

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
MISCELLANEOUS APPLICATION NO.621 OF 2015
IN
ORIGINAL APPLICATION NO.260 OF 2012**

DISTRICT : PUNE

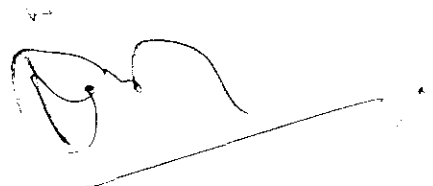
The State of Maharashtra,)
Through the Additional Chief Secretary,)
Cooperation, Marketing & Textiles Department)
Mantralaya, Mumbai 400032)..Applicant
(Ori.Resp. No.1)

Versus

Shri Shivling Keshav Pawar,)
R/o A-202, Surabhi Park, S.No.161/162,)
Nagardas Road, Aundh, Pune 411007)..Respondent
(Ori. Applicant)

Shri A.R. Pitale – Special Counsel with Miss Neelima Gohad –
Presenting Officer for the Applicant-original Respondent No.1

Shri A.V. Bandiwadekar with Shri V.V. Joshi - Advocates for the
Respondent-original Applicant



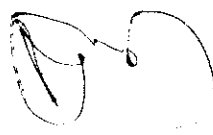
CORAM : Rajiv Agarwal, Vice-Chairman
R.B. Malik, Member (J)
DATE : 2nd March, 2016
PER : R.B. Malik, Member (J)

J U D G M E N T

1. This MA is moved by the respondent no.1 State of Maharashtra through the Additional Chief Secretary, Cooperation, Marketing and Textiles Department in a disposed of Original Application (OA). He was the original respondent no.1 to the disposed off OA. The original applicant is the sole respondent herein. The Director of Sericulture, Maharashtra State, was the second respondent to the disposed off OA but he has not been impleaded hereto. We shall keep calling the parties as State and the original applicant respectively.

2. The MA seeks extension of time by two months for fresh enquiry against the applicant.

3. We in this very bench disposed off by a common judgment two OAs brought by the original applicant being OA No.987 of 2010 and OA No.260 of 2012. The first OA was allowed and the charge sheet which was the subject matter thereof came to be quashed and set aside. The second OA



came to be disposed off by the following final order in Para 34 thereof:

“34. The order made by the State of Maharashtra in the Cooperation, Marketing and Textile Department No. रेशीम-१४०८/प्र.क्र.२५४/रेशीम कक्ष, मंत्रालय, dated 18th May, 2010 (Annexure ‘A-21’, Page 191 of the paper book) and the appellate order dated 10th January, 2012 (Annexure ‘A-25’, Page 218 of the paper book) both stand quashed and set aside. The matter stands remanded to the disciplinary authority to act in accordance herewith from the stage of the receipt of the report of the Enquiry Officer dated 25/26th September, 2008 in D.E. No.5/2004. The disciplinary authority shall after giving an opportunity of being heard to the Applicant shall consider the whole matter afresh in accordance with the law and observations made herein. The disciplinary authority shall decide the matter on or before 31st December, 2015. The Applicant shall appear before the disciplinary authority on 21st September, 2015 on which date, the further course of action shall be decided, so that the matter must be decided finally by 31st December, 2015. The disciplinary authority shall within one week from his order inform the same to the Applicant. If the time



limit herein prescribed is not kept, the Applicant shall stand exonerated and the charge shall be taken as quashed and set aside without any further reference to this Tribunal. In that case, the Applicant shall be entitled to all pensionary and retiral benefits as if no DE took place against him.

In case, the Applicant was aggrieved by the order of the disciplinary authority, he shall prefer an appeal within the prescribed time limit and if no time limit is prescribed, then within four weeks thereof. In case the appeal is preferred, the same shall be decided within two months thereof, failing which the detailed directions given just now in relation to the disciplinary authority shall apply to the appellate authority as well in toto. The Original Application No.260/2012 is allowed in these terms with no order as to costs.

