

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 770 OF 2007

DIST.: JALGAON

Narendra Walmik Sonawane,
Aged: 36 years, Occu: Service,
R/o Kandari,
Tal & Dist. Jalgaon.

- APPLICANT

V E R S U S

1. State of Maharashtra,
Through its Secretary,
The Department of Co-operative,
Mantralaya, Mumbai- 32.
2. Asst. Registrar Co-operative,
Chalisgaon, Dist. Jalgaon.
3. Joint Registrar Co-operative,
Gadkari Chowk, Old Agra Rd.
Nshik-2.
4. The Revenue Commissioner,
Nasik Rd. Nasik.
5. The District Collector,
Collectorate, Jalgaon.
6. The Tahsildar,
Jalgaon.
7. Nathhu Shripat Shinde,
Age – 88 years, Occu- Freedom fighter,
R/o. 20 A “Madhupushpa”, Sharda Colony,
Jilha Peth, Jalgaon.

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RESPONDENTS

APPEARANCE : Shri H.A. Joshi, learned Advocate
for the Applicant.

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

CORAM :HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)
AND
HON'BLE SHRI J.D. KULKARNI, MEMBER (J)

Date : 23.09.2016.

ORDER

[Per- Hon'ble Shri J.D. Kulkarni, Member (J)]

The applicant was appointed as Assistant Co-operative Officer and was working at Chalisgaon. He was appointed from the quota of nomination made by the freedom fighter. He was nominated by the respondent no. 7, freedom fighter after following due procedure, his appointment order was issued.

2. On 8.3.2007, the Assistant Registrar Co-operative Society, Chalisgaon issued an order dated 8.3.2007, whereby the applicant has been removed from service. It seems from the pleadings that the said order was issued in view of some enquiry held by the Divisional Joint Registrar, Co-operative Society, Nasik Division Nasik. The order passed by the Divisional

Assistant Registrar, Co-operative Society, Nasik Division Nasik is placed on record at paper book page nos. 10 to 14 (both inclusive). From the said order, it seems that the applicant was removed from the service because during enquiry it was noticed that the freedom fighter i.e. respondent no. 7 did not nominate the applicant and the applicant has shown false relation with the said freedom fighter. According to the applicant, the impugned order whereby, the applicant has been removed from service by respondent nos. 2, 3 and 5 be quashed and set aside and he be restored to his original post.

3. According to the applicant, the freedom fighter is grandfather of the applicant and he himself nominated the applicant prior to 15 years in front of the Executive Magistrate and two witnesses. The respondent, freedom fighter himself disclosed the relation with the applicant and the application was duly submitted for appointment on nomination quota of freedom fighter. Not only that, the respondent no. 7 i.e. freedom fighter himself purchased the stamps from the stamp vendor prior to 15 years. The Tahsildar, who conducted enquiry, did not verify the signature of the applicant as well as that of respondent no. 7 and did not make proper enquiry. The said enquiry is vague and

incorrect. The Tahsildar did not take statement of respondent no. 7. The respondent no. 7 was unable to speak and listen as he was aged about 87 years old at that time and the applicant has therefore, filed this Original Application.

4. The respondent nos. 2 and 3 have filed their affidavit in reply and submitted that the applicant was appointed as Junior Clerk from freedom fighter's quota vide order dated 29.11.1990. Since the compliant was received, and enquiry was conducted and during enquiry it was noticed that the nomination of the applicant was not made by the freedom fighter and therefore, his nomination was cancelled by the respondent no. 5 i.e. the Collector, Jalgaon. Due opportunity was given to the applicant by issuing show cause notice.

5. The applicant has filed rejoinder affidavit and submitted that the applicant was working as Clerk on nomination quota from 1990 and was on permanent post and he should not have been dismissed/removed from service unless due enquiry under Rule 8 of the Maharashtra Civil Service (Discipline & Appeal) Rule, 1979 is held against the applicant.

6. We have heard Shri H.A. Joshi, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents. We have also perused the affidavit, affidavit in reply, rejoinder affidavit and various documents placed on record by the respective parties.

