

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3830 OF 2006

Bharat Tatyrao Jadhav
age 41 years, occ. service
r/o Sharda kunj, C/o Shri Kachkure
Behind Telephone Bhavan,
Ajabnagar,
Aurangabad

Petitioner

Versus

1. The State of Maharashtra
Through the Co-operative Department
Mantralaya,
Mumbai.
2. The Divisional Joint Registrar
Co-operative Societies,
Aurangabad
3. The Additional Collector AND
the Chairman,
Freedom Fighter Nomination
Verification Committee, Jalna.

Respondents

Mr. A.S. Deshpande, advocate for petitioner.
Mr. A.R. Kale, A.G.P. for respondents.

CORAM : R.M.BORDE &

SMT. VIBHA KANKANWADI, JJ.

DATE : 14th DECEMBER, 2017

JUDGMENT : (PER R. M. BORDE, J.)

1. Heard learned counsel for the parties.
2. Petitioner is objecting to the order passed by the Additional Collector, Jalna on 13.02.2006 thereby cancelling nomination issued in favour of petitioner by the wife of deceased freedom

fighter with a view that petitioner may claim benefits in securing employment.

3. According to petitioner, one Kaduba Kolte was the freedom fighter who died in the year 1986 and was succeeded by his wife Smt. Ramkunwarbai Kaduba Kolte. Petitioner claims to be the son of sister of deceased freedom fighter. Wife of the deceased freedom fighter issued nomination in favour of petitioner which was duly verified by the Collector. On the basis of verification issued by the Collector, petitioner was offered employment in Co-operation department in the year 1993. Respondent no. 3 on its own enquired as regards authenticity and correctness of nomination certificate issued in favour of petitioner and, relying upon the report of enquiry, the Additional Collector, Jalna proceeded to direct cancellation of nomination issued in favour of petitioner by wife of the deceased freedom fighter. As a result of cancellation of nomination issued in favour of petitioner, the department proceeded to hold an enquiry against petitioner and directed termination of his services.

4. Petitioner raised challenge to the order passed by the department directing termination of his services by presenting Original Application No. 182/2002 which came to be heard and disposed of by the Division Bench of Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad. The tribunal allowed the original application tendered by petitioner and directed quashment of the order passed by the employer on 02.03.2002 directing termination of services of petitioner. The tribunal granted liberty to the respondents to take action as per law. The tribunal,

while disposing of original application has observed in paragraphs 11 to 13 as under :

11. The question for determination is as to whether nomination which was the basis of the applicant's employment was wrongly made and whether the Collector, Jalna's report about the deceased freedom fighter not having any sister at all can be sustained in view of overwhelming evidence to the contrary.

12. We have not been shown any evidence based on which the Collector, Jalna came to the conclusion that the deceased freedom fighter had no sister at all and hence could not have a nephew. Even after the enquiry officer's report was sent to the Collector, he gave a very cryptic reply, which does not inspire confidence. We have gone through the enquiry officer's report and found that since the freedom fighter's widow was indisposed and aged 80 years, her son remained present and confirmed that the applicant is his first cousin, as claimed. There is no reason to disbelieve this evidence. Similarly, there is an affidavit filed by the brother of the deceased freedom fighter stating that there were three sisters, which again has gone unchallenged. Besides, there are certificates from the Sarpanch - as of the concerned villages in support of the applicant's case.

13. On the other hand, the Collector's so-called enquiry was conducted behind the back of the applicant. No statement, recorded in the enquiry, has been produced before the Tribunal or was before the respondents when they took the decision to accept the Collector's report. The least that was expected from respondent no. 2 was to satisfy himself, that the Collector's report was based on some reliable evidence by securing a copy of the same, before discarding the

enquiry report of the District Enquiry Officer,
Aurangabad.

The tribunal has recorded clear finding that the conclusion reached by the Enquiry Officer that the deceased freedom fighter was not having any sister at all, cannot be sustained in view of overwhelming evidence to the contrary. It is also recorded by the tribunal that enquiry has been conducted in respect of nomination issued to the petitioner by wife of deceased freedom fighter without observing principles of natural justice and as such, the conclusions reached are not sustainable. The very basis for issuing the order of termination was found to be shaky and as such the tribunal proceeded to quash the order.

5. Petitioner contends that since the order passed by the Additional Collector, Jalna, cancelling nomination issued in favour of petitioner has not yet been set aside, he apprehends further adverse action at the instance of the department. It is the contention of petitioner that post decision of the tribunal, further investigation was undertaken by the department and it was noticed that nomination issued in favour of petitioner is valid.

6. It is clear from record that the Additional Collector, Jalna while directing cancellation of nomination has not followed the principles of natural justice and the order has been passed in breach of the principles of natural justice. The Maharashtra Administrative Tribunal, while dealing with the order of termination based upon the order passed by the Additional Collector, Jalna has concluded that observations of the Additional Collector in the enquiry report that deceased freedom fighter was

not having any sister is found to be shaky and incorrect and as such the very basis and foundation for reaching the conclusion by the Additional Collector while passing adverse order against petitioner is found to be unsustainable. In the circumstances, no reliance can be placed by respondents on the communication dated 13.02.2006 directing cancellation of nomination issued in favour of petitioner since it is found to be in breach of observance of principles of natural justice.

7. For the reasons recorded above, writ petition deserves to be allowed and the same is accordingly allowed. Rule made absolute in above terms. There shall be no order as to costs.

SMT. VIBHA KANKANWADI
JUDGE

R.M.BORDE
JUDGE

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