

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL:

MUMBAI

ORIGINAL APPLICATION NO. 68 OF 2004

DIST : MUMBAI

JUDGMENT

Shri Nasim Ali Ahsanullah Khan.)
Higher Grade Stenographer (Urdu))
in the office of Maharashtra State)
Urdu Sahitya Academy, Mumbai residing)
at Takshila Co-op.Hsg. Society,)
Building No. 7/B/1, Mahakali Cave)
Road, Andheri (E), Mumbai 400 093.) ... Applicant.

Versus

1. The State of Maharashtra.)
through the Principal Secretary,)
General Admn. Department)
(Services), Mantralaya,)
Mumbai 400 032.)
2. Principal Secretary.)
Social Justice, Cultural Affairs)
& Sports Department, Mantralaya,)
Mumbai 400 032.) ... Respondents.

Mr. A.V. Bandiwadekar, Id. Advocate for Applicant.

Mr. M. B. Kadam, Id. Presenting Officer for Resps.

CORAM : SHRI P.K. GAIKWAD (MEMBER-J)
SHRI G.C. TRIPATHY (MEMBER-A)

DATE : 01.09.2005

PER : SHRI P.K. GAIKWAD (MEMBER-J)

J U D G M E N T

1. We have heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant. We have also heard Shri M.B. Kadam, learned Presenting Officer for the Respondents.
2. In the present Original Application, the applicant is seeking regularisation of his services in the post of Urdu Typist from 6.1.1981. He is also seeking regularisation in the post of Higher Grade Stenographer (Urdu) from 17.5.1991. The facts may be stated.
3. The applicant was appointed as Typist (Urdu) on 6.1.1981. The same was temporary appointment. It was in the scale of Rs. 260-495. He was allowed to cross the Efficiency Bar and from 1.1.1987 onwards, his pay scale was revised from Rs. 950-1500. The applicant was appointed purely on temporary basis. The Government had taken a policy decision on or about 1.12.1994. Such ad-hoc or temporary employees working in various departments in the State of Maharashtra were considered for their regularisation of their services as per the policy decision dated 1.12.1994.

It was subject to the fulfilment of certain conditions mentioned therein. The list was published by the Government. The name of the applicant was conspicuous by its absence. He made representation dated 17.12.1994. The same was followed by number of reminders. The case of the applicant was recommended by the Respondent No. 2 to the Respondent No. 1.

4. From 17th May, 1991 onwards, the applicant was appointed as Higher Grade Stenographer (Urdu). That appointment was initially for the period of 2 to 3 months. The Recruitment Rules for the post of Higher Grade Stenographer were framed on 18.4.1994. The process of selection through the M.P.S.C. was started. The applicant made an application before the M.P.S.C. for the post of Stenographer Higher Grade (Urdu). The applicant had submitted various Certificates and the documents in support of his application, prima facie stating that he has speed of 120 W.P.M. in Shorthand and 30 W.P.M. in Typing (Urdu). The applicant was informed that he could not be selected as the Certificates ^{replied} upon by the applicant are not from recognised Institute. The applicant submits that there is no Institute imparting training in Urdu Shorthand, Typing and which is recognised by the State of Maharashtra. In the absence of such recognition, a candidate to the post of Stenographer Higher Grade (Urdu) cannot be selected. The M.P.S.C. had requested the Government to make the necessary amendments in the Recruitment Rules. The same had not been done so far. The applicant therefore, prays that his services in the post of Typist (Urdu) be regularised from 6.1.1981 or from 1.12.1994 on which date the policy decision was taken. He also prays that his services be regularised in the post of Stenographer

Higher Grade (Urdu) from 17.5.1991 onwards.

5. The respondents have filed their affidavit-in-reply. They contend that the post on which the applicant was working namely Typist (Urdu) has lapsed by end of March, 1994. The applicant was taken as Stenographer Higher Grade (Urdu). There was no appointment made in his place. As such, the said post had lapsed. A question of regularisation in the post of Stenographer Higher Grade (Urdu) was under consideration of the Government. The same was subject to the Recruitment Rules and the Certificates produced by the applicant. These Certificates were under the scrutiny. The Recruitment Rules were framed in 1994. Certain qualification is prescribed for the post of Stenographer Higher Grade in that Recruitment Rules. One of the requirement for the post of Stenographer Higher Grade is the Certificate issued by recognised Institute showing that a candidate possesses requisite Shorthand and Typing speed. The applicant had made an application for the said post. He was interviewed by the M.P.S.C. on 6th November, 1995. On being satisfied that the Certificates relied by the applicant were not issued by the recognised Institute, the M.P.S.C. had informed the applicant that his candidature for the said post cannot be considered. The Respondent No. 1 had requested the M.P.S.C. to reconsider the case of the applicant on the basis of the Certificates dated 29.7.1994. The M.P.S.C. had informed the Respondent No. 1 that unless and until the Recruitment Rules are suitably amended, the case of the applicant cannot be considered.

