

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

WRIT PETITION NO. 5545 OF 2005

Nimish s/o Trimbakrao Gaulkar,
Age : 33 years, occup. Government
Service as Linen-keeper (Vastrapal)
in the Office of Medical Hospital,
Women and Child Hospital, Jalna,
R/o Dr. Gaulkar, Vidya Nagar,
Jalna, District : Jalna

.. PETITIONER/
Orig. Applicant

versus

1) The State of Maharashtra,
through the Secretary,
Department of Health Services,
M. S. Mantralaya, Mumbai

2) The Joint Director,
Health Services (Health),
Pune – 3

3) The Deputy Director,
Health Services, Aurangabad.

.. RESPONDENTS
Original

4) The Medical Superintendent,
Women & Child Hospital, Jalna

Non-Applicants

Mr. Avinash S. Deshmukh, Advocate holding for Mr. Rajendrraa
Deshmukkh, Advocate for petitioner
Ms. S. S. Raut, Assistant Government Pleader for respondents

CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.

DATE : 4th October, 2017

ORAL JUDGMENT (PER: SUNIL P. DESHMUKH, J.)

1. Leave to amend.
2. Petitioner is before this court, challenging order of the Maharashtra Administrative Tribunal, Aurangabad Bench, passed on 05-07-2005 in Original Application No. 238 of 2001 whereunder his request for declaration of his appointment to be regular and permanent under order dated 05-01-2001 issued by respondent no. 3 and to give to him all incidental, ancillary and consequential benefits arising therefrom, has been declined.
3. Petitioner has passed higher secondary certificate examination (12th standard examination) and has also passed English and Marathi typing tests. Additionally, petitioner has undergone two years course of machinist in Industrial Training Institute. So far as these qualifications are concerned, there is no dispute on that those are sufficient for appointment in class III category in the Government service.

4. Under Government Resolution Dated 02-03-1981 concession is given to the freedom fighters and their nominees from rigour of getting selected through Regional Selection Board and they are given preference in class III and IV posts in Government service.

5. Smt. D.S. Sadhu who was a freedom fighter had nominated the petitioner to avail of the benefit of employment pursuant to Government Resolution dated 02-03-1981, on 03-06-1994. Despite the request made in 1994, for quite a long time, the same was not being responded to. Around 2000, the petitioner had requested respondent no. 2 for appointment. Petitioner's request had been forwarded to respondent no. 3, as petitioner was competent for appointment on the post which was permanent and vacant at the relevant time.

6. On 05-01-2001, an order came to be issued by respondent no. 3 appointing petitioner as linen keeper for a period of three months, purporting the same to be *ad-hoc* appointment. Petitioner being a nominee of freedom fighter, had been claiming a permanent post on regular basis whereas

his appointment was on *ad-hoc* basis and as such, he had been before the Maharashtra Administrative Tribunal under Original Application No. 238 of 2001 referred to hereinabove seeking the reliefs mentioned therein.

7. The Tribunal had granted interim relief in the original application and the same continued till final decision had been rendered on 05-07-2005 rejecting the request of the petitioner under the original application. Petitioner thus is before this court.

8. While deciding original application, the Tribunal has considered that in its' earlier decision rendered on 18-11-2002 in Original Application no. 720 of 2001 and other companion Original Applications, it had disapproved Government Resolutions dated 07-04-2001 and 20-03-2002 concerning appointments in public employment of candidates from special categories and had issued certain directions to the Additional Chief Secretary and the Principal Secretary, General Administration Department (Personnel) to review Government circular dated 13-09-2000 and modify the same suitably by incorporating appropriate guidelines, further directing to carry out similar exercise in relation to other

special categories, such as, freedom fighters and census retrenched employees within the time frame stated in the order.

9. While this petition had been pending, under interim orders in the same, petitioner's services were protected till decision in writ petition. In the meanwhile, it appears that since the posts of linen keeper were declared surplus, the petitioner who was holding such post had been accommodated as junior clerk by respondent no. 3 in the same department.

10. Learned counsel for the petitioner Mr. A. S. Deshmukh refers to and relies on order dated 3/6-12-2007 which, according to him, declares that the employees who were rendered surplus, were absorbed under the same, and in the same it had been referred to that case of the petitioner is pending in court.

11. Learned counsel submits that a concession for appointment of nominee of freedom fighter had been made available under Government Resolution passed way back on 02-03-1981 pursuant to which Smt. Sadhu who had been looked after by petitioner had nominated petitioner in 1994

for appointment in government services. However, said request was not attended to and the laudable reason for which Government Resolution has given concession in appointing nominee or freedom fighter was getting ignored and the family of the petitioner and that of freedom fighter Smt. Sadhu had not been in any gainful employment. Pursuant to nomination of petitioner by Smt. Sadhu, ultimately her request had been forwarded to respondent no. 3 and accordingly petitioner was appointed in class III post of linen keeper. It is not the case at all that the petitioner does not possess requisite qualification for appointment.

12. He submits that the petitioner is qualified to hold on to class III post. The post he is employed in, is permanent. Concession has been given to nominee of freedom fighter from the rigour of undergoing recruitment process through Regional Selection Board pursuant to which he has been legitimately entitled to a permanent post. However, his appointment had been made only on *ad hoc* basis for a period of three months and, as such, the petitioner had to approach the Maharashtra Administrative Tribunal.

