

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1136 OF 2016

DISTRICT : MUMBAI

Shri Nasim Ali Ahsanullah Khan,)
Urdu Stenographer (HG) in the office of)
Maharashtra State Urdu Sahitya Academy)
Mumbai, residing at Takshilka C.H.S,)
Bldg No. 7B/1, Mahakali Caves Road,)
Andheri [E], Mumbai 400 093.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Principal Secretary,)
General Administration Department,))
Mantralaya, Mumbai 400 032.)
2. Principal Secretary,)
Social Justice, Cultural Affairs &)
Sports Department, Mantralaya,)
Mumbai 400 032.)
3. Government of Maharashtra,)
Through the Secretary,)
Minority Development Department,)
Madam Cama Marg, Mantralaya,)
Mumbai 400 032.)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Ms Archana B.K, learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Mrs Medha Gadgil (Member) (A)

DATE : **16.10.2022**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. By way of this Original Application, the applicant seeks directions that the order of termination dated 30.11.2016 issued by Respondent no. 3 is illegal and bad in law and is to be quashed and set aside. He also prays that his service as Stenographer (Higher Grade) Urdu is to be regularized by way of amendment by order dated 21.6.2022. Pursuant to order of this Tribunal dated 15.6.2022 he additionally prayed that he is to be regularized in the post of would be Typist at par with Applicant no. 2 in O.A 231/2012.

2. The facts of the case in brief are as follows:-

The applicant was temporarily appointed through Employment Exchange by the Respondents by order dated 6.1.1981 on the post of Urdu Typist. Thereafter, on 7.5.1991, the Respondents appointed him on a higher post, i.e., of Stenographer (Higher Grade), Urdu. Though the appointment order was temporary, by order dated 16.6.1995, his appointment was continued till the available of candidates from M.P.S.C. However, no candidate was made available by M.P.S.C and he continued to work on the said post till his retirement on 31.8.2017. The Government after the appointment of the applicant in the year 1991 as a Stenographer (Higher Grade), Urdu for the first time framed the Recruitment Rules for the post of Stenographer (Higher Grade) Urdu in the year 1994. The Respondents issued the order of termination of service of the applicant on 30.11.2016, on the ground of suppression of fact of not holding the requisite qualification for the post of Stenographer (Higher Grade), Urdu. Aggrieved by the said order, the applicant filed the present Original Application and interim relief was granted in favour of the applicant and he was allowed to continue in service. However, he

retired on 31.8.2017, during the pendency of this Original Application.

3. Learned counsel for the applicant has submitted that the case of the applicant needs to be considered on the background of the earlier order dated 1.9.2005 in O.A 68/2004 filed by the applicant. The applicant though had prayed for the similar relief of regularization of his services in the post of would be Typist from 6.1.1981 and to the post of Stenographer (Higher Grade) Urdu from 7.5.1991, however, the Tribunal has rejected the said application. Due to the further development, after the date of the said order, the applicant is entitled for the same relief as the facts are different and naturally were not considered by the earlier Division Bench while rejecting the said Original Application.

4. Learned counsel for the applicant has submitted that when the applicant was working as a Stenographer (Higher Grade) Urdu, he was placed under suspension from 30.7.2002 to 15.1.2010. Departmental Enquiry was initiated against him on the ground of misconduct and three charges were framed, which were about active participation in education and religious activities of Muslim religion and so also collecting donations from various National and International sources and using the same to propagate Islam. Learned counsel submitted that the departmental enquiry was fully conducted and the applicant was exonerated by the Enquiry Officer by his report dated 23.9.2010. All the three charges were not proved and he was only warned that he should not participate in any work of educational institution or charitable organization without seeking pre-permission of the Respondent-State. The said enquiry report was accepted by the Disciplinary Authority by order dated 29.4.2011 and his suspension period from 30.7.2002 to 15.1.2010 was treated as duty period.

5. Learned counsel for the applicant has taken us through the entire order of termination dated 30.11.2016 and argued that in the said order the Respondents have lost sight of the basic facts and erroneous facts are mentioned and relied. Learned counsel for the applicant has submitted that the applicant mainly challenges the termination order as it is illegal and bad in law. Learned counsel for the applicant has submitted that though the Government has framed the Recruitment Rules in the year 1994, as per the requisite conditions mentioned in the Recruitment Rules, it was necessary for the candidate to possess the ability to write Urdu, experience of 3 years as Stenographer (L.G) and speed of 120 wpm in Urdu Shorthand and 40 wpm in Urdu Typing.

