

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

WRIT PETITION NO.6345 OF 2016

Kailaschandra s/o Vithalrao Waghmare,
Age:40 years, Occu.: Service,
(as Naib Tahsildar)
R/o.: Tathagatnagar, Malegaon Road,
Taroda Khu., Nanded-5

- PETITIONER

VERSUS

1. State of Maharashtra,
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, M.S., Mumbai-32
2. The State of Maharashtra,
Through the Secretary,
General Administration Department,
Mantralaya, Mumbai - 32
Maharashtra State.
3. The State of Maharashtra,
Through the Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai-32
Maharashtra State.

- RESPONDENTS

Mrs. Preeti R. Wankhede, Advocate for Petitioner/s
Mr.AS Shinde,AGP for the Respondent Nos. 1 to 3.

**CORAM : R.M.BORDE &
P.R.BORA, JJ.**

DATE : 21st MARCH, 2017.

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

1) Rule. Rule made returnable forthwith. With the consent of learned Counsel appearing for the parties, this petition is taken up for final disposal at admission stage.

2) The petitioner is praying for issuance of directions to the respondents to issue an order of appointment to the petitioner as Tahsildar, Group-A in pursuance to the selection by Maharashtra Public Service Commission (for short, MPSC). The petitioner is also praying for quashment of the order passed by the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad (for short, MAT) dated 6.5.2016 in Original Application No.502/2015, refusing the request of the petitioner/applicant for issuance of directions, as referred above.

3) The petitioner belongs to scheduled caste

category and is presently serving as Naib Tahsildar on being selected through MPSC in the year 2010. An offence under the provisions of Sections 498-A, 497 and other sections of Indian Penal Code along with Section 4 of The Dowry Prohibition Act, has been registered against the petitioner. After due investigation, charge sheet has been presented against the petitioner and the matter is pending for trial.

4) The petitioner tendered an application seeking employment as Tahsildar, Group-A in the year 2012. Selection process was conducted by MPSC and the petitioner has been declared as successful and eligible for being appointed to the post of Tahsildar, Group-A. The petitioner, while tendering the application seeking employment, has disclosed as regards registration of the offence against him under Section 498-A of IPC at the instance of his wife as well as pendency of the criminal case before the Judicial Magistrate First Class, Nanded being Case No.330/2013. After being found successful in the process conducted by MPSC, petitioner's candidature was recommended to the Government by MPSC on

13.5.2013. However, since the offence, referred to above, is registered against the petitioner, the case was referred to a Committee under the Chairmanship of Additional Home Secretary, whereupon the Committee has recommended not to issue a letter of appointment in favour of the petitioner, which decision was the subject matter of challenge in Original Application No.502/2015 presented by the petitioner before the MAT. The Original Application presented by the petitioner came to be dismissed by the MAT by order dated 6.5.2016. The petitioner has impugned the said decision of the MAT passed in Original Application and is seeking direction to the Respondent/State to appoint him during pendency of the trial pending against him.

5) Learned Counsel appearing for the petitioner has invited our attention to the Circular dated 26.8.2014 issued by the State Government, which lays down certain guidelines in respect of issuance of letter of appointment or dispensing of services of the employees/candidates functioning under the Government in the event of initiation of criminal proceedings against such employees/candidates or in

the event of finding them guilty for commission of certain offences. The Government Circular further lays down the procedure in respect of scrutiny of the cases by a committee constituted under the Chairmanship of Additional Chief Secretary (Home). Schedule A and B thereof refer the list of various offences. In the event of an employee or candidate seeking employment, is found guilty of the offences indicated in Schedule/Appendix A and B; or in certain cases, if a candidate/employee is found to have been facing criminal prosecution in respect of the charges specified in the aforesaid Schedules, it is recommended, either not to appoint such candidate/employee during pendency of the trial or in certain cases only in the event of having found such candidate/employee guilty in respect of such offences.

6) Admittedly, the petitioner is charged with commission of offence punishable under Section 498-A and the offence prescribed under The Dowry Prohibition Act. Entry at Serial No.20 in Schedule-A prescribes that, if a candidate is convicted of the offence relating to cruelty by husband or by

relatives against the wife, such candidate shall not be considered for appointment. It has not been prescribed that only on account of pendency of criminal prosecution alleging cruelty by husband or by relative, the candidate shall not be offered employment. Similar is the prescription in respect of the offence under the Dowry Prohibition Act, 1961. Schedule B of the Circular provides for prohibition for employing a candidate in the event of recording of finding of guilt by Criminal court and such prohibition is not prescribed on registration of offence on account of pendency of trial. The guidelines under the Government Circular referred to above do not appear to have been adhered to in the instant case by the Committee. The decision of the committee appears to be without application of mind to the record of the case. The Committee has not at all referred to the Circular issued by the Government prescribing the guidelines. The criminal application tendered by the petitioner, seeking anticipatory bail to the High Court, is considered as a pending criminal prosecution against him. It thus appears that the matter has been dealt with by the Committee in a most casual manner.

7) The petitioner has invited our attention to the decision taken by the Committee in the case of one Prashant Digraskar. In identical circumstances, Shri Digraskar, who was facing trial for commission of offences under Section 406, 409, 420, 467, 468 and 471 of the Indian Penal Code, was not recommended by the Committee for employment during pendency of the trial. The Committee, while considering the case of Mr. Digraskar, though placed reliance on the Government Circular referred to above, did not recommend the Government to offer employment to Shri Digraskar during pendency of the criminal prosecution. The State Government, however, overruled the opinion of the Committee and proceeded to direct issuance of letter of appointment to Shri Digraskar on correct interpretation of the Circular, referred to above. In the instant case, however, the Committee, without referring to the Government Circular, proceeded to issue adverse recommendation to the Government against the petitioner, which has been accepted and the petitioner has not been issued a letter of appointment. It is expected of the State Government to follow uniform policy while offering employment to the candidates recommended by the MPSC.

It does appear that the State Government has adopted a discriminatory approach and attitude by refusing to consider the claim of the petitioner for issuance of the letter of appointment during pendency of criminal prosecution. It is not the contention of the respondents that the petitioner has withhold or suppressed the information as regards pendency of the criminal prosecution against him while applying for employment. The petitioner, in fact, has disclosed in respect of pendency of the criminal case against him while tendering the application to the MPSC.

8) In view of the facts and circumstances, as enumerated above, the request of the petitioner deserves to be accepted. The adverse decision recorded by Maharashtra Administrative Tribunal deserves to be quashed and set aside and the same is accordingly quashed.

9) The respondents are directed to issue a letter of appointment to the petitioner in pursuance of the recommendations made by MPSC, appointing him to the post of Tahsildar, Group-A subject to decision of pending criminal prosecution against him. The

Respondents shall issue the letter of appointment to the petitioner, as expeditiously as possible and preferably within four weeks from today and it is accordingly directed.

10) Rule is made absolute to the extent as specified above. No order as to costs.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

bdv/