

O.A. No. 272/2016

(S.B.)

Coram:Shri A.D. Karanjkar,
Member (J)

Dated : 4th December 2018.

C.A. 316/2018.

Shri P.S. Tiwari, the learned counsel for the applicant and Shri M.I. Khan, the learned P.O. for the respondents.

For the reasons stated in the C.A., C.A. is allowed and disposed of.

O.A. No. 272/2016

In the interest of justice, matter be taken up for final hearing on **7th January 2019.**

Member (J)

Dt. 4.12.2018.

pdg.

O.A. No. 136/2018

(S.B.)

**Coram: Shri A.D. Karanjkar,
Member (J)**

Dated : 4th December 2018.

None for the applicant. Shri H.K. Pande, the learned P.O. for the respondents.

Time for filing reply is granted to the Ld. P.O.

S.O. four weeks.

Member (J)

Dt. 4.12.2018.

pdg.

**O.A. Nos. 160 and 161 of 2018
(S.B.)**

**Coram: Shri A.D. Karanjkar,
Member (J)**

Dated : 4th December 2018.

Shri A.Y.Kapgate, the learned counsel for the applicant and Shri M.I. Khan, the learned P.O. for the respondents.

At the request of Ld. P.O., S.O.
three weeks.

Member (J)

Dt. 4.12.2018.

pdg.

**O.A. Nos. 282 & 283 of 2018
(S.B.)**

**Coram: Shri A.D. Karanjkar,
Member (J)**

Dated : 4th December 2018.

Shri S.P. Palshikar, Adv. holding for Shri R.V. Shiralkar, the learned counsel for the applicants and Shri A.M. Ghogre, the learned P.O. for the respondents.

Today reply is filed by Ld. P.O.

Interim order to continue till further orders.

S.O. **two weeks.**

Member (J)

Dt. 4.12.2018.

pdg.

O.A. No. 452/2018

(S.B.)

**Coram:Shri A.D. Karanjkar,
Member (J)**

Dated : 4th December 2018.

There is a leave note from Shri G.G. Bade, the learned counsel for the applicant. Shri M.I. Khan, the learned P.O. for the respondents.

At the request of the applicant,
S.O. **one week.**

Member (J)

Dt. 4.12.2018.

pdg.

O.A. No. 480/2018

(S.B.)

Coram:Shri A.D. Karanjkar,
Member (J)

Dated : 4th December 2018.

Shri P.V. Thakre, the learned counsel for the applicant and Shri A.M. Ghogre, the learned P.O. for the respondents.

The Ld. P.O. has filed an affidavit on behalf of respondent Nos. 1 to 3, it is taken on record and a copy thereof is supplied to the learned counsel for the applicant. The learned counsel for the applicant wants to go through the reply.

S.O. **one week** for filing rejoinder.

Member (J)

Dt. 4.12.2018.

pdg.

**O.A. Nos. 522, 523, 524 & 529 of 2018
(S.B.)**

**Coram:Shri A.D. Karanjkar,
Member (J)**

Dated : 4th December 2018.

There is a leave note from Shri G.G. Bade, the learned counsel for the applicant. Shri M.I. Khan, the learned P.O. for the respondents.

At the request of the applicant,
S.O. one week.

Member (J)

Dt. 4.12.2018.

pdg.

O.A. No. 734/2018

(S.B.)

Coram: Shri A.D. Karanjkar,
Member (J)

Dated : 4th December 2018.

Shri S.P. Palshikar, the learned counsel for the applicant and Shri H.K. Pande, the learned P.O. for the respondents.

The Ld. P.O. requests for time for submitting reply. Time granted.

S.O. 18.12.2018.

Member (J)

Dt. 4.12.2018.

pdg.

O.A. No. 846/2018

(S.B.)

Coram: Shri A.D. Karanjkar,
Member (J)

Dated : 4th December 2018.

None for the applicant. Shri A.M. Ghgre, the learned P.O. for the respondents.

The Ld. P.O requested three weeks' time for filing reply. Time granted.

