

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.943 OF 2023

DISTRICT : PUNE

Shri Haribhau Banduji Shinde,)
Senior Administrative Officer,)
Higher Education Directorate,)
Department of Higher & Technical Education, Pune-1)..Applicant

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
Department of Higher & Technical Education,)
Mantralaya, Mumbai 400032)
2. The Director, Higher Education Directorate,)
Department of Higher & Technical Education,)
Pune 411 001)
3. Dr. Prakash Dhondu Bacchao,)
Administrative Officer,)
Office of Divisional Joint Director,)
Higher Education Department, Solapur)..Respondents

Smt. Punam Mahajan – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for Respondent No.1 & 2

Shri M.D. Lonkar – Advocate for Respondent No.3

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

RESERVED ON : 1st July, 2024
 PRONOUNCED ON: 1st August, 2024
 PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. The applicant who is working as Senior Administrative Officer, Higher Education Directorate, Department of Higher & Technical Education, Pune challenges the impugned order dated 13.1.2023 wherein the respondent no.1 gave additional charge of Joint Director, Department of Higher and Technical Education (Administration), Maharashtra Education Services, GR-A, Pune to Respondent No.3, who is working as Administrative Officer, Office of Divisional Joint Director, Higher Education Department, Solapur.

2. In this case it is seen that as per GR dated 4.1.2021 a committee consisting of the following members was constituted for recommendations of eligible candidates/officers for appointment to the post of Divisional Joint Director, Higher Education/Joint Director (Administration) on temporary basis:

Sr. No.	Name with designation	Post
1	Shri Chandrashekhar V. Oak, IAS (Retired), Former Chairman, Maharashtra Public Service Commission	Chairman
2	Shri Abhay Wagh, Director, Technical Education, Directorate Office, Mumbai	Member
3	Shri Dattatraya Kahar, Dy. Secretary (MASHI), Higher & Technical Education, Department, Mantralaya, Mumbai	Ex-Officio Secretary

3. The Government vide its communication dated 12.3.2021 has prescribed the procedure/requirement for recommendation of the candidates for the post of Joint Director, Higher Education. For the post

of Joint Director (Administration) the following requirement was laid down:

(i) Minimum 3 years' experience on the post of regular Senior Administrative Officer, Maharashtra Education Service, Group A cadre.

(ii) Minimum 6 years' experience on the post of regular Administrative Officer, Maharashtra Education Service, Group A cadre.

4. As per communication dated 30.3.2021 based on Government instructions, the Director of Higher Education, Pune informed all the offices of Divisional Joint Director, Higher Education at State level to submit applications for the post of Joint Director, Higher Education and Joint Director (Administration). Out of the applications received, 3 candidates were present for interview. It is important to note that for the said post the applicant in this OA did not submit the application. As per GR dated 14.7.2021 the Government vide its decision dated 4.3.2021 accepted the recommendations of the committee for giving additional charge of the post of Joint Director (Administration) to the following officers for a period of 2 years on temporary basis or till the appointment of regular candidate through MPSC or till further orders of the Government:

Sr. No.	Name and Designation	Place of appointment
1	Dr. Prakash Dhondu Bachhav, Administrative Officer, Office of Divisional Joint Director, Higher Education, Solapur	Joint Director (Administration) Office of Director, Higher Education, Pune
2	Shri Hari Vijay Ganpatrao Shinde, Administrative Officer, Office of Divisional Joint Director, Higher Education, Pune	Joint Director, Shikshan Shulka Samiti, Mumbai

5. The Government vide its GR dated 3.11.2022 took a decision for taking interview of working of the existing Joint Directors, Higher Education and Joint Director (Administration) as per the duties and responsibilities. The Government then withdrew the earlier selection committee and constituted new committee of the following members:

Sr. No.	Name with designation	Post
1	Shri Sanjay Chahande, IAS, Former Additional Chief Secretary	Chairman
2	Dr. Nitin Karmalkar, Former Vice Chancellor, Savitribai Phule University, Pune	Member
3	Shri Ajit Baviskar, Dy. Secretary, Higher & Technical Education, Department, Mantralaya, Mumbai	Member Secretary

6. The committee scrutinized the applications and the interviews were fixed in the first week of December, 2022. Total 3 candidates submitted their applications and applicant was one of them. Interviews were fixed on 9.12.2022 and 10.12.2022 for the post of Joint Director, Higher Education and Joint Director (Administration). In accordance with the report and merit/marks assessed by the committee constituted, it was decided by the Government to continue the services of the existing officer who has been recommended in the first preferential Sr. No.1. Applicant acquired 2 marks and respondent no.3 acquired 6 marks out of 10 marks.

