

ORIGINAL APPLICATION NO. 484/2020
(Dr. Balasaheb Tak Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

[This matter is placed before the Single Bench due to non-availability of Division Bench.]

DATE : 11.5.2021

ORAL ORDER :

Heard Shri Amit A. Yadkikar, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents.

2. Record shows that on 2.5.2021 Shri V.R. Bhumkar, Presenting Officer appearing for the respondents on that day has placed on record copy of order dated 1.4.2021 thereby the impugned suspension order of the applicant dated 10.9.2020 (Annex. A.4 paper book page 152 of O.A.) is revoked. On that day he also placed on record copies of orders dated 7.4.2021 & 8.4.2021 passed by the Chief Administrative Officer, Office of Health Commissioner, Mumbai & the Deputy Director of Health Services, Latur respectively reinstating the applicant in service. In view of that it is the contention of the learned P.O. that the O.A. has become infructuous and it is to be disposed of.

3. On that day, Shri Ashish Manglani, learned Advocate holding for Shri Amit A. Yadkikar, learned Advocate for the applicant sought time to take instructions from the

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applicant as regards the recent developments in his suspension case.

4. Today, Shri Amit A. Yadkikar, learned Advocate for the applicant appeared before the Tribunal and submits that the present O.A. can be disposed of in view of revocation of the impugned suspension order of the applicant.

5. In view of above, the present O.A. stands disposed of as the grievance of the applicant is redressed by the respondents by revoking his suspension order. There shall be no order as to costs.

MEMBER (J)

C.P. 08/2021 in T.A. 01/2016 (W.P. No. 115/2016)
(Abhay G. Sanap Vs. State of Maharashtra & Ors.)

CORAM : Shri V.D. Dongre, Member (J)

(This matter is placed before the Single Bench
due to non-availability of Division Bench.)

DATE : 11.05.2021

ORAL ORDER :

Heard Shri Sandeep Munde, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent No. 1.

2. Learned Advocate for the applicant submits that in spite of follow up made by the applicant, the respondent Nos. 1 and 2 have failed to comply with the order dated 12.02.2021 passed by the Principal Bench of this Tribunal at Mumbai in T.A. No. 01/2016 (W.P. No. 115/2016). Thereby the respondent No. 2 i.e. the M.P.S.C. was directed to issue orders of recommendations within a period of two weeks from the receipt of copy of the order and further respondent No. 1 therein was directed to take steps within a period of two weeks.

3. Learned C.P.O. appeared on behalf of respondent No. 1 and stated that unless the recommendation made by the respondent No. 2, the role of respondent No. 1 in the main Transfer Application No. 01/2016 does not come into play. Hence, according to him no useful purpose would be served by issuing show cause notice to the respondent No. 1. He further submitted that Review Petition is already filed by

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C.P. 8/21 in T.A. 1/2016
(W.P. 115/2016)

the respondent No. 2 seeking review of the order dated 12.02.2021 in T.A. No. 01/2016. He submits that he does not know about the status of the said matter.

4. Considering the facts of the matter as disclosed in C.P. and documents annexed therein, at this stage, show cause notice is issued to the respondent No. 2.

5. S.O. to 11.06.2021.

MEMBER (J)

ORIGINAL APPLICATION NO. 196 OF 2021
(Sandip P. More Vs. State of Maharashtra & Ors.)

CORAM : Shri V.D. Dongre, Member (J)

(This matter is placed before the Single Bench
due to non-availability of Division Bench.)

DATE : 11.05.2021

ORAL ORDER :

Heard Shri K.B. Jadhav, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.

2. By this O.A., the applicant is challenging the show cause notice dated 30.04.2021 issued by the respondent No. 3 as to why his services should not be terminated as the Sport Certificate relied upon by him is declared invalid and seeks ad-interim relief.

3. Learned Advocate for the applicant has submitted that the said show cause notice is at Annexure A-12, page No. 35 of paper book. He further submits that the reply dated 03.05.2021 (Annexure A-13, page No. 39 of paper book) is filed by the applicant to the said show cause notice.

4. Merit certificate relied upon by the applicant is at Annexure A-1, page No. 14 of paper book. The said certificate is undated and it is issued by the General Secretary, Maharashtra Amateur Trampoline Association. Sport certificate in Form-3 dated 24.04.2018 issued by the

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Dy. Director of Sports & Youth Services, Aurangabad and it is Annexure A-2 (page No. 15 of paper book). Sport validity is issued by the same authority on the same day i.e. on 24.04.2018 is Annexure A-13 (Page No. 16 of paper book). Thereafter, the applicant came to be appointed by the respondent No. 2 on the post of Supply Officer, District Supply Office, Parbhani by the appointment order dated 22.02.2019. Since then he is working with the respondents.