S.O. three weeks.

Member (J)

Dt. 4.12.2018.

pdg.

O.A. No. 879/2018

(S.B.)

Coram: Shri A.D. Karanjkar,
Member (J)

Dated : 4th December 2018.

Shri G.M. Hemke, the learned counsel for the applicant and Shri H.K. Pande, the learned P.O. for the respondents.

At the request of Ld. P.O., S.O.
four weeks.

Member (J)

Dt. 4.12.2018.

pdg.

**O.A. Nos. 126 & 189 of 2015
(S.B.)**

**Coram:Shri A.D. Karanjkar,
Member (J)**

Dated : 4th December 2018.

Shri Tiwari, Adv. holding for Shri N.R. Saboo, the learned counsel for the applicant and Shri M.I. Khan, the learned P.O. for the respondents.

At the request of the learned counsel for the applicants, S.O. **two weeks.**

Member (J)

Dt. 4.12.2018.

pdg.

O.A. No. 323/2015

(S.B.)

**Coram:Shri A.D. Karanjkar,
Member (J)**

Dated : 4th December 2018.

None for the applicant. Shri A.M. Ghogre, the learned P.O. for the respondents.

The Ld. P.O. has filed a letter dated 20.11.2018 written by Additional Chief Secretary, Finance Department, Govt. of Maharashtra to the Joint Director of Accounts and Treasuries, Directorate, Nagpur. It seems that the Regional Divisional Inquiry Officer Nagpur is appointed as Inquiry Officer and the inquiry is not yet completed.

S.O. four weeks.

Member (J)

Dt. 4.12.2018.

pdg.

O.A. No. 642/2016

(S.B.)

Coram: Shri A.D. Karanjkar,
Member (J)

Dated : 4th December 2018.

C.A. No. 325/2017.

Shri M.V. Mohokar, the learned
counsel for the applicant and Shri ,
the learned P.O. for the respondents.

S.O.

Member (J)

Dt. 4.12.2018.

pdg.

O.A. No. 44/2017

(S.B.)

**Coram: Shri A.D. Karanjkar,
Member (J)**

Dated : 4th December 2018.

Shri S.P. Palshikar, the learned counsel for the applicant and Shri M.I. Khan, the learned P.O. for the respondents.

At the request of the learned counsel for the applicant, S.O.
6.12.2018.

Member (J)

Dt. 4.12.2018.

pdg.

O.A. No. 452/2018 (S.B.)

Coram:Shri A.D. Karanjkar,
Member (J)

Dated : 4th December 2018.

There is a leave note from Shri G.G. Bade, the learned counsel for the applicant. Shri M.I. Khan, the learned P.O. for the respondents.

At the request of the applicant,
S.O. one week.

Member (J)

Dt. 4.12.2018.

pdg.

O.A.No. 392/2016. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**

Dated : 04th December 2018.

Shri Karode holding for Shri N.R.Saboo,
the Id. counsel for the applicant and Shri
M.I.Khan, the Id. P.O. for the respondents.

At the request of Id. counsel for the
applicant, **S.O. two weeks.**

Member(J)
Date:-04/12/2018.
aps.

Member(A)

O.A.No. 351/2016. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**

Dated : 04th December 2018.

Shri Karode, the Id. counsel for the applicant and Shri M.I.Khan, the Id. P.O. for the respondent nos. 1 to 5. None for the respondent no. 6.

At the request of Id. counsel for the applicant, **S.O. four weeks.**

Member(J)
Date:-04/12/2018.
aps.

Member(A)

O.A.No. 639/2018. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**

Dated : 04th December 2018.

Shri S.P.Palshikar, the Id. counsel for the applicant, Shri A.M.Khadatkar, the Id. P.O. for the respondent no. 2 and Shri A. Deshpande, the Id. counsel for the respondent nos. 1 & 3.

The Id. counsel for the applicant submits that his applicant has also filed the writ petition in Hon'ble High Court too. The Id. counsel for the applicant has advised him to choose either Hon'ble High Court or MAT. The same instructions will be received within two-three days.

