

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 971 OF 2015

DISTRICT : MUMBAI

Shri Ravindra Shivram Sonawane,)
Occ : Service, R/o: LIC 13/201,)
Maharashtra Housing Board Colony,)
Laxmi Nagar, Pune 411 009.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Chief Presenting Officer,)
Maharashtra Administrative Tribunal)
Mumbai.)
2. The Principal Secretary,)
General Administration Department)
Mantralaya, Mumbai.)
3. The Principal Secretary,)
Law & Judiciary Department,)
Mantralaya, Mumbai.)
4. The Principal Secretary,)
Energy Department, Mantralaya,)
Mumbai.)



5. The Maharashtra Public Service)
Commission, 5th, 7th and 8th floor,)
Cooperage, Telephone Nigam Bldg,)
M.K Road, Cooperage,)
Mumbai 400021.)...**Respondents**

Shri Sachin Chavan, learned advocate for the Applicant.

Shri K.B Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 01.12.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri Sachin Chavan, learned advocate for the Applicant and Shri K.B Bhise, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 5.11.2015 issued by the Respondent no. 5, viz. Maharashtra Public Service Commission, that he was overage for the post of Solicitor


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(Mofussil Litigation) & Deputy Secretary in the State Government.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Deputy Director (Legal) in the Maharashtra Electricity Regulatory Commission on 2.7.2012. This Commission is a Regulatory Authority under the control of the Energy Department of the State of Maharashtra, thus the Applicant is a Government servant under Rule 2(b) of the Maharashtra Civil Services (General Conditions of Services) Rules 1981. The Applicant has applied for the post of Solicitor (Mofussil Litigation) and Deputy Secretary, advertised by the Respondent no. 5 on 25.6.2015. The age limit for the said post is 49 years relaxable in case of Government servants. However, the Applicant was held ineligible for age relaxation, as his present job under Maharashtra Electricity Regulatory Commission was not held to be a job under the State Government by the Respondent no. 5. Learned Counsel for the Applicant argued that under Rule 9(32) of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981, 'local fund' has been defined. Under that rule also the Applicant is a Government servant as there is provision of Local Fund under the Electricity Act, 2003. As per Section 102 and 103 of the Electricity Act, 2003, the Applicant is clearly a Government servant. Learned Counsel for the Applicant

relied on various judgments of Hon'ble Supreme Court and High Courts, which are discussed subsequently.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Maharashtra Electricity Regulatory Commission (Commission) is an autonomous body created under the Electricity Act, 2003. It is not functioning under the State Government, as it is a regulator and not a Government Department. The funding of this body is done by the Government, but that does not make the employees of the Commission as Government servant. The officers and employees of the Commission are appointed as per Maharashtra Electricity Regulatory Commission (Appointment and Service Conditions of Employees) Rules 2007 and Revised Rules, 2011. They are appointed by the Commission and not by the State Government. Those employees are not government by the Maharashtra Civil Services Rules. Learned Presenting Officer argued that under Section 15(2) of the Administrative Tribunals Act, 1985, unless the provision of sub section (3) are applied to local or other authorities or Corporations and Societies owned or controlled by the Government by a notification, employees of such authorities, Corporations or Societies cannot seek relief under this Act. Learned Presenting Officer argued that judgments cited by the Applicant are not applicable in the present case.



5. The only issue to be decided in the present Original Application is whether an employee of the Maharashtra Electricity Regulatory Commission (Commission) is an employee of the State Government. The Applicant has claimed that under Rule 2(b) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. This Rule reads:-

“2(b) any person in respect of whose service, pay and allowances and pension or any of them special provision has been made by an agreement made with him, in respect of any matter not covered by the provision of such law or agreement.”

The Applicant has definitely not entered into an agreement with the State Government regarding any service conditions. He is appointed under the Maharashtra Electricity Regulatory Commission (Recruitment and Conditions of Service of Employees) Regulations, 2007. These Regulations are framed by the Commission with the approval of the State Government and not by State Government under Article 309 of the Constitution of India. We do not find that the claim of the Applicant that as per Rule 2(b) *ibid*, he is covered in the definition of Government servant. Coming to Rule 9(32) of the aforesaid Rules read as below:-

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“32. Local Fund means---

- (a) revenues administered by bodies, which by law or rule having force of law come under the control of Government whether in regard to proceedings generally or to specified matters, such as the sanctioning of the budgets, sanction to the creation or filling up of particular posts, or the enactment of leave, pension or similar rules; and
- (b) the revenues of any body which may be specially notified by Government as such.

Maharashtra Electricity Regulatory Commission's revenues have not been notified as 'Local Fund' by the State Government. Nor leave, pension or similar rules have been enacted by the State Government. It is already noted that Regulations of 2007 have been enacted by the Commission itself. However, Section 103 of the Electricity Act, 2003 has a provision for creation of a fund by the State Government and the salary of the employees of the State Electricity Regulatory Commission is paid from that fund. This aspect will be examined later.