6. Learned counsel for the applicant further pointed out that as per the termination order the Government issued the advertisement for filling up the post of Stenographer (Higher Grade) Urdu on 26.7.1995. The name of the applicant could not be recommended by M.P.S.C for want of the requisite qualification. However, he submitted Certificate dated 29.7.1994 of having the requisite speed in shorthand and typing. However, as per the Recruitment Rules the Certificate issued by only recognized Institution can be accepted and the Certificate issued by the Institution was not recognized by the Respondent-State. Hence, the said Certificate was not the proof of his requisite qualification.

7. Learned counsel for the applicant has submitted that at the relevant time and till today there is no recognized Institution of Urdu Typing and Shorthand and therefore, it was not possible for the applicant to secure and produce such Certificate. His case was referred to different Institutions, Organizations and Universities to carry out the test/examination of his typing and shorthand. However, none of them had no such provisions. Therefore, the

Government could not provide any such place where he could have appeared for such test/examination. Learned counsel for the applicant has submitted that when the wife of the applicant is working as Associate Professor in one college and her colleague having some prejudice or ill will against the applicant has complained to the Lok Ayukta that the applicant is holding a false Certificate and when he was not eligible to work on the post of Stenographer (Higher Grade) Urdu and Typist (Urdu), he is occupying the said post since last 20 years. Pursuant to the said complaint, Lok Ayukta conducted enquiry and sent report and directed the Respondent-State to find out and take proper steps in the matter. Further Law & Judiciary Department also gave directions and pursuant to the same, the Respondent-State requested many Institutions, Universities to conduct the test. However, the said test could not be conducted. Therefore, he has submitted that the applicant did not produce any fake or forged Certificate from one Institute NAKSHE KOKAN. The applicant never suppressed any fact and hence the order of termination is bad in law, illegal and should be quashed and set aside.

8. Learned P.O has submitted that the applicant has earlier approached the Tribunal with a same prayer of regularization of his services as Urdu Typist and Higher-Grade Stenographer (Urdu) by filing O.A 68/2004. The said Original Application was rejected by the Tribunal by order dated 1.9.2005. Thereafter, in the present Original Application, the applicant has come with the same prayers along with one more prayer, i.e., challenging the termination order dated 30.11.2016 issued by Respondent no. 3, as bad in law and it is to be quashed and set aside along with consequential monetary benefits. Learned P.O relied on the affidavit in reply dated 1.2.2017, filed by Shyamlal R. Chaure, Deputy Secretary in the office of the Minorities Development Department, so also affidavit

in reply dated 1.8.2022 filed by Smt Arati P. Pednekar, Under Secretary in the office of Minorities Development Department and affidavit in reply dated 14.10.2022 filed by Shri Anupkumar Yada, Secretary, Minorities Development Department. Learned P.O further submitted that the applicant was not possessing the Certificate of the recognized Institute and NAKSHE KOKAN Institute is a private Institute and therefore, his services were not regularized as decided by this Tribunal earlier. Learned P.O submitted that the order of termination dated 30.11.2016 was issued by the Disciplinary Authority pursuant to the enquiry report.

9. In this matter, the fact about the appointment of the applicant as Urdu Typist on 6.1.1981 and thereafter his appointment as Higher-Grade Stenographer (Urdu) on 17.5.1991 is not disputed by the Respondents. It is also true that the post of Urdu Typist was lapsed in between and he worked thereafter as Higher-Grade Stenographer (Urdu). The Respondent-State has categorically admitted on affidavit filed by Shri Anupkumar Yadav, Secretary, Minorities Development Department that there is no Government recognized Institute in the State of Maharashtra to conduct examination of Urdu Typist and Urdu Stenographer. Therefore, it was just not possible for the applicant to produce such Certificate. We are fully aware that the applicant had earlier filed Original Application No. 64/2004 seeking regularization of his services as Urdu Typist or Higher-Grade Stenographer (Urdu) and the said Original Application was rejected by this Tribunal by order dated 1.9.2005, after adjudicating the issues on merit. The said order was not challenged by the applicant by filing Writ Petition before the Hon'ble High Court. Thus, the said order as on today it holds the field. We are not the Appellate Authority and therefore, cannot deal with the issue of regularization of the services of the

