

ORIGINAL APPLICATION NO.931/2019
(Ashwini Kankute Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri Bijay Kumar, Member (A)

DATE : 25.09.2021

ORAL ORDER :

Heard Mr. Manish P. Tripathi, learned Advocate for the Applicant and Mr. M.P.Gude, learned Presenting Officer for the Respondent nos.1 and 2 and Ms. Anjali R. Nishad learned Advocate holding for Mr. A.G.Jadhav learned Advocate for respondent no.4.

2. Learned Advocate for the applicant has complied with order dated 21-09-2021 and made necessary amendment in the O.A. on 23-09-2021. Notice was also served on the respondent no.4 the newly added respondent.

3. Learned Advocate for respondent no.4 under instructions from the respondent no.4 submitted that the respondent no.4 will co-operate with the applicant and make joint application to the authority for release of monetary benefits like DCPS etc.

4. Learned P.O. states that he has no objection to this compromise.

5. Learned Advocate for the applicant has submitted that a request letter has been made with the authority for

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release of benefit of payment of amount of DCPS also as per G.R. dated 29-09-2018. Therefore, the applicant and respondent no.4 may submit the claims with the respective authorities. Thereafter, the respondents are directed to decide the claims of the applicant and respondent no.4 on merit as per rules.

6. In view of the above discussion, O.A. stands disposed of. There shall be no order as to costs.

MEMBER (A)

YUK ORAL ORDERS 25.09.2021

ORIGINAL APPLICATION NO.353/2021
(Sunil Kamble Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri Bijay Kumar, Member (A)

DATE : 25.09.2021

ORAL ORDER :

Heard Shri S.S.Tandale, learned Advocate for the Applicant and Shri B.S.Deokar, learned Presenting Officer for the Respondents.

2. Learned P.O. seeks time to file affidavit in reply. Time is granted.
3. S.O. to 22-10-2021.

MEMBER (A)

ORIGINAL APPLICATION NO.396/2021
(Vilas Nikam Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri Bijay Kumar, Member (A)

DATE : 25.09.2021

ORAL ORDER :

Heard Shri R. Menezes, learned Advocate for the Applicant and Shri D.R.Patil, learned Presenting Officer for the Respondents.

2. It is observed that a report of ACB is not on record though it has been averred that a successful trap was made by the ACB but no document is filed on record so far as trap of ACB is concerned.

3. Learned Advocate for the applicant states that he has no access to such documents. Learned P.O. assures to get the same and seeks time to file affidavit in reply. Time is granted.

4. S.O. to 20-10-2021.

MEMBER (A)

ORIGINAL APPLICATION NO.900/2019
(Arvind Bhingardive Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri Bijay Kumar, Member (A)

DATE : 25.09.2021

ORAL ORDER :

Heard Shri Ashish B. Rajkar learned Advocate holding for Shri V.B.Wagh, learned Advocate for the Applicant and Shri D.R.Patil, learned Presenting Officer for the Respondents.

2. It has been brought to the notice of learned Advocate for the applicant that a short affidavit has been filed on behalf of the applicant on 3rd September, 2021, new facts have been brought on record including transfer of the applicant from Supa to Pathardi, which is not part of O.A. Therefore, he may like to clarify whether to amend the O.A. or get the O.A. in the present form decided.

3. Learned Advocate for the applicant submitted that he will seeks instructions from the applicant and make M.A. for amendment, if necessary.

4. S.O. to 18-10-2021.

MEMBER (A)

**ORIGINAL APPLICATION NO.582/2021
(Anant Kapse Vs. State of Maharashtra & Ors.)**

CORAM : Hon'ble Shri Bijay Kumar, Member (A)

DATE : 25.09.2021

ORAL ORDER :

Heard Shri Kakasaheb B. Jadhav, learned Advocate for the Applicant and Shri D.R.Patil, learned Presenting Officer for the Respondents.

