

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.522 OF 2015**

**DISTRICT : SOLAPUR**

Mrs. Mohini Madhav Maybhate, )  
 @ Kum. Ranjana Manikrao Kulkarni, )  
 R/at. 48/B, Swami Vivekanand Nagar, )  
 Vijapur Road, Solapur. )...**APPLICANT**

**VERSUS**

1. The State of Maharashtra, )  
 Through the Secretary, )  
 Industries & Labour Department, )  
 New Administrative Building, )  
 Opp. Mantralaya, Mumbai 32. )
2. The Assistant Director (Industries), )  
 Pune Division, Pune, )  
 Agriculture College Premises, )  
 Shivaji Nagar, Pune 5. )
3. The General Manager, )  
 District Industries Centre, )  
 Hotagi Road, Solapur 3. )

**....RESPONDENTS**

*Handwritten mark*

Shri K.R. Jagdale, learned Counsel for the Applicant.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

DATE : 03.05.2016.

### **J U D G M E N T**

1. Heard Shri K.R. Jagdale, learned Counsel for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 07.06.2014 withdrawing the benefit of the Time Bound Promotion granted to her by order dated 02.12.1997 with effect from 07.06.1996.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Steno-typist on 04.06.1984 through Employment Exchange. She was given Time Bound Promotion from 07.06.1996 on completion of 12 years of service. The Applicant submitted a representation on 20.01.2014 seeking second Time Bound Promotion as she had completed 24 years of service. However, the Respondent No.2 issued that impugned order dated 07.08.2014 withdrawing the first Time Bound Promotion as well as increments granted to the Applicant from 1984 to 2006. Learned Counsel for the Applicant argued that the order dated 07.08.2014 has been passed behind the back of the Applicant, without giving her

any notice. Learned Counsel for the Applicant argued that at the time of appointment, the Applicant fulfilled all qualifications for appointment as Steno-typist except the proficiency in Marathi typing which she acquired in 2006. As the Applicant has subsequently acquired all qualifications, the impugned order is bad in law. Learned Counsel for the Applicant cited a few judgments, which are discussed subsequently.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents, that the Applicant did not fulfill the requirement of appointment as steno-typist as per recruitment rules, when she was appointed as steno-typist on 04.06.1984. As such, she was not eligible to be promoted on the next higher post, nor for Time Bound Promotion. She was not entitled to get yearly increments released to her, as her appointment was not in consonance with the Recruitment Rules. Learned P.O. argued that Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and Others Versus Umadevi & Others : (2006) 4 SCC 1**, has held that services of those, who are appointing, without having requisite qualifications cannot be regularized and they are not eligible for any benefits. The Applicant's Time Bound Promotion was a nullity. Learned P.O. argued that the Applicant acquired necessary qualifications in 2006, and no recovery is ordered after 2006.

25

5. The recruitment rules for the post, *inter-alia*, of Marathi steno-typist viz. "the Steno-typist, Lower Grade Stenographers and Higher Grade Stenographers in the offices of Government outside Greater Bombay (Recruitment) Rules, 1981," notified on 10.12.1981 have the following requirements as regards typing viz. Government commercial certificate of 80 words per minutes in shorthand and 30 words per minutes in Marathi typewriting. The Applicant had submitted certificate of 25 w.p.m. in Marathi typewriting dated 15.08.1979 when she was appointed as steno-typist. It is an admitted fact that the Applicant acquired speed of 30 w.p.m. in Marathi typewriting only in 2006. The Applicant claims that she was not selected as Marathi steno-typist, but as steno-typist and she had requisite qualification in English typewriting of 40 w.p.m.. However, the Respondents have relied on Government Resolution (G.R.) dated 11.11.1983, which provided that all posts of Steno-typist, Stenographers, and typists in all offices, should be filled by Marathi Typists/ Stenographer only. The Applicant was appointed in 1984. In the G.R. dated 11.11.1983, it is specifically mentioned that appointment to the post of English Steno-typist would require approval from General Administration Department (G.A.D.) of the State Government. It is a fact, that there was no approval to the Applicant's appointment from G.A.D. Office file noting of the Superintending Industries Officer, Pune - Nashik Region, Pune, also mentioned that :-

