

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
CONTEMPT APPLICATION NO.60 OF 2006
IN
ORIGINAL APPLICATION NO.1083 OF 2003
WITH
REVIEW APPLICATION NO.29 OF 2005
IN
ORIGINAL APPLICATION NO.1083 OF 2003**

DISTRICT : THANE

Shri Sunil D. Sankhe,)
Agriculture Assistant, R/o Datta Nagar,)
Tambhode Road, Khanpada, Palghar, District Thane)..Applicant

Versus

Shri R.L. Fulmali,)
The Divisional Joint Director (Agriculture),)
Konkan Division, Thane 400604)..Respondent

Shri A.V. Bandiwadekar – Advocate for the Applicant

Shri K.B. Bhise – Presenting Officer for the Respondent

CORAM : Shri Justice A.H. Joshi, Chairman
Shri Rajiv Agarwal, Vice-Chairman

PER : Shri Justice A.H. Joshi, Chairman

Reserved on : 25th October, 2016

Pronounced on : 8th November, 2016

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri K.B. Bhise, the learned Presenting Officer for the Respondents.
2. Contemnor had appeared personally on few dates along with learned P.O.
3. In the present contempt application according to the applicant Government has communicated to the applicant by letter dated 5.5.2006 Annexure 'D' page 23 of the contempt application that applicant's case cannot be considered for grant of deemed date. This decision is taken by the Contemnor. The text of the communication which according to Applicant constitutes contempt is quoted ad verbatim as follows :-

“जा.क्र.कोर्टप्र-
१९०३/पिंपळे/०१/०५/३०५७/०६
विभागीय कृषि सह संचालक, कोकण विभाग,
ठाणे-४ दिनांक ५.५.२००६.

प्रति,

श्री. सुनिल दामोदर संखे, कृषि सहाय्यक,
तालुका कृषि अधिकारी विक्रमगड, यांचेमार्फत

विषय :- मूळ अर्ज क्र.१०८३/२००३

श्री. चंद्रकांत सिताराम पिंपळे व इतर ३

रिक्तू अॅप्लीकेशन २९/२००५

संदर्भ :- १. मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई यांचा न्यायनिर्णय क्र.

उपरोक्त संदर्भिय विषयानुसार आपणांस कळविण्यात येते की, आपण मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई यांचेकडील मूळ अर्ज क्र.१०८३/०३ व रिक्तू अॅप्लीकेशन क्र.२९/२००५ चे निर्णयानुसार परीच्छेद क्र. १ ते ९ व १ ते ६ नुसार कृषि

पर्यवेक्षक पदावर पदोन्नती मिळण्याबाबत विनंती अर्ज या कार्यालयास सादर केला आहे. सदर प्रकरणी आपणांस कळविण्यात येते की, मा. प्रशासकीय न्यायाधिकरण, मुंबई यांचे दिनांक ३.५.२००५ चे निर्णयाचे परीच्छेद क्र.६ मध्ये नमूद केल्याप्रमाणे श्री. इंगळे, कृषि पर्यवेक्षक यांचेऐवजी श्री. एस.छी. संखे, कृषि सहाय्यक यांना पदोन्नती द्यावी असे आदेशित केले आहे. परंतु रिव्ह्यू ऑप्लीकेशन क्र. २९/२००५ मधील निर्णय दिनांक १४.२.२००६ मधील परीच्छेद क्र.४ मध्ये नमूद केल्याप्रमाणे श्री. इंगळे, कृषि पर्यवेक्षक हे भज-ड प्रवर्गातील कर्मचारी नसून ते विमुक्त जाती-अ प्रवर्गातील कर्मचारी आहेत. आणि त्यांना विमुक्त जाती-अ प्रवर्गातूनच कृषि पर्यवेक्षक पदावर पदोन्नती दिलेली आहे. ही बाब मा. न्यायालयाच्या निदर्शनास आणून दिलेनंतर न्यायालयाने ही बाब मान्य केलेली आहे. त्यामुळे श्री. इंगळे यांचेजागी आपणांस कृषि पर्यवेक्षक पदावर पदोन्नती देता येणार नाही.

