 15.07.2017. As has been pleaded by the applicant he did not submit any such option as at the relevant time he was working in the Soil and Water Conservation Department itself on deputation. As has been contended by the applicant, it was his understanding that when he was already working in Soil and Water Conservation Department, it was not necessary for him to submit such option form.

11. In the present O.A. the applicant as well as respondents, both have made lengthy submissions. Controversy arose in the present matter can, however, be brought into a narrow compass. After having gone through the pleadings of the parties it is revealed that entire controversy revolves around the option exercised by the applicant in view of G.R. dated 31.05.2017. Vide the said G.R. the erstwhile Water Resources Department was divided into 02 departments by creating a new department named as Soil and Water Conservation Department. In the said G.R. itself the officers and employees working in the Water Resources Department at

the relevant time were called upon to give their options on or before 15.07.2017 whether they intend to remain in Water Resources Department or desire to permanently absorbed in newly created Soil and Water Conservation Department.

12. It is the case of the applicant that he had submitted the option in the office of respondent No. 2 at Aurangabad with Assistant Regional Water Conservation Officer, Soil and Water Conservation Department, Aurangabad. It is the further contention of the applicant that the option so exercised by him on 23.08.2017 was forwarded by respondent No. 3 to respondent No. 2 on 14.12.2021. It is the further contention of the applicant that since no decision was taken by respondent No. 1 on the proposal so forwarded by respondent No. 3 to respondent No. 2 as above in regard to absorption of the applicant in Soil and Water Conservation Department, he was constrained to file the present O.A.

13. As is revealing from the record during pendency of the present O.A. G.R. dated 30.11.2022 came to be issued whereby the applicant and 07 other officers in the cadre of Assistant Engineers, Grade-I came to be absorbed in the Soil and Water Conservation Department on the conditions incorporated in the said G.R. It is also the matter of record that

subsequent to issuance of the aforesaid G.R. another G.R. was issued on 15.02.2023 whereby the absorption of the applicant in the Soil and Water Conservation Department vide G.R. dated 30.11.2022 was cancelled. We have noted that, all these facts have been brought on record by the applicant by amending the OA. As has been argued on behalf of the applicant, while issuing G.R. dated 30.11.2022, respondent No. 1 has referred to and acted upon the proposal dated 14.12.2021 forwarded by respondent No. 3 vide outward No. 2816. Learned counsel has pointed out that vide the aforesaid letter bearing outward No. 2816 dated 14.12.2021 respondent No. 3 had forwarded the option exercised by the applicant on 23.08.2017 for to be absorbed in the Soil and Water Conservation Department. It has been therefore, argued on behalf of the applicant that by issuing G.R. dated 30.11.2022 the respondent No. 1 has accepted the option given by the applicant on 23.08.2017 for remaining in Soil and Water Conservation Department. As has been further argued on behalf of the applicant, respondent No. 1 has committed patent illegality by cancelling the order of absorption of the applicant in the Soil and Water Conservation Department vide earlier G.R. dated 30.11.2022 without giving any opportunity of hearing to the applicant. In premise of the facts as aforesaid the applicant has sought quashment of the

order dated 15.02.2023 and has further prayed for all the consequential benefit i.e. to say the seniority etc.

14. As against the submissions as are made on behalf of the applicant the respondents have with equal vehemence argued that the contention of the applicant regarding his submission of option on 23.08.2017 is concocted story. As has been pleaded by respondent No. 01 in his affidavit in reply, the document of option dated 23.08.2017 is created afterwards and in fact the applicant had earlier submitted an option for his continuation in the Water Resources Department and that was the reason that his name did not figure in the press note issued by respondent No. 01 on 22.09.2017 and in the list issued on 07.06.2018 of the employees who opted for Soil and Water Conservation Department. It has been argued on behalf of the respondent that the applicant did not raise any objection to the press note dated 22.09.2017 and to the list annexed with the G.R. dated 07.06.2018 which do not contain name of the applicant, who were to be permanently absorbed in the Soil and Water Conservation Department. It has been further argued on behalf of the respondents that had it been the fact that had the applicant really submitted an option on 23.08.2017, he would not have remained silent when his name was not included in

the list of the officers and employees to be absorbed in the Soil and Water Conservation Department as per the option submitted by said employees. It has also been argued that not raising of any objection by the applicant to the aforesaid documents leads to only an inference that the applicant had not submitted any such option on 23.08.2017. Respondent No. 1 has also raised an objection that the applicant has not disclosed the fact of filing O.A. No. 764/2018 by him before this Tribunal. According to respondent No. 1 that is also a circumstance against the contention of the applicant that he had submitted an option on 23.08.2017.

