
(2016) 02 BOM CK 0157
In the Bombay High Court
Case No : Writ Petition No. 11143 of 2014

Namdeo

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Citation : (2016) 4 ALLMR 868 : (2016) 4 BCR 419 : (2016) 3 MhLJ 327

Hon'ble Judges : S.S. Shinde and P.R. Bora, JJ.

Bench : Division Bench

Advocate : Anand V. Patil [Indrale], Advocate, for the Appellant; S.B. Yawalkar, AGP, for the Respondent

Final Decision : Partly Allowed

Judgement

S.S. Shinde, J.—1. This Petition takes exception to the Judgment and Order dated 24th September, 2014, passed by the Maharashtra Administrative Tribunal, Mumbai Bench in Original Application No. 354/2014, and also the order dated 20th November, 2014, issued by the Additional Director General of Police and Inspector General of Prison, Maharashtra State, Pune, thereby cancelling the appointment / promotion order of the petitioner on the post of Jailor Grade-II.

2. It is the case of the petitioner that, by the impugned order dated 20.11.2014, issued by the respondent No. 2, thereby the promotion order of the petitioner from the post of Jail Guard to Jailor Grade-II has been cancelled abruptly without giving any show cause notice or opportunity of hearing. The petitioner herein was not party to the Original Application No. 354/2014 [Chandrakant Rambhau Sangale Vs. The Additional Director General of Police and the Inspector General of Prisons], decided on 24th September, 2014, by the MAT, Mumbai. It is further the case of the petitioner that, the petitioner came to be appointed on the post of Jail Guard under respondent Nos. 1 to 3 in the year 2002. While discharging his duties, he came across with the Circular / Requisition dated 06.08.2013 issued by the respondent No. 2 appointing authority, thereby applications were called for filling up the promotional post of Jailor Grade-II by way of promotion from

the Jail Guard and other posts.

3. It is further the case of the petitioner that, as per the requisition for the promotional post, it was prescribed that, there would be written examination as well as oral examination and the physical fitness examination. Separate marks were prescribed for the aforesaid examinations. The petitioner, after appearing in the examination, secured total 104.75 marks out of 200 marks. The concerned Selection Committee prepared merit list dated 03.03.2014. In the said merit list, the name of the petitioner is appearing at serial No. 67 in general merit. The petitioner having appeared for the post in question from S.T. category was entitled for consideration from the said category. Accordingly, the selection list was prepared by the respondent No. 2 dated 20.03.2014, wherein the petitioner is at serial No. 23, and he is shown to have been appointed / promoted from the Scheduled Tribe category, on the condition to submit the caste validity certificate within stipulated period. The petitioner was issued an appointment order, and he was sent for completing the training as prescribed for a period of one year with the respondent No. 4 training centre. Accordingly, the petitioner started attending the respondent No. 4 training centre since April, 2014.

4. It is further the case of the petitioner that, respondent No. 5 herein had approached the MAT, Mumbai Bench, by way of filing Original Application No. 354/2014, contending therein that, the respondent therein i.e. respondent No. 2 herein, has not properly followed the reservation of OBC category, while following the recruitment for the post of Jailor Grade-II by way of promotion. It appears that, the MAT Mumbai Bench upon hearing the respondent No. 5 and respondent No. 2 herein proceeded to pass the Judgment and Order dated 24.09.2014, thereby held that, there cannot be reservation to OBC category in promotion, therefore, the claim of the respondent No. 5 for appointment, needs to be considered. The MAT further pleased to observe that, as backward class candidates promoted against vacancy in the category to which they belong, are to be adjusted against that category, the candidate at serial Nos. 11 and 20 has to be adjusted against the S.T. category vacancies, that will take the applicant at serial No. 19 in the select list. With the aforesaid observations, the MAT proceeded to dispose of the Original Application, directing the respondent No. 2 herein to issue the promotion order as per the select list dated 03.03.2014 to the respondent No. 5 and further directed to fill the vacancies of Jailor Grade-II by promotion, keeping in mind the observations made in the judgment and order.

5. It is further the case of the petitioner that, it appears that, the respondent No. 2 instead of challenging the above Judgment and order passed by the MAT, Mumbai, on the ground that, by the said Judgment modification / revision of the selection list was directed to be made without hearing successful candidates, who are already selected / appointed on the post of Jailor Grade-II in view of the completion of selection process, the respondent No. 2 authority proceeded to revise the selection list dated 03.03.2014 sanctioned on 20.03.2014, thereby proceeded to cancel the promotion order of petitioner on the post of Jailor Grade-

II from S.T. category on the basis of Judgment and order passed by the MAT, Mumbai in Original Application No. 354/2014. By the said order, the petitioner has been informed that, the appointment order of the petitioner on the post of Jailor Grade-II has been cancelled, and the petitioner has been directed to join on the original post at Nanded Central Jail, Nanded.

