

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8856 OF 2016

The State of Maharashtra through .Petitioners
the Chief Engineer, Maharashtra Land
Development Corporation & ors.

Vs.

Anton Saraja Kadam .Respondent

Mr. S. H. Kankal, AGP, for the Petitioners - State
Mr. N. Kulkarni i/b. Ms S. Dongre, Advocate, for the Respondent

CORAM : REVATI MOHITE DERE, J.

DATE : 12.10.2018

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner - the State of Maharashtra has impugned the order dated 09.09.2009 passed by the Competent Authority and the Commissioner for Persons with Disabilities, Maharashtra State, Pune in Complaint Application No. 91 of 2006.

3. The principal grievance of the learned AGP who

appears for the Petitioner is that the Application filed by the Respondent herein, was not maintainable under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. He submits that the person who was entitled to file an Application under Section 47 of the said Act, is a person who has suffered / acquired a disability during the course of his employment. He submitted that the Respondent was disabled at the time of his employment and therefore, the said Application filed by the Respondent before the Competent Authority was not maintainable. He further submitted that the Respondent had suppressed documents which are on page Nos. 157 to 159. According to the learned AGP, the Respondent himself had sent a letter to the Maharashtra Land Development Corporation on 31.03.2003 and had sought benefits under the VRS, from the Corporation and had also stated that his letter dated 31.03.2003, be accepted as his resignation. He submitted that the Respondent had even signed an indemnity bond to that effect, which is on page No. 159 of the Petition.

4. Learned counsel for the Respondent opposed the

Petition. He submitted that nothing survives for consideration in the Petition, inasmuch as, pursuant to the order dated 10.02.2017 passed by this Court (Coram : S. C. Dharmadhikari & B. P. Colabawala, JJ..) passed in W. P. No. 12143 of 2012, the Respondent was given a fresh appointment in the Irrigation Department and as such, the Respondent has been working in the said department since then, and is due to retire in 2019.

5. Perused the papers, in particular, the order dated 10.02.2017 and 22.02.2017 passed by this Court (Coram : S. C. Dharmadhikari & B. P. Colabawala, JJ..) in W. P. No. 12143 of 2012. Before dealing with the submissions advanced by the learned AGP, it would be pertinent to note that the Respondent had filed W. P. No. 12143 of 2012 in this Court and had sought certain directions as against the Respondent Nos. 2 & 3 therein, in particular a direction to the Respondent Nos. 2 & 3 to comply with the order dated 09.09.2009 passed by the Commissioner for Persons with Disabilities, Maharashtra State, Pune. A Division Bench of this Court (Coram : S. C. Dharmadhikari & B. P. Colabawala, JJ..) after hearing the parties

extensively has in para Nos. 8 & 9 of its order dated 10.02.2017

observed and held as under :-

“8. When we repeatedly questioned Ms Vhatkar that despite such an affidavit we can direct the Petitioner's absorption in the Sub-Divisional Engineer's Office and with a further direction of the above nature, she sought time to take instructions and has informed us that the Petitioner would be absorbed as a Research Assistant in the office of the Soil Survey Division / Office at Pune, Irrigation and Research, Pune and bearing in mind that the Petitioner is a resident of Pune, he will be appointed at Pune office. He would be issued an appointment letter and thereafter a proposal will be forwarded to the General Administration Department of the State for granting post facto approval to the Petitioner's appointment. The Petitioner would be issued an appointment order on/before 15th February, 2017. We accept each of these statements made by the officer as undertakings to this Court. We direct that in default of issuance of such an order, we would not hesitate to take action in contempt against the Sub-Divisional Engineer, Irrigation Research Sub-Division, Kalwa, Thane and such other authority in the Soil Research Office who is obliged to give effect to and implement our direction and order and pending such proceedings direct their suspension from the services without any subsistence allowance. We hope and trust that they will not invite such consequences. We would also direct in the facts and circumstances of the present case and as the order passed under the 1995 Act dated 9th

September, 2009 has not been given effect to till date though it has not been stayed or quashed and set aside by any competent authority that the General Administration Department grants a post approval to the appointment order of the Petitioner in terms of our directions as expeditiously as possible and within a period of ten days from the date of receipt of the proposal. We direct Ms. Vhatkar to forward a copy of this order to both the Irrigation Department and General Administrative Department of the State.

9. We place this matter for compliance on 22nd February, 2017.”

The said Petition, being W.P. No. 12143 of 2012 again came up before the Division Bench on 22.02.2017, pursuant to which the following order was passed.

“A compliance affidavit has been filed by the Respondents. The same is taken on record. That indicates that subject to the rights of the Respondents in the pending proceedings and without prejudice to their contentions therein, the order of appointment is issued.

2. The Petitioner has assumed charge pursuant to the order of appointment. The order of appointment having been issued and in terms of the order passed by this Court on the earlier occasion, nothing further needs to be done. The Writ Petition is disposed off.”

6. As noted earlier, the aforesaid Writ Petition, being W. P. No. 12143 of 2012 was filed by the Respondent, wherein a direction was sought as against the Respondent Nos. 2 & 3 therein, for compliance of the order dated 09.09.2009 passed by the Competent Authority and the Commissioner for Persons with Disabilities, Maharashtra State, Pune. It is not in dispute that the State of Maharashtra had also filed the aforesaid Petition in this Court challenging the very same order i. e. the order dated 09.09.2009 passed by the Competent Authority and the Commissioner for Persons with Disabilities, Maharashtra State, Pune. The Division Bench which passed the orders dated 10.02.2017 and 22.02.2017 was well aware of the filing of the aforesaid Petition in this Court and the same is reflected in para 6 of the order dated 10.02.2017.

7. Having regard to the orders dated 10.02.2017 and 22.02.2017 passed by the Division Bench of this Court in W. P. No. 12143 of 2012, nothing survives for consideration in the present Petition, inasmuch as, the order of the Division Bench has

attained finality, the same not having been challenged by the Petitioner – State. The Petitioner – State has, in fact, even issued an appointment letter to the Respondent, pursuant to which, the Respondent is working in the Irrigation Department.

8. The Petition, being devoid of merits is dismissed.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)