

ORIGINAL APPLICATION NO. 691 OF 2021
(Amol Vishwanath Padale Vs. State of Maharashtra & Ors.)

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

DATE : 12.11.2021

ORAL ORDER :

Heard Shri Rhshikesh Joshi, learned Advocate for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondents.

2. The present Original Application is filed by the applicant challenging the impugned order dated 27.10.2021 (Annexure A-7) issued by the respondent No. 3 i.e. the Principal, Government Polytechnic, Mhada Colony, Pachod Road, Ambad, Tq. Ambad, Dist. Jalna showing recovery of the excess amount paid to him on account of supposedly wrongly granting annual increments.

3. The applicant was appointed on the post of Junior Clerk with the respondent No. 3 as per the order dated 11.06.2015 (Annexure A-1). He was appointed on the said post under the reservation of S.T. category. The applicant through respondent No. 3 employer applied for Caste Validity certificate. However, the Caste Validity Certificate was not issued within a requisite period of six months as per the

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terms of employment. The applicant therefore, filed W.P. No. 14447/2017 in the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad. The said W.P. was disposed of by the order dated 15.12.2017 (Annexure A-2) and thereby committee was directed to decide the proposal of the applicant of Caste Validity Certificate within next 8 months. However, till today committee has not granted / issued Caste Validity Certificate.

4. Meanwhile, there was advertisement for the post of Junior Clerk in the District Court, Jalna. The applicant made application for the said post. The applicant was selected for the said post from Open category. He therefore, decided to join on the post of Junior Clerk in the District Court, Jalna. For that purpose, he tendered his application for resignation w.e.f. 30.06.2021 with immediate effect by depositing one month's salary. The applicant's resignation was accepted by the respondent No. 2 i.e. the Joint Director, Technical Education, Aurangabad Region, Aurangabad vide letter dated 24.08.2021 (Annexure A-4) w.e.f. 30.06.2021. The applicant was also relieved on 30.06.2021. The applicant joined on the post of

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Junior Clerk in the District Court, Jalna on 01.07.2021 and since then he is working there.

5. Though the applicant worked for more than five years with the respondent No. 3, he was not granted annual increments. On his application, annual increments were granted to him and the arrears were also paid to him.

6. Subsequently, the applicant made application for leave encashment for the leave of 156 days. His proposal was forwarded by the respondent No. 3 to the respondent No. 2 and at that time, vide letter dated 06.10.2021 (Annexure A-5), the respondent No. 3 communicated to the respondent No. 2 that the applicant was granted annual increments. The respondent No. 2 accordingly granted leave encashment vide letter dated 13.10.2021 (Annexure A-6), however with rider of recovery of excess amount paid on account of annual increments. In view of that the respondent No. 3 issued impugned order of recovery dated 27.10.2021 (Annexure A-7).

7. Learned Advocate for the applicant strenuously urged before me that the annual increments were

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granted to the applicant in terms of G.R. dated 24.05.2002 (Annexure A-3), which refers to provisions of Rule 36 and 39 of the Maharashtra Civil Services (Pay) Rules, 1981. He submits that without issuing show cause notice to the applicant, the impugned order is passed. In view of the same, prima-facie, it seems that the impugned order suffers from want of principles of natural justice. Hence, the same is required to be stayed by granting interim relief. Thereby no irretrievable prejudice will be caused to the respondents. Hence, the interim relief is granted in terms of prayer clause 8(A) till filing of the affidavit in reply by the respondents.

8. Issue notice to the respondents, returnable on 15.12.2021.

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

10. 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.

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11. 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.

12. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

13. S.O. to 15.12.2021.

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

15. The present matter be placed on separate board.

MEMBER (J)

ORIGINAL APPLICATION NO. 694 OF 2021
(Avinash G. Chonde Vs. State of Maharashtra & Ors.)

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

DATE : 12.11.2021

ORAL ORDER :

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

2. The present Original Application is filed by the applicant challenging the impugned order dated 26.10.2021 passed by the respondent No. 2, the Commissioner, Sports & Youth Services, M.S., Pune thereby rejecting the second appeal filed by the applicant against the rejection of first appeal order dated 1.3.2021 passed by the respondent NO. 3, the Joint Director, Sports & Youth Services, M.S. Pune confirming the order of the respondent No. 4, Deputy Director, Sports and Youth Services, Aurangabad Division, Aurangabad, invalidating the verified Sports Certificate in the name of the applicant dated 15.7.2017 (Annexure 'A-6', page-61 of the paper book) on the basis of which the applicant got an employment to the post of Assistant Motor Vehicle Inspector in the office of respondent No. 6 i.e. the Regional Transport Officer, Parbhani, Tq. & Dist. Parbhani. The appointment letter of the applicant for the said post is dated 14.10.2019 (Annexure 'A-7').

3. Learned Advocate for the applicant submitted that initially the applicant challenged the said order by filing W.P. No. 7563/2020 in the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad (Annexure 'A-10', page-71 of paper book). In the said writ petition by order dated 4.11.2021 interim relief was granted. The said writ petition along with other similar writ petitions was disposed of by the Hon'ble High Court by an order dated 19.1.2021 (Annexure 'A-11') granting liberty to the applicant and others to avail alternate remedy.