7. Smt. Punam Mahajan, Ld. Advocate for the applicant has raised objection challenging the constitution of committee and the selection of respondent no.3 on the ground that there is deviation from the guidelines stated in the Government Circular dated 5.9.2018. She has submitted that once procedure is laid down by the Government by way of guidelines how the Government can deviate from the procedure by entrusting

different method of selection for the post of Joint Director, Higher Education.

8. Ld. Advocate for the applicant further pointed out that no Departmental Enquiry (DE) is pending against the applicant. On the contrary the DE is pending against the respondent no.3. Ld. Advocate submitted that in view of sub clause (1) of clause 2 of GR dated 5.9.2018 generally the additional charge is given to the senior most experienced officer and if such officer is not available and by superseding him, if charge is given to a junior officer then reasons in writing are to be recorded in the noting. Ld. Advocate submits that no such noting is available and therefore the order is illegal and needs to be quashed and set aside.

9. Ld. Advocate for the applicant submitted that a provisional seniority list dated 1.1.2021 was published by the Higher Education Department that Senior Administrative Officers Grade A and the applicant was listed at Sr. No.1 in the seniority list. She further stated that the provisional seniority list dated 8.2.2023 was published by the Higher and Technical Education Department of Administrative Officers, Grade-A and that respondent no.3 was listed at Sr. No.2 in the seniority list.

10. Ld. Advocate for the applicant further pointed out that applicant was on medical leave from 20.10.2022 to 21.11.2022 as he has fractured his leg. The applicant had submitted a representation dated 27.1.2023 to respondent no.2 requesting that the additional charge of Joint Director, Head Office, Higher & Technical Education Department be handed over to him based on GR dated 5.9.2018.

11. Ld. Advocate for the applicant has submitted that in the order dated 28.6.2024 passed by this Tribunal, the statement made by Ld. Advocate

for Respondent No.3 that in the common seniority list of 1.1.2022 to 31.12.2022 the name of Respondent No.3 is shown at Serial No. 1, name of one Ms. Archana Boharde is at Serial No.2 and the name of Applicant is shown at Serial No.3 and thus on merit Respondent No.3 is shown as senior, is false. Ld. Advocate for the applicant has pointed out that in the impugned list name of Respondent No.3 is shown at Serial No.2. However, the name which is addressed as junior is of some other person whose name is 'Harivijay Ganpatrao Shinde' whereas the name of the present Applicant is 'Haribhau Banduji Shinde'. Secondly, she has submitted that the impugned seniority list is of the cadre of Administrative Officer, whereas the Applicant belongs to the cadre of Senior Administrative Officer and the seniority list of the said Senior Administrative Officers as on 1.1.2021 is placed on record at page 30 and in the said list name of only one person i.e. of Applicant 'Haribhau Banduji Shinde' is shown at Serial No.1.

12. Shri M.D. Lonkar, Ld. Advocate for Respondent No.3 pointed out that due procedure was followed by the Government in giving additional charge for the post of Joint Director (Administration). He pointed out that respondent no.3 fulfilled the eligibility criteria prescribed by the Government that is not below 6 years' experience on the post of regular Administrative Officer, Group-A for the post of Joint Director (Administration). He further submitted that respondent no.3 has been selected by the committee on fulfillment of the eligibility criteria and merit only. Therefore, the issue mooted by the applicant in the present OA regarding seniority is irrelevant as the respondent no.3 has been appointed through selection on merit and fulfillment of eligibility criteria.

