

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11408 OF 2014

Ganesh S. Mayne and ors. ... Petitioners.

V/s.

The Chief Conservator of
Forest, Thane and ors. ... Respondents.

WITH

CIVIL APPLICATION NO. 698 OF 2015

The Chief Conservator of
Forest, Thane and ors. .. Applicants/Respondents.

V/s.

Ganesh S. Mayne and ors. ... Petitioners.

Ms Lata Patne for the Petitioners.

Mr. Prashant More, AGP for the Respondent- State.

CORAM : A.S. OKA AND M.S. SONAK, JJ.

DATE : 25th SEPTEMBER 2018.

ORAL JUDGMENT: (PER A.S.OKA,J.)

1] Heard the learned Counsel appearing for the petitioners and the learned AGP for the respondent-State. Notice for final disposal was issued on 17th December 2014.

2] The petitioners are the applicants in Original Application No. 1253 of 2013 filed by them before the Maharashtra Administrative Tribunal (for short "*the Tribunal*"). In the Original Application, the petitioners prayed for quashing and setting aside the show cause notices issued to them. The petitioners were appointed as Class-IV employees in the Forest Department of the Government of Maharashtra in the year 2005-2006.

The show cause notices were issued to the petitioners on 16th December 2013 alleging that the petitioners were not entitled to be appointed on compassionate ground in view of the Circular dated 14th April 1981. The petitioners were called upon to show cause as to why their appointments should not be cancelled.

3] It appears that the petitioners replied to the show cause notices contending that they desire to file an Original Application before the Tribunal. By the impugned judgment and order, the Tribunal had rejected the Original Application. However, the Tribunal observed that the appointments of the petitioners were made in violation of law.

4] The learned Counsel appearing for the petitioners submits that apart from the fact that the appointments of the petitioners were completely lawful, the respondents are adopting pick and choose policy by issuing the show cause notices only to selected few. She pointed out the averments made in Civil Application No. 698 of 2015 filed by the State Government. She submitted that on the date on which the appointments were made, the same were within four corners of the law and only on the basis of the judgment and order dated 14th June 2013 passed by the Aurangabad Bench of this Court show cause notices could not have been issued. Her submission is that the finding recorded by the Tribunal that the appointments of the petitioners were illegal is completely erroneous. In any case, her submission is that the Government Resolution/ Circular dated 14th April 1981 will not be applicable to the facts of the present case. Her submission is that the appointment of the petitioners have been

made in permanent sanctioned posts and therefore, there is nothing illegal about the same.

5] The learned AGP supported the findings recorded by the Tribunal under the impugned order. He also relied upon the affidavit in reply of Smt. Geeta R. Kulkarni filed on 1st August 2017 and submitted that the orders of appointments are contrary to the Government Resolution/Circular dated 14th April 1981. He submitted that no interference is called for.

6] We have carefully considered the submissions. We have perused the prayers made in the Original Application. In substance, the prayer was for quashing the show cause notices calling upon them to show cause as to why they should not be removed from the employment. The petitioners were served with identical show cause notices on different dates mentioned in paragraph 13 of the impugned judgment. Paragraph 13 also records that when the show cause notices were issued, the petitioners had completed 7 or 8 years of service. The show cause notices are identical. We have, therefore, perused the show cause notice on page 88 issued to the 3rd petitioner. The said notice alleges that as the 3rd petitioner's father, who was in the Government employment, has superannuated after 1981, the Government Resolution/Circular dated 14th April 1981 will not apply. Therefore, the 3rd petitioner was called upon to show cause as to why his employment should not be terminated.

7] According to the case made out in the writ petition, on 17th December 2013, the petitioners submitted their reply. A copy of the reply sent by the 3rd petitioner is annexed on page 89 of the Petition. In the reply, apart from contending that the appointments were lawful, it was contended that the 3rd petitioner will be filing an Original Application before the Tribunal.

8] The Tribunal while deciding the Original Application filed by the petitioners was exercising the power under Article 226 of the Constitution of India. In fact, what was challenged in the Original Application filed by the petitioners were only the show cause notices and therefore, it was not necessary for the Tribunal to go into the question whether the appointments of the petitioners were illegal. In our view, the Tribunal ought to have disposed of the Original Application by keeping the issue of legality of appointments of the petitioners open. Instead of that when the State Government had not admittedly taken a final decision on the show cause notices, the Tribunal has recorded a finding that the appointments of the petitioners were made in violation of law. Therefore, we are inclined to interfere with the impugned order to the limited extent by setting aside the findings of the Tribunal limited to the petitioners on the issue of legality of their appointments.

9] Considering the fact that the petitioners are relying upon the several documents including various decisions, we deem it appropriate to grant opportunity to the petitioners to file additional reply to the show cause notices.

10] Accordingly, the petition succeeds in part and we pass the following order:-

(a) The impugned judgment and order dated 13th November 2014 is hereby quashed and set aside only to the extent of Original Application No. 1253 of 2013;

(b) We make it clear that the issue of legality and validity of the appointments of the petitioners remains expressly kept open which will have to be considered by the State Government while passing the orders on show cause notices;

(c) We make it clear that the impugned judgment and order decides several Original Applications apart from Original Application No. 1253 of 2013 (and Original Applications subject matter of companion petition decided today) and therefore, we clarify that the impugned judgment and order will continue to operate insofar as other Original Applications are concerned;

(d) It will be open for the petitioners to file additional reply to the show cause notices impugned before the Tribunal. Such additional reply shall be filed along with necessary documents, if any, within a period of four weeks from the date on which this judgment and order is uploaded;

(e) Needless to add that for a period of four weeks from the date on which this judgment and order is uploaded, final

decision shall not be taken on show cause notices. We make it clear that the final decision shall not be taken on the show cause notices without considering the reply already filed by the petitioners and additional reply which may be filed by the petitioners;

(f) We also make it clear that the final decision shall not be taken by the State Government on the show cause notices without giving an opportunity of being heard to the petitioners;

(g) We make it clear that all the contentions of parties on the issue of legality and validity of the appointments of the petitioners are kept open;

(h) Rule is made partly absolute on the above terms;

(i) Pending Civil Application does not survive and the same is disposed of accordingly.

(M. S. SONAK, J.)

(A.S.OKA, J.)