

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13883 OF 2023

1. The State of Maharashtra }
Through Principal Secretary, }
Water Resources Department, }
Mantralaya, Mumbai – 400 032. }

2. The Executive Engineer }
Medium Project Division, }
Ambadpal, Tal. Kudal, Sindhudurg } ... Petitioners.

V/s.

Smt. Valia Punathil Vrinda Valsan }
(since after marriage– Vrinda }
Ameya Nair, Age: 26 yrs, Occ: Nil, }
Ex. Dy. Executive Engineer, }
Medium Project Division, Ambad- }
pal, Tal. Kudal, Dist. Sindhudurg, }
R/o. 814, Sai Dham, Anand Nagar, }
A/p. Oras, Tal. Kudal, Dist. }
Sindhudurg } ... Respondent.

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Mr. N. K. Rajpurohit, AGP for the Petitioners.
Mr. Gaurav Bandiwadekar for the Respondent.

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**CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.**

DATE : 13 December 2023.

P.C.:

The present Writ Petition is filed by the State of Maharashtra through the Principal Secretary, Water Resources Department,

Mantralaya, Mumbai and the Executive Engineer, Medium Project Division, Ambadpal, Tal- Kudal, District- Sindhudurg. The State has filed the present Writ Petition being aggrieved by the judgment and order passed by the Maharashtra Administrative Tribunal, Mumbai, in Original Application No. 819 of 2017. The State is aggrieved by the said order, whereby the termination of the Respondent herein has been quashed and set aside directing the present Petitioner, to reinstate the Respondent, within a period of six weeks without back-wages. The said order has been passed by the Tribunal on 1 August 2023, and the present Petition has been filed on 17 October 2023. (For the sake of convenience the parties are referred to as has been referred before the Tribunal).

2. The Applicant before the Tribunal had challenged the order dated 11 August 2017, whereby her appointment to the post of Assistant Engineer- Class I has been cancelled. The Applicant was appointed on 14 December 2015 on the post of Assistant Engineer- Class I. As per Clause – 2 of the appointment order, she was required to join for training at Maharashtra Engineering Training Academy (META), Nashik on 1 January 2016. As per Clause – 3 of the appointment order, if any of the candidates referred to in Annexure- 1 of the Government Resolution dated 14 December 2015 fail to join the place on their appointment within fifteen days of issuance of the appointment order, then it would be deemed that, the said appointment order stands automatically cancelled and they

would not be allowed to be joined thereafter. The present Applicant was required to join META on 1 January 2016, but she could not join the same on 1 January 2016, on account of the ailment suffered by her during the said period. It was the case of the Applicant that she could not even make an application to seek extension of time for joining the said training as contemplated in Clause – 4 of the said appointment order. She was suffering from Ophthalmic ailment as well as she was undergoing Ophthalmic Laser Treatment, because of such condition, she could not even make an application seeking extension of time.

3. Later on, she joined the said post at Ambadpal on 1 February 2016. After her joining, she had made representation to the Superintending Engineer, Sindhudurg, pointing out her Medical condition for delay in joining META at Nashik, between 1 January 2016 to 31 January 2016. The said representation came to be forwarded to the Chief Engineer, Konkan Region, Mumbai on 2 March 2016 alongwith the Medical Certificate. The Applicant had informed the higher Authorities that, because of her medical condition, she could not undergo the training at META, Nashik, however, she has undertaken to complete the said training, whenever called upon to do so.

4. The Applicant was served with the Show Cause Notice on 31 March 2016, as to why her appointment should not be cancelled since she has failed to join the training at Nashik on the given date.

Thereafter, the Superintending Engineer by his order dated 27 December 2016, relieve the Applicant on the ground that as per the terms of appointment order, she was required to join within fifteen days, in which she has failed to do and, therefore, she came to be relieved. When the Applicant challenged the said order before the Tribunal and was granted interim relief on 1 February 2017, the order issued by the Superintending Engineer came to be withdrawn, and as a result, the Original Application No. 72 of 2017 was disposed of.

5. Though the order dated 27 December 2016 came to be withdrawn, however, on 11 August 2017, the appointment order of the Applicant dated 14 December 2015 was cancelled, solely on the ground of not joining the post within fifteen days as mentioned in Clause – 4 of the appointment order. The Applicant thereafter challenged the said order in Original Application No. 819 of 2017, and after considering the contents of the Original Application, reply of the Respondent- State and the arguments advanced, the Tribunal has been pleased to allow the Original Application directing the Respondent to reinstate her within a period of six weeks from the date of order. The Tribunal has taken into account all the facts and circumstances as well as record and has considered that though she was required to join within fifteen days and she could not join within the said time, later on she was allowed to join and she was continued in service for 18 months and thereafter her appointment was cancelled by order dated 11 August 2017. Therefore, considering

that she was allowed to join and continue for 18 months, the Tribunal has favourably considered the case of the Applicant. The Tribunal has also taken into consideration the voluminous medical record produced by the Applicant regarding her treatment during period of her absence. The Tribunal has come to the conclusion that, the medical record produced by the Applicant does not seem that she had voluntarily avoided to join, she could not join due to compelling circumstances, which could be gathered from the record produced.

