

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO.142 OF 2015
IN
WRIT PETITION NO.11305/2014**

Smt.Aparna D/o Gangadhar Puri @
Smt. Aparna w/o Sudam Gosavi - PETITIONER

VERSUS

1) The State of Maharashtra & Ors. - RESPONDENTS

Ms.Pradnya S.Talekar, Advocate for Petitioner;
Mr.SK Kadam, Addl.GP for State.

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

DATE OF RESERVING ORDER : 5th MAY, 2016
DATE OF PRONOUNCING ORDER:7th JUNE,2016

PER COURT

1) Heard. By filing the present
application, the applicant/petitioner has sought
review of the order passed by this court on 8th
April, 2015 in Writ Petition No.11305/2014.

2) The petitioner had filed the aforesaid
writ petition, challenging the order passed by
Maharashtra Administrative Tribunal, Bench at

Aurangabad, (for short, the Tribunal), in Original Application No.655/2013 on 1st December, 2014.

3) The aforesaid original application was filed by the applicant seeking quashment of communication dated 4th October, 2013, issued by the Sub Divisional Officer, Patoda, District Beed, whereby the Sub Divisional Officer had rejected the applicant's request to resume the duties.

4) Relevant facts, in brief, are thus :
The applicant was appointed as Talathi by Collector, Beed, vide order dated 30th August, 2011. Accordingly, the petitioner submitted her joining report to the Sub Divisional officer, Patoda, District Beed. Thereafter, vide order dated 14.9.2011, the application was posted as Talathi of Sajja Deulgaon Ghat, Tq. Ashti, District Beed and was directed to resume at the said place. The applicant, however, did not

resume her duties. On 20th September, 2011, the applicant informed Tahsildar, Ashti District Beed that she was not in a position to join the duties on health ground and she would join after she is recovered. On 1.8.2013 the applicant submitted an application to Tahsildar, Ashti requesting him to allow her to join her duties stating that she was substantially recovered from the ailment. On 13.9.2013, the applicant again submitted an application requesting to allow her to join the duties and annexed medical certificate of a private doctor. However, she was not allowed to join the duties. Vide communication dated 4.10.2013, the Sub Divisional officer, Patoda informed the applicant that since the applicant did not resume her duties within the period stipulated in the order dated 14.9.2011, her application dated 1.8.2013 stands rejected.

5) As stated herein above, the aforesaid communication dated 4.10.2013 was challenged by the applicant by filing the original application

before the Tribunal. The learned Tribunal, after having considered the material placed before it, rejected the said original application. It was the contention of the applicant before the Tribunal as well as this Court that her request to allow her to resume the duties could not have been rejected by the Sub Divisional Officer, Patoda without issuing any show cause notice to the applicant. It was the further contention of the applicant that the act of the Sub Divisional Officer virtually amounts to termination of her service on the ground that she did not join at the place of her posting within the stipulated period. In the circumstances, according to the applicant, it was mandatory on the part of the Government authorities to issue show cause notice to the applicant and to conduct an appropriate enquiry. For want of such procedure being followed by the Government authorities, according to the applicant, the communication dated 4.10.2013 whereby her services came to be impliedly terminated, was liable to be quashed

and set aside.

. The Tribunal rejected the contention so raised by the applicant and this Court has also not interfered in the order passed by the Tribunal.

6) Ms.Pradnya Talekar, learned Counsel appearing for the applicant, submitted that in no case, the services of the applicant could have been terminated by the Government authorities without conducting appropriate enquiry in that regard and without giving due opportunity to the applicant to put forth her contentions.

7) After filing the present review application, the applicant filed Civil Application No.16635/2015, seeking permission to amend the review application and to incorporate in the review application the contentions raised in the draft annexed to the aforesaid civil application. Though the said draft runs in about 12 pages, in nutshell, it seems to be the

contention of the applicant that her services could not have been terminated automatically and the act of the Government authorities in terminating the services of the applicant in such a manner, amounts to violation of Article 311 of the Constitution of India. The applicant has also attempted to seek protection of the provisions incorporated under the Maternity Protection Convention.

8) Ms.Talekar submitted that by forwarding the application dated 20th September, 2011 to Tahsildar, Ashti, she has duly informed about her ill-health and her inability to join at the place of her appointment and had also informed that after recovering from the ailment as per the medical advice, she will resume her duties with medical certificate. According to Ms.Talekar, the aforesaid communication has missed the attention of this Court while dismissing the writ petition filed by the applicant/petitioner.