13. Learned counsel goes on to submit that petitioner's Original Application had been decided by Maharashtra Administrative Tribunal not on merits of the case but stands decided with reference to its' earlier order rendered on 18-11-2002 in some other application i.e. Original Application bearing No. 720 of 2001 and other companion Original Applications which hardly has any relevance to the claim of the petitioner. He submits that, in fact, there had been no hearing as such on the issue involved in the Original Application and the order impugned has been passed on the concerns not related with the Government Resolution dated 02-08-1981. He submits that while there is no dispute about the petitioner being nominee of freedom fighter and had been appointed accordingly, his rightful claim was undecided on merits and for the reasons which are apart from the Government Resolution dated 02-03-1981.

14. Learned Assistant Government Pleader Ms S. S. Raut, submits that petitioner's claimed absorption / accommodation under order dated 3/6-12-2007 had been *ad hoc* in nature subject to the decision by the court and said order would have to bWP-5545e considered in the context of background in which it had been issued.

15. Learned Assistant Government Pleader for the respondents submits that Tribunal's order reflects, analogy had been drawn and there had been directions to the Additional Chief Secretary and the Principal Secretary, General Administration Department to formulate transparent guidelines for appointments under special categories including those of nominees of freedom fighter and census retrenched employees and in such a case, order impugned can hardly be faulted with. She further purports to refer to that respondent no. 3 had no authority to make appointment on permanent / regular basis from special category since such authority vests in the Government.

16. We have heard learned counsel as aforesaid. It would be pertinent to refer to Government Resolution dated 02-03-1981 which reads :-

" By Government Circular Memorandum, General Administration Department, No. CNS/1065/4652/J, dated the 12th October 1965, Government has granted certain concessions to Freedom Fighters and their nominees in the matter of recruitment to class III and class IV posts in Government offices which are not required to be filled in by the appointment of candidates selected by the Maharashtra Public Service Commission. These orders were reiterated by Government Endorsement, General Administration Department, No. CNS-1077/1078/XVI-A, dated the 1st September 1977 (copy appended for ready reference. In order to remove the

impediments in the implementation of these orders Government is pleaded to direct further as follows :-

(i) The appointments of freedom fighters and their nominees in Class III posts in Government service which are at present within the purview of the Regional Selection Boards should be excluded from their purview with immediate effect.

(ii) The freedom fighters and their nominees should be given preference over strike period personnel in the matter of recruitment to class III and class IV posts, if the former are otherwise suitable for appointment.

(iii) It is reiterated that the freedom fighters and their nominees should be considered for appointment to class III and class IV posts in Government service on the basis of their applications received directly, without requiring them to come through the Employment Exchanges.

2. All the appointing authorities are requested to follow these orders scrupulously. "

17. There is no dispute about petitioner possessing requisite qualifications for appointment in class III category post in State government service. There is no dispute, while petitioner had been initially appointed as linen keeper in the post, it was a permanent and regular post and the post of clerk on which he is accommodated / absorbed also is a permanent post. There is also no dispute that petitioner had been appointed as a nominee of freedom fighter according to the decision of the State Government as reflected in the Government Resolution dated 02-03-1981. It appears that operation of the Government Resolution dated 02-03-1981,

had not been obfuscated or was in-operative or has been stayed.

18. While the petitioner had been appointed under the order of respondent no. 3, it appears, respondent no. 3 had purportedly appointed him only for a period of three months. Since petitioner's legitimate claim had been for permanent post which he was denied, he had approached the Maharashtra Administrative Tribunal. The Tribunal, however, had declined to accede to the request getting weighed under its directions to the authorities to formulate guidelines. It is nobody's case pursuant such directions any guidelines in respect of appointments of nominees of freedom fighter have been framed by the authorities concerned.

19. During the course of this writ petition petitioner had been accommodated / absorbed under orders dated 3/6-12-2007 and 26-11-2007. Both these communications show, to a fairly large extent, that the petitioner had been absorbed as class III category post i.e. junior clerk or post equivalent to the same. Such accommodation / absorption does not appear to be conditional one.

20. Further, petitioner has been working all along since 2001 continuously without any interruption and presently his age is 46 years. The tribunal had been in error in passing impugned order in 2005 relying on its order in 2002 without taking into account it did not appear its order had been followed and without looking at prevailing position.

21. In the facts and circumstances, we consider that it would not be proper for us to allow services of the petitioner being truncated, particularly when he is the nominee of freedom fighter and his case had been recommended under said category and appointed pursuant to decision of Government giving concession to nominees of freedom fighters who have been given exemption from the rigour of selection through Regional Selection Board. In such circumstances, it would be difficult for us to leave the petitioner in dire straits more so while his claim to the post being legitimate is undisputed.

22. We do not consider, in the facts of the case, Tribunal could have dismissed an otherwise legitimate claim simply going by its earlier decision rendered on 18-11-2002 in Original Application no. 720 of 2001 and other companion

Original Applications referred to hereinbefore without considering government instructions or decision in this regard. Under the circumstances, we deem it appropriate to allow the writ petition.

23. Writ petition accordingly is allowed in terms of amended prayer clauses (C), (D) and (E) and is disposed of.

24. Rule made absolute in aforesaid terms.

SANGITRAO S. PATIL
JUDGE

SUNIL P. DESHMUKH,
JUDGE

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