At the request of Id. counsel for the applicant, **S.O. 11/12/2018.**

Member(J)
Date:-04/12/2018.
aps.

Member(A)

O.A.No. 888/2018. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**

Dated : 04th December 2018.

Shri A.M.Borkar, the Id. counsel for the applicant and Shri A.M.Khadatkar, the Id. P.O. for the respondent nos. 1 & 3 and Shri Verma holding for Shri Sudame, the Id. counsel for the respondent no. 4. None for the respondent no. 2.

At the request of Id. counsel for the respondent no. 4, **S.O. two weeks.**

Member(J)
Date:-04/12/2018.
aps.

Member(A)

O.A.No. 687/2015. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**

Dated : 04th December 2018.

C.A.No.210/2018:-

Shri N.S.Trivedi holding for Shri S.G.Malode, the Id. counsel for the applicant and Shri V.A.Kulkarni, the Id. P.O. for the respondent nos. 1 to 3. None for the respondent nos. 4 to 6.

The Id. counsel for the applicant submits that his senior is busy in Hon'ble High Court. At his request, **S.O. one week.**

**Member(J)
Date:-04/12/2018.
aps.**

Member(A)

O.A.No. 180/2018. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**

Dated : 04th December 2018.

None for the applicant. Shri A.M.Khadatkar, the Id. P.O. for the respondents.

The Id. P.O. submits that enquiry has been completed. However, process for issuing final order is still pending. Respondents are directed to finalize the D.E. and issue final order within three weeks.

S.O. three weeks.

Member(J)
Date:-04/12/2018.
aps.

Member(A)

O.A.No. 410/2017. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**

Dated : 04th December 2018.

Shri V.R.Borkar, the Id. counsel for the applicant and Shri S.A.Deo, the Id. C.P.O. for the respondent nos. 1 to 3. The S.P., Wireless, in person. None for the respondent nos. 4 & 5.

The Id. counsel for the applicant invited our attention to the Order No. vKLFL&1@,fiy@eGvtl 410&17@2018@6176] dated 03/11/2018 by Additional Director General of Police, Police Wireless, Pune in which the cut-off marks has been reduced but there is no whisper of anything about Sports persons as per the policy given by Government G.R. No. jkdh/A&2002@i:dz:68@dh; q &2] dated 30/04/2005. The respondents are directed to take necessary directions from Government in the light of Additional D.G. Wireless, Letter No. vKLFL&1@,fiy@eGvtl 410&17@2018@6176] dated 03/11/2018 and Government Policy No. jkdh/A&2002@i:dz:68@dh; q &2] dated 30/04/2005.

S.O. three weeks.

Steno copy is allowed.

Member(J)
Date:-04/12/2018.
aps.

Member(A)

O.A.Nos.815,816&817/2018. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**
Dated : 04th December 2018.

Shri A.C.Dharmadhikari, the Id. counsel for the applicant and Shri P.N.Warjurkar, the Id. P.O. for the respondents.

The Id. Counsel for the applicant has filed counter affidavit on behalf of the applicant, the same is placed on record and marked Exh. X for the purpose of identification. He has also submitted order of Hon'ble High Court Mumbai, Bench at Aurangabad in writ petition No. 13274/2018, dated 03/12/2018, the same is marked Exh-X-1 for the purpose of identification.

The Id. P.O. has submitted Hon'ble Supreme Court Judgment dated 12/07/2016, which is marked Exh-3-A for the purpose of identification. He has also submitted Hon'ble High Court Mumbai, bench at Nagpur Judgment decided on 16/04/2013 which is marked Exh-A-1 for the purpose of identification.

All these documents are taken on record. Matter will be examined and order will be pronounce **in afternoon at 03:00 p.m.**

Member(J)
Date:-04/12/2018.
aps.

Member(A)

O.A.No. 720/2018. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**
Dated : 04th December 2018.

Shri S.K.Verma, the Id. counsel for the applicant and Shri P.N.Warjurkar, the Id. P.O. for the respondents.