6. It was transpired during the course of the scrutiny that the applicant had produced false and fabricated Certificates. The departmental enquiry is initiated against the applicant. There was some other alleged misconduct, alleging inter-alia that the applicant is involved in religious activities. The departmental enquiry is also initiated on this ground.

7. After hearing the submissions advanced before us, we find that there is no dispute that since inception the applicant was appointed on ad-hoc or on temporary basis. Even the fresh appointment in the post of Higher Grade Stenographer (Urdu) is also on temporary basis. It was a fresh appointment in as much as after the applicant was relieved from the post of Typist (Urdu), ^{he} He was appointed afresh in the post of Higher Grade Stenographer. Then there is no dispute that a policy decision is taken by the Government to regularise services of such ad-hoc employees subject to fulfilment of conditions mentioned in that decision. Admittedly, the name of the applicant did not figure in the list. The fact that the Recruitment Rules were framed on or about 18.4.1994 and one of the requirement for the post of Stenographer Higher Grade is possessing requisite Shorthand and Typing speed is not in dispute. Such a Certificate to that effect is required to be issued by a recognised Institute. Shri Bandiwadkar has urged before us that there is no Institute in the State of Maharashtra which imparts Shorthand, Typing in Urdu and which is recognised Institution by the State of Maharashtra. In the absence of such recognition, the M.P.S.C. had requested the Government

that the Recruitment Rules be suitably amended. So long there is no recognised Institute, It is not possible to obtain a Certificate showing that a particular candidate has particular speed in Shorthand and Typing. Consequently, the post is not likely to be filled in. It is therefore, urged that having regard to the fact that the applicant is in service from January, 1981 onwards, a question of regularisation of his services in the post of Typist and Higher Grade Stenographer be considered from 6.1.1981 and 17.5.1981 respectively.

8. Having regard to the aforesaid undisputed facts, it can be reasonably gathered that the applicant is seeking regularisation in the post of which he does not possess the requisite qualification vis-a-vis the Recruitment Rules. The regularisation is prima-facie sought ^{de-hors} the Recruitment Rules. We therefore, find that the question of considering the case of the applicant for regularisation of his services in the post of either Typist or Higher Grade Stenographer when the same is inconsistent with the Recruitment Rules cannot be entertained. It is like seeking a direction to the Respondents to ignore the provision made in the Recruitment Rules.

9. It is true that the applicant is serving from the year 1981. It is also true that the Resp. No. 2 had recommended the case of the applicant to the Resp. No. 2. In fact, the Resp. No. 1-State had requested the M.P.S.C. to reconsider the case of the applicant for the purpose of

his appointment on the post of Stenographer Higher Grade. Admittedly, the M.P.S.C. had refused to entertain such plea as the applicant did not possess a Certificate issued by the recognised Institute. Thus, calling upon the respondents to consider the case of the applicant de hors the provisions of the Recruitment Rules shall not be proper. It is not possible to give the directions in the aforesaid manner.

10. Shri Bandiwadekar has then relied upon a case reported in (1992) 19 Administrative Tribunal Cases 292 in between H.C. PUTTASWAMY & ORS. V/S. THE HON'BLE CHIEF JUSTICE OF KARNATAKA HIGH COURT, BANGALORE & ORS. According to him, having regard to the fact that the applicant is in service for the last 25 years and bearing in mind that his case had been recommended by the Respondents, on humanitarian ground such directions be given. We are unable to entertain this plea also. It is precisely for the reason that admittedly the applicant does not possess the Certificate issued by the recognised Institute. Secondly, there are allegations levelled against him, *prima facie*, that he had obtained the Certificate dated 29.7.1994 from the Institute. Then there is yet another departmental enquiry pending against the applicant. We find that having regard to this *prima-facie* conduct and the behaviour, it is not possible to exercise the discretion in the manner urged by Shri Bandiwadekar.

11. In the case of PUTTASWAMY (cited supra), the Supreme Court was ^{but} dealing with an isolated case of an employee. There were number of persons who had been recruited in the subordinate Courts and the question of their regularisation was

under consideration. It was then observed that those employees are in continuous service for more than 10 years. They had crossed the upper age limit and are not eligible for appointments elsewhere in the Government. It was thereafter a humanitarian approach was adopted. Suitable directions were given to regularise their services. In the present case, such humanitarian approach, for the reasons aforesaid cannot be adopted. We are therefore, inclined to hold that this Application is without any substance. The same is hereby dismissed with no order as to costs.

Sd/-

(P.K. GAIKWAD)
MEMBER-J
01.09.2005

Sd/-

(G.C. TRIPATHY)
MEMBER-A
01.09.2005

Mumbai.
Date : 1.9.05.
Dictation taken by :
S.K. Wamanse.