तसेच भज-ड प्रवर्गातील कृषि पर्यवेक्षकांचा पदोन्नतीचा अनुशेष प्रमाणानुसार भरलेला असल्यामुळे सदर कोट्यातून आपणांस पदोन्नती देण्याबाबतची विनंती मान्य करता येणार नाही. तसेच कृषि सहाय्यकांच्या जेष्ठतेनुसार भज-ड प्रवर्गात १२ कृषि सहाय्यक आपणांपेक्षा सेवा जेष्ठ आहेत. त्यांना डावलून आपणांस पदोन्नती देता येणार नाही. तसेच खुल्या प्रवर्गातून जेष्ठतेनुसार पदोन्नतीसाठी आपला विचार जेष्ठतेप्रमाणे केला जाईल. भविष्यात रिक्त होणाऱ्या कृषि पर्यवेक्षक पदावर पदोन्नती देताना आपल्या सेवा जेष्ठतेचा विचार करुन जेष्ठतेनुसार आपला विचार करण्यात येईल. आपला दिनांक ६.३.२००६ चा अर्ज अंतीमरित्या निकाली काढण्यात आला आहे.”

(quoted from page 23 of the CA No.60/2006)

4. The Applicant has pleaded the circumstances in which the Respondent has committed the Contempt in the words as follows:-

“1.

 Respondent herein have committed contempt of this Hon. Tribunal by wilfully and deliberately not implementing the decision of this Hon. Tribunal rendered in the aforesaid main matter on 3.5.2005 (Exhibit A); so also the order dated 14.2.2006 passed in the aforesaid Review Application matter (Exhibit B). That under the first order, this Hon. Tribunal directed the respondent herein to promote the present

petitioner in the vacancy which would be available on account of promotion of Mr. Ingle being found invalid and illegal and as such non-est.”

(quoted from para 1 page 2 of the CA No.60/2006)

5. According to the applicant finding is recorded in the judgment in para 9, which supports applicant's claim.

6. This Tribunal has examined the text of para No.10 of the order dated 3.5.2005 of OA No.1083 of 2003 which is the foundation of contempt. Text of said para 9 reads thus :-

“9. We, therefore, find that the post is available and if Shri Ingale was considered from the category of NT(D)-30, the claim of the applicants who are admittedly senior to Shri Ingale was erroneously superseded. It is at this stage, we find it expedient in the interest of justice to direct the respondents to consider the case of the applicants for the post of Shri Ingale provided of course Shri Ingale was considered from NT(D)-30 category and not from NT(B) category. The other factual aspect of the case is not in dispute. The case of the applicants be therefore, considered from the category of NT(D)-30 in place of Shri Ingale and in the event it is transpired that the applicants or any one of them is wrongly superseded, consider the case of any of the applicants for that post of Shri Ingale at Serial No.5.”

(quoted from para 9 page 14-15 of CA No.60/2006)

7. It is an admitted fact that applicant had some grievance relating to the findings recorded in the judgment in O.A.No.1083/2003. Therefore, the applicant, filed RA No.29 of 2005 and sought modification. The said RA was heard and has been dismissed on 14.2.2006.

8. Copy of the judgment rendered in the RA is on record of present C.A. at page 16 as Exhibit-B. In the RA certain observations are

contained in para 5 on which the applicant is relying. It is necessary to quote and refer to para 4 as well as para no.5. Relevant paras are quoted below:

- “4. The Respondents have filed their affidavit in reply. Most of the facts are not in dispute. It is pointed out that the total cadre strength is 308. 231 posts are to be filled in by way of promotion. Admittedly, 2% reservation to the category of NT(D) is available and therefore only 4 posts can be filled in by way of promotion to the post of Agriculture Supervisor. It is not in dispute that initially there was reservation to the extent of 6% to the category of VJNT under GR dated 4.8.1992. By another GR dated 23.3.1994, the entire category is classified as ‘A’, ‘B’, ‘C’ & ‘D’ and the total reservation is fixed at 11%. The applicants, who are from Vanjari community would be under NT(D) category for which 2% reservation is available. It is then pointed out that the promotion of Shri Ingale was awarded not under the category of NT(D), but from the category of VJ(A). That was a mistake which may be condoned.
5. The question that would arise for our determination is whether there is any apparent error on the face of the record, which would enable this Tribunal to rectify the same. The scope of the Tribunal to entertain the Review Petition is extremely limited. We have seen earlier that the very assumption of the applicants that Shri Ingale is from the NT(D) category is erroneous. That promotion was effected from the category of VJ(A). He is not from NT(D) category. The backlog to the category of NT(D) is prima facie not available in as much as 4 posts have been filled in by way of promotion on or about 31.12.2002. The quota meant for NT(D) is provided from the date of notification, namely from 18.10.1997. Thus, apparently, at this stage, there is no backlog available to the category of NT(D). The certificate issued by the competent authority, which is produced as Exh. ‘A’ collectively shows that there is backlog in the category of “वि.ज./भ.ज.-४(४)”. There is therefore backlog in the category. But no such backlog is available in the category of NT(D)-30.”

