

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

**WRIT PETITION NO. 5019 OF 2024
WITH
INTERIM APPLICATION NO.3668 OF 2025**

Shri Bharat Jibhau Borse
@ Bharat Jibhau Patil
V/S

....Petitioner/Applicant

The Divisional Joint Director, Agriculture,
Nashik Division, Nashik And Ors

....Respondents

Mr. Sanjeev B. Deore a/w. Ms. Suchitra J. Pawar & Mr. Arman Ansari,
Advocates for Petitioner/Applicant.

Mr. N. K. Rajpurohit, Assistant Government Pleader, for Respondent Nos. 1
to 3-State.

**CORAM : A. S. CHANDURKAR &
M. M. SATHAYE, JJ.**

DATED : 25th MARCH 2025

P.C.:

1. Rule. Rule made returnable forthwith and heard finally by consent of learned counsel for the parties.

2. The Petitioner is challenging the judgment and order dated 20/02/2024 passed by the Maharashtra Administrative Tribunal, Mumbai Bench (MAT) in Original Application (OA) No. 1173 of 2017. By the said impugned order, the Petitioner's Application was dismissed, under which he had sought declaration that he is entitled for being granted deemed date of appointment to the post of Agricultural Servant (Krushi Sevak) with effect from 01/02/2010 as against actual date of appointment – 02/02/2013 with

consequential service benefits. The Petitioner has also challenged the communication/show-cause notice dated 18/03/2024 issued by the Respondent No. 1, seeking explanation from the Petitioner for alleged fabrication of the Project Affected Person (PAP) certificate, threatening further necessary action.

3. Few facts necessary for disposal of this Petition are as under.

3.1. In February 2009, an advertisement was published and the Petitioner applied for the post of Agricultural Servant under PAP category. The Petitioner secured 155 marks, which was highest in the PAP category and remaining candidates scored less than Petitioner. Total 5 vacancies were available. Considering the marks scored, the Petitioner expected that he will be given appointment by the Respondent No. 1. However, his name did not appear in the final select list. Other 5 candidates came to be issued the order of appointment on the said post by the Respondent No. 1 on 12/02/2010. The Petitioner approached this Court by filing Writ Petition No. 8426 of 2010. An affidavit-in-reply dated 19/09/2011 of one Shri Krishna G. Jadhav, Assistant Administrative Officer in the office of Respondent No. 1 was filed in the said petition, taking a stand under paragraph No. 7 that the Petitioner had filed application along with requisite examination fees and PAP certificate and he had scored good marks too; however, unfortunately due to some computer mistake, Petitioner's name did not appear in the final list of selected candidates. Based on this statement, the Petition was disposed of by this Court by order dated 10/01/2013.

3.2. Thereafter, the Petitioner was appointed to the post of Agricultural

Servant on 02/02/2013. Thereafter, a Corrigendum was issued on 28/02/2013 by Respondent No. 1 thereby deleting Clause No. 14 of the appointment order which required 3 years experience on the post of Agricultural Servant. After completing the probation period for 3 years on 02/02/2016, the Petitioner was not given permanent appointment. The Petitioner made several representations, but to no avail and his grievance was not redressed. The Petitioner therefore approached the Tribunal by filing the said OA.

4. It appears that in the Tribunal, the Presenting Officer, relied on affidavit-in-reply dated 02/05/2018 of Divisional Superintendent, Agricultural Officer, in the office of the Respondent No. 1 and took a stand that the certificate relied upon by the Petitioner, claiming to belong to PAP category, is not genuine and it was sent for verification and initially no appointment was issued in favour of the Petitioner. It was contended that appointment was given to Petitioner only because of the order of the High Court and it was without verifying Petitioner's PAP certificate. It is contended that it is now found that the PAP certificate relied upon by the Petitioner is bogus and therefore he is not given deemed date of appointment. It was submitted that, now, necessary action against the Petitioner is under contemplation by the appointing authority. The Presenting Officer, while dealing with the affidavit-in-reply of 19/09/2011 (basis which this Court passed disposed of earlier petition), submitted that the stand taken therein was a false submission and the Respondent-State has conducted departmental inquiry against the concerned officer and he was punished.

5. In these circumstances, the Tribunal has considered the Petitioner's PAP certificate and a letter dated 13/03/2018 issued by the Deputy

Collector, Rehabilitation Nasik, addressed to Respondent No. 1. The Tribunal has considered the Petitioner's PAP certificate, holding that there is overwriting and Applicant's grand-father's name (Shankar) is erased and name of Petitioner is inserted before father's name. The Tribunal has therefore not accepted the Petitioner's PAP certificate, holding that originally it was issued to Petitioner's father and by overwriting and erasing the name, Petitioner made the certificate of his own. Therefore, the said OA has been dismissed.

6. Learned Counsel for the Petitioner submitted that Petitioner's father was already in government employment when the Petitioner's PAP certificate was issued on 26/12/1997 and therefore, it cannot be said that Petitioner's father has derived any benefit therefrom. Inviting the Court's attention to the report dated 13/03/2018 (referred by the Tribunal) it is pointed out that said report mentions that name on the certificate is Jibhau Shankar Patil (Petitioner's father) but it also mentions that benefit of 'Project Affected Person' can be given to the grandson of the Project Affected Person. It is pointed out that this explanation is given on a specific query in that regard.

