

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.549 OF 2018

**DISTRICT : Mumbai
SUB : Suspension**

Smt. Jyoti Prabhakar Ambare)
(Since after marriage- Smt. Mansi)
Mahendra Jadhav))
Age 39 Years, Occu: Office Peon, now)
Under suspension. Grant Government)
Medical College, Byculla, Mumbai – 8,)
R/o. F/9, Siddharth Nagar, Bapti Road,)
P.P. Marg, Byculla, Mumbai – 8.).....**Applicant**

V/s

1. The Dean, Grant Government Medical)
College, having office at Byculla,)
Mumbai -8.)
2. The State of Maharashtra, Through the)
Principal Secretary, Medical Education &)
Drugs Dept., having office at Mantralaya,)
Mumbai 400 032.)....**Respondents**

Shri A. V. Bandiwadekar, learned Advocate for the Applicant.

Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman.
Hon'ble Shri Debashish Chakrabarty,
Member (A)

Reserved on : 06.03.2025

Pronounced on : 09.06.2025

Per : Hon'ble Shri M. A. Lovekar, Vice-Chairman.

JUDGEMENT

Heard Shri A. V. Bandiwadekar, learned Advocate for the Applicant and Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. Facts leading to this Original Application are as follows. The Applicant was appointed as Office Peon/Badali Kamgar on temporary basis for 29 days by Respondent No.1 on 2-5-1995. Identical orders were then passed from time to time. On 9-1-2016 Crime no.13/2016 was registered against her on complaint of one Ashok Pawar at Tardeo Police Station *inter alia* under sections 406 and 420, I.P.C. She was arrested and remanded to police custody on 24-8-2017. Respondent no.1 issued a notice dated 6-9-2017 to her. At this point of time she was in police custody. Since she remained in custody for more than 48 hours, by order dated 12-9-2017 Respondent No.1 placed her under suspension. Thereafter, by order dated 12-9-2017 Respondent No.1 terminated her services. On 27-10-2017 charge-sheet was submitted against her in the Court of learned 4th A.C.M.M., Girgaon, Mumbai. On 6-12-2017 she applied for bail and was directed to be released on bail. On 19-1-2018 she sent a legal notice that she be reinstated. By order dated 27-1-2018 Respondent No.1 turned down her request. Hence, this Original Application.

3. Other relevant facts are as follows. The Applicant and 11 others had filed Original Application No.199/2016 in this Tribunal seeking relief of regularisation. By judgment dated 15-6-2017 this Tribunal held –

“It is hereby held and declared that the Applicants are eligible for being regularized in the category of Class IV servants or Sweeper, depending upon their individual cases. The Respondents are directed to make appropriate modification in the GR of 7th December, 2015 (Exh. ‘A’, Page 24 of the PB) and include the names of the Applicants therein at proper places. It is clarified that, this order does mandate the deletion of the names of any candidate. Compliance within four weeks from today. The Original Application is allowed in these terms with no order as to costs.”

Pursuant to judgment dated 15-6-2017 decision was taken by Government of Maharashtra to regularise services of all the Applicants in Original Application No.199/2016 which included the present Applicant. Accordingly, G. R. dated 17-12-2018 was issued. However, by letter dated 8-3-2019 guidance was sought from respondent no.2 regarding regularisation of services of the Applicant since Criminal Case was pending against her. By letter dated 23-7-2021 Respondent No.1 communicated its decision to the Director, Medical Education and Research, Mumbai that the Committee constituted as per Circular dated 26-8-2014, in its meeting dated 5-2-2021 had taken a decision not to regularise services of the Applicant due to pendency of Criminal Case against her.

4. In their replies dated 20-10-2018 and 14-2-2025 Respondents 1 and 2 have referred to the chronology about which there is no dispute. They have conceded that since the Applicant was not a regular employee there was no question of placing her under suspension.

5. The main ground on which the Applicant has impugned order dated 12-9-2017 is that it was passed in breach of Article 311(2) of Constitution of India which mandates giving an opportunity of hearing before any punitive action is taken. The impugned order reads as under –

“उपरोक्त विषयाबाबत संदर्भाधीन पत्रान्वये श्रीमती मानसी महेंद्र जाधव (श्रीमती ज्योती प्रभाकर अंबारे) यांच्याविरुद्ध ताडदेव पोलीस ठाणे, मुंबई येथे लोकांना नोकरी लावण्याचे अमीष दाखवून पैसे घेऊन फसवणूकी केल्याबाबत गुन्हा दाखल झाला असून त्या दिनांक २४/०८/१७ पोलीस कोठडीत आहेत. श्रीमती मानसी महेंद्र जाधव (श्रीमती ज्योती प्रभाकर अंबारे) हया या संस्थेत मा. न्यायालयीन जेष्ठता यादीतील बदली कर्मचारी असून त्यांना ७४ दिवसाच्या तत्वावर बदली काम देण्यात येते. त्यांनी त्यांच्या बदली कामाच्या पदाचा गैरवापर केला आहे. त्यांना लोकांना नोकरीची अमीष दाखवून पैसे घेऊन फसवणूक केल्या प्रकरणी दिनांक २४/०८/१७ पासून अटक करण्यात आलेली आहे व त्या सद्यःस्थितीत पोलीस कोठडीत आहेत त्यांना अटक होऊन २४ तासापेक्षा जास्त कालावधी झालेला आहे. महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९९७ अंतर्गत नियम (४) (२) मधील पोट नियम (अ) प्रमाणे नियमित कर्मचा-यास ४८ तास फौजदारी आरोपाखाली पोलीस न्यायालयीन अभिरक्षेमध्ये ठेवल्यास त्यांना अटक झालेल्या तारखेपासून निलंबित करण्यात येते. श्रीमती मानसी महेंद्र जाधव (कु. ज्योती प्रभाकर अंबारे) या

एक बदली कर्मचारी असून सदर प्रकरणी श्रीमती ज्योती प्रभाकर अंबारे, बदली सेवक यांचे मा. न्यायालयीन जेष्ठता यादीतील नांव वगळण्यात येऊन त्यांना देण्यात येत असेलेली २९ दिवसाच्या तत्वावरील बदली ही कायमस्वरूपी बंद करण्यात येत आहे.”

