

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

WRIT PETITION NO.2608 OF 2014

Pushpa d/o. Bhagwan Palve
(Pushpa w/o. Dilipkumar Khedkar)
Age: 38 years, Occ.:- Nil.
R/o. N-9, MAHA colony,
Raigad Nagar, House No.333,
R-26, CIDCO, Aurangabad

... PETITIONER

VERSUS

1. The State of Maharashtra
Through It's Secretary,
School and Education and Sport
Department, Mantralaya,
Mumbai - 32
2. The Commissioner of Transport,
Maharashtra State,
Office at Administrative Building,
4th floor, Government Colony,
Wandre (East), Mumbai-400051.
3. The Chairman/Secretary of
Selection Committee through
The Commissioner of Transport
Maharashtra State,
Office at Administrative Building,
4th floor, Government Colony,
Wandre (East), Mumbai-400051.
4. The Regional Transport Officer,
office of R.T.O. Station Road,
Aurangabad.

...RESPONDENTS

Mr. S.K.Ashraf Patel, Advocate h/f Mr. A.P.Avhad, Advocate for the petitioner
Mr. P.N.Kutti, Advocate for the respondent/State

**CORAM : SUNIL P. DESHMUKH
S.M.GAVHANE,JJ.
DATED : 12.12.2018**

J U D G M E N T (PER :- SUNIL P. DESHMUKH, J.)

1. Rule. Rule made returnable forthwith and heard learned counsel
for the parties finally, by consent.

2. The petitioner had been appointed as a clerk (Grade-C) in R.T.O. pursuant to an advertisement reserving post for Sports category. The petitioner claimed to be entitled to be considered from sports category. She had been accordingly appointed, on 09.07.2008 as a clerk in R.T.O. at Aurangabad. One of the candidates who had not been selected, had challenged appointment of the petitioner in an original application before Maharashtra Administrative Tribunal at Aurangabad, seeking appointment to the post of clerk from sports category.

3. Maharashtra Administrative Tribunal under its order dated 08.07.2009 had partly allowed the original application rejecting the claim for appointment of the original applicant and, had considered that the petitioner, whose appointment had been challenged and the original applicant as well, are not eligible for appointment applying relevant criteria. Challenge to said order of Maharashtra Administrative Tribunal in Writ Petition No.4917 of 2009 at the instance of petitioner had failed and even Special Leave to Appeal had also been rejected by the Supreme Court.

4. Subsequently an order dated 13.01.2014 came to be passed directing removal of petitioner from service with effect from 16.12.2010 and further directing that salary and other allowances paid to the petitioner from the date of appointment i.e. 10.07.2008 be recovered from her.

5. Having regard to antecedents of the matter learned counsel for the petitioner submits that although challenge in writ petition is apparently been posed to the termination order, petitioner resiles to that challenge to termination may not be effective but in such a case the recovery of salary and allowances sought in the impugned order may have to be set aside. At least

that part of challenge ought to be considered. He submits that it is not the case that the petitioner had not worked at all or that petitioner had not rendered any services. He submits that salary and other allowances are compensation for services rendered. He further submits that the petitioner genuinely believed that she is eligible for appointment and had accordingly applied for and had been appointed after scrutiny on all aspects. Later it was considered that certificates with reference to which appointment had been sought, had not been issued by prescribed authorities. It is not a case where the petitioner has practiced fraud. Further there is no dispute on that the service is rendered by the petitioner. In such a case recovery sought is not proper. The petitioner is already suffering and is searching for source of livelihood upon her termination. He submits that this is an excess action being taken beyond the scope of orders passed by the forum hitherto.

6. Learned AGP, however, submits that while the requisite criteria had not been fulfilled, the petitioner had been appointed on the basis of documents submitted by her. Later Tribunal had found that those documents would not enable her to have legitimate appointment and accordingly the action was required to be taken and then recovery has been sought.

7. Although learned AGP has submitted as aforesaid, it appears that there was no element of deceit nor any intention has been impugned in impugned order. It is not a case that appointment of the petitioner had come through under an illegal or mala fide process. His appointment had been considered not to be proper.

8. As such, it appears that though the department may be justified

in taking action of termination, yet, while it is not disputed that the petitioner had worked and had rendered services, she would be required paid and to be compensated and paid. It is not a case that the petitioner had snatched the amount from the respondent. In the circumstances, the alternative request made by petitioner that the order directing recovery of salary and allowances from the petitioner be quashed appears to be quite legitimate.

9. Having regard to that Maharashtra Administrative Tribunal, High Court and Supreme Court having not found that the petitioner would have legitimate claim to appointment, the impugned order to the extent of termination would not be interfered with. However, since impugned order also seeks recovery of the amount paid to the petitioner towards salary and allowances while there is no dispute about the petitioner having worked with the respondent, it appears to be expedient, that the impugned order to that extent only deserves to be struck down.

10. As such, the petition is partly allowed. Directions under the impugned order for recovery of salary and other allowance paid to the petitioner from the date of appointment i.e. 10.07.2008 is quashed and set aside.

11. Rule is made absolute to aforesaid extent and the writ petition is disposed of.

[S.M.GAVHANE,J.]

[SUNIL P. DESHMUKH,J.]