15. The G.R. dated 15.02.2023 reveals that the absorption of the applicant in the Soil and Water Conservation Department has been cancelled on the ground that the applicant had submitted an option for his retention in the Water Resources Department and subsequently he submitted an option for his absorption in the Soil and Water Conservation Department. Thus, for at a time submitting 02 different options one for retention in Water Resources Department and other for absorption in the Soil and Water Conservation Department, the respondent No. 1 cancelled the absorption of the applicant in the Soil and Water Conservation Department. One more reason

is assigned that the Water Resources Department had requested for repatriation of the applicant.

16. From the contents of the G.R. dated 15.02.2023 it appears that the fact that the applicant had at a time given option for his retention in the Water Resources Department and simultaneously for his absorption in the Soil and Water Conservation Department came to the notice of respondent no. 01 after passing of the G.R. dated 30.11.2022. In light of the contents of the G.R. dated 15.02.2023 it would be expedient to read G.R. dated 30.11.2022. The aforesaid G.R. is based on 15 documents, which are enlisted under the title as 'Read'. The document no. 09 in the said list is material insofar as the absorption of the applicant is concerned. The document no. 09 is the proposal dated 14.12.2021 forwarded by respondent no. 03 to respondent no. 02 whereby respondent no. 03 had forwarded the option forms executed by S/shri Yatin Kothawale, Prashant s/o Bhagwansingh Kachhawa (the present applicant) and Dilip Khandu Landge for necessary action on the said option forms. It is thus evident that the proposal dated 14.12.2021 forwarded by respondent no. 03 to respondent no. 02 was accepted and accordingly the respondent no. 01 issued the G.R. and thereby absorbed the applicant and other officers

named therein in the Soil & Water Conservation Department. In his affidavit in reply the respondent no. 01 has expressed serious doubts about submission of the option form executed by the applicant on 23.08.2017. As further contended by respondent no. 01, in view of the press note dated 22.09.2017 and G.R. dated 07.06.2018 issued by respondent no. 02 there is reason to believe that the applicant had submitted the option form exercising option for not to be absorbed in Soil & Water Conservation Department. Respondent no. 01 had alleged that back-dated application is submitted by the applicant. In the letter dated 14.12.2021 respondent no. 03 however has admitted that the applicant had submitted his option form dated 23.08.2017 and has further explained that since there were no specific instructions from the Government in respect of the option received beyond the cut-off date that he did not forward the said application for further action. In the forwarding letter dated 14.12.2021 the respondent no. 03 has in the tabular form, provided the names of the officers and the dates on which they have submitted their options.

17. As noted above, the proposal for absorption of 03 officers namely S/shri Yatin Kothawale, Prashant s/o Bhagwansingh Kachhawa (the present applicant) and Dilip



Khandu Landge were forwarded by respondent no. 03 vide covering letter dated 14.12.2021. The tabular form reveals that Shri Yatin Kothawale has submitted the option form on 08.09.2017, applicant Shri Prashant Bhagwansingh Kachhawa had submitted it on 23.08.2017, whereas Shri Dilip Khandh Landge is shown to have submitted his option form on 15.06.2018. It is further significant to note that the affidavit in reply on behalf of respondent no. 01 has been filed on 07.10.2022 and about 1 ½ month thereafter the G.R. came to be issued on 30.11.2022, whereby the applicant and 07 others have been absorbed in the Soil & Water Conservation Department.