The Registrar to comply with the directions regarding forwarding a copy hereof to the Chief Secretary, State of Maharashtra (Paragraph 9 hereof)."

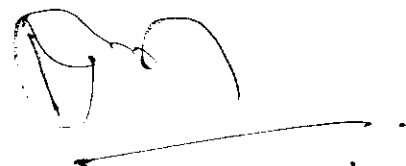
(Emphasis supplied)

4. The entire paragraph having been extracted hereinabove no further elaboration is really necessary. It is self



speaking and self operating as well. If the time limit was not adhered to then no further scope was there except for the event so ordained to take place as emphasized hereinabove. Be it therefore noted quite clearly that the defaulting respondents would not be in a position to redeem their case at all. The mere presentation of this MA shall surely not be able to save them from the consequences of their failure to keep the deadline of 31.12.2015. There can be no escape at all from the consequences. The justification of our view shall be furnished by the following discussion.

5. At this stage a very brief reference to the said judgment will not be out of place. As already mentioned above one OA came to be allowed and the charge sheet was quashed. The allegations made against the applicant who at the relevant time was Joint Director in Sericulture Department, Pune were under 5 heads. The allegations were of financial impropriety. The enquiring officer for all practical purpose and in good measure did not find the applicant guilty of any major misconduct. The perusal of the record would show that the Director then working as such one Shri Kalantri in fact came in for adverse comments by the enquiring officer. Shri Kalantri was not the disciplinary authority but still he acted as such for all practical purposes and in effect by implicating the applicant he tried to extricate himself. In fact in paragraph 28 of our judgment we made clear observations that it was still be open



to the Government to consider if DE should be initiated against the said Director Shri Kalantri. The punishment imposed on the applicant, however, was compulsory retirement with a direction to reimburse the Government by way of recovery from the applicant of an amount of Rs.33.7 lakhs. It was found by us during the course of our judgment that as far as recovery of that amount was concerned it was not even the subject-matter of the DE against the applicant. There was not even a charge against him in that behalf. Further somehow or the other by the addition of just one more charge a second DE was initiated against the applicant which as mentioned above came to be quashed in deciding OA No.987 of 2010.

6. It was in the above background that we mandated what we did and a time limit was prescribed which was not capable of being extended and by a self operation the consequence of non compliance would follow.

7. Now, it is in the above background that we have to consider the MA for extension of time. Instead of in any manner paraphrasing the application we may as well reproduce Paras 3 and 4 of the MA verbatim:

“3. That as per the directions of the Hon’ble Tribunal, the Respondent (Original Applicant) appeared before the Additional Chief Secretary on 21.9.2015. That, it is



necessary to bring to the kind notice of this Hon'ble Tribunal few facts in this matter. The Hon'ble Tribunal, in their judgment, have pointed out the lacunae in the enquiry of the Original Applicant. While considering the case of enquiry afresh, the Disciplinary Authority will have to take into account the said lacunae which is pointed out by the Hon'ble Tribunal. In this connection the Disciplinary Authority has collected some documents from concerned offices. The examination of these documents was already completed. Now, the matter is being examined according to Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The Disciplinary Authority (Applicant) will forward the Enquiry report and his opinion on the same as per the provisions contained in Rule 9(2) in the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, and will call for the say from the respondent (original Applicant) within 15 days. The appropriate action as per the directions and guideline given by Hon'ble Tribunal in the judgment shall be taken after receipt of the say and after examining the case. Thereafter, Disciplinary Authority the matter will have to be submitted to the General Administration Department, Hon'ble Minister (Textile), Maharashtra Public Service Commission, etc. for their approval/orders. During December 2015, the Winter Session of the State Assembly is at Nagpur and all the responsible officer including the

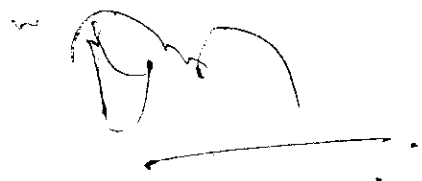


Disciplinary Authority are awfully busy in the Assembly work. In view of the extreme pressure of work, all this process of fresh enquiry may require at least two months more.