6. The learned counsel appearing for the petitioner submits that, the impugned order passed by the respondent No. 2 is in breach of basic principles of natural justice. The petitioner was not issued any notice and respondent No. 2, without issuing any notice to the petitioner, proceeded to pass the impugned order, thereby the appointment of the petitioner on the post of Jailor Grade-II has been cancelled, and the petitioner has been directed to join on the original post at Nanded Central Jail, Nanded. It is submitted that, out of 30 posts which were advertised, 3 posts were reserved for S.C. category, 3 posts were reserved for S.T. category, 2 posts were reserved for VJNT category, and 22 posts were meant for open category. It is submitted that, the petitioner belongs to ST category, and accordingly, he was selected from the said category at serial No. 3 in the merit list from S.T. category. It is submitted that, two candidates from S.T. category have been selected from the general category and their names have been included in 22 candidates selected from the general merit list. Therefore, those two posts from S.T. category filled in from the general merit list, could not have been counted from S.T. category. In so far as petitioner is concerned, he was considered from S.T. category, and selected from S.T. category.

7. The sum and substance of the arguments of the learned counsel appearing for the petitioner is that, he is duly selected candidate from S.T. category. The Judgment and Order passed by the MAT is not binding upon him, inasmuch as he was not party in the said proceedings, and the impugned order passed by the respondent No. 2 is without hearing to the petitioner and is in breach of principles of natural justice, and therefore, same deserves to be quashed and set aside.

8. In support of the contention that, the principles of natural justice ought to have been followed and the petitioner ought to have been heard before passing the impugned order by the respondent No. 2, the learned counsel appearing for the petitioner pressed into service exposition of the Hon"ble Supreme Court in the case of Canara Bank and others Vs. Shri Debasis Das and others , AIR 2003 SC 2041.

9. On the other hand, the learned AGP appearing for the respondent -State, relying upon the reasons assigned by the Maharashtra Administrative Tribunal and also the impugned order, and relying upon the averments in the affidavit-in-reply, submits that, the order passed by the respondent No. 2 is consequential, inasmuch as for implementing the directions issued by the MAT in its Judgment dated 24th September, 2014, in Original Application No. 354/2014 [Chandrakant Rambhau Sangale Vs. The Additional Director General of Police and the Inspector General of Prisons], the impugned order dated 20th November, 2014, has been

passed by the respondent No. 2. Therefore, he submits that, the Petition may be rejected.

10. We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, learned AGP appearing for the respondent Nos. 1 to 3. Though respondent No. 5 is served twice and to that effect affidavit of service is filed, none appears for the respondent No. 5. We have also perused grounds taken in the Petition, annexure thereto, the reasons assigned by the MAT, and also the reasons assigned in the impugned order passed by respondent No. 2. Upon perusal of the affidavit-in-reply filed by the respondents, nowhere it is denied that, before passing the impugned order by respondent No. 2, the petitioner was not given hearing. Admittedly, the petitioner was not party in Original Application No. 354/2014, which was decided by the MAT on 24th September, 2014. Admittedly, the petitioner was selected from S.T. category on the post of Jailor Grade-II. He was issued an appointment order, and he was sent for completing training as prescribed for the period of one year with the respondent No. 4 training centre. Accordingly, the petitioner started attending respondent No. 4 training centre since April, 2014. We are not considering the controversy raised in the Petition on merits. Suffice it to say that, the order passed by the respondent No. 2 is without adhering to the principles of natural justice inasmuch as the petitioner, who is affected party by the impugned order, ought to have been issued notice for hearing and only after hearing the petitioner, the decision should have been taken by the respondent No. 2. The Supreme Court in the case of *Canara Bank and others Vs. Shri Debasis Das and others* [cited supra] in para 13 to 15 and 19 held thus:

13. Natural justice is another name of commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

14. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

15. The adherence to principles of natural justice as recognised by all civilised States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving

civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta." The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate." In the celebrated case of *Cooper v. Wandsworth Board of Works* (1963 (143) ER 414), the principle was thus stated :

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that thou should not eat."

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

11. In the light of discussion in foregoing paragraphs, the impugned order dated 20th November, 2014, passed by the respondent No. 2 [Exhibit-A Page 16] stands quashed and set aside.

This Writ Petition was filed on 5th December, 2014. This Court was pleased to issue notice to the respondents on 9th December, 2014, and by way of ad-interim relief, it was ordered that, ""till the next date status-quo as on today in respect of the petitioner be maintained"". It further appears that, said interim

relief was continued from time to time. However, it appears that, the respondent No. 4, on 21.11.2014, informed by the respondent No. 2 that, the petitioner is relieved from the post of Jailor Grade-II.

12. Therefore, we make it clear that, though we have set aside the impugned order on the ground of non-adherence to the principles of natural justice by the respondent No. 2, status quo as to the services of the petitioner as available on today be continued till the decision is taken afresh by the respondent No. 2. Respondent No. 2 to issue formal notice to the petitioner for hearing, and after hearing, take final decision afresh as expeditiously as possible, and preferably within 12 weeks and communicate the said decision to the petitioner. In case said decision, which would be taken by the respondent No. 2, if adverse to the petitioner, only appropriate course to take exception to the said decision, would be filing of proceedings before the MAT, and not directly before the High Court.

13. Petition is allowed in part on above terms, and same stands disposed of accordingly.