The Id. P.O. filed the affidavit-in-reply on behalf of the respondent no. 3. The same is taken on record. Copy is served to the other side.

The Id. P.O. further submits that the same reply is sufficient for the respondent nos. 1 & 2.

The Id. Counsel for the applicant desires time to file Rejoinder. At his request, **S.O. two weeks.**

Member(J)
Date:-04/12/2018.
aps.

Member(A)

O.A.No. 932/2018. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**

Dated : 04th December 2018.

Shri S.C.Deshmukh, the Id. counsel for the applicant and Shri P.N.Warjurkar, the Id. P.O. for the State.

The Id. Counsel for the applicant relied on the order dated 19/11/2018 in O.A.No. 893/2018, passed by D.B. of the MAT, Nagpur Bench, which is taken on record. The present O.A.No.932/2018 is also related to the promotion. Hence, both the matters i.e. O.A.No. 932/2018 & O.A. No. 893/2018 should be heard together.

The O.A. No. 893/2018 is already fixed for 14/12/2018. Hence, the Id. P.O. is requested to collect the reply from the Government till 14/12/2018.

S.O. 14/12/2018.

**Member(J)
Date:-04/12/2018.
aps.**

Member(A)

O.A.No. 325/2012. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**

Dated : 04th December 2018.

Shri V.R.Chaudhari, the Id. counsel for the applicant and Shri M.I.Khan, the Id. P.O. for the Respondents.

At the request of Id. Counsel for the applicant, **S.O. next week.**

Member(J)
Date:-04/12/2018.
aps.

Member(A)

O.A.Nos.267,268 & 269/2011 (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**

Dated : 04th December 2018.

Shri W.N.Nayse, the Id. counsel for the applicant and Shri M.I.Khan, the Id. P.O. for the Respondents.

At the request of Id. Counsel for the applicant, **S.O. next week.**

Member(J)
Date:-04/12/2018.
aps.

Member(A)

O.A.No.494/2014. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**

Dated : 04th December 2018.

Shri W.N.Nayse, the Id. counsel for the applicant and Shri M.I.Khan, the Id. P.O. for the Respondents.

At the request of Id. Counsel for the applicant, **S.O. next week.**

Member(J)
Date:-04/12/2018.
aps.

Member(A)

O.A.Nos. 815,816 & 817 of 2018

**Coram :- Shri Shree Bhagwan,
Member (A) and
Shri A.D. Karanjkar,
Member (J).**

Dated :- 04/12/2018.

ORDER

Per : Member (J).

Heard Shri A.C.

Dharmadhikari, learned counsel for the applicants and Shri P.N. Warjurkar, learned P.O. for the respondents.

2. All the applicants are in service as Special Assistant Public Prosecutor on temporary basis. The applicants are appointed in service by the respondent no.2 for a specific period. There is no dispute about the fact that the MPSC is the competent authority to prepare the select list of eligible candidates and forward the same to the Government for their appointments as

Assistant Public Prosecutor. In the present case the applicants are not recommended by the MPSC and they are not appointed on that post by the Government of Maharashtra.

3. It is submission of the applicants that they are in service since long as continued by the respondent no.2 time to time. The respondent no.2 has now published the advertisement to fill the post of Special Assistant Public Prosecutor on ad-hoc basis. It is contention of the applicants that it is settled law that the ad-hoc Government servant cannot be replaced by another ad-hoc Government servant and therefore, the action of respondent no.2 to fill the post of Special Assistant Public Prosecutor is illegal and it is required to be stayed till the suitable candidates are appointed by the Governor after the recommendation of the MPSC.

4. In addition it is contended on behalf of the applicants that the respondent no.3 was not satisfied with the performance of the applicants as Special Assistant Public Prosecutors, for this reason also directions are issued by the Government to prepare new panel of the Special Assistant Public Prosecutors and therefore the respondent no.2 has decided to replace the applicants by appointing the new Special Assistant Public Prosecutors from the new panel. It is submitted that this entire action of the respondent no.2 is illegal, therefore, interim protection be given to the applicants till final hearing of the O.A.