6. The Applicant has relied on the following judgments, viz:-

(1) **STATE OF ASSAM & ORS Vs. SHRI KANAK CHANDRA DUTTA : AIR 1967 SC 884.**

The question before the Hon'ble Supreme Court was whether a Mauzadar in Assam was holding a Civil post under the State of Assam, and whether he was entitled to the protection of Article 311(2) of the Constitution. Mauzadar was a revenue contractor, and was required to execute a written agreement with the Deputy Commissioner of the District regarding collection of Land Revenues. Hon'ble Supreme Court has held that:-

“A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Article 309, 310 and 311. The heading and the sub headings of Part XIV and Chapter-I emphasize the element of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the posts, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages of remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.”




In the present case, the Applicant was neither selected nor appointed by the State, but by the Electricity Regulatory Commission. All other indicia in the aforesaid judgment which indicate master and servant relationship show that master in the present case is the Commission and not the Government. Other circumstances in the present case, would also indicate that a Regulator may be ultimately funded by the State, but it is a separate and distinct entity different from the State. Under Electricity Act, 2003, this position becomes clear on perusal of Section 82 and 86 of the Act. Under Section 82(2), the State Commission is a body corporate. Section 86 prescribes the functions of the State Commission, which are determination of tariff (electricity charges), regulation of electricity purchase and procurement, issue licenses for transmission and distribution of electricity and inter alia, "adjudicate upon the disputes between the licensee and generating companies and to refer any dispute for arbitration". Under Section 95, all proceedings before the Commission are deemed to be judicial proceedings. If the Commission is held to be part or under control of the Government, the very purpose of creating independent regulator would be defeated.

We are of the considered opinion that the employees of the Commission are not the employees of the Government. Their service conditions are governed by Regulations framed by the Commission and not under

Rules framed under Article 309 of the Constitution. This judgment is clearly distinguishable.

(ii) R.N.A BRITTO Vs. CHIEF EXECUTIVE OFFICER & ORS : S.C Civil Appeal No. 718 of 1993, dated 1.8.1995.

The Petitioner before Hon'ble Supreme Court was working as Secretary of a Panchayat. Hon'ble Supreme Court considered the scheme of the Panchayat Act of Karnataka State and various Rules framed thereunder. There were rules which stated that the Karnataka Civil Services (Conduct) Rules, 1966 and other rules for the time being in force regulating conditions of service of Government servants made under proviso to Article 309 of the Constitution in so far as they are not inconsistent with the provisions of Rules for Panchayat servants shall be applicable to the Panchayat Servants. Panchayat Act also gives wide power to State Government and its officers (Commissioner) over the functioning of Panchayats and the Panchayats are required to construct and maintain village roads, ponds, drainage bunds etc. They have to manage grazing lands and discharge any other functions entrusted to them by the Government. In short, the Panchayat are required to discharge functions of the State and State have wide powers over its working. The same is not true in so far as Regulatory bodies are concerned. In the present case, Commission has to decide the rates of energy payable by various categories




of Consumers, e.g. domestic, industrial, commercial etc., issue licenses to distributors etc. One party is consumer of Electricity and the other party is service providers (Electricity Companies) which may not necessarily be in public sector. Government does not seem to have authority to give directions to the Regulators regarding issuing of licences or in fixing tariffs and to entrust any functions to such regulators.

We are of the opinion that the aforesaid judgment will not apply to the Regulatory authorities.

(iii) SUKHWINDER SINGH Vs. STATE OF PUNJAB & ANR : Punjab & Haryana High Court, Civil Writ Petition no. 19589 of 2012, dated 26.3.2013.

In this Writ Petition, the Petitioner has challenged relevant rules of the State Government, permitting age relaxation to employees of Punjab Government, other State Government or Central Government for Punjab State Civil Services Combined Competitive Examinations. The Petitioner claimed the rules to be discriminatory as age relaxation was not given to employees of Punjab State Electricity Board etc. It was held that employee of Corporation (Boards) Public Sector undertakings which are State under Article 12 will be entitled to the benefit of age relaxation. It may be noted that this decision is regarding Corporations, Boards/ Public Sector



Undertakings of the Government. Nature of Regulatory Body is totally different from that of these bodies. This judgment cannot be said to be applicable to the employees of the Maharashtra Electricity Regulatory Commission. This judgment is distinguishable.

7. The employees of the Maharashtra Electricity Regulatory Commission cannot be said to be the employees of the State Government. Accordingly, the Applicant is not entitled to any reliefs sought by the Applicant in this Original Application. This Original Application is accordingly dismissed with no order as to costs.

Sd/-

~~(R.B. Malik)~~
Member (J)

01.12.16

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 01.12.2016

Dictation taken by : A.K. Nair.