applicant either as Urdu Typist or Higher-Grade Stenographer (Urdu). However, the Government has appointed the applicant in the year 1981 when there were no recruitment rules for appointment of Urdu Typist or Higher-Grade Stenographer (Urdu). Subsequently, after 12 to 13 years on 18.4.1994 the Recruitment Rules for the post of Higher-Grade Stenographer (Urdu) was framed by the Government and as per the said rules the speed for Typing and Shorthand is prescribed. It is necessary on the part of the Respondent-State to provide the names of the Institute which are recognized or approved by the State to enable the Government employee or the person to take training or to get his qualification certified by the said recognized/approved Institute. Till today, the Government has not decided any Institute which is recognized or approved for Urdu Typing or Urdu Shorthand as per the 1994 Recruitment Rules. The said Rules are still in existence without providing the name of the recognized Urdu Institute. It is shocking to come across such a mockery of its own rules framed by the Government. We direct, the Secretary, Minorities Development Department, Respondent no. 3, to find out which Institute can be called as approved/registered for Urdu Typing and Urdu Shorthand so that in future no person like the applicant shall suffer.

10. So far as the termination order is concerned, it is illegal and malicious order, which we are inclined to quash and set aside. Admittedly, departmental enquiry was conducted by the Respondents for the charges levelled against the applicant. At this stage, we do not want to comment on these charges which were rightly held by the Enquiry Officer not sustainable and the Enquiry Officer has rightly exonerated the applicant and as per the Maharashtra Civil Service Rules if the Enquiry Officer has exonerated the delinquent officer and the report is submitted to the

Disciplinary Authority, the Disciplinary Authority has every power either to accept or reject the report. By order dated 23.9.2010, the applicant was exonerated of all the charges and he given warning that he should not participate in education and religious activities of Muslim religion and so also collecting donations from various National and International sources and using the same to propagate Islam. Further the suspension period of the applicant from 30.7.2002 to 15.1.2010 was treated as period spent on duty and regularized. Five years thereafter, on the complaint by third Party, the file of the applicant was reopened by the Upa Lokayukta. By order dated 1.9.2016 the Upa Lokayukta, Dr Sailesh Kumar directed the Respondents to take steps in respect of the illegality committed by the applicant. Pursuant to the recommendations of the Upa Lokayukta the order of termination dated 30.11.2016 was passed.

11. We have perused the order dated 30.11.2016 terminating the services of the applicant. We are surprised to see the procedure followed by Mr Shyamlal Chaure, Deputy Secretary, Minorities Development Department. He has passed the order on the basis of his own perceptions and subjective bias. No notice was served to the applicant as to why his services are not to be terminated. Even on receiving the report and directions of the Upa Lokayukta dated 1.9.2016, the Government is not authorized to terminate unilaterally and summarily the services of the applicant and especially when he was exonerated from the charges in the D.E. The entire order appears biased and baseless as the applicant was not given any show cause notice, which is against the principles of natural justice. Thus, it leads to travesty of justice.

12. We have been informed by the learned counsel for the applicant that the Respondents did not pay the arrears for the

period of suspension, though there was specific order of his reinstatement and it was ordered that applicant is entitled to get the pecuniary benefits during that period. Learned P.O on our query and on the basis of the instructions from the Respondents admitted that the dues during the suspension period of applicant remained to be paid and it is calculated by the Respondents. We express that the applicant has suffered injustice and the Government completely ignored the fact of his reinstatement and payment of the amount during that period. Hence, the applicant is entitled to get interest @ 9% p.a from year-wise whenever it fell due.

13. In view of the above, we pass the following order:-

- (a) The Original Application is allowed.
- (b) The impugned order dated 30.11.2016 terminating the services of the applicant is quashed and set aside.
- (c) The applicant is entitled to arrears of salary for the suspension period from 30.7.2002 to 15.1.2010 along with 9% interest p.a.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 16.10.2022
Dictation taken by : A.K. Nair.