5. After appointment of the applicant, the Deputy Director of Sports and Youth Services, Aurangabad submitted the verification report to the respondent No. 2 informing that the Sport certificate of the applicant is valid. The said certificate, however, is not annexed with the present O.A. About two years thereafter, the Deputy Director of Sports & Youth Services, Aurangabad conducted enquiry in respect of validity of the said Sport Certificate. The said authority by letter dated 16.09.2020 declared that the Sport Certificate is invalid. The applicant challenged the said order dated 16.09.2020 by filing W.P. No. 6701 of 2020 before the High Court of Judicature At Bombay Bench at Aurangabad. Interim relief was granted in the said W.P. by the Hon'ble High Court. The said W.P. came to be disposed of by order dated 03.02.2021 with liberty to file appeal before the Joint Director of Sports & Youth Services, Pune. Interim relief granted in favour of the applicant was

continued for 15 days. The said order is at Annexure A-6, page no. 24 of paper book.

6. According to the applicant, he preferred first appeal. During pendency of the said appeal, the applicant preferred W.P. No. 3201 of 2021 for continuation of Interim relief. As per order dated 18.02.2021, the said W.P. was disposed of extending the interim orders till the decision of the first appeal pending before the Joint Director. The copy of the said order is at Annexure A-7, paper book page No. 27. First appeal came to be rejected by the order dated 22.03.2021. It is at annexure A-8, page no 29 of paper book. The applicant has preferred second appeal.

7. Learned Advocate for the applicant has submitted that the last date of hearing of second appeal was 07.05.2021. On that date, the applicant could not remain present, as he was suffering from Covid-19 and the hearing of second appeal is adjourned and further no specific date is fixed.

8. Meanwhile, the impugned show cause notice dated 30.04.2021 is issued by the respondent No. 3 as to why services of the applicant should not be terminated. To this, the applicant has filed reply dated 03.05.2021. It is at Annexure A-13, page No. 39 of paper book.

9. Learned Advocate for the applicant by seeking interim order of not passing any adverse action/order against the applicant submitted that before terminating the services of the applicant, the respondents have to follow the provisions of G.R. dated 12.10.1993. In the said G.R. it is stated as follows :-

“It has now been decided that wherever it is found that a Government servant, who was not qualified or eligible in terms of the recruitment rules etc. for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. If he is a probationer or a temporary Government servant he should be discharged or his services should be terminated. If he has become a permanent Government servant, an enquiry as prescribed in Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 may be held and if the charges are proved, the Government servant should be removed or dismissed from service. In no circumstances, should any other penalty be imposed.”

10. Learned Advocate for the applicant invited my attention to the appointment letter dated 22.02.2019 (Annexure A-4, page No. 17 of paper book). The said appointment letter provides that the probation period of the applicant was of one year. The applicant has completed that probation period.

11. In view of the above, the learned Advocate for the applicant has submitted that during pendency of the first appeal, the applicant was protected by the Hon'ble High Court therefore, he is seeking interim relief of protection during pendency of the present O.A.

12. Learned C.P.O. appeared on behalf of respondents vehemently opposed the submissions of the applicant and stated that holding Departmental Enquiry as per G.R. dated 12.10.1993 before terminating the services would come in to play any, if the applicant is permanent employee and in otherwise. He has submitted that only because of one year is over does not mean that the applicant has become permanent employee. In view of the same, he submitted that no blanket order of interim protection can be granted before filing affidavit in reply by the respondents.

13. Considering the facts detailed as above, it is evident that the applicant is pursuing remedy of second appeal before the competent authority. It is a matter of record that during pendency of first appeal about the Sport Validity Certificate, the applicant was protected by way of interim relief. Now the present O.A. is filed challenging the show cause notice of termination. For the said purpose, G.R. dated 12.10.1993 (Annexure A-16 at page no. 53 of paper book) would also fall consideration. In such circumstances, in my opinion, it would be just and proper

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to grant interim relief of not taking any adverse action against the applicant till the affidavit in reply is filed by the respondents. Hence, by way of interim order the respondents are directed not to take any adverse action against the applicant till filing of the affidavit in reply by them.

14. Issue notices to the respondents, returnable on 10.06.2021.

15. Tribunal may take the case for final disposal at once and separate notice for final disposal shall not be issued.

16. Applicant is authorized and directed to serve on respondent/s intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of the case. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

17. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

18. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the

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Registry before due date. Applicant is directed to file affidavit of compliance and notice.

19. S.O. to 10.06.2021.

20. Steno copy and Hamdast is allowed to both parties.

MEMBER (J)

KPB ORAL ORDERS 11.05.2021