

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.15285 OF 2022
IN WP/5528/2022

Balu s/o Laxman Gaikwad and others

.. Applicants

Versus

The State of Maharashtra and others

.. Respondents

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Mr. R. S. Deshmukh, Senior Counsel i/b Mr. A. G. Ambetkar,
Advocate for applicants.

Mrs. M. A. Deshpande, AGP for respondents - State.

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CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRADE, JJ.

DATE : 11th November, 2022.

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. The present application has been filed by the original petitioners for interim relief in view of the communication/order that has been issued on 21.10.2022 by Joint Secretary of Agricultural, Animal, Husbandry, Dairy Development Department and Fisheries Department, State of Maharashtra as well as Communication dated 01.11.2022 issued by the Senior Administrative Officer of Commissionerate Office of Agriculture, Maharashtra State, Pune.

2. Heard learned Senior Counsel Mr. R. S. Deshmukh instructed by learned Advocate Mr. A. G. Ambetkar for the applicants and learned AGP Mrs. M. A. Deshpande for respondents - State.

3. Learned Senior Counsel appearing for the applicants/petitioners has submitted that the petitioners are praying the writ of mandamus to direct the respondents to issue permanent orders to the petitioners on the post of "Agriculture Supervisor" as per their seniority. They have also challenged the order passed by the Maharashtra Administrative Tribunal Mumbai, Bench at Aurangabad dated 05.04.2022 in Original Application No.260 of 2021 as not binding on them. It has been further submitted that the applicants were appointed to the post of Agriculture Sevak by respondent No.5 in the year 2004 by adopting due procedure of law. Thereafter, they were promoted to the post of Agriculture Assistant in the year 2007. Respondent No.5 found the work of the applicants as satisfactory, therefore, they had been given Ad-hoc promotion orders to the applicants on the post of Agriculture Supervisor as per the seniority in the month of January, June, August and September of 2021 under the directions of respondent Nos.3 and 4, therefore, at present, the applicants are working on the post of Ad-hoc Agricultural Supervisor. However, certain guidelines have been issued and norms have been fixed in respect

of the promotion of the employees and to fill up the post. It is said that meeting was held under the chairmanship of the Honourable the Minister of Agriculture on 31.10.2020 and it was decided to fill up the vacant posts. In fact, when respondent No.5 had promoted about 137 employees including the applicants on the Ad-hoc basis and after completion of necessary period of service, respondent No.5 have approved and issued permanency orders to 98 employees out of them. The petitioners were in the queue. Their promotion could not have been so taken away by such decision. Some of the employees i.e. Agriculture Assistant approached Maharashtra Administrative Tribunal Mumbai, Bench at Aurangabad by filing Original Application No.260 of 2021 and by order dated 05.04.2022, the said application was allowed. In the said original application, the applicants had challenged the Ad-hoc orders of promotion issued by respondent No.5 on the post of Agriculture Supervisor. In fact, that order would affect the present petitioners. The present applicants/petitioners were not made party to that petition and even the concerned Tribunal had not considered of getting those persons added, who would be affected by the order. When that order is under challenge in the main petition, yet now a further communication has been issued on 01.11.2022 to go for the post of Agriculture Supervisor. In the said impugned communication, it has been stated that only those posts could be

regularized, which could be so regularized, however, as regards the others are concerned, it should not be regularized. If the respondents are allowed to proceed, then it will affect the petitioners and, therefore, interim protection deserves to be granted to the applicants/petitioners.

4. Learned Senior Counsel submitted that one of the Member of the Tribunal, who issued the order dated 05.04.2022 in Original Application No.260 of 2021 ought not to have dealt with the said matter. It has been specifically stated that he was party to the Notification that was issued on 29.01.2018. He was the then Principal Secretary to the Government. It ought to have been pointed out by the applicants therein that at some point of time he was the member of the process which had formulated the rules for promotion, therefore, he ought to have abstained himself from dealing with the matter. It is then stated that thereafter in another matter i.e. Kishor Kantilal Gaikwad and others Vs. State of Maharashtra and others in M.A. No.403 of 2022 in O.A. ST. No. No.1452 of 2022, the learned Member Hon'ble Shri. Bijay Kumar, who is the Member, has passed an order that the matter should not be placed before the Division Bench, in which, he is a member. He could not have been the Judge of his own cause and, therefore, the learned Senior Counsel, to buttress his submission, relies upon the

decision in ***A. U. Kureshi Vs. the High Court of Gujarat and another, [2009 (11) SCC 84]***, wherein it has been observed that :-

"9. It is an accepted principle of natural justice that a person should not be a judge in his or her own cause. In common law, this principle has been derived from the Latin maxim - 'nemo debet esse judex in propria sua causa. A reasonable permutation of this principle is that no judge should adjudicate a dispute which he or she has dealt with in any capacity, other than a purely judicial one. The failure to adhere to this principle creates an apprehension of bias on part of the said judge."