4. It is therefore prayed that, this Hon'ble Tribunal may kindly be pleased to extend the time limit for fresh enquiry and deciding this matter for two months."

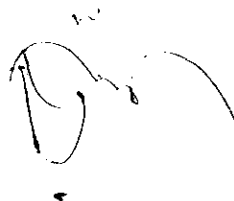
(Emphasis supplied)

8. Nothing more really needs to be said. The paragraph 3 is remarkable for its vagueness and complete disdain to the need and necessity to comply with the orders of the Tribunal. There are absolutely no particularization as regards the dates etc. There is an affidavit in rejoinder as well filed by the same officer. Paragraph 3 thereof again refers to the State Assembly Session which was held at Nagpur during 7.12.2015 to 23.12.2015. It is mentioned that all the officers were busy with that session and pertinently even then other officers got time to initiate this MA proceedings on 21.12.2015. There are allegations against the applicant of delaying the enquiry which is not worth the paper it is written on. Most significantly the entire course of action was fully laid down by us in Para 34 of our judgment in the OA. To resume the proceeding from the stage of submission of the report by the EO to the disciplinary authority has been described as "fresh enquiry". It reflects



poorly on the capacity to understand even the simplest of the language the directions were couched in. Or it is a deliberate display of contrived innocence which is completely mischievous. But even then one plainly is aghast at the manner in which the affiant who swore the affidavit has with impunity even failed to set out the facts that he was conscious of the fact that there was a time limit and on its expiry the consequences would follow. Whatever had to be done had to be done within that time limit.

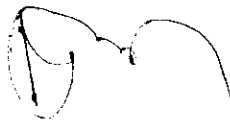
9. Assuming that despite the clear language of our order in the OA and despite the principles of *functus officio* we could still entertain such a request as is made by the State and this we must emphasize is only an assumption, it is still not possible for us to simply gloss over the complete callousness and total disdain which the State has exhibited if one went by the affidavits filed by the affiant Shri Vilas Ramdas Thakur, Under Secretary in the office of Additional Chief Secretary (Textile), Cooperation, Marketing and Textiles Department, Mantralaya, Mumbai. We must mention without mincing words that the very thought that such a cavalier attitude could be shown by an officer of the State is really incredible. It is a sufficient enough ground for the Government to hold appropriate enquiry against the said officer Shri V.R. Thakur and punish him, if found guilty. He could not have taken the



whole thing as lightly as it was. We are going to give necessary directions in that behalf.

10. In so far as the State Assembly Session is concerned everyone respects the State Legislative Body being the highest law making body of the State. However, the record would show that granting all latitude to the respondents practically nothing was done in the remaining days of September and the months of October and November, 2015 by the respondents and even in the month of December the Session was only for two weeks. We are, therefore, very clearly of the view that by a belated reference to the State Assembly Session more particularly and predominantly in the affidavit in rejoinder the State has in fact compounded its felony.

11. For the foregoing we find absolutely no merit in this MA and the same is accordingly dismissed with no order as to costs. The observations in paragraph 4 above need to be noted by all concerned. The Additional Chief Secretary (Textile), Cooperation, Marketing and Textiles Department, Mantralaya, Mumbai be furnished a copy hereof with directions to note our observations in Para 9 above and comply therewith by initiating action against Shri Vilas Ramdas Thakur, Under Secretary in that office who swore affidavits in support and rejoinder in this MA. The compliance be made by the said Additional Chief Secretary within three months from today and though this MA



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is now disposed of but the details of the action and punishment if any be informed to this Tribunal within one week thereafter. The Registrar of this Tribunal shall place before this bench such a compliance report before this bench on 6.6.2016.

Sd/-
(R.B. Malik)
Member (J)
2.3.2016

Sd/-
(Rajiv Agarwal)
Vice-Chairman
2.3.2016

Date : 2nd March, 2016

Dictation taken by: S.G. Jawalkar.