5. The respondent nos. 2 and 3 have submitted their reply at page no.29 of the P.B. and justified the action of respondent no.2. Apart from the performance of the applicants, it is contended that the legal position is now

changed and there is no force in the contention that one ad-hoc employee can be replaced by another ad-hoc employee. It is submission of the applicants that the applicants have no right to the post, and they have avoided to apply for the post. It is submitted that the directions are received by the respondent no.2 to prepare the new panel of the Special Assistant Public Prosecutors and for that purpose the advertisement was published by respondent no.2 and in reply to the advertisement 33 candidates applied, there was scrutiny and 12 candidates were selected for the interview. It is submitted that there is no illegality in the action of respondent no.2 as the applicants were permitted to apply for the post subject to age limit, but they did not apply and as the applicants are not appointed on the posts by the competent

authority after following the due procedure, therefore, they have no right to claim any relief in this regard.

6. The learned P.O. has placed reliance on the Judgment in case of **Aman Shah Hussain Shah & Ors. Vs. Chief Officer, Municipal Council, Karanja (Lad) & Ors.2013 (4) Mh.L.J.,255.**

7. We have perused all the documents which are produced by the applicants and the respondents. The most important issue involved is whether one ad-hoc employee can be replaced by another ad-hoc employee.

8. In case of **Rajendra Vitthal Kamble Vs. Government of Maharashtra, 2012 (4), Mh.L.J.,505,** the Hon'ble Division Bench placing reliance on the Judgment in case of **State of Haryana & Ors. Vs. Piara Singh &**

Ors.,(1992)4 SCC, 118 laid down that an ad-hoc or temporary appointment may become necessary on account of exigency of the administration. However, an ad-hoc or temporary employee appointed to a permanent post should not be replaced by another ad-hoc or temporary employee, he can be replaced only by a regularly selected employee.

9. The Judgment in case of Rajendra Vitthal Kamble Vs. Government of Maharashtra was brought to the notice of the Hon'ble High Court in case of Aman Shah Hussain Shah & Ors. Vs. Chief Officer, Municipal Council, Karanja (Lad)._ After considering the Judgment in case of **Gangadhar Pillai Vs. Simense Limited,2007 (1) SCC,533** the Hon'ble Division Bench in para-5 of the Judgment, held that the Judgment in case of State of Haryana Vs. Piara Singh & Ano. was over ruled by the

Constitution Bench of the Hon'ble Apex Court in case of **Secretary, State of Karnataka Vs. Umadevi, 2006 (4) SCC,1.**

10. After reading the Judgment in case of Gangadhar Pillai Vs. Simense Limited, 2007 (1) SCC, 533, it seems that in para-31 the Hon'ble Supreme Court has held that "Pyarasing has been since over ruled by Constitution Bench of this Court in Secretary, State of Karnataka Vs. Umadevi, In case of Aman Shah this position of law was examined and it was held that as the Judgment in case of Rajendra Vitthal Kamble Vs. Government of Maharashtra was based on the Judgment in case of State of Haryana Vs. Piara Singh which was expressly over ruled, therefore, in case of Aman Shah, it was held that the petitioners who were working on clock hour basis, they were not occupying any

permanent post, were not entitled to have protection on the basis that one ad-hoc employee cannot be replaced by another ad-hoc employee. In present case all the applicants are ad-hoc employees, they are not recommended by the MPSC and were not appointed by the Government and therefore, in view of the recent legal position which is discussed above, it is not possible to accept that they are entitled to have protection on the ground that one ad-hoc employee cannot be replaced by another ad-hoc employee. In view of this discussion, we are of the view that the applicants are not entitled for the interim relief.

11. The learned P.O. is directed to file detailed reply to the O.A. on the next date. **S.O. four weeks.**

Steno copy is granted.

(A.D. Karanjkar)
(Shree Bhagwan)
Member(J).
Member (A).

Dated :- 04/12/2018.

*dnk.