13. Shri A.J. Chougule, Ld. PO opposes the submissions made by the Ld. Advocate for the applicant. At the outset he submits that the GR dated 5.9.2018 is not applicable to the present facts of the case but the

latest GR dated 3.11.2022 is applicable and the Government has taken a decision by following the said GR. Ld. PO pointed out that continuation of additional charge of respondent no.3 as Joint Director (Administration) was as per GR dated 13.1.2023.

14. Ld. PO relied on the affidavit in reply dated 28.6.2024 filed by Shailendra Kamlakar Deolankar, Director of Higher Education, Pune and states that based on the proposal submitted by the Director of Higher Education, Pune vide communication dated 25.9.2023 the Government has considered the issue of entrusting additional charge of office of Regional Joint Directors on administrative ground and decision has been taken vide GR dated 13.1.2023 thereby giving additional charge of Regional Joint Director, Higher Education, Mumbai to the new teacher including present applicant on temporary basis till further orders as mentioned in the Appendix B of GR dated 13.1.2023. Ld. PO pointed out that in view of the Government decision vide GR dated 3.11.2022, now the grievance raised by the applicant in the present OA does not survive and the present OA should be disposed off.

15. We have considered the submissions of both the sides. This matter revolves around the issue of entrusting additional charge of the post of Joint Director (Administration). It is seen that the impugned GR dated 5.9.2018 is not applicable to the present facts of the case but the latest GR dated 3.11.2022 is applicable. The Government has taken a decision by following the GR dated 3.11.2022. It is important to note that the GR dated 5.9.2018 talks of the norms of giving additional charge which reads as under:

“२. उपरोक्त परिस्थिती विचारात घेऊन, अतिरिक्त कार्यभार कोणास देण्यात यावा यासंदर्भात खालीलप्रमाणे मार्गदर्शन सूचना देण्यात येत आहेत:-

१) महाराष्ट्र नागरी सेवा (वेतन) नियम, १९८१ मधील नियम ५६ नुसार शासकीय कर्मचाऱ्यांकडे त्याच्या स्वतःच्या पदाव्यतिरिक्त दुसऱ्या पदाचा अतिरिक्त कार्यभार सोपविण्यात येतो. असा हा दुसऱ्या रिक्त असलेल्या पदाचा अतिरिक्त कार्यभार, एकाच प्रशासकीय विभागांतर्गत, प्रशासकीय सोय व निकड लक्षात घेवून शक्यतो त्याच कार्यालयातील, त्याच संवर्गातील सर्वात सेवाजेष्ठ, अनुभवी व कार्यक्षम / अधिकारी कर्मचाऱ्यांकडे सोपविण्यात यावा. जेथे असे अधिकारी / कर्मचारी उपलब्ध नसतील तेथे संबंधित पदाला लागत असलेल्या निम्न संवर्गातील सर्वात ज्येष्ठ अधिकारी/ कर्मचाऱ्यांना अतिरिक्त कार्यभार देण्यात यावा. काही बाबींमुळे सर्वात ज्येष्ठ अधिकारी / कर्मचारी यांना डावलून नंतरच्या व्यक्तीला अतिरिक्त कार्यभार द्यावयाच असेल तर सर्वात ज्येष्ठ अतिरिक्त कार्यभारासाठी का अपात्र आहे त्याची लेखी कारणे अभिटिप्पणीत नमूद करावीत.”

16. The Government vide GR dated 3.11.2022 took a decision to review the working of the existing Joint Directors, Higher Education and Joint Directors (Administration). The applications were called from interested eligible candidates for continuation of the post of Joint Director (Administration). It is seen that due procedure has been followed in the selection of the candidates for holding additional charge of the post of Joint Director (Administration). It is also noted that respondent no.3 has been selected by the committee on fulfillment of the eligibility criteria and merit only and not on the basis of seniority.

16. In view of the aforesaid facts and circumstances of the case, we find no merit in the contentions raised by the Ld. Advocate for the applicant and the OA deserves to be dismissed. Hence, the Original Application is dismissed with no order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
1.8.2024

Sd/-

(Mridula Bhatkar, J.)
Chairperson
1.8.2024

Dictation taken by: S.G. Jawalkar.