

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

940 WRIT PETITION NO.1217 OF 2014

ARSHAD AYUB KHAN.

...PETITIONER.

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS

...RESPONDENTS.

...

Mr.Kiran M. Nagarkar, Advocate for Petitioner;
Mr.U.K. Patil, Special council for Respondent No.1/State
Mr. S.K.Kadam, AGP for Respondent No.1/State
Mr. V.G. Pingle, Advocate for Respondent No.2
Mr. Sudhir Patil, Advocate for Respondent No.3

....

CORAM : **S.S.SHINDE &**
P.R.BORA,JJ.

DATE : **25th March,2015.**

PER COURT :

1) Heard. Though number of points have been raised in the petition, the Counsel appearing for the Petitioner confined his arguments to only point that, the Maharashtra Administrative Tribunal rejected the application of the Petitioner on the ground that, the Petitioner did not place any material on record in support of his case. Learned counsel for the Petitioner submits that, the record is in possession of Respondent No.1 and therefore the Maharashtra Administrative Tribunal, ought to have directed Respondent No.1 to produce the record, however disposed of the application of the Petitioner, without directing to applicant No.1 to

produce the record. It is submitted that, the application of the Petitioner is decided with observation that, the Petitioner did not produce material on record and therefore, there is no prima-facie case of tenability of the Original Application, which has caused injustice to the Petitioner.

2) The learned Special Counsel appearing for Respondent No.1 concedes that, the record is in possession of Respondent No.1 and therefore, in all probabilities, Petitioner was not in a position to place on record relevant material. The learned counsel for Respondent Nos. 2 and 3 submits that, Petition lacks merit and the same may be dismissed.

3) We have given careful consideration to the submissions advanced by learned Counsel for the parties, perused the pleadings in the petition as well as contents of annexures thereto. We confine our adjudication of this Petition to the single raised by the Petitioner that, the Maharashtra Administrative Tribunal has decided the Original Application in absence of perusal of record maintained by the Respondent No.1, which relates to the case of the Petitioner. We have carefully read the observations of the Maharashtra Administration Tribunal in para 11, 12 and 13 and we are of the opinion that, in the first place, the learned Maharashtra Administrative Tribunal was not correct in observing that the Petitioner has not placed material on record. The

Respondent No.1 herein was very much party before the Maharashtra Administrative Tribunal, with whom the relevant material is available.

4) In that view of the matter, since the Maharashtra Administrative Tribunal did not decide the application on merits. We quashed and set aside the impugned Judgment and Order of the Maharashtra Administrative Tribunal in Original Application No. 891/2012, and restore the Original Application to its original file. The Maharashtra Administrative Tribunal to decide the Original Application afresh, after giving opportunity to the concerned parties and after summoning the record from the Respondent No. 1, on its own merits.

5) The Petition stands disposed of in above terms.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

S.P. Rane