5. The learned AGP appearing for the respondents - State has strongly opposed the application and submitted that first of all in Original Application No.260 of 2021, those applicants were, in fact, not challenging the said Notification, which was issued under the signature of Shri. Bijay Kumar, who thereafter become the Member of the Maharashtra Administrative Tribunal Mumbai, Bench at Aurangabad. Another fact is that the present applicants/petitioners never challenged any part of the communication before Maharashtra Administrative Tribunal either independently or by taking recourse of intervention application before Maharashtra

Administrative Tribunal when Original Application No.260 of 2021 was pending. The applicants cannot directly come to this Court. Further, there is availability of remedy of review to the petitioners to go before the same tribunal. She relies on the decision in ***K. Ajit Babu Vs. Union of India, [1997 (6) SCC 473]***, wherein it has been observed that :-

" Whenever an application under Section 19 of the Administrative Tribunal Act, 1985 is filed and the question involved in the application stands concluded by the decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in earlier case as a precedent and decide the application accordingly."

It has been further observed that :-

"Often in service matters the judgments rendered either by the tribunal or by the court also affect other persons, who are not parties to the cases. It may help one class of employees and at the same time adversely affect another class of employees. In such circumstances the judgments of the courts or the tribunals may not be strictly judgments in personam affecting only the parties to the cases, they would be judgments in rem. In such a situation, the question arises: What remedy is available to such affected persons who are not

parties to a case, yet the decision in such a case adversely affects their rights in the matter of their seniority. In the present case, the view taken by the tribunal is that the only remedy available to the affected persons is to file a review of the judgment which affects them and not to file a fresh application under Section 19 of the Act. Section 22(3)(f) of the Act empowers the tribunal to review its decisions. Rule 17 of the central Administrative Tribunal (Procedure) Rules (hereinafter referred to as "the Rules") provides that no application for review shall be entertained unless it is filed within 30 days from the date of receipt of the copy of the order sought to be reviewed. Ordinarily, right of review is available only to those who are party to a case. However, even if we give wider meaning to the expression "a person feeling aggrieved" occurring in Section 22 of the Act whether such person aggrieved can seek review by opening the whole case has to be decided by the tribunal. The right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although strictly speaking Order 47 of the Code of Civil Procedure may not be applicable to the tribunals but the principles contained therein surely have to be extended. Otherwise there being no limitation on the power of review it would be an appeal and

there would be no certainty of finality of a decision. Besides that, the right of review is available if such an application is filed within the period of limitation. The decision given by the tribunal, unless reviewed or appealed against, attains finality. If such a power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of the party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case for all times to come. Public policy demands that there should be an end to law suits and if the view of the tribunal is accepted the proceedings in a case will never come to an end. We, therefore, find that a right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation."

Here, those applicants who had filed Original Application No.260 of 2021, have not been made as party respondents and, therefore, the applicants cannot seek any interim relief.

6. After pondering upon the provisions as well as the documents, we do not want to go into the merits as to whether the Member of the Tribunal could have taken up the matter, as earlier he has dealt with a Notification in the capacity as Principal Secretary. As on today, the judgment and order passed in Original Application

No.260 of 2021 has not been set aside though it can be taken that it is under challenge in the original petition. The present applicants were not party to the said petition before the Tribunal and when the applicants have challenged the said decision and sought writ of mandamus stating that the said judgment and order passed in Original Application No.260 of 2021 is not binding on them, then definitely those applicants will have to be the party respondents in this case. In absence of their addition and without hearing them, no interim orders can be passed. The learned AGP has pointed out that there is alternative efficacious remedy available to the applicants and, therefore, in view of the above reasons, we are of the opinion that no interim protection as prayed can be granted.

7. The application, therefore, stands dismissed.

[Y. G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm