

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

WRIT PETITION NO. 9082 of 2010

Bapurao Dattatraya Kadam,
age 40 years occupation service
R/o C/o Special Auditor Grade-II,
Co-operative Societies Marketing,
Nanded District Nanded

...PETITIONER.

VERSUS

1. The State of Maharashtra
Through its Secretary,
Co-operation and Textiles Department,
Mantralaya, Mumbai.
2. The Commissioner and Registrar,
Co-operative Societies, Maharashtra State,
Central Building, Pune.
3. The Divisional Joint Registrar,
Co-operative Societies,
Balasaheb Pawar Sahakar Bhavan,
Mondha Naka, Aurangabad.
4. The District Special Auditor Class-I,
Nanded, District Nanded.

...RESPONDENTS

WITH
WRIT PETITION NO. 9066 of 2010

Ramdas S/o Vitthalrao Suryawanshi,
age 42 years occupation service
R/o C/o Special Auditor Grade-II,
Co-operative Societies Marketing,
Nanded District Nanded

...PETITIONER.

VERSUS

1. The State of Maharashtra
Through its Secretary,
Co-operation and Textiles Department,
Mantralaya, Mumbai.
2. The Commissioner and Registrar,
Co-operative Societies, Maharashtra State,
Central Building, Pune.
3. The Divisional Joint Registrar,
Co-operative Societies,
Balasaheb Pawar Sahakar Bhavan,
Mondha Naka, Aurangabad.
4. The District Special Auditor Class-I,
Nanded, District Nanded.

...RESPONDENTS

**WITH
WRIT PETITION NO. 9080 of 2010**

Sakharam Shankarrao Suryawanshi,
age 40 years occupation service
R/o C/o Special Auditor Grade-II,
Co-operative Societies, Gandhi Nagar,
Dharmabad District Nanded

...PETITIONER.

VERSUS

1. The State of Maharashtra
Through its Secretary,
Co-operation and Textiles Department,
Mantralaya, Mumbai.
2. The Commissioner and Registrar,
Co-operative Societies, Maharashtra State,
Central Building, Pune.
3. The Divisional Joint Registrar,
Co-operative Societies,
Balasaheb Pawar Sahakar Bhavan,
Mondha Naka, Aurangabad.

4. The District Special Auditor Class-I,
Nanded, District Nanded.

...**RESPONDENTS**

Mr Nitin B. Suryawanshi, Advocate for petitioner, in all petitions.
*Mr Y.G. Gujarathi, Asstt. Govt. Pleader for respondents, in all
petitions.*

CORAM : P.B. VARALE, AND
SUNIL K. KOTWAL, JJ.

DATE : 7th December 2017

ORAL ORDER :

Petitioners before this Court are challenging the order passed by the learned Maharashtra Administrative Tribunal in original applications preferred by these petitioners. As the original applications decided by common order and the issue involved in these three petitions is an identical issue, these three petitions are taken up for final hearing and are decided by this common order. We take up Writ Petition No. 9082 of 2010 as a lead case.

2. Learned Counsel Mr Suryawanshi, appearing for the petitioner submits that the petitioner was the nearest relative of freedom fighter and the State Government formed a policy for providing employment to the nearest relative, who is nominated by the freedom fighter. Mr Suryawanshi, learned Counsel invited our attention to the document placed on record i.e. Exh. "A" on page No.

15 to submit that the petitioner was the nearest relative of one Smt. Bainabai Champatrao Kale, widow of freedom fighter. Perusal of the document shows that it is submitted by Smt. Bainabai that due to her old age and illness, she is unable to seek any benefit to be awarded to freedom fighter or his widow and she has nominated her nearest relative i.e. son of the real sister of her deceased husband (freedom fighter), Shri Bapurao Dattarao Kadam, aged 29 years i.e. the petitioner. The petitioner, in view of the nomination, was appointed as a Peon, in the office of the Auditor, Co-operative Societies Marketing, Parbhani. The perusal of other documents placed on record shows that a complaint was received in the office of the Collector and also in the office of the Auditor (Divisional Joint Registrar). It was submitted that the petitioner by adopting illegal means, namely, by preparing fabricated documents, obtained the employment. An inquiry was conducted against the petitioner for the charges levelled against him. In the inquiry conducted by the District Enquiry Officer, the District Enquiry Officer for his satisfaction recorded the statements, apart from considering the documents. In the inquiry, the widow of the freedom fighter, who nominated petitioner Bapurao Dattarao Kadam, stated that the petitioner is son of sister of deceased freedom fighter and same statement was given by the petitioner and some other relatives. Considering this material,

the District Enquiry Officer arrived at a conclusion that the charge against the petitioner is not proved. The District Enquiry Officer with his opinion, recommended that the petitioner be exonerated. On further perusal of the documents placed on record, it reveals that the petitioner initially, after receipt of the notice, approached the Maharashtra Administrative Tribunal. In earlier round of the litigation of the proceedings the learned Tribunal directed the authorities to conduct a fresh inquiry. The original application was disposed of.

3. In view of the direction of the Tribunal, afresh inquiry was conducted by the District Enquiry Officer. In the fresh inquiry conducted by the Enquiry Officer, the Enquiry Officer found that a mischief was played in the inquiry, the statements were recorded and it revealed that the petitioner is not the son of real sister of the deceased freedom fighter but he was son of the daughter of the deceased freedom fighter. As such, the petitioner was grand-son of the deceased freedom fighter. In the inquiry, freshly conducted, the statements were recorded in presence of panchas and panchnama to that effect was also prepared. Interestingly enough, widow of the deceased freedom fighter herself stated in her statement that the petitioner is her grandson. In view of the fresh inquiry conducted in compliance of the order of the learned Tribunal, the petitioner was subjected to termination order dated 3rd September 1999.