“३. कु र.मा. कुलकर्णी, हया एस. एस. श्री. परिक्षा मार्च ७५ मध्ये उत्तीर्ण असून त्यांनी शासनाची मराठी स्टेनोग्राफरची १०० शब्द प्र.मी. वेग परिक्षा आणि मराठी टायपिंग २५ शब्द प्र.मी. वेग अशी दोन्ही परिक्षा पास आहे, तेव्हा त्यांच्या निवडीकरिता त्यांना स्टेनोटायपिस्ट या रिक्त पदावर नेमणूक करावी अशी माहा. जि. उ. केंद्र सोलापूर यांनी शिफारस केली आहे.”

It is clear that the Applicant was appointed as Marathi steno-typist and she did not fulfill the requirement of speed of 30 w.p.m. in Marathi. Learned Counsel for the Applicant stated that the above office note is undated and cannot be relied upon. It is seen from the context that the note was prepared before the Applicant was given appointment as Steno-typist. No other construction is possible. The office file has been kept in ordinary course of business. There is no reason to believe that the said filing noting is not authentic. In Umadevi's case (supra ) Hon'ble Supreme Court has referred to with approval its earlier judgment in A. Umarani V. Registrar Co-operative Societies, where it was held that :-

*“..... when appointment were made in contravention of mandatory provisions of the Act and Statutory rules frame thereunder and by ignoring essential qualifications the appointment would be illegal and cannot be regularized by the State.”*

In paragraph 43, of the judgment in Umadevi (supra), Hon'ble Supreme Court has held that :-

*“Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms*

14

*of the relevant rule and after a proper competition among qualified persons, the same would not confer any right on the appointee." (emphasis supplied.)*

6. In the present cases, it is clear that the Applicant was not appointed in terms of relevant rules for appointment of Marathi steno-typist. She, therefore, cannot claim any rights derived from such appointment. The question which arises is whether the Applicant was eligible to earn annual increments and whether she was entitled to get Time Bound Promotion. The relevant G.R. for Time Bound Promotion is dated 08.06.1995 and paragraph 2(b) reads :-

*“(ब) या योजनेअंतर्गत वरिष्ठ वेतनश्रेणी मिळण्यासाठी पदोन्नतीसाठी विहित कार्यापध्दती, ज्येष्ठतापात्रता अर्हतापरीक्षा, विभागीय या बाबींची पूर्तता करणे आवश्यक आहे.”*

It is clear that a person eligible for regular promotion only can be given Time Bound Promotion. The Applicant did not have qualifications for the lower post of Marathi Stenographer. She was not eligible to get Time Bound Promotion.

7. It appears that a Departmental Promotion Committee (D.P.C.) was held on 04.04.2006. The Committee took the following decision regarding the Applicant :-

*“वरील तक्त्यातील अनुक्रमांक ३ वरील व ज्येष्ठता यादी क्र.४ वरील सौ. एम. एम. मायभाते ह्या दिनांक ७/६/१९८४ रोजी लघुटंकलेखक या पदावर शासकिय*

24

सेवेत नियुक्त झाल्या आहेत. त्या लघुटंकलेखक (नि.श्रे.) पदाकारीता आवश्यक असलेला अर्हता पूर्ण करित नाहीत. त्यामुळे त्या लघुटंकलेखक (नि.श्रे.) पदासाठी पात्र ठरत नाहीत. सौ. मायभाटे, यांना दिनांक १९.०५.१९९६ रोजी घेण्यात आलेल्या पदोन्नती समितीच्या बैठकीमध्ये दिनांक ०१.०६.१९९६ पासून कालबद्ध पदोन्नती देण्यात आलेली आहे. लघुलेखक (नि.श्रे.) पदाची पात्रता पूर्ण करत नसल्याने सदर दिलेली कालबद्ध पदोन्नती चुकीची असल्याने त्यांना दिनांक ०१.०६.१९९६ पासून देण्यात आलेली लाभाची वसुली करण्यात यावी असा पदोन्नती समितीने निर्णय घेतला आहे.”