6. We have gone through the order passed by the Tribunal alongwith the reply filed by the Respondent- State before the Tribunal. The fact that the Applicant was appointed on the post of Assistant Engineer- Class I is not at all disputed. On going through the said appointment order we find that the name of the Applicant appears at Serial No. 145 in Annexure- B to the G.R., whereby appointments were made. Further going through the said G.R. it transpires that, Clause – 4 of the said G.R. is regarding appointments of the Engineering Services, Class I and the said clause further stipulates that, the appointment made subject to various conditions mentioned under the said clause, and the Clauses – 1 and 3 referred to serial number or merit list number of the candidates in Schedule – A, who are required to join within 15 days from the date of appointment, failing which, their appointments shall automatically stand cancelled.

7. Clause – 4 further stipulates that, if because of unavoidable circumstances a candidate unable to join, he could make an application to the Competent Authorities within 15 days mentioning the reasons for inability to join. Therefore, the Applicant, who is included in the Annexure – B, at Serial No. 145 was not governed by Clause – 4, which was made applicable to her. The Tribunal has also taken note of the said stipulation and has rightly found it in favour of the Applicant. The Applicant has also placed on record the Medical Certificates and documents pertaining to her treatment, which are genuine and the Tribunal has found favour with the Applicant, and has rightly recorded that, when a candidate who is appointed on Class - I post, unless there are certain compelling circumstances, would not risk cancellation of his appointment.

8. We also agree with the said observation of the Tribunal, considering that the amount of study and research work a candidate is required to undergo before qualifying for Class- I post. It is incomprehensible that, the candidate would risk the same by adopting a casual approach. It is only due to circumstantial constraint a candidate is unable to join the appointed place within stipulated period.

9. One more important aspect which according to us needs to be considered is that, when the Applicant joined on 1 February 2016, she was allowed to join and she continued to discharge her duty as Assistant Engineer- Class I for 18 months, her name was not

included at the first instance in the list of 20 candidates, whose appointment orders were subsequently and belatedly cancelled on 11 July 2016. Therefore, the act of the employer in allowing the Applicant to continue for 18 months has created a right in her favour and the principle of estoppel would also operate against the Government, as has been rightly observed in the order of the Tribunal.

10. As per Rule- 4(2) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, a period of 30 days is provided for joining from the date of issue of order or within such extended period as the competent authority may in its discretion allow, failing which, the same would entail in loss of seniority. The said joining time is primarily given, so that it would help the Government to maintain the seniority of the candidates appointed in the said recruitment process.

11. The Applicant though had joined belatedly, she has been allowed to join and she worked for 18 months, and thereafter, without considering the Medical Certificates tendered by the Applicant only resorting to the stipulation of the appointment order, the appointment, which is cancelled, is arbitrary exercise of power by the Government. The State being a model employer should have taken into consideration the genuine problem of the Applicant. More so on the background of the fact that she herself had undertaken to complete the said training, whenever she was called

upon and also has mentioned in her application that, her seniority would be reckoned with from the date she has joined. The order of termination is harsh and has been issued arbitrarily that too after 18 months of joining of the Applicant. The State has filed the present Writ Petition challenging the said order primarily on the ground that Clauses – 4.2, 4.3 and 4.4 of the said G.R. appointing the Applicant is more than clear which provides that, one has to join the post within stipulated period, failing which a candidate has to face termination. It is on this line the State has filed the present Petition.

12. We have already observed in foregoing paragraphs that, Applicant has justified her absence which is appreciated by the Tribunal and it has taken a lenient view. The State terminated the services after allowing the Applicant to join and serve for 18 months and so also the Applicant's name appears in Schedule – B to the appointment order, and the said Clause – 4 is applicable to the candidates mentioned in the Schedule – A. Since the order is not perverse and based on equity, we do not propose to interfere with the order. Hence, in view of the reasons mentioned as above, we do not find any ground for interference in the order passed by the Tribunal.

As a result, the Writ Petition filed by the State is dismissed. However considering that, while allowing the Original Application and granting relief of reinstatement, the Tribunal has not passed any orders regarding the training required to be undergone by the

Applicant and her placement in seniority, we grant liberty to the State to seek clarification from the Tribunal on these two issues, by making appropriate Application.

With these observations, the Writ Petition is disposed of.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)