18. The press-note dated 22.09.2017 and the G.R. issued on 07.06.2018 have been much emphasized by the respondents contending that the list of employees, who have exercised the option for absorption in the Soil & Water Conservation Department was annexed to the press note dated 22.09.2017, as well as, G.R. dated 07.06.2018 and none of the aforesaid lists did contain the name of the applicant. It has been further argued that despite the fact his name did not figure in the said lists the applicant did not raise any objection in that regard. According to the respondents, the aforesaid

facts lead to an only inference that the applicant had not exercised the option for getting absorbed in the Soil & Water Conservation Department. Further the respondents have relied upon the Government Notification dated 30.06.2021 and more particularly to Annexure “क” with the said notification. Vide said notification dated 30.06.2021 posting orders on promotion in respect of 160 officers working in the Soil & Water Conservation Department came to be issued. Along with said notification there is annexure “क” wherein the list of the officers who are due for repatriation to Water Resources Department is provided. The list contains names of 14 such officers and name of the present applicant is at sr. no. 10 in the said list. It is the contention of the respondents that the aforesaid Government notification confirms the fact that the applicant till date had not submitted any option for his absorption in the Soil & Water Conservation Department and he was therefore due for his repatriation to his parent Department i.e. Soil & Water Conservation Department.

19. The respondents, however, seem to have lost sight of the contents in paragraph 03 of the said Government Notification dated 30.06.2021. We deem it appropriate to

reproduce the entire paragraph 03 of the said Notification, which reads thus:-

“३. या आदेशाच्या परिणामी जलसंपदा विभागाकडील तात्पुरत्या प्रतिनियुक्तीने कार्यरत असलेल्या व शा.नि. दि. ३१.०५.२०१७ च्या मुददा क्रं. ८ (iv) मधील तरतुदीनुसार त्यांचे सेवा जलसंपदा विभागाकडे प्रत्यार्पित करण्यासाठी पात्र १४ उपविभागीय जलसंधारण अधिका-यांची यादी सदर आदेशासोबत प्रपत्र-क जोडली आहे. सदर १४ उपविभागीय जलसंधारण अधिका-यांच्या सेवा तात्काळ प्रभावाने जलसंपदा विभागाकडे प्रत्यार्पित करण्यात येत असून सदर अधिका-यांनी त्यांच्या मूळ प्रशासकीय विभाग म्हणून जलसंपदा विभागाकडे तात्काळ रुजू व्हावे.

परंतु, सदर १४ उपविभागीय जलसंधारण अधिकारी या विभागाकडील इतर ठिकाणावरील रिक्त पदावर या विभागात कार्यरत राहण्यास इच्छुक असल्यास त्यांनी मृद व जलसंधारण या प्रशासकीय विभागाकडे तात्काळ संपर्क करावा.”

20. From the contents as aforesaid it is quite explicit that the option for the aforesaid 14 officers to seek their absorption in Soil & Water Conservation Department was kept open and they were called upon to immediately contact the administration section. Pursuant to the aforesaid notification dated 30.06.2021 the next notification was issued by respondent no. 01 on 30.07.2021. We deem it appropriate to reproduce herein below paragraph nos. 01, 02 and 03 of the said notification as it is in vernacular, which read thus:-

“मृद व जलसंधारण विभागातील खालील अधिकाऱ्यांना जलसंधारण अधिकारी (स्थापत्य) (शाखा अभियंता/ सहाय्यक अभियंता श्रेणी-२) या संवर्गातून उप विभागीय जलसंधारण अधिकारी या पदावर संदर्भाधिन शासन आदेशान्वये तात्पुरत्या स्वरूपात पदोन्नती देण्यात येवून पदोन्नतीने पदस्थापना देण्यात आलेल्या आहेत. सदर आदेशान्वये पदोन्नतीने देण्यात आलेल्या पदस्थापनेच्या

ठिकाणात सक्षम प्राधिकाऱ्याच्या मान्यतेने, संबंधित अधिकाऱ्यांच्या विनंतीनुसार, सार्वजनिक सेवेच्या हितार्थ व प्रशासकीय सोयीच्या दृष्टीने अंशतः बदल करून खालीलप्रमाणे प्रपत्र "अ" मध्ये त्यांच्या नावासमोर दर्शविल्याप्रमाणे पदस्थापना देण्यात येत आहेत.

विभागात उप विभागीय जलसंधारण अधिकाऱ्यांची पदे मोठ्या प्रमाणात रिक्त असल्याने दिनांक ५ जुलै, २०२१ च्या आदेशान्वये व दिनांक ३०.६.२०२१ च्या पदोन्नती आदेशासोबतच्या प्रपत्र "क" अन्वये जलसंपदा विभागाकडे सेवा प्रत्यार्पित केलेल्या अधिकाऱ्यांपैकी, सदर शासन आदेशांच्या परिच्छेद ३ मधील उपपरिच्छेद २ नुसार या विभागातील इतर ठिकाणावरील रिक्त पदावर या विभागात राहण्याची इच्छुकता दर्शविलेल्या उपविभागीय जलसंधारण अधिकाऱ्यांना, त्यांच्या सेवा प्रत्यार्पित करण्याबाबतच्या आदेशात अंशतः बदल करून, सक्षम प्राधिकाऱ्याच्या मान्यतेने, संबंधित अधिकाऱ्यांच्या विनंतीनुसार, सार्वजनिक सेवेच्या हितार्थ व प्रशासकीय सोयीच्या दृष्टीने प्रपत्र "अ" मध्ये त्यांच्या नावासमोर दर्शविल्याप्रमाणे पदस्थापना देण्यात येत आहेत.

२. उपरोक्त पदस्थापना ह्या संदर्भांमधील शासन आदेशातील अटी व शर्तीच्या अधीन राहतील.

३. या आदेशाच्या परिणामी जलसंपदा विभागाकडील तात्पुरत्या प्रतिनियुक्तीने कार्यरत असलेल्या व शासन निर्णय दिनांक ३१.५.२०१७ च्या मुद्दा क्र. ८ (iv) मधील तरतुदीनुसार जलसंपदा विभागाकडे सेवा प्रत्यार्पित करण्यात आलेल्या उप. विभागीय जलसंधारण अधिकाऱ्यांची यादी या आदेशासोबतच्या प्रपत्र "ब" मध्ये दर्शविण्यात आली आहे. सदर उपविभागीय जलसंधारण अधिकाऱ्यांच्या सेवा तात्काळ प्रभावाने जलसंपदा विभागाकडे प्रत्यार्पित करण्यात येत असून सदर अधिकाऱ्यांनी त्यांच्या मूळ प्रशासकीय विभाग म्हणून जलसंपदा विभागाकडे तात्काळ रुजू व्हावे.

परंतू सदर उपविभागीय जलसंधारण अधिकारी या विभागाकडील इतर ठिकाणांवरील रिक्त पदावर या विभागात कार्यरत राहण्यास इच्छुक असल्यास त्यांनी मृद व जलसंधारण या प्रशासकीय विभागाकडे तात्काळ संपर्क करावा."

21. Vide the aforesaid notification the applicant was posted as Sub Divisional Water conservation Officer at Soil & Water Conservation Sub-Division, Parbhani. As per the annexure to the said notification dated 30.07.2021 Shri Dinesh Pawar, Sanjay Kumathekar and Ramesh Nallangade were repatriated to their parent department i.e. Water Resources Department.

22. Applicant has placed on record the copy of the communication dated 23th November, 2021 whereby the Government has called upon all the Regional Water conservation Officers in the State to forward the information in regard to the options exercised by the officers in the cadre of Sub-Divisional Water Conservation Officers whose names are not included in the proclamation dated 22.9.2017 but who had submitted their options before 25<sup>th</sup> September, 2018, along with the relevant documents. It is significant to note that in reference to the said communication dated 23<sup>rd</sup> November, 20221, the Assistant Regional water conservation Officer, Aurangabad vide his letter dated 14<sup>th</sup> December, 2021 forwarded the option forms, executed by Yatin Kothawalee, the present applicant and Dipak Landge to the Government. In the Government Resolution dated 30<sup>th</sup> November, 2022 reference is given of the communication dated 30<sup>th</sup> November, 2021 as well as of the communication dated 14.12.2021.

23. The aforesaid documents make it abundantly clear that the doors were not closed for the officers working in the Water Resources Department to get absorbed in the Soil & Water Conservation Department. The 14 Sub-Divisional Water Conservation Officers including applicant, Prashant

Bhagwansingh Kachhawa, were expressly given option and opportunity to get absorbed in the Soil and Water Conservation Department vide Government Notification dated 30.06.2021. The next notification issued on 30.07.2021, whereby the applicant was given posting as Sub-Divisional Water Conservation Officer, Parbhani, volumnly reveals that the applicant was absorbed in the Soil & Water Conservation Department.