2. Learned Advocate for the applicant has submitted a copy of minutes of meeting of Civil Services Board relevant in the matter which is dated 27-08-2021. The fact in this case has been that the applicant was transferred from the office of Joint Sub Registrar, Hingoli to the office of Joint Sub Registrar, Palam in the year 2017 and he worked at Palam, Dist. Parbhani until he was transferred vide order dated 09-08-2021 issued by Inspector General of Registration & Stamp Controller, Pune to the office of Sub-Registrar, Pathri, Dist. Parbhani. The contention of the applicant is that he joined at new place of posting at Pathri, Dist. Parbhani on 10-08-2021 and he had never made any request for posting at Selu, Dist. Parbhani, still by another order dated 30-08-2021 issued by Section Officer, Revenue & Forest Department, Mantralaya, Mumbai, the applicant has been again transferred to Selu and it has been shown as "request transfer". A copy of minutes of meeting of Civil

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Services Board submitted by the learned Advocate shows no reason for his proposed transfer.

3. As there are unexplained facts on the face of record submitted by the learned Advocate for the applicant, status quo be maintained in the matter till filing affidavit in reply by the respondents.

4. In the meanwhile, issue notice to the respondents, returnable on 22.10.2021.

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

6. 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.

7. 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.

8. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and

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produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

9. S.O. to 22.10.2021.

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

MEMBER (A)

YUK ORAL ORDERS 25.09.2021

ORIGINAL APPLICATION NO.576 OF 2021
(Atmaram M. Raut Vs. State of Maharashtra & Ors.)

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

DATE : 25.09.2021

ORAL ORDER :

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

2. The Original Application is filed seeking the relief to quash and set aside the impugned order dated 12.12.2019 issued by the respondent no.2, order of pay fixation dated 15.07.2021 issued by the respondent no.3 and the order dated 23.08.2021 issued by the respondent no.3 to the extent of directing recovery from the applicant towards excess payments made to him towards one step promotion from the date of grant of Assured Career Progressive Scheme benefits.

3. It is the case of the applicant that by order dated 12.12.2019 (Annex. 'A-5'), he was granted the benefit of A.C.P.S. After that, revised pay fixation was done by order dated 15.07.2021 by the respondent no.3 (Annex. 'A-6'). Thereafter, by order dated 23.08.2021 (Annex. 'A-7') recovery of Rs.6,98,331/- is ordered being excess payment. The excess amount seems to be the amount

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received by the applicant due to one step promotional pay scale from 31.05.2011 onwards when he got the benefit of A.C.P.S.

4. In order dated 12.12.2019 (Annex. 'A-5'), there is clause no.7 which is as follows:-

(७) आदेशातील कर्मचारी जर एकस्तर योजनेचा लाभ घेत असतील तर सुधारीत सेवांतर्गत आश्वासित प्रगती योजनेचा लाभ लागू झालेल्या दिनांकापासून एकस्तर योजनेचा लाभ बंद करण्यात यावा व अतिप्रदान रकमेची वसुली करण्यात यावी.

(quoted from page no.30 of P.B.)

5. It is evident that the applicant was put to notice about the probable recovery in December, 2019 itself. Thereafter, revised pay scale was fixed by order dated 15.07.2021 (Annex. 'A-6'). There also the applicant was put to notice of recovery of excess payment on that account. Actual recovery is thereafter order by order dated 23.08.2021 (Annex. 'A-7').

6. Learned Advocate for the applicant submits that since January, 2020, the applicant is not getting amount towards one step promotional pay scale. However, at this stage, he does not have documents to substantiate the same.

7. In view of above, it would be just and proper to direct the applicant to produce his pay slip of December, 2019 and one pay slip from the year, 2020. It is directed

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accordingly. Similarly, the respondents to put on record drew and drawn statement.

8. Upon compliance of this order, issue of interim relief will be considered appropriately.

9. S.O. to 28.09.2021.

MEMBER (J)

**M.A.NO.337 OF 2019 IN O.A.ST.NO.1116 OF 2019
(Gopal M.Waghmare Vs. State of Maharashtra & Ors.)**

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

DATE : 25.09.2021

ORAL ORDER :

Heard Shri A.D. Gadekar, learned Advocate for the applicant and Shri B.S. Deokar, learned Presenting Officer for the respondents.

