

CR1989040101

क्रमांक-ईस्टी-१०८८/१७०३५२/३९७/ई-६.

महसूल व वन विभाग,
मंत्रालय, मुंबई-४०००३२.
दिनांक- १ सप्टेंबर १९८९.

प्रति,

जमाबंदी आयुक्त व संचालक, भूमी अभिलेख,
महाराष्ट्र राज्य, पुणे.

जमाबंदी कायदा बालि विसरुन
मुंबई बालि महाराष्ट्र राज्य, पुणे.

- 7 APR 1989

विषय:- अतिरिक्त कार्यभार धारणा करणा-या अधिका-याचे
अधिकार-----

संदर्भ :- आपले पत्र क्र.आस्थापना/ई-२/१९८८, दि.१२.११.८८.

वरील विषयी सामान्य प्रशासन विभागाच्या दि.४.१२.८३ रोजी
पाठविलेल्या पृष्ठांकनाची प्रत संदर्भात सोबत जोडली आहे. सदर पृष्ठांकनाच्या
शेवटच्या पोरछेदात नमूद केल्याप्रमाणे खात्या पदाच्या बांधोधाक स्वत्वाच्या
जबाबदा-या त्या पदावरील नियुक्तीच्या अधिका-यालाच पार पाडता
येतील. त्यामुळे उपसंचालक भूमी अभिलेख या पदाचा अतिरिक्त कार्यभार धारणा
करणा-या अधिका-यास त्या पदाच्या बांधोधाक जबाबदा-या हाताळता येणार
नाहीत. मात्र प्रशासकीय आदेशांवर उपसंचालकावर सोपविलेल्या दैनंदिन
कामकाजाच्या जबाबदा-या ते पार पाडू शकतील.

अ/सहाय्यक संचालक
[३-दा.पोडके]

सहाय्यक, महाराष्ट्र शासन,
महसूल व वन विभाग.

सोबत-दि.४.१२.८३ च्या पृष्ठांकनाची प्रत.

प्रतिीलपी सामान्य प्रशासन विभागाच्या दि.४.१२.८३ च्या पृष्ठांकनासह

माहितीसाठी अगोष्टात:-

उपसंचालक, भूमी अभिलेख कोकण प्रदेश, मुंबई/पुणे प्रदेश, पुणे/रंगनाबाद प्रदेश,
औरंगाबाद/अमरावती प्रदेश, अमरावती/नागपूर प्रदेश, नागपूर/नांदेड प्रदेश,

दया

200
248
Two Copies of :-

(i) The Government of India, Ministry of Finance (Department of Expenditure) Office Memoranda No.F-6(7)-E-II(A)/58 dated the 21st May, 1958 and No.F-12(2)-E.II(A)/60 dated the 5th October, 1960.

"Subject :- Arrangement for holding current charge of duties of a post by another officer during the absence of the regular incumbent of that post.

The undersigned is directed to state that a question has been raised whether an officer appointed to hold current charge of the duties of a post could exercise all or any of the financial powers exercised by a full-fledged incumbent of that post without any specific delegation in this regard. It has been decided in consultation with the Comptroller and Auditor General of India that each such case may be decided on its own merits by the authority sanctioning such arrangement taking into account the experience of the officer appointed to carry on current duties of the post. The Ministry of Home Affairs etc. are therefore requested to indicate clearly in their orders of appointment of an officer hold current charge of the duties of a post whether the officer so appointed may exercise all or any specified powers vested in the full-fledged incumbent of that particular post."

.....
"The undersigned is directed to invite a reference to this Ministry's O.M. No.F-6(7)-E.II(A)/58 dated the 21st May, 1958 according to which Ministries of the Government of India are required to indicate clearly in very order appointing an officer to hold the current charge of the duties of a post whether the officer so appointed is to exercise all or any specified powers vested in the full-fledged incumbent of that post.

2. The question has been reconsidered in consultation with the Comptroller and Auditor General of India and the Ministry of Law. It has been decided that an order appointing an officer to hold the current charge of the duties of a post should, in the absence of any specific direction to the contrary, be deemed to clothe the officer with all the powers vested in the full-fledged incumbent of that post, even though he may not get the full pay of the post. Such an officer should not, however, modify or overrule the orders of the regular incumbent of the post, except in an emergency, without obtaining the orders of the next higher authority.