4. Being aggrieved by the said termination, the petitioner was before the Maharashtra Administrative Tribunal. The Tribunal considering the material in its entirety, arrived at a conclusion that the order of the termination passed against the petitioner is just, proper and legal, and no interference is warranted. Accordingly, the Tribunal dismissed original applications.

5. Mr Suryawanshi, learned Counsel appearing for the petitioners by inviting our attention to Government Resolution, which is placed on record alongwith affidavit in reply filed by the State, dated 4th March 1991, submits that the policy is framed by the State Government. He submits that timely there were also certain changes in the policy and by way of the Government Resolution dated 4th March 1991, certain details are carved out on the aspects, such as, who are competent persons to be nominated, who should be a nominee. Clause (4) and clause (5) of the Government resolution deal with these aspects. Mr Suryawanshi invited our attention to clause (4), which states about persons, who can be nominated and the loose translation of this clause (4) would be, a nomination is to be effected basically by the freedom fighter and, in case, the freedom fighter lost his life in freedom movement or prior to nomination, in that case, as an exceptional circumstance, the widow of the freedom fighter can nominate one of the nearest relatives. Now the words

“nearest relatives” are clarified in clause (5). It states that either son, unmarried or divorcee daughter of the freedom fighter, real brother, real unmarried or divorcee sister or son of real brother or son of real sister, who is dependent on freedom fighter, daughter-in-law of the freedom fighter i.e. wife of son of freedom fighter or widowed daughter of freedom fighter, who is deserted by her relatives and is wholly dependent on freedom fighter. Submission of Mr Suryawanshi is that the petitioner was falling in the cadre of the nearest relative. The petitioner was duly appointed on the basis of the nomination.

6. Next submission of Mr Suryawanshi is that afresh inquiry was conducted in view of the order of the Tribunal. Inquiry is conducted in breach of principles of natural justice. His submission is that no opportunity was given to the petitioner to cross-examine the witnesses, whose statements were recorded in the process of inquiry. In support of his submission, Mr Suryawanshi, learned Counsel for the petitioners, placed reliance on the judgments of the Honourable Apex Court in the case of **Ayaubkhan Noorkhan Pathan Vs. State of Maharashtra and others, {(2013) 4 Supreme Court Cases 465}**; and **Nirmala J. Jhala Vs. State of Gujarat and another, {(2013) 4 Supreme Court Cases 301}**.

7. Mr Gujarathi, learned Assistant Government Pleader

opposes the petition and submits that no error is committed by the Tribunal.

8. On the backdrop of above submissions of the learned Counsel, referred to above, we have gone through the material placed on record. We find that though the submission of Mr Suryawanshi, learned Counsel for petitioners, looks attractive at the first blush, we are unable to accept his submission for more than one reason. As stated above, the nomination was submitted on behalf of these petitioners stating that they are the nearest relatives of respective deceased freedom fighters. In initial inquiry, the first Enquiry Officer found that the statements recorded in the inquiry support the case of the petitioners. The petitioners then have approached the Tribunal on receipt of the notice and Tribunal directed the authorities to conduct afresh inquiry. In the fresh inquiry conducted, the Enquiry Officer found that a mischief is played by petitioners. Enquiry Officer recorded statements. Interestingly, the widow of the freedom fighter herself in the fresh inquiry states that petitioner Mr Bapurao Dattarao Kadam in Writ Petition No. 9082 of 2010 is her grand-son. The nomination states that Bapurao is son of real sister of deceased freedom fighter. It would not stand to reason to say that somebody, who claims to be the near relative of freedom fighter and is seeking appointment on that basis, is not sure of his

relationship with the deceased person. In these petitions, relationship shown while obtaining the nomination is different from the real relationship of these petitioners with the person, who nominated the petitioners. The Tribunal considered each applicant's case. The Tribunal also referred to the material in respect of these applicants. The Tribunal then on relying on judgment of the Hon'ble Apex Court found that when the nomination issued in favour of these petitioners, itself was obtained by misrepresenting the authorities by playing the mischief and this mischief revealed in an inquiry conducted under the orders of the Tribunal. The petitioners' termination was just and proper. The Tribunal referred to the judgment of the Apex Court in the case of **Superintendent of Post Offices and others Vs. R. Valasina Babu {2007 AIR SCW 1099}**.

9. The Tribunal also dealt with the contentions raised by learned Counsel for the petitioners. It was submission of Mr Suryawanshi that there was breach of principles of natural justice as no opportunity was granted to the petitioners to cross-examine the witnesses. In our opinion, an inquiry was conducted in view of the orders passed by the Tribunal. The nature of the inquiry was clearly a limited inquiry. The scope of the inquiry as submitted by Mr Suryawanshi could not have been extended as if the officer was

conducting a trial. The authorities, as a caution, while recording the statements of the persons, more particularly widow of the freedom fighter herself, recorded it in presence of independent witnesses. Panchnama to that effect is also drawn. It is also not the case of the petitioners that the concerned officer conducting inquiry was carrying any grudge against the petitioners. Petitioners are not alleging any malafide against the Enquiry Officer.

10. Learned Counsel Mr Suryawanshi placed heavy reliance on the judgments of the Hon'ble Apex Court. We have gone through the said judgments. There cannot be any dispute about the proposition of law reflecting in those judgments, in our opinion, these judgments hardly help the petitioners.

11. Considering all these aspects, we are of the opinion that the judgment and order passed by the Tribunal is just and proper. No interference or indulgence is called for. The petitions, thus, being devoid of merits, deserve to be dismissed and accordingly the petitions are dismissed.

12. Rule is discharged.

13. No order as to costs.

(SUNIL K. KOTWAL)
JUDGE.

(P.B. VARALE)
JUDGE.