2. At the request of learned P.O., time is granted for filing affidavit-in-reply on behalf of the respondents in M.A.

3. S.O. to 13.10.2021.

MEMBER (J)

ORIGINAL APPLICATION NO. 137/2017
(Namdeo S. Arsale Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)
DATE : 25.09.2021

ORAL ORDER :

The present matter was heard by this Division Bench at length on 2.9.2021 and it was closed for orders.

2. Thereafter, on 17.9.2021 the learned Advocate for the applicant has placed on record copy of judgment of the Hon'ble Supreme Court delivered in **M.A. No. 241/2019 in Special Leave Petition (Civil) No. 23223/2018 [Saurav Yadav & Ors. Vs. the State of U.P. & Ors.]**. Similarly, manner in which total 34 vacancies (29 Open category, 03 S.T. category & 01 S.B.C. category) have been filled up, is not available for passing final order.

3. In the above circumstances, we both are of the opinion that the present case be taken up for re-hearing for considering the citation submitted by the learned Advocate for the applicant and also ascertaining further facts from both the sides.

4. Accordingly the present O.A. be placed on board on 1.10.2021 for re-hearing.

MEMBER (A)

MEMBER (J)

**M.A.NO. 289/2021 IN O.A.ST.NO. 1162/2021
(Holambe Nitin Dagdu & Ors. Vs. State of Maharashtra &
Ors.)**

**CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 25.09.2021

ORAL ORDER :

Heard Shri C.V. Dharurkar, learned Advocate for the applicants and Shri M.P. Gude, learned Presenting Officer for the respondents.

2. This is an application preferred by the applicants seeking leave to sue jointly.

3. For the reasons stated in the application, and since the cause and the prayers are identical and since the applicants have prayed for same relief, and to avoid the multiplicity, leave to sue jointly granted, subject to payment of court fee stamps, if not paid.

4. Accompanying O.A. be registered and numbered, after removal of office objections, if any. The present M.A. stands disposed of accordingly without any order as to costs.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION ST.NO. 1162 OF 2021
(Holambe Nitin Dagdu & Ors. Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 25.09.2021

ORAL ORDER :

Heard Shri C.V. Dharurkar, learned Advocate for the applicants and Shri M.P. Gude, learned Presenting Officer for the respondents.

2. Learned Presenting Officer submitted that due to some technical difficulties the written examination, which was held on 25th & 26th September, 2021 for the post under Group 'C' & 'D' is postponed. In view of the same, at this stage instead of dealing with interim relief it would be just and proper to issue notices to the respondents and to hear the present Original Application expeditiously.

3. Issue notice to the respondents, returnable on 13.10.2021.

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

5. 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

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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 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.

8. S.O. to 13.10.2021.

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

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO. 569 OF 2021
(Jagannath M. Jadhav Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 25.09.2021

ORAL ORDER :

Heard Shri Kakasaheb B. Jadhav, learned Advocate for the applicants and Shri M.P. Gude, learned Presenting Officer for the respondents.

2. Learned Advocate for the applicant pursuant to the yesterday's hearing i.e. 24.9.2021 placed on record case status report of Regular Criminal Case No. 119/2017 pending against the applicant and two others under Sections 354(A)(1), 354 (B), 417, 498-A, 344 and 34 of IPC in the court of 4th Civil Judge J.D. AND J.M.F.C., Daund District Pune. The same is taken on record and marked as document 'X' for the purposes of identification.

3. In view of the above, the present case be kept for passing orders on the point of interim relief on 27.9.2021.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO. 517 OF 2017
(Anup Subhash Kulkarni Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 25.09.2021

ORAL ORDER :

Shri M.V. Bhamre, learned Advocate for the applicant
(**absent**). Shri B.S. Deokar, learned Presenting Officer for
the respondents, present.

