

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 461 OF 2018**

**DISTRICT : MUMBAI**

Shri Arun Laxmanrao Dube )...**Applicant**

**Versus**

The State of Maharashtra & Ors )...**Respondents**

Shri Ajay Desphande, learned advocate for the Applicant.

Ms Savita Suryavanshi, learned Presenting Officer for the Respondents.

**CORAM** : **Shri Justice A.H Joshi (Chairman)**  
**Shri P.N Dixit (Member) (A)**

**DATE** : **24.5.2018**

**PER** : **Shri P.N Dixit (Member)(A)**

**ORDER**

1. Heard Shri Ajay Desphande, learned advocate for the Applicant and Ms Savita Suryavanshi, learned Presenting Officer for the Respondents.

2. Learned Advocate for the applicant sought leave of this Tribunal to amend the O.A by adding annexures and prayers. Leave to amend the O.A is granted.

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3. Issue notice returnable on 6<sup>th</sup> June, 2018.
4. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.
5. Applicant is authorized and directed to serve on Respondents intimation / notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.
6. 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.
7. The service may be done by Hand Delivery / Speed Post / Courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.
8. In case, notice is not collected within three days or service report on affidavit is not filed 3 days before returnable date, Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.
9. Heard on Interim Relief.
10. Admitted facts of the case are as under:-
  - (i) The applicant was working as Chief Executive Officer, Bhandara Zilla Parishad from December, 2011 to February, 2014.
  - (ii) During this period Rural Water Supply Regular Temporary Employees Union, Bhandara moved the Industrial Court at

Bhandara claiming pay and allowances at par with Zilla Parishad employees as per 6<sup>th</sup> Pay Commission by filing ULP No. 35/2011.

(iii) The Industrial Court, Bhandara allowed the Complaint ULP 35/2011 by order dated 17.12.2012 and ordered to pay the arrears.

11. Applicant thereafter moved General Body to consider the decision of the Industrial Court. General Body took a decision to file appeal before the Bombay High Court, Nagpur Bench, challenging the decision of the Industrial Court. The said appeal was dismissed on 26.6.2013. Thereafter, SLP was filed before the Hon'ble Supreme Court against the order of Hon'ble Bombay High Court, Nagpur Bench. The said appeal was dismissed by Hon'ble Supreme Court on 29.11.2013.

12. Thereafter the General Body resolved to implement the decision of the Industrial Court in ULP No. 35/2011 and accordingly decision to pay the arrears was taken on 3.3.2014 and arrears were paid from 2010 to 2014. Substantial compliance of the order of Industrial Court was made on 19.6.2014 and complete compliance was made on 31.5.2015.

13. Meanwhile, the Labour Court, Bhandara in Criminal ULP No. 7/2013 found the applicant guilty for non-compliance of the orders of the Industrial Court and by order dated 26.6.2014 awarded him sentence of simple imprisonment of two months under Sec 48(1) of Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practices Act, 1971

14. The applicant thereafter filed (ULP) Appeal No. 10/2014 before the Industrial Court at Bhandara for grant of stay/

sqd

quashing of the order of conviction awarded by the Labour Court. The Industrial Court suspended the sentence by order dated 7.7.2014, which reads as follows:-

“1. The sentence awarded by the Learned Labour Court, Bhandara by impugned judgment is hereby suspended and the accused be released on bail on the same terms and conditions which have been imposed by the Learned Labour Court, Bhandara.

2. The bail bond produced by the appellant/accused shall be continued during the pendency of appeal.”

15. The order of the Industrial Court was communicated by the applicant to the Rural Development Department. Meanwhile R.D.D shortlisted the name of the applicant for nomination to Pre-IAS selection process in the year 2015 and 2016. However, at that time this particular development was not mentioned. The applicant's name was again communicated for shortlisting by nomination to Pre-IAS selection process in the year 2017. At that time the above mentioned fact about his sentence and its suspension was mentioned in Appendix-8 instead of Appendix 4.1 & 4.2 of the proposal.

16. G.A.D as per its record states that it did not take into account the fact about suspension of his sentence. However, when in the year 2018 the proposal was received by G.A.D, this time G.A.D found the applicant to be unfit pointing out that he does not have unblemished record.

17. The issue therefore for consideration is whether the service record of the Applicant can be considered as unblemished when discharging his official duties the applicant was convicted by the Labour Court and awarded sentence of simple imprisonment of two months for his civil action but the Industrial Court has suspended

the sentence and stayed the punishment. Does this amount to say that the officer still continues to be under blame or otherwise.

18. Prima facie, the answer to the above issue is concluded negatively for the reason that while discharging his official duties he had performed his task appropriately. However, for want of funds the Zilla Parishad was not able to honour the decision of the Industrial Court in time. Subsequently, Z.P, Bhandara had complied with the order. Moreover, the Industrial Court has stayed the order of simple imprisonment.

19. As it is clear that the punishment given by the Labour Court does not amount to involving moral turpitude or for doing anything wrong by the Officer in his personal capacity and therefore to conclude that the punishment which has already been suspended and stayed by the Industrial Court still is a blame on his record, is erroneous.

20. R.D.D and G.A.D have obviously not applied their mind to the facts available on record in appropriate perspective. Therefore, the impugned order dated 23.5.2018 issued by Rural Development Department at the behest of G.A.D stating that the applicant is not having his service record unblemished is erroneous and therefore he cannot be given vigilance clearance is prima facie erroneous and arbitrary for lack of due application of mind.

21. The impugned order dated 23.5.2018 is therefore kept in abeyance. The applicant therefore, should be permitted to appear for the written test on 25.5.2018 as a part of Pre IAS selection process by nomination. Accordingly, interim relief in terms of prayer D-1 is granted. Prayer clause D-1 reads thus:-

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“D-1. Pending hearing and final disposed of this application, the respondents may kindly be directed to include the name of the applicant for elementary process of selection for pre- IAS selection process of state level by keeping the impugned communication dated 23.5.2018 at Exh. ‘G’ in abeyance.”

22. O.A stands adjourned to 6.6.2018. Hamdast and steno copy is granted. Learned P.O is directed to communicate this order to the Respondents.

Sd/-

**(P.N Dixit)**  
**Member (A)**



Sd/-

**(A.H. Joshi, JJBK)**  
**Chairman**

**Place : Mumbai**  
**Date : 24.05.2018**  
**Dictation taken by : A.K. Nair.**