(quoted from para 4 & 5 page 19-20 of CA No.60/2006)

9. According to the applicant judgment in OA as well as RA will have to read together and the conclusions which emerge as to what is the dictum of judgments is as follows :-

- (a) The applicant belongs to NT(D).
- (b) Shri Ingale was promoted in the category of NT(D).
- (c) Ingale was junior to applicant.
- (d) Therefore, refusing to promote the applicant amounts to contempt.

10. This Tribunal has examined applicant's submissions and judgments in O.A. as quoted in foregoing para No.6. Limited text of same para no.(9) is re-extracted, in so far as direction part of the order is concerned, and it reads as below :-

“9.

 It is at this stage, we find it expedient in the interest of justice to direct the respondents to consider the case of the applicants for the post of Shri Ingale provided of course Shri Ingale was considered from NT(D)-30 category and not from NT(B) category. The other factual aspect of the case is not in dispute. The case of the applicants be therefore, considered from the category of NT(D)-30 in place of Shri Ingale and in the event it is transpired that the applicants or any one of them is wrongly superseded, consider the case of any of the applicants for that post of Shri Ingale at Serial No.5.”

(quoted from para 9 of order in OA No.1083/2003,
 page 14-15 of CA No.60/2006)

11. In so far as the applicant's reliance on the observations contained the judgment in R.A. No.29 of 2005 are concerned, the applicant has connived crucial observations and finding which is quoted above in para No.8, which text is re-extracted below:

“4.

 It is then pointed out that the promotion of Shri Ingale was awarded not under the category of NT(D), but from the category of VJ(A). That was a mistake which may be condoned.

5.

 Thus, apparently, at this stage, there is no backlog available to the category of NT(D). The certificate issued by the competent authority, which is produced as Exh. 'A' collectively shows that there is backlog in the category of “वि.ज./भ.ज.-४(४)”.”

(quoted from para 4 & 5 page 19-20 of CA No.60/2006)

12. From the foregoing quotation, conclusions emerge as finding given by Tribunal:-

- (a) That there is no backlog in NT(D) Category.
- (b) That the backlog which existed, was belonging to V.J. / N.T.-4(4).
- (c) “VJNT-4(4)” and “NT(D)-30” are two different categories.

13. It is thus evident that what was ordered by this Tribunal was to consider. An inference in terms of applicant’s submissions is not recorded by this Tribunal as a finding in the judgment in O.A.No.1083/2003. The Applicant’s belief that this Tribunal has recorded a finding that applicant was superseded, is not seen from plain reading of the judgment rendered in the O.A. In so far as judgment in Review is concerned it rather totally rules out applicant’s version in totality.

14. In the background of unambiguous findings recorded in O.A. as well as in the R.A. it is conclusive that applicant’s claim and belief that Shri

Ingale was promoted from NT(D) category or against NT(D) category is based on imagination and this belief is akin to hallucination.

15. From the foregoing discussion, it is evident that the applicant has failed to endure and to palate that he did not get promotion and he is keen on settling scores by hook or crook, and as its devise has filed this application for action for contempt.

16. Be it that the decision of the Government communication through the letter text whereof is quoted herein before in para 3, hurts the applicant. In that event it was open for the applicant to challenge the said order / communication by filing a representation &/or an Original Application. Apparently, applicant has elected to file a contempt case and selectively omitted to avail said remedy, even by way of abundant caution.

17. Therefore, applicant's attempt to agitate the issue by filing CA is exercise by way of arm twisting.

18. It is very much likely that applicant must have received proper and apt legal advice to challenge the decision of the Government. However, litigant is the master of litigation and most probably by disregarding a fair legal advice he has chosen to follow the course of arm twisting. Thus, the contempt application is to be a vexatious exercise, than a lis lodged bonafide and in good faith.

19. The applicant, therefore, cannot go without being chastised and has to pay at least token cost to the respondent as well as to the State. Hence, following order is passed.

20. (a) Contempt Application is dismissed. Notice is discharged.
- (b) The applicant is directed to pay cost of Rs.10,000/- (Rupees ten thousand only) to contemnor-Respondent and in addition, sum of Rs.10,000/- (Rupees ten thousand only) as costs to the Agriculture Department of State of Maharashtra within two months.
- (c) In case applicant fails to pay the costs, Respondent as well the State shall be free to recover the amount by all permissible modes.

Sd/-
(Rajiv Agarwal)
Vice-Chairman
8.11.2016

Sd/-
(A.H. Joshi, J.)
Chairman
8.11.2016

Dictation taken by: S.G. Jawalkar.