2. In view of absence of learned Advocate for the
applicant, S.O. to 21.10.2021.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO. 57 OF 2018
(Uttam T. Dabhade & Ors. Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 25.09.2021

ORAL ORDER :

Heard Shri S.D. Dhongde, learned Advocate for the applicants and Shri M.P. Gude, learned Presenting Officer for the respondents.

2. Learned Advocate for the applicants has filed a copy of judgment dated 30.3.1999 delivered by the Hon'ble Apex Court in the case of CAPT.M. PAUL ANTHONY VS. BHARAT GOLD MINES LTD. & ANR. and the same is taken on record.

3. The present case be treated as a part heard. S.O. to 8.10.2021.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO. 119 OF 2018
(Smt. Jyoti L. Rathod Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 25.09.2021

ORAL ORDER :

Heard Shri Santosh N. Patne, learned Advocate for the applicants and Shri D.R. Patil, learned Presenting Officer for the respondents.

2. During the course of arguments when the reference was made to the advertisement dated 18.9.2014 (Annexure 'A-2', it reveals that there is no mention of the post of Assistant Store Keeper/Store Clerk in clause No. 16, which states that the candidate must acquire minimum 45% marks together in written test and skill test. In view of the same, it would be just and proper to have the recruitment rules on record, which may enlighten. Hence, either of the parties to produce the same on record on or before the next date of hearing.

3. S.O. to 14.10.2021.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO. 579 OF 2021
(Siddharth R. Pandurnikar Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 25.09.2021

ORAL ORDER :

Heard Shri Ajay Deshpande, learned Advocate for the applicant and Shri B.S. Deokar, learned Presenting Officer for the respondents.

2. The Original Application is filed challenging the communication dated 15.9.2021 (Annexure 'A-12') rendering the applicant ineligible for the post of Dietician pursuant to the advertisement dated 22.2.2019 (Annexure 'A-1'). The applicant is also seeking interim relief in terms of prayer clause 20 (C) seeking directions to the respondent No. 1 not to fill up the post of Dietician against which the applicant has been selected for appointment in order of merit and keep the post of Dietician vacant.

3. The applicant is holding the degree of B. Tech. (Food Technology) from Marathwada Agriculture University, Parbhani. He has also completed M.Sc. (Agriculture)-Food Science and Technology & MS-CIT. The respondent No 1 published an advertisement dated 22.9.2019 (Annexure 'A-1') for the post of Dietician and other posts. The applicant applied for the post of Dietician. The written test was held. The applicant stood 2nd in order of merit as per result sheet

(Annexure 'A-7'). The applicant was called for counseling as per letter dated 16.4.2021 (Annexure 'A-5'). At the time of counseling, the respondent No. 1 expressed doubt about eligibility of the applicant. The applicant showed Government Order dated 7th September, 2011 (Annexure 'A-6') whereby the degree of B.Sc. (Agricultural Bio-Technology), B.Sc. (Agriculture Management), B.Sc. (Home Science), B.Tech (Food Technology), B.Sc. (Horticulture) are said to be equivalent. In view of that the respondent No. 1 addressed letter dated 23.4.2021 (Annexure 'A-8') seeking guidance from respondent No. 2. The guidance was sought in the background that respondent No. 4 – Smt. Subhadra Madhav Harale, who was another candidate & who had taken objection about the degree of the applicant. Respondent No. 2 by letter dated 3.5.2021 (Annexure 'A-9') instructed the respondent No. 1 to seek clarification from the concerned university and take decision. Respondent No. 1 sought guidance from the Marathawada Agriculture University, Parbhani in terms of directions of respondent No. 2 under his letter dated 3.5.2021 (Annexure 'A-9'). The applicant does know whether respondent No. 1 has received any response to the said letter dated 10.5.2021 (Annexure 'A-10').

4. It is the contention of the applicant that abruptly respondent No. 2 by letter dated 6.8.2021 (Annexure 'A-11')

conveyed the respondent No. 1 that the applicant is not eligible without waiting for reply from the Marathawada Agriculture University, Parbhani and ignoring the Government orders granting equivalency. According to the applicant, it is done at the behest of the respondent No. 4. Respondent No. 1 conveyed to the applicant by the impugned letter dated 15.9.2021 that he is ineligible for the post and the same is done by the respondent No. 1 without waiting for response from the Marathwada Agriculture University, Parbhani.

