



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.8038 OF 2025
IN WP/1283/2023
WITH
WRIT PETITION NO.1283 OF 2023**

**STATE OF MAHARASHTRA PRINCIPAL SECRETARY
DEPARTMENT AND OTHERS
VERSUS
SUNIL RANGNATH JOSHI AND OTHERS**

...
AGP for Applicants : Ms. Neha B. Kamble
Advocate for Respondents : Mr. G.L. Deshpande
Advocate for Respondent Nos.4 and 5 : Mr. Mukul Kulkarni

...
**CORAM : MANISH PITALE &
Y. G. KHOBRAGADE, JJ.**

DATE : 12.08.2025

PER COURT:

1. Heard learned counsel for the Applicants (Original Respondent Nos.1 to 3) and the learned counsel for the Original Petitioner that is Non-Applicant No.1 in this application.
2. The applicants being State authorities have approached this Court for vacating interim order dated 06.02.2023 passed by this Court in the writ petition, directing that the services of the Petitioner would not be dispensed with until further orders. It is on the basis of the said interim order that the Petitioner has continued to work as a public prosecutor i.e. the post in which he was appointed.
3. We are inclined to vacate the interim order in the light of the

facts brought to our notice on behalf of the Applicants.

4. We find that the Original Petitioner was appointed on the said post on 18.03.2009 on the basis of his being a candidate having low vision and obviously on the basis of suffering from such disability.

5. The appointment order itself includes terms and conditions, which show that the appointment was on probation for a period of two years and that the appointed candidates, including the Petitioner, would have to undergo medical examination upon such appointment.

6. It is pointed out on behalf of the applicants that after the Petitioner underwent medical examination pursuant to his appointment, it came to the fore that he was suffering from 30% disability as opposed to 40% disability shown in the document relied upon by him while securing the appointment. It is an admitted position that 40% disability was the norm. In the face of the aforesaid factual position, a show cause notice was issued to the Petitioner on 07.02.2011. Although the Petitioner appears to have responded to the show cause notice, before any further precipitate action could be taken in the matter, the Petitioner approached this Court by filing Writ Petition No.5290/2018 praying for a direction to the applicants to decide his representation and further a direction to the applicants to issue a certificate of completion of probation and for release of increment. The said petition was disposed of by an order dated 06.06.2018 upholding the preliminary objection raised on behalf of

applicants that the Petitioner ought to approach the Maharashtra Administrative Tribunal (MAT) for relief. The petition was disposed of for the Petitioner to avail the alternative remedy.

7. In that light, the Petitioner filed Original Application (ST) No.924/2018 before MAT, which was disposed of by an order dated 05.07.2018 issuing a direction to the applicants herein to decide the representations of the Petitioner.

8. It appears that the Petitioner had filed a contempt petition before the MAT, which was subsequently disposed of on 03.12.2019 by rejecting the same. In that backdrop, the Petitioner filed Writ Petition No.2831/2020 before this Court. The said petition was disposed of with a direction to the applicants to decide the representations of the Petitioner. In the said petition also the Petitioner filed Contempt Petition No.342/2021, which was disposed of by an order dated 20.10.2021. By the said order a Division Bench of this Court gave a specific direction to the Petitioner to remain present before the Medical Board of Sir J.J. Hospital at Mumbai on 01.11.2021 to get himself examined by the Medical Board. This direction, according to us, is crucial in the facts and circumstances of the present case, for the reason that paragraph No.7 of the said order records that depending on further events liberty was reserved for the parties to take further steps.

9. The Petitioner did appear before the Medical Board and as

per the disability certificate placed on record along with this application by the applicants, we find that the Medical Board found the percentage of disability of the Petitioner as only 30%. This reinforced the document, which in the first place had resulted in show cause notice dated 07.02.2011 being issued by the applicants to the Petitioner.

10. It is in this backdrop that the Petitioner filed the instant petition. Perusal of the prayer clauses of the present petition show that the initial prayer clauses are identical to the prayers made on behalf of the Petitioner in his first writ petition filed before this Court i.e. Writ Petition No.5290/2018, which was disposed of by asking the Petitioner to approach the MAT on the ground of alternative remedy. The present Petition seeks further reliefs and it is on the basis of the further reliefs sought in present petition that the learned counsel for the Petitioner is seeking to justify filing of this petition directly without first approaching the MAT. Be that as it may, on 06.02.2023, this Court passed the interim order in favour of the Petitioner. A perusal of the said order indicates that the Medical Certificate issued by the Board, pursuant to the Petitioner appearing before the Board, as per direction issued in the contempt petition was not available. In the absence of the said document, this Court appears to have carried an impression that the Petitioner was being continued unabated as a probationer from the very date of his appointment i.e. 24.03.2009 and in that backdrop certain observations were made,

leading to the interim direction granted in favour of the Petitioner.

11. We are of the opinion that if the Disability Certificate at **Exh-X-3** with the present civil application was before this Court, perhaps the interim direction would not have been issued.

12. When we probed further into the matter, we realized that the Petitioner is seeking adjudication from this Court on the aspect of 40% blindness Vs. 30% blindness and about the marginal error of 10% blindness, primarily on the basis of a document filed at **Exhibit - W** along with the petition. The said document is nothing but an article written in a medical journal which can hardly be said to be material that can lead to any concrete findings by this Court while exercising writ jurisdiction.

13. In any case, the Petitioner will have to make efforts to convince this Court to even consider prayer clause 'F' in the present petition.

14. The document at **Exh - X-3** in the present application reinforces the serious doubt raised by the applicants while issuing show cause notice as far back as on 07.02.2011 to the Petitioner. Since then the Petitioner has been approaching either this Court or the MAT and embroiling the applicants in litigation while continuing in the said post.

15. We are of the opinion that the Petitioner will have to make efforts firstly to convince this Court regarding maintainability of the writ petition in the face of the alternative remedy of approaching the MAT and

in any case, further efforts would have to be made to demonstrate how this Court in writ jurisdiction can entertain prayer clauses 'B' and 'F' as framed in the present petition.

16. We are of the opinion that the applicants have made out a case for vacating the interim order granted on 06.02.2023.

17. It is relevant to note that the applicants in their reply affidavit filed in the present petition, as far back as on 14.03.2023, had indeed annexed the Disability Certificate at **Annexure R-20** issued by the Medical Board pursuant to the Petitioner appearing before the Board in the light of the order passed in the contempt petition by the Division Bench of this Court. Till date, the Petitioner has not responded to the same by way of rejoinder or any other affidavit.

18. Hence, we are convinced that this application deserves to be allowed. Accordingly, the application is allowed and interim order dated 06.02.2023 is vacated.

19. List the writ petition for hearing on 09.09.2025. Needless to say the Petitioner, if he so chooses, may file a rejoinder affidavit in the writ petition within four weeks from today.

(Y. G. KHOBRAGADE, J.)

(MANISH PITALE, J.)