To support the impugned order Respondents 1 and 2 have pleaded as follows -

“(i) The applicant was working on just 29 days basis Ad-hoc and Badli-worker. She was not at all permanent employee. It was found that the Criminal Case was registered against her and she was in custody for more than 4 ½ months. As mentioned herein above previously also similar complaints of cheating people were received against her. Considering all these circumstances her name was deleted from the waiting / seniority list of Badli-employees and giving her Badli appointment was stopped.

(ii) It is pertinent to note that she was a purely temporary Ad-hoc employee and was appointed just for 29 days in view of the then requirement of routine work, she doesn't possess any lien or right on the post and she cannot force the administration to again appoint her on the same basis.

12. It is strongly denied that the applicant was permanent / regular Class-iv employee. Her appointment orders are very much clear in this manner.”

6. Admittedly, procedure under Article 311(2) was not followed. From stand of Respondents 1 and 2 it can be inferred that

according to them, considering nature of appointment of the Applicant, it was not necessary to follow the procedure under Article 311(2).

7. The Applicant has relied on the judgment of this Tribunal dated 09.07.2021 in **O.A.No.598/2026 (Rahul Damurao Pawar V/s State of Maharashtra & Ors.)**. In this case this Tribunal *inter alia* relied on **Jarnail Singh vs. State of Punjab(1987) SCR 1022** wherein it is held -

"When an allegation is made by the employee assailing the order of termination as one based on misconduct though couched in innocuous terms, it is incumbent on the court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the Court, in such a case, will lift the veil and will see whether the order was made on the ground of misconduct, inefficiency or not."

This Tribunal further observed -

*"In **Hari Ram Maurya Vs. Union of India & Ors. [2006] SCC (L & S) 1677**, the Hon'ble Supreme Court observed that even where employee is under temporary employment, his services cannot be terminated on a charge of bribery without holding enquiry and thereafter acting in accordance with law. It is held as under :-*

"From the order of termination Annexure P-7, it appears that the same refers to the show-cause notice dated 20.8.2002 which is to be found at Annexure P-5. It is stated therein that the appellant demanded kickback with a view to help the complainant to get a favourable

order in the pension matter. That being so, there was a clear charge of bribery leveled against the appellant. No doubt, the appellant was a temporary employee, but if he is sought to be removed on the ground that he was guilty of the charge of bribery, it becomes necessary for the respondent Union of India to hold an inquiry and thereafter to act in accordance with law. In this case, admittedly, no inquiry was conducted, and that is obvious even from Annexure P-7, the letter described as disengagement of casual labour. We, therefore, allow this appeal and set aside the order of the High Court as also the order of termination Annexure P-7 dated 30.9.2002. This, however, will not prevent the respondents from taking action in accordance with law."

8. The Applicant has further relied on ***Prakash Khushalrao Dabhade V/s Zilla Parishad, Aurangabad, 2000 (4) Mh. L. J.*** wherein it is held –

"It is well settled law that even a temporary Government servant cannot be removed from service without holding departmental enquiry, if the complaint is there regarding misbehavior or misconduct, and without giving him an opportunity to defend himself as per the rules prescribed for the departmental enquiries."

9. The Applicant has also relied on a judgment of this bench dated 16.06.2022 in ***O.A.No.321/2018 (Sachin Ramdas Sonawane V/s State of Maharashtra & Others)***. In this case the

impugned order of termination was held to be unsustainable for failure to observe Article 311(2).

Judgment of this Tribunal in **Sachin**(supra) was challenged in W.P.No.2573/2024. The Hon'ble Bombay High Court modified order of this Tribunal as follows -

“(i) While maintaining the order passed by the Tribunal in Original Application No.321 of 2018 to the extent it sets aside the order of termination dated 16/02/2017 and denies the relief of back wages, it is directed that the reinstatement of the respondent would be in terms of his order of appointment, namely on probation for three years. On reinstatement, the respondent would be entitled to be put back on the post of Agricultural Assistant for the remaining period of probation. At the completion of the period of probation, it would be open for the petitioners to determine the suitability of the respondent in accordance with the terms and conditions of his appointment. Rule is disposed of in aforesaid terms with no order as to costs. Time of four weeks is granted to the petitioners to implement the order passed by the Tribunal.”

10. The Applicant has further relied on **Nar Singh Pal V/s Union of India & Others, (2000) 3 SCC 588** wherein it is held that casual labour acquiring temporary status is entitled to protection of Article 311.

11. Considering the aforesaid facts and law, the impugned order dated 12-9-2017 is quashed and set aside. The Respondents are directed to reinstate the Applicant in service within 1 month from today. The Applicant is held not entitled to backwages. The Respondents would be at liberty to proceed against the Applicant in accordance with law. The Original Application is allowed in the aforesaid terms with no order as to costs.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(M. A. Lovekar)
Vice-Chairman

Place: Mumbai
Date : 09.06.2025
Dictation taken by: V. S. Mane
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