5. Learned Advocate for the applicant in view of the above-said fact has invited our attention to clause 29 of the advertisement (Annexure 'A-1'), wherein it is stated as follows: -

“२९. जाहिरातीतील कोणतेही मुददे शासन निर्णयाच्या विसंगत असल्यास, शासन निर्णय अंतिम राहिल”

In view of this he submitted that the Government Order dated 7.9.2011 (Annexure 'A-6'), page-31 would prevail where it is shown that the degree of B.Sc. (Agricultural Bio-Technology), B.Sc. (Agriculture Management), B.Sc. (Home Science), B.Tech (Food Technology), B.Sc. (Horticulture) are equivalent. He further pointed out that in the impugned communication dated 6.8.2021 (Annexure 'A-11') addressed by respondent No. 1

to respondent No. 2, as well as, in the impugned communication dated 15.9.2021 (Annexure 'A-12') address by respondent No. 1 to the applicant, there is no reference of any response from the Marathwada Agriculture University, Parbhani from whom the clarification was sought. He also further submitted that as specified in paragraph 10 of the O.A. the persons listed therein with the same degree as that of applicant are working on the post of Dietician under the State. In the circumstances, he submits that this is a fit case to grant interim relief.

6. Learned Presenting Officer appearing on behalf of the respondents opposed the submissions made on behalf of the applicant. He strenuously urged before us that clause 7 of the advertisement on page 16 of the paper book shows that only the candidate who possess the degree in B.Sc. (Home Science) of a statutory University is eligible to apply for the post of Dietician and none other and, therefore, according to him, the applicant is ineligible as he is not having the said degree and, therefore, he seeks time for filing affidavit in reply.

7. After having considered the contentions of the applicant in the Original Application and the various annexures, it is *prima facie* evident that the degree in B.Sc. (Home Science) and degree in B.Tech. (Food Technology) are treated to be equivalent by the Government as per it's

Order dated 6.9.2011 (Annexure 'A6'). In that regard clause 29 of the advertisement would *prima facie* comes into play. It is also a matter of record that in last two communications dated 6.8.2021 (Annexure 'A-11') and 15.9.2021 (Annexure 'A-12'), there is no mention of any clarification being received from the Marathwada Agriculture University, Parbhani. In fact, the respondent No. 2 had advised respondent No. 1 to seek clarification from the Marathwada Agriculture University, Parbhani and, therefore, it was expected that the decision would be taken after receipt of such clarification. In the circumstances, in our considered opinion, this is a fit case of granting interim relief at this stage till filing of the affidavit in reply by the respondents. Thereby no irretrievable prejudice would be caused to the respondents at this stage. Hence, interim relief in terms of prayer clause 20 (C) is granted till filing of the affidavit in reply by the respondents.

8. Learned Advocate for the applicant submits that the clarification from Vice Chancellor, Marathwada Agriculture University, Parbhani, was sought pursuant to the letter dated 10.5.2021 (Annexure 'A-10') addressed by respondent No. 1 to the said Marathwada Agriculture University, Parbhani as per instructions of the respondent No. 2 as per its letter dated 3.5.2021 (Annexure 'A-9'). Hence, response of the said University would be of paramount importance to

decide the controversy raised in the application. In view of the same, he seeks leave of this Tribunal to join the Marathwada Agriculture University, Parbhani as party respondent No. 5. In the facts and circumstances, in our considered opinion, the said University would be proper party. Hence, permission is granted to the applicant to add the said University as party respondent No. 5 in the present O.A. The applicant shall amend the O.A. forthwith.

9. Issue notice to the respondents, returnable on 26.10.2021.

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

11. 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.

12. 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.

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13. 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.

14. S.O. to 26.10.2021.

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

MEMBER (A)

MEMBER (J)