

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 114 OF 2022
WITH**

MISC APPLICATION NO 704 OF 2022

IN

ORIGINAL APPLICATION NO 114 OF 2022

DISTRICT : PUNE

Shri Ankush Nana Dhonde,)
Worked as Taluka Agriculture Officer)
Having office at Lanja, Dist-Ratnagiri.)
R/o: A-Rui Bhagwanbaba Nagar,)
Post-Sawar, Tal-Baramati, Dist-Pune.)...**Applicant**

Versus

The State of Maharashtra)
Through Addl. Chief Secretary,)
Agriculture Department, Mantralaya,)
Mumbai 400 032.)...**Respondents**

Shri B.A Bandiwadekar, learned advocate for the Applicant.
Smt K.S Gaikwad, learned Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)**

DATE : 06.02.2023

J U D G M E N T

1. The applicant prays that the impugned order dated 12.10.2021 passed by the Respondent by which his services was terminated from the post of Taluka Agriculture Officer for failure to pass the Departmental Examination during the probation period of 2 years in requisite time and chances be quashed and set aside and the applicant be granted all the consequential service benefits. The Misc Application 704/2022 is filed by the applicant seeking directions of this Tribunal to allow /dispose of the Original application in terms of the decision of the Hon'ble Tribunal dated 1.8.2022 in O.A 1009/2021.

2. The applicant joined the service as Agriculture Officer, Group-B, (Junior) on 13.9.1991. Thereafter, vide order dated 4.7.2009 he came to be promoted to the post of Taluka Agriculture Officer, Group-B (Senior). Learned counsel for the applicant submits that by order dated 12.10.2021 his services were abruptly terminated without issuing show cause notice. Learned counsel for the applicant submits that as per the order of appointment he was required to pass the departmental examination within two years. However, he did not pass the said examination. The said period can be extended by one more year for passing the examination. If the applicant does not clear the said examination, his service can be terminated. Learned counsel for the applicant further submits that the applicant is going to retire on 31.5.2023.

3. Learned counsel for the applicant submits that he relies on the judgment of this Tribunal dated 1.8.2022 in O.A 1009/2021, Shri Sandeep B Kamble Vs. The State of Maharashtra & Ors. In the said case, his colleague who was appointed along with the applicant did not clear the departmental examination and who has

already retired, his pensionary benefits were withheld on the ground that he did not pass the departmental examination. The said Original Application was allowed and the applicant was granted the pensionary benefits. Learned counsel for the applicant submits that his case is similar to that of Shri Sandeep Kamble. L

4. Learned counsel for the applicant points out to G.R dated 1.11.1977, which states that a Government employee is exempted from passing the departmental examination after attaining the age of 45 years. He further relies on the G.R dated 1.3.2018 by which the policy decision was taken to exempt a Government employee from passing the departmental examination after completion of age of 50 years.

5. Learned P.O relies on the affidavit in reply dated 3.6.2022 filed by Amol N. Sakharkar, Under Secretary, Agriculture, Animal Husbandry, Dairy Development and Fisheries Department, and submits that the decision to terminate the services of the applicant is taken as the applicant did not pass the departmental examination within a stipulated period as is prescribed by the Rules. Learned submits that the G.R dated 1.11.1977 is not applicable to the present case as it is a common policy decision of the Government. Learned P.O submits that the applicant is not entitled to consequential service benefits on the ground of 'No Work No Pay'

6. The case of the applicant stands on merit. The facts unfolded before us disclose that the Respondent-Government has allowed the applicant to work even after 3 years of the stipulated period given for passing the departmental examination. Once the applicant is allowed to continue on the same post and thereafter promoted to the higher post, the Respondent-State

looses the right to take any action against the applicant on this ground. It is not the case of that the Respondent-State was kept in dark by the applicant about passing of the departmental examination. His service record was before the Respondent-State and yet he was given promotion. Thereafter, he was allowed to continue for 12 years

7. We are surprised to know the fact that the Respondent-State terminated the services of the applicant without giving notice to the Applicant which is violative of Article 311 (1) of the Constitution of India. We do not accept the submissions made by the learned P.O and so also the averments made in the affidavit in reply dated 3.6.2022. We make it clear that the principle of 'No Work No Pay' will not come in the way of the applicant as the applicant was illegally terminated by the Respondent-State.

8. In view of the above, we pass the following order:-

- (a) The Original Application is allowed.
- (b) The impugned order dated 12.10.2021 terminating the services of the applicant is illegal, void and hereby quashed and set aside.
- (c) The applicant's services is to be treated as continuous from 1991 onwards.
- (d) The Respondents are directed to reinstate the applicant in service on or before 13.2.2023.
- (e) The applicant is entitled to all consequential service benefits as per the rules.

- (f) As the Original Application is allowed, the Misc Application stands disposed of.
- (g) The copy of this order be sent to General Administration Department for information.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 06.02.2023
Dictation taken by : A.K. Nair.