7. Learned Counsel for the Petitioner has also relied upon Government Resolutions (GRs) dated 22/05/1996 and 30/05/2003, which according to Petitioner provides that any single member of the family of project affected person can get employment under said benefit. It is submitted that the appointment order dated 02/02/2013 was issued after due verification of documents and therefore, it is not open for the Respondents now to content that Petitioner's PAP certificate is not genuine. The Petitioner has also contended that under GR dated 22/05/1996, the grandson of the PAP is included as beneficiary and therefore his PAP certificate was rectified by

correcting clerical error in the same year and the name of the Petitioner was entered in the said certificate with necessary cross-signatures.

8. Learned AGP on the other hand, by referring to the affidavit-in-reply dated 10/06/2024 affirmed by Administrative Officer of the Respondent No. 1 made following submissions. That under section 5(c) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 ('the said Act' for short) it is duty of the Collector to issue certificate who is nominated for being employed against the said quota. That as per the letter/report dated 13/03/2018, Deputy Collector, Resettlement has clarified that the Project Affected Person was Shankar Bamaji Patil who is Petitioner's grand-father and the certificate holder was Jibhau Shankar Patil i.e. Petitioner's father. He submitted that therefore the certificate was not issued to the Petitioner and there is fabrication. That the Respondent No. 1 by issuing letter dated 05/03/2018 had called for report/clarification from the Deputy Collector, Resettlement, Nashik pursuant to which the communication dated 13/03/2018 was issued. That since the Petitioner's PAP certificate is not genuine, there is no question of grant for deemed date. That provision of Section 5(c) of the said Act will prevail over any deviation, if at all, under the GR as relied upon by the Petitioner. That the Petitioner must prove the legality of the certificate and if he does so, the Respondent No. 1 i.e. the appointing authority will take appropriate necessary decision. It is contended that the Petitioner has not made the certifying authority as party to the Petition. On these grounds, the Petition is opposed.

9. It is seen from the record that on 03/04/2024, this Court directed that no decision be taken on the show cause notice dated 18/03/2024 and to that extent, the Petitioner was protected.

10. From the aforesaid facts and circumstances, it is clear that various aspects of the matter such as whether the PAP certificate was corrected by the authority itself and whether the Petitioner's father who is claimed to be the original certificate holder, according to the Respondents, had availed the said benefit, are not considered on merits. Perusal of the copy of the Petitioner's PAP certificate dated 26/12/1997 (at Exhibit-F - Page 58) apparently shows some kind of counter signatures made over scoring of the name Shankar. It is not seriously disputed by the Respondents that the Petitioner's father - Jibhau Shankar Patil has not taken any benefit as Project Affected Person. The aspect of clarification given by the Deputy Collector, Resettlement, under letter dated 13/03/2018 that even grandson of the PAP is entitled to benefits, is also not considered.

11. We note that the GR dated 22/05/1996 as well as format of the PAP certificate indeed indicate that the grandson (नातु) is included in the list of eligible relatives of the project affected person. The aspect about whether the said GR would prevail or section 5(c) of the said Act would limit the benefits absolutely also requires consideration.

12. We also note that the stand of the Respondents has suddenly changed as can be seen from the affidavit-in-reply filed in the earlier Writ Petition and the affidavit-in-reply filed in OA as well as in this Petition. The contention of the Respondents that the concerned officer of the Respondent is punished after filing the affidavit-in-reply in earlier Writ Petition cannot *per se* affect the merits of the case and rival contentions of the Petitioner's PAP certificate being genuine or otherwise will have to be considered on its own merits. It is also not specific case of the Respondents that when the affidavit-in-reply was filed in the earlier Writ Petition, the Petitioner's PAP certificate was under

scrutiny or there existed any doubt about it.

13. In view of these important aspects which are germane to the dispute at the hand, not being considered on merits, we are of the view that instead of this Court considering these aspects for the first time in writ jurisdiction, the Petitioner should be given an opportunity to agitate his case on the aforesaid aspects before the Tribunal, which is the Court of first instance.

14. The Petitioner is protected by order of this Court and he is working even today. There is no inquiry initiated so far. Therefore if the Petitioner is not being paid his salary, the same needs to be paid. The interim protection also deserves to be continued.

15. Therefore, in the facts, circumstances and reasons narrated above, the following order would serve the ends of justice :

(a) The impugned order dated 20/02/2024 is quashed and set aside. The Original Application No. 1173 of 2017 is restored to the file of the Maharashtra Administrative Tribunal, Mumbai Bench for fresh hearing on merits.

(b) The Petitioner is at liberty to amend his Original Application to incorporate his case and grounds in respect of various submissions considered by us. Amendment be carried out within a period of two weeks from receipt of copy of this order. The Respondents will be at liberty to file additional affidavit-in-reply.

(c) Thereafter, the Tribunal is requested to consider the Petitioner's case on merits in accordance with law, without being influenced by what has been observed in this order. Rival contentions on merits are

kept open.

(d) During the pendency of the Original Application, the show cause notice dated 18/03/2024 issued by the Respondent No. 1 shall remain stayed.

(e) Petitioner's pending salary be paid alongwith arrears up to date within a period of four weeks from today, if not already paid.

(f) Rule is made absolute and petition alongwith pending interim application are disposed of in above terms. No order as to costs.

All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)

(A. S. CHANDURKAR, J)