D.P.C. has recommended that Time Bound Promotion given to the Applicant from 01.06.1996 may be withdrawn. The Respondents are relying on the Maharashtra Civil Services (Making it Mandatory to Pass Marathi Stenographer / Marathi Typing Examination for English Stenographer / Typist) Rules, 1991 notified on 06.05.1991. (Paragraph 6 of the affidavit-in-reply of the Respondents dated 17.11.2015. Rule 7 of these rules reads :-

“७. परीक्षा उ-तीर्ण न झाल्यास होणारे परिणाम - (१) जो इंग्रजी लघुलेखक / इंग्रजी टंकलेखक उपरोक्त नियम ४ मध्ये विहित केलेल्या मुदतीत उपरोक्त परीक्षा उ-तीर्ण होणार नाही, तो/ ती परीक्षा उ-तीर्ण होईपर्यंत किंवा त्यास / तिला अशी परीक्षा उ-तीर्ण होण्यापासून सूट मिळेपर्यंत त्याची/ तिची वार्षिक वेतनवाढ रोखून धरली जाण्यास पात्र होईल.”

These rules make it mandatory even for English Stenotypist, to pass Marathi Typewriting Examination of 30 w.p.m. and Stenography Examinations 180 w.p.m. This has to be done within 4 years of appointment. The Applicant joined

M

service on 04.06.1984. Even if her claim that she was appointed as English steno-typist is accepted, she was required to pass Marathi typewriting examination of 30 w.p.m. on or before 06.05.1995. She actually passed it on 11.08.2006. After 1995, she was not entitled to draw increments.

8. The Applicant had relied on the following judgments :-

**(I) State of Punjab and Others Vs. Rafiq Masih (White Washer) etc. in Civil Appeal No.11527 of 2014 - S.C.**

It has been held that no recovery of excess payment made to an employee belong to Class III or Class IV can be made. It has to be appreciated that the Applicant's appointment was not in accordance with Recruitment Rules as she did not fulfill the requirement of Marathi typewriting as regards speed (30 w.p.m.). Constitution Bench of Hon'ble Supreme Court in Umadevi's case (supra) has held that such appointment without following relevant rules does not confer any rights on the appointee. Here the Respondents have decided only to withdraw Time Bound Promotion, which could not have been granted to the Applicant. The Applicant had given an undertaking when Time Bound Promotion was granted to her that if such promotion was found to have been given by

6/2/15



mistake, she would refund the excess payment. Even under rules of 06.05.1991 mandating English Stenographers to pass requisite Marathi Typing & Stenography examination, which the Applicant did not pass in 4 years (before 06.05.1995), she was clearly ineligible to get T.B.P. in terms of G.R. dated 08.06.1995. This case is clearly distinguishable as the judgment of constitution Bench of Hon'ble Supreme Court will prevail over judgment of a two judge Bench.

**(II) Sanjeev Dhar Dubey Versus State of Uttar Pradesh and Other : (2015) 10 ADJ 57.**

This judgment is also based on Hon'ble Supreme Court judgment in Rafiq Mashi's case (supra). So no further comments are necessary.

**(III) O.A.No.24 of 2015 in O.A.No.1068 of 2014, and**

**(IV) R.A.No.17 of 2015 in O.A.No.603 of 2013.**

Both these judgments are also based on the judgment of Hon'ble Supreme Court in Rafiq Masih's case (supra).

9. As regards, the Time Bound Promotion, the Applicant was clearly ineligible to get the same and the recovery is justifiable. However, as regards increments from 01.06.1985 to 01.06.1996, the Respondents have not been able to show

o h

and G.R. or Rules (except rules dated 06.05.1991) which will permit them to stop increments of the Applicant. Of course, after 06.05.1995, on her failure to pass Marathi Typewriting Examination within 4 years of her appointment it can be said she was not entitled to earn increments under the rules of 06.05.1991.

10. As a result, Part 1 of the impugned order dated 20.06.2015 is quashed and set aside. Part 2 of the order is held to be valid.

11. This Original Application is partly allowed accordingly with no order as to costs.

Sd/-  
**(RAJIV AGARWAL)**  
**VICE-CHAIRMAN**

**Place : Mumbai**  
**Date : 03.05.2016**  
**Typed by : PRK**