9) Ms. Talekar, in support of her arguments, placed reliance on the following two judgments of the Hon'ble Apex Court, -

(i) **Jai Shanker Vs. State of Rajasthan**
(1966) 1 SCR 825

(ii) **The State of Assam and Ors. Vs. Akshaya Kumar Deb – (1975) 4 SCC 399.**

10) We have given due consideration to the submissions advanced on behalf of the review applicant. However, we do not find any substance in the submissions so made. As stated earlier, the argument advanced by learned Counsel for the review applicant that the act of the Government authorities, amounts to implied termination of the services of the applicant and further that the same is violative of Article 311(2) of Constitution of India, is liable to be rejected at the threshold. Article 311(2) provides that no person, who is a member of Civil Services of the Union or of the State or holds the civil post, shall be dismissed or removed or reduced in rank except after an enquiry in which he has been

informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. In the instant case, the services of the applicant have not been terminated by the Government authorities for any misconduct on part of the applicant requiring any enquiry to be held in regard to the said misconduct. As has been rightly observed by the Tribunal, non-compliance by the applicant of the conditions incorporated in the appointment order has resulted in cancellation of her appointment. The impugned order dated 4.10.2013 states that the applicant has violated condition No.15/12, which prescribes that the candidate has to join at the place of his appointment within fifteen days from the date of order of appointment. In first Para of the aforesaid appointment order it has been clarified that the appointment is being given subject to the terms and conditions incorporated in the said appointment order and **non-compliance of any of such condition will result in cancellation of the appointment order.**

11) It is undisputed that the applicant did not join at the place of her posting within stipulated time. As per the order passed by the Sub Divisional Officer, Beed on 14.9.2011, the applicant was supposed to forthwith join at the place of her posting or latest by 30th September, 2011 in view of the initial appointment order dated 30.08.2011. Though it is the contention of the review applicant that vide her application dated 20.9.2011, which was sent by the applicant on 30.09.2011 by post, submitted to Tahsildar, Ashti, she had applied for time to join her duties, looking to the contents of the said application, the same cannot be said to be an application either seeking time resume at the place of appointment or seeking medical leave. Moreover, admittedly, after forwarding the said application by post on 30th September, 2011, the applicant did not submit any subsequent application seeking extension of medical leave or seeking extension of time for joining at the place of her appointment for the period of about

two years. In the meanwhile, there was absolutely no communication from the side of the applicant nor she has informed the Tahsildar, Ashti or Sub Divisional officer, Beed about her ailment. After the gap of about two years, for the first time, on 1.8.2013, the applicant submitted the application to Tahsildar, Ashti requesting him to allow her to join her duties. It is difficult to accept that it was not possible for the applicant to inform her office about her ailment and to make proper request either seeking medical leave or seeking extension of time for joining her duties. Complete inaction on the part of the applicant for a long period of about two years, cannot be in any way justified. As has been observed by the Tribunal, the applicant was quite aware about the terms and conditions incorporated in the order of appointment dated 30.08.2011 and the order of posting dated 14.09.2011 that she was to join at the place of posting within 15 days and non-compliance thereof would result in cancellation

of her appointment order.

12) In the above circumstances, it does not appear to us that any wrong has been committed by the Government authorities in not allowing the applicant to join her duties. The Tribunal has also not committed any error in rejecting the original application of the applicant. We do not see any apparent error in the order passed by us so as to review the same. As stated earlier, the contention of the applicant, alleging violation of Article 311(2) of Constitution of India is absolutely misconceived. Having regard to the facts of the present case, none of the authorities relied upon by the petitioner can be of any help to the petitioner. The complete inaction and gross carelessness on part of the applicant in not even informing the Tahsildar, Ashti or Sub Divisional officer, Beed about her alleged ailment and in seeking either medical leave or seeking extension of time for joining her duties at the place of her appointment has

resulted in cancellation of her order of appointment, for which, she has to blame herself and not to the Government authorities. We do not see any error on the part of the Government authorities in not allowing the petitioner to join the duties. The Review Application is devoid of any substance and deserves to be rejected and is accordingly rejected. Pending Civil Application, if any, stands disposed of.

Sd/-
(P.R.BORA)
JUDGE

Sd/-
(S.S.SHINDE)
JUDGE

bdv/

fldr 25.5.2016