7. The only material point to be considered in this O.A. is whether the removal/dismissal of the applicant from the service on account of his cancellation of his nomination in the category of freedom fighter without following due enquiry under Rule 8 of the MCS (D&A) Rules, 1979 is legal and proper?

8. The Applicant has placed on record a copy of the report submitted by the Divisional Assistant Registrar, Co-operative Society, Nasik Division Nasik dated 8.3.2007, from which it seems that some enquiry was conducted against the applicant as regards complaint filed against him to the effect that he was not nominated by the freedom fighter. The freedom fighter Shri Narendra Valmik Sonwane, alleged to have stated in the said enquiry that the applicant was not son of his real sister and therefore, nomination was cancelled. Admittedly, no departmental enquiry was held against the applicant before

issuing the order of removal. This fact is also not disputed by the respondents.

9. The learned Advocate for the applicant submits that there were number of complaints of the persons who are appointed by nomination under freedom fighter category and number of Writ Petitions were filed against the said orders before the Hon'ble Bombay High Court, Bench at Aurangabad. The Hon'ble High Court in the said Writ Petitions have passed an order on 11.08.2014 and all the W.Ps. were disposed of as withdrawn as the Hon'ble Honourable Chief Minister has passed an order to the effect that the people already in service shall not be terminated. The said order reads as under :-

“WRIT PETITION NO. 3175 OF 2014 & OTHERS

DATE – 11TH SEPTEMBER, 2014.

PER COURT :

1) *Learned counsel for respective petitioners submit that the Honourable Chief Minister has passed an order to the effect that the people already in service shall not be terminated and the matter is referred to appointing authorities to take decision and submit it to the Administrative Department for further consideration.*

2) *Considering the order passed by the Honourable Chief Minister, the matter was adjourned so as to enable the learned AGP to take instructions upon the same.*

3) *Learned AGP submits that the Honourable Chief Minister has passed the said order and now decision would be taken by the Appointing Authorities and would be submitted for further decision to the Administrative Department, for orders.*

4) *In the light of the above, learned counsel for respective petitioners seek leave to withdraw the writ petitions with liberty to file fresh writ petition, if occasion so arises.*

5) *Mr. Kanade, learned counsel appears for the intervenors and submits that he has already challenged the said action by way of a separate writ petition. As the Writ Petitions are sought to be withdrawn, nothing is being decided on merits by this Court. In view of this, there is no need to consider the intervention application also.*

6) *Writ Petitions accordingly stand disposed of as withdrawn, with liberty as prayed. In view of the disposal of the writ petitions, intervention application stand disposed of.”*

10. The learned Advocate for the applicant has also invited my attention to one Government Resolution issued by the Government of Maharashtra on 24.06.1997. It is marked Exhibit-X for the purposes of identification. In the said G.R., the Government has taken decision in view of the O.A. No. 137/1997. The said relevant decision and the reason for decision reads as under:-

“३. श्री. आर. डी. दशपुते विरुद्ध महाराष्ट्र शासन या मुळ याचिका क्र. १३७/९७ बाबत महाराष्ट्र प्रशासकीय न्यायाधिकरणाने स्वातंत्र्य सैनिकांनी केलेल्या नामनिर्देशन पत्राची पडताळणी करण्यास योग्य अशी यंत्रणा शासनाने प्रस्तावित केली नसल्यामुळे सध्या ब-याच स्वातंत्र्य सैनिकांच्या नामनिर्देशित व्यक्तींची पत्रे बनावट/खोटी असल्याबाबतच्या तक्रारी करण्यात येउन त्यांना नोकरीबरोबर निलंबित करण्याच्या घटना घडलेल्या आहेत. त्यामुळे या नामनिर्देशनाद्वारे नेमलेल्या कर्मचा-यांची कोणत्याही स्तरावर कोणत्याही वेळी पुन्हा पुन्हा चौकशी करण्यात येते. त्यामुळे ते कर्मचारी एका वेळी दोषी तर दुस-या वेळी निर्दोष असल्याचे आढळून येते. अशाप्रकारच्या त्रुटी न्यायाधिकरणाने निदर्शनास आणलेल्या आहेत आणि त्यावर उपाय म्हणून शासनाकडे नामनिर्देशनाबाबत केलेल्या तक्रारी पडताळणीकरिता योग्य ती यंत्रणा असावी, असे नमुद केले आहे.,

४. शासन असा आदेश देत आहे की,

जिल्हाधिका-यांच्या अधिपत्याखाली चौकशी कक्ष नेमण्यात यावा. सदर चौकशी कक्षाने पुढील मार्गदर्शक तत्वाच्या अनुषंगाने चौकशी अधिका-यांनी योग्य ती कार्यवाही करावी.