3. Where the appointment to hold the current duties of a post involves the exercise of statutory or such other powers conferred on the holders of the post, the appointment should also be notified in the Gazette.

4. The orders contained in this Ministry's O.M. No.F-6(7)-E-II(A)/58 dated the 21st May 1958 may be treated as cancelled.

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(ii) The Law and Judiciary Department unofficial references No.24377/B dated the 25th October, 1961 and No.32033/B dated the 12th December, 1962.

.....2/-

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"The last opinion given by this Department No.35192, dated the 15th November, 1958 is based on the decision of the Bombay High Court in Govindram Seksaria V/s. the Commissioner of Income-Tax (Central) Bombay, 45 Bom. L.R. 168. In that case decided by the High Court an Assistant Income Tax Officer/*** and to hold charge of a particular section, and assessment under the Income Tax Act in the case of an assessee was made by the said Assistant Income Tax Officer in the exercise of such functions. It was held by the High Court that the assessment thus made was not valid since the Officer was not properly appointed an Assistant Income-Tax Officer; because merely appointing a person to perform the duties of an office did not amount to a substantive appointment to that office. It would follow from this decision of the High Court that in order to enable a person to exercise statutory powers and functions of an office, it would not be sufficient to appoint him merely to perform the functions of the office or to hold the current charge of the duties of such office even if a notification is issued in the Gazette. It is necessary that he should be appointed to hold the office itself. It is not clear whether this decision of the Bombay High Court was taken into consideration by the Government of India before issuing its Memorandum dated the 5th October 1960. So long as this decision stands, it will have to be followed in this State. In so far as the exercise of statutory powers and functions is concerned, it would not be advisable, therefore, for this Government to issue orders on the lines of those contained in the Government of India Memorandum referred to above. Where however the appointment does not involve exercise of any statutory powers and functions, there would be no objection to make appointments merely to perform the duties of an office, or to hold the current charge of the duties of a post as suggested in said Government of India Memorandum."

.....

The fact that an Ordinance was passed to get over the difficulty occasioned by the Bombay High Court Judgement makes it obvious that the opinion recorded in this Department No.24377/B, dated the 25th October, 1961 on the statutory powers is correct.

2. If only financial powers are to be conferred (see last part of Ministry of Law's advise at page 35/c.), no legal point arises and the Government may follow the Finance Ministry's Circular".

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(iii) An extract from the letter No.1(6)-E-II(A)/62 dated the 15th February, 1963 from the Government of India, Ministry of Finance (Department of Expenditure).

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"The question whether an officer appointed to hold current duties is competent to exercise statutory powers in terms of this Ministry's O.M. No.12(2)-E.II(A)/60,

/*** was appointed to perform the functions of an Income Tax Officer

.....3/-

dated the 5th October, 1960, was again reviewed by this Ministry in consultation with the Ministry of Law. The legal opinion is that the statutory functions can be performed only by a person holding a designated post and not by the persons appointed to discharge current duties. An authority granted to some officer, even by a gazetted notification to discharge current duties of the designated post, would not make him holder of the said designated office and statutory powers of the designated officer cannot be exercised even if he is appointed to discharge current duties of the designated post. He cannot sign the orders of appointment or dismissal as designated officer unless he holds that office in a regular or acting capacity. When a statute invests certain powers, duties, and functions in the officer holding a designated post, these powers can be exercised only by the officer holding that designated post and not by any other officer. Duties and powers conferred by statute would include those conferred by statutory rules, regulations and bye-laws like Fundamental Rules, Classification, Control and Appeal Rules, Civil Service Regulations etc. Duties and powers of administrative nature granted by Administrative orders, office memorandum etc., stand on a different footing and are not of statutory nature. The orders contained in Finance Ministry's O.C. dated 5-10-1960 are in order in so far as they relate to administrative and financial powers.

No.AEC-1060/712-C.
General Administration Department,
Sachivalaya, Bombay, 4th December, 63.

Forwarded for information and guidance to all Departments of the Secretariat in continuation of Government Endorsement, General Administration Department No.AEC-1058-C, dated the 3rd December, 1958.

S/-
Deputy Secy. to the Govt. of
Maharashtra,
General Administration Deptt.