

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7753 OF 2019

The State of Maharashtra & Ors.Petitioners
Versus
Shri. Balasaheb Sadashiv LambhateRespondent

Mr. N.K. Rajpurohit, AGP for the Petitioner-State.
Mr. Bhushan Bandivadekar a/w. Gaurav Bandivadekar, Advocate for Respondent.

**CORAM : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.**

DATE : 1st AUGUST, 2019.

P. C. :

1. The State of Maharashtra has approached this Court, challenging the impugned judgment dated 16.04.2019 passed by the learned Maharashtra Administrative Tribunal (hereinafter referred to as the Tribunal), Mumbai in Original Application No.975 of 2018, by which, the original application filed by the respondent came to be allowed and apart from setting aside impugned order dated 16.04.2017 and the impugned communication dated 27.04.2018 issued by the Petitioner Nos.1 and 3 respectively, the said petitioners were also directed to release regular pension of the respondent, which was withheld from May 2018. The petitioners were also directed to extend the benefit of Leave Encashment to the respondent and the entire exercise was directed to be completed within two months including releasing of the monetary benefits.

2. Brief facts of the case are necessary to be mentioned here before we proceed to adjudicate the present writ petition:

The petitioner came to be appointed as a Clerk on 02.10.1985 and on 31.12.1986 his services came to be terminated on account of Zero Budget Policy of the State Government and it is the claim of the State that the post on which the petitioner was working was abolished. The petitioner approached the Maharashtra Administrative Tribunal by filing Original Application No.530 of 1992 and in the said application, an interim order was passed by the Tribunal. Resultantly, the respondent was continued to work on the said post. In the year 1998, the original application filed by the petitioner came to be dismissed, against which along with other similarly situated employees he approached the High Court by filing Writ Petition No.4091 of 1998.

3. In light of a subsequent events in form of the favourable report given by the District Collector, Satara, where the Collector had recommended that services of the petitioners should be regularized and they should be absorbed in service since they had continued to work in the said posts, in view of the interim order passed by this Court. This Court also noted that in the report it is stated that the petitioners were selected District Selection Committee since at the relevant time, there was no sanction Board in existence. In light of the subsequent developments, this Court observed that the petition has become

infructuous since the Government had decided to consider the case of the petitioners in light of the report submitted by the Collector in 2008. The Court also noted that the earlier direction to decide the representation has resulted into rejection of the representation inspite of the favourable report. In such circumstances, the writ petition was disposed of with the direction to the State Government to decide the representation dated 19.05.2010 afresh by taking favourable report given by the Collector and to decide whether recruitment of the petitioners was a regular recruitment.

4. On 23.09.1998 interim order was passed by the Court and on 25.03.2013 the Division bench of this Court disposed of the writ petition. In the earlier order, therefore, the Court had taken note of the subsequent events namely the report of the District Collector, Satara, which was in favour of the petitioners and directed the State Government to decide the representation. Once again the said representation came to be rejected and as a consequence, the retirement, gratuity, commutation of pension, which was granted to the petitioners from June 2017 to April 2018 came to be abruptly stopped. This constrained the petitioners to approach the Tribunal by filing Original Application No.975 of 2018, which came to be allowed on 16.04.2019.

5. With the assistance of the learned counsel for the parties, we have carefully perused the copy of the writ petition filed by the State Government as well as the impugned order and the earlier orders passed

by this Court from time to time. The Tribunal has considered the uncontroverted factual aspects on the issue involved and after making reference to the judgment of this Court dated 25.03.2013 noted that the service-book of the petitioner was maintained on par with regular employee and even yearly increments were granted to him along with the benefits of the 6th and 7th Pay Commission. Not only this, after retirement, the gratuity, commutation of 1/3rd of pension, G.I.S. came to be released. The Tribunal, therefore, proceeded to deal with the issue as to whether the petitioner was appointed without following due process of law and whether he worked for 23 years on a substantive post. The Tribunal clearly observed that it is not the case that despite non-availability of substantive vacant posts, the Government servant was continued in service only on the basis of protection given by the Tribunal. The Tribunal made reference to the report of the Collector and recorded that the report reveals that the petitioner fulfilled the criteria laid down in the Government Resolution of 08.03.1999 and he reproduced the said contents of the said report.

6. The said report was referred to by the Tribunal in the impugned order and it was observed by the Tribunal that in terms of Government Resolution dated 08.03.1999 the State Government called upon the Collector to consider the issue of appointment of ad-hoc employees. The collector in his report submitted that in the year 1986 in

view of the Government decision of Zero Budget Policy, some of the schemes initiated by the Government had lapsed and consequently, the employees came to be terminated. However, in light of the interim order granted by the Tribunal in Original Application No.530 of 1992, the respondent and similarly situated employees came to be reappointed and then, the Collector in his report dated 25.05.2000 made a reference to the factual situation and specifically submitted that the respondent and other similarly situated employees were working on the available posts and that substantive posts are available, and therefore, the respondent and similarly situated employees were continued in service on the basis of the interim order granted by the Tribunal. The second report dated 28.01.2008 is substantive report where the Collector has clearly admitted that the appointment of the respondent was clearly sanctioned and it was also clarified that it would not incur any additional financial burden on the State. In light of this report, the Division Bench of this Court on 25.03.2013 directed the State Government to take a decision on the representation of the respondent and other similarly situated employees by taking into consideration this report given by the Collector in the year 2008 and other documents on record. However, the said aspect was not considered by the State Government and the representation was rejected and a decision was taken on 14.04.2017 that the services of the respondent cannot be regularized. On the basis of this decision, the pension due to the respondent on account of completion of his service

period was also declined.

7. We have perused the detailed reasoning recorded by the Tribunal and we do not find any perversity or illegality in the said decision. On the contrary, the said decision is based on the report of the Collector, which categorically states that the posts were sanctioned and the petitioner along with other employees were appointed on the said posts, which were clearly sanctioned.

8. In such circumstances, we fail to approve the action of the State Government rejecting the representation of the respondent inspite of the clear fact finding report recorded by the Collector. The Tribunal has referred to the said decision of the Collector and considering the fact that the respondent has rendered his services from 1995, held him eligible for pensionary benefits considering his appointment on such a subsequent post in terms of the Maharashtra Civil Services (Pension) Rules, 1982. The direction has been given by the Committee to release the pension due to the responded within a period of two months. We are not convinced with submission of the learned counsel for the petitioner that the order passed by the Tribunal calls for any interference in exercise of the writ jurisdiction. Resultantly, we dismiss the writ petition. No order as to costs.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]