24. Subsequent to the issuance of the aforesaid notification, the Government issued G.R. dated 30.11.2022 whereby the applicant and 07 others have been absorbed in the Soil & Water Conservation Department on the terms and conditions mentioned therein. We have noted hereinabove that the aforesaid G.R. has been passed based on the proposal dated 14.12.2021 forwarded by respondent no. 03 to respondent no. 02, as well as, certain other documents. It is to be reiterated that vide communication dated 14.12.2021 respondent no. 03 had forwarded the option forms executed by the applicant and other 02 for their absorption in the Soil & Water Conservation Department for necessary action in that regard.

25. Having considered the Government Notification dated 30.06.2021, the Government Notification dated

30.07.2021, the communication dated 23.11.2021 the proposal forwarded by respondent no. 03 on 14.12.2021 and the Government Resolution dated 30.11.2022, the Government Resolution dated 15.02.2023 appears unsustainable. It is to be reiterated that vide Government Notification dated 30.06.2021, 14 Sub Divisional Water Conservation Officers, wherein the name of the applicant was containing, were repatriated to their parent department and were directed to resume duties in the said department. However, immediately thereafter in the said notification itself it was mentioned that if the said 14 Sub-Divisional Water Conservation Officers are willing to remain in Soil & Water Conservation Department, they shall immediately contact the administration section. As noted by us hereinabove, till the said date the doors were, thus, open for the said 14 officers for seeking their absorption in the Soil & Water Conservation Department. It is the matter of record that vide subsequent notification issued one month thereafter i.e. on 30.07.2021 the applicant came to be promoted in the Soil & Water Conservation Department and vide G.R. dated 30.11.2022 was absorbed in the said department.

26. For the sake of argument even it is assumed that on 23.08.2017 the applicant submitted two options

simultaneously, one for his retention in the Water Resources Department and the other for his absorption in Soil and Water Conservation Department, the said fact lost its significance when in the order/notification dated 30<sup>th</sup> June, 2021, respondent no. 1 notified that the 114 officers named in Annexure 'Ka' appended to the said order/notification which contains the name of the applicant, can still apply for their absorption in Soil & Water Conservation Department if they so desire. Accordingly, subsequent order/notification was issued by respondent no. 1 on 30<sup>th</sup> July, 2021, giving posting to the applicant in the Soil & Water Conservation Department. Thereafter vide G.R. issued on 30<sup>th</sup> November, 2022 respondent no. 1 formally declared the absorption of the applicant in Soil & Water Conservation Department. Considering the facts as aforesaid, the G.R. dated 15.2.2023 cannot be sustained.

27. The documents placed on record by the applicant i.e. communication dated 30<sup>th</sup> June, 2021, posting order dated 30<sup>th</sup> July, 2021, communication dated 23<sup>th</sup> November, 2021, communication dated 14<sup>th</sup> December, 2021 and G.R. dated 30.11.2022 cannot be said to be prepared or got prepared by the applicant subsequently. All these documents considered conjointly it becomes clear that though in the G.R. dated 31<sup>th</sup>



May, 2017 the last date given for exercising options was 15<sup>th</sup> July, 2017, the process of getting absorbed the employee and officers in the Soil and Water Conservation Department continued even thereafter.

28. Having considered the facts as aforesaid, the cancellation of the order dated 30.11.2022 to the extent of the applicant on the ground that he had simultaneously submitted 2 options cannot be sustained. Moreover, as is revealing from the documents on record respondents have absorbed some such officers in the Soil and Water Conservation Department who had earlier recorded their options for retention in Water Resources Department. The Respondents cannot discriminate between the said officers and the applicant.

29. For the reasons recorded above, the following order is passed: -

### **ORDER**

- (i) Order dated 15.02.2023 passed by respondent no. 02 is quashed and set aside.
- (ii) The applicant shall be held to be absorbed in Soil and Water Conservation Department as per G.R. dated 30.11.2022 on the terms and conditions mentioned in the said G.R.

(iii) The Original Application is allowed in the aforesaid terms, however, without any order as to costs.

**MEMBER (A)**

**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 21.10.2024**

ARJ HDD O.A. NO. 851 OF 2022 ABSORPTION