- १) नामनिर्देशन पत्राची विधी ग्राह्यता तपासण्यासाठी/चौकशी करण्यासाठी प्राधिकारी नेमण्यात यावे.
- २) सदर प्राधिका-यांनी नियमानुसार कार्यवाही करावी.
- ३) शासन सेवेतील कर्मचा-याला कमी करण्याबाबतची नियमानुसार योग्य असलेली पद्धत अनुसरण्यात यावी.

४) ज्या मूळ नामनिर्देशनाद्वारे नोकरी देण्यात आली होती, ते खोटे/बनावट होते, याची शहानिशा करून योग्य निर्णय घेण्यात यावा.

५) सदर नामनिर्देशपत्राची एकंदर चौकशी केल्यानंतर त्याची पुन्हा पुन्हा चौकशी करण्यात येऊ नये. तसेच नामनिर्देशनपत्र बनावट/खोटे आढळून आल्यास संबंधित कर्मचा-यावर विहित शासकीय पध्दती अवलंबून नियमानुसार कार्यवाही करावी.

सर्व जिल्हाधिका-यांनी वरील आदेशांची काटेकोरपणे अंमलबजावणी करावी.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.”

11. From Sub Clause 5 of Clause no. 4 as aforesaid it seems that the Government has issued direction that in case the nomination from freedom fighter category was found fabricated/false, it was directed that the departmental action as per Rules shall be taken against the employee.

12 In this case, it is material to note that the applicant has been appointed on the post and was working there since long i.e. from 15.05.1992. All of a sudden, he was removed from service vide impugned order dated 8.3.2007 i.e. after 15 years without initiating Departmental Enquiry against him and this definitely against the Rules.

13. In this case vide impugned order dated 8.3.2007, the applicant has already been removed from service w.e.f. 8.3.2007. The applicant is claiming restoration on his original post with back pay and allowances. Admittedly, he is not in service since 2007 i.e. from 8.3.2007. The learned Presenting Officer submits that as per guidelines issued in G.R. dated 24.06.1997 in Sub Clause 5 of Clause no. 4 it has been mentioned that, “सदर नामनिर्देशपत्राची एकंदर चौकशी केल्यानंतर त्याची पुन्हा पुन्हा चौकशी करण्यात येऊ नये. तसेच नामनिर्देशनपत्र बनावट/खोटे आढळून आल्यास संबंधित कर्मचा-यावर विहित शासकीय पध्दती अवलंबून नियमानुसार कार्यवाही करावी .” and therefore, the respondents were under impression that there was no need to make enquiry again and again, once the enquiry is held by the officer competent by the Collector, however that is not so. However, in view of the fact that the applicant has already been removed from service w.e.f. 8.3.2007 and the fact that there is preliminary enquiry report as per the directions issued as per G.R. dated 24.06.1997 by the competent authority. We are of the opinion that it will not be proper to reinstate the applicant immediately. Instead, it will be in the interest of justice to direct the respondent authorities to initiate departmental enquiry against the applicant within stipulated period and the reinstatement and other reliefs may be

subject to the result of said enquiry. Hence, we pass following order:-

O R D E R

1. The Original Application is partly allowed.
2. The impugned order of removal of the applicant dated 8.3.2007 is quashed and set aside.
3. The respondents are directed to initiate Departmental Enquiry as per Rule 8 of the M.C.S. (D&A) Rules 1979 and complete the said enquiry in all respect within six months from the date of this order.
4. The applicant shall be entitled to be reinstated in service and all consequential benefits, in case, in the said enquiry the applicant is exonerated.

There shall be no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)