4. From the facts on record, it is evident that the applicant is in service since 2019. The applicant got an employment on the basis of verified Sports Certificate. It is the grievance of the applicant that the show cause notice was not served on the applicant before invalidating Sports Certificate by an order dated 16.9.2020 (part of Annexure 'A-9' page-69). The applicant submits that he received the copy of show cause notice dated 10.8.2020, as well as, copy of order dated 16.9.2020 only upon making application by the applicant dated 22.10.2020 (Annexure 'A-8', page-66 of paper book). In the circumstances, the applicant apprehends that he is likely to be terminated from the service. Hence, the applicant seeks interim relief in terms of prayer clause 48 (D), which is as follows: -

“D. To grant interim injunction restraining the respondent Nos. 5 and 6, their agents, servants and subordinates from taking any adverse action against the applicant pursuant to the impugned order dated 26.10.2021 passed by the Respondent No. 2, the Commissioner, Sports & Youth Services, MS, Pune, pending hearing and final disposal of the original application.”

5. In the circumstance as above, *prima facie*, it appears that initially the Sports Certificate was validated. It is invalidated subsequently, but the applicant stated that before that he did not receive show cause notice. First and second appeal filed by the applicant are already dismissed. In view of the same, in my considered opinion, *prima facie*, there is substance in the contentions raised by the applicant that the respondents are likely to take adverse action against the applicant. Considering the situation as above in my opinion, *prima facie*, this is a fit case to grant interim relief till filing of the affidavit in reply by the respondents. Hence, interim relief in terms of prayer clause 48 (D) is granted till filing of the affidavit in reply by the respondents.

6. Issue notice to respondents, returnable on 20.12.2021.

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

8. 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.

9. 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.

10. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

11. S.O. to 20.12.2021.

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

13. The present case be placed on separate board.

MEMBER (J)

ORIGINAL APPLICATION NO. 695 OF 2021
(Narayan D. Mundhe Vs. State of Maharashtra & Ors.)

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

DATE : 12.11.2021

ORAL ORDER :

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

2. The present Original Application has been filed by the applicant challenging the impugned order dated 17.8.2021 (Annexure 'A-9') and corrigendum dated 16.9.2021 (Annexure 'A-10') passed by the respondent No.3, the Deputy Director, Sports and Youth Services, Aurangabad Division, Aurangabad, thereby invalidating Sports Certificate dated 14.3.2017 (Annexure 'A-7') issued by respondent No. 3 only.

3. The applicant has also challenged the first impugned order dated 17.8.2021 by preferring appeal dated 27.9.2021 (Annexure 'A-11') before respondent No. 2 i.e. the Joint Director, Sport and Youth Services, Pune. It is the further contention of the applicant that during the pendency of the said appeal the applicant received corrigendum dated 16.9.2021 (Annexure 'A-10') on 30.9.2021. Appeal against the earlier order 17.8.2021 is still pending before the respondent No. 2. In the circumstances, the applicant apprehends that some

coercive action will be taken against him by the respondents.

4. Record shows that on the basis of verified Sport Validity Certificate he got an appointment on the post of Police Constable as per letter dated 6.7.2017. The applicant is in service with the respondent No. 5 since then. It is the grievance of the applicant that the applicant has not received any show cause notice from respondent No.3 before passing the impugned order and corrigendum. In the circumstances, in my considered opinion, it would be just and proper to grant interim relief till filing of the affidavit in reply by the respondents. Hence, the prayer of the applicant to grant interim relief is granted in terms of prayer clause 'H' (B) till filing of the affidavit in reply by the respondents. The said prayer clause 'H' (B) reads as follows: -

“H. (B) To grant interim injunction restraining the respondent No. 5, their agents, servants and subordinates from taking any adverse action against the applicant pursuant to the impugned order dated 17.8.2021 and corrigendum dated 16.9.2021 issued by the respondent No. 3, pending hearing and final disposal of the original application.”

5. Issue notice to respondents, returnable on 20.12.2021.

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

7. 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.

8. 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.

9. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

10. S.O. to 20.12.2021.

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

12. The present case be placed on separate board.

MEMBER (J)

ORIGINAL APPLICATION NO. 696 OF 2021
(Nagesh V. Chavan Vs. State of Maharashtra & Ors.)

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

DATE : 12.11.2021

ORAL ORDER :

Heard Shri Amol B. Chalak, learned Advocate for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondents.

2. The present Original Application has been filed by the applicant challenging the impugned corrigendum dated 16.9.2021 (Annexure 'A-9') issued by the respondent No.3, the Deputy Director, Sports and Youth Services, Aurangabad Division, Aurangabad, thereby invalidating Sports Certificate dated 12.6.2017 (Annexure 'A-7') issued by respondent No. 3 only.

3. The applicant challenged the corrigendum dated 16.9.2021 by preferring appeal dated 27.9.2021 (Annexure 'A-10') before respondent No. 2 i.e. the Joint Director, Sport and Youth Services, Pune. Appeal against the corrigendum dated 16.9.2021 is still pending before the respondent No. 2. In the circumstances, the applicant apprehends that some coercive action will be taken against him by the respondents.

4. Record shows that on the basis of verified Sport Validity Certificate the applicant got an appointment on the

post of Police Constable as per order dated 3.12.2018. The applicant is in service with the respondent No. 5 since then. It is the grievance of the applicant that he has not received any show cause notice from respondent No.3 before passing the impugned corrigendum. In the circumstances, in my considered opinion, it would be just and proper to grant interim relief till filing of the affidavit in reply by the respondents. Hence, the prayer of the applicant to grant interim relief is granted in terms of prayer clause 'H' (B) till filing of the affidavit in reply by the respondents. The said prayer clause 'H' (B) reads as follows: -

“H. (B) To grant interim injunction restraining the respondent No. 5, their agents, servants and subordinates from taking any adverse action against the applicant pursuant to the impugned corrigendum dated 16.9.2021 issued by the respondent No. 3, pending hearing and final disposal of the original application.”

5. Issue notice to respondents, returnable on 20.12.2021.

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

7. 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.

8. 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.

9. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

10. S.O. to 20.12.2021.

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

12. The present case be placed on separate board.

MEMBER (J)