

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 995 OF 2017

DISTRICT : KOLHAPUR

Shri Mahamadali Hidayat Rafai,)
Occ : Nil, Ex. Awal Karkoon from Supply Branch,))
In the office of below named Respondent no. 1))
R/o: Vishwas C.H.S Ltd, Sirat Mohalla,))
Jawahar Nagar, Kolhapur.)...**Applicant**

Versus

1. The District Collector,)
Kolhapur, having office at)
Nagla Park, Kolhapur.)
2. The State of Maharashtra,)
Through Principal Secretary,)
Revenue Department)
Having office at Mantralaya,)
Mumbai 400 032.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : Shri Justice A.H Joshi (Chairman)

DATE : 05.12.2017



ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

2. In this Original Application, applicant has challenged order dated 19.9.2017 at Exh. 'A'. The operative part of the order reads as follows:-

“१. श्री महमदअली हिदायत रफाई, तत्कालीन लिपीक, तहसिलदार कार्यालय, हातकणंगले सध्या सेवानिवृत्त अब्बल कारकून, जिल्हा पुरवठा अधिकारी, कोल्हापूर यांचा दिनांक १/११/१९९५ ते ९/४/२००२ अखेर निलंबन कालावधी केवळ निवृत्तीवेतन विषयक लाभांच्या प्रयोजनार्थ कर्तव्य कालावधी ठरविणेत येत आहे.

२. श्री महमदअली हिदायत रफाई, यांच्या दिनांक १/११/१९९५ ते ९/४/२००२ या निलंबन कालावधीत महाराष्ट्र नागरी सेवा (पदग्रहण अवधी, स्वीयेत्तर सेवा आणि निलंबन, बडतर्फी व सेवेतून काढून टाकणे या कालावधीतील प्रदाने) नियम १९८१ च्या नियमांच्या नियम ६८ (१) ए अन्वये, ज्या प्रमाणात वेतन व भत्ते अदा करणेत आलेले आहे त्याच प्रमाणात वेतन व भत्ते मिळणेस हक्कदार असलेचे निश्चित करणेत येत आहे”.
(Quoted from Exh. 'A', page 20 of O.A)

3. The foundation of the order, i.e. the reason due to which applicant has been deprived of benefits of full salary and allowances is seen in the last para, i.e. para prior to the operative order quoted in the foregoing paragraph. The relevant text reads as follows:-

“१ सेवेतून काढून टाकणे या कालावधीतील प्रदाने) नियम १९८१ या नियमांच्या नियम ७२(७) प्राप्त झालेले अधिकार व महाराष्ट्र शासन, वित्त विभाग, शासन निर्णय क्रमांक: निलंब-१०८७/सीआर-१०६ सेवा, दिनांक २४ डिसेंबर, १९८७ मधील तरतुदी विचारात घेऊन खालीलप्रमाणे आदेश देत आहे”.

(Quoted from Exh. 'A', page 19 of O.A)

4. Impugned order reveals that the Collector claims to have read the order passed by the Special Judge as well as Hon'ble High Court.

5. It shall be useful to refer to the reasoning contained in the judgment of the Special Judge, which runs in extensor, and the length of said judgment admits room for plurality of views. However, the finding recorded by the Hon'ble High Court is unambiguous. Relevant text of the finding by the Hon'ble High Court is seen in para. 7 of the judgment. The said para 7 reads as follows:-

"7. The case was registered as Special Case No. 11 of 1995. The prosecution has examined five witnesses to bring home the guilt of the accused. The complainant has been examined as PW-1. First and foremost, the demand has not been proved. It simply appears that complainant had learnt from the accused that notices are issued to his brothers and sister. The complainant has specifically admitted that he was quite sure that his brothers and sister would cause their appearance in the execution proceedings and would file objections to execution and therefore, the complainant was of the opinion that no notices be issued to his brothers and sister. He had been informed by the accused that the notices are made returnable on 15.4.1994 and therefore being annoyed with the same, he had approached the office of the Anti Corruption Bureau. It is a matter of record that the accused was only working as Junior Clerk in the office of Tahsildar. He was bound to follow the procedure. The accused has admitted in his statement under Section 313 of Cr. P.C that the partition proceedings had been entrusted to him and therefore he had issued notices to the judgment debtors. The accused had no authority to pass effective order in the execution proceedings. The learned Special Judge has rightly held that the accused has demonstrated the preponderance of probabilities and had rebutted the presumption drawn under Section 20 of the Prevention of Corruption Act, 1988. The learned Special Judge has assigned justifiable reasons for acquitting the accused by appreciating the substantive evidence of the witnesses in its proper perspective. The tainted notes were found in the bag. It is pertinent to note that there is no cogent evidence to even remotely indicate that the accused had directed the complainant to put the tainted notes in his bag. It is a material omission in the evidence of the complainant as well as the panch witnesses."

(Quoted from page 71 of the O.A)

6. It is thus evident that the impugned order is passed by the Collector without even applying mind to the text of the judgment of Hon'ble High Court. Hence the impugned decision is wholly justified.

7. The impugned order dated 19.9.2017 is quashed and set aside. It is declared that applicant shall be entitled to continuity of service for all effects and incidences such as full salary and allowances as if he was not at all suspended.

8. The Original Application is allowed with costs.



Sd/-

(A.H Joshi, J.)
Chairman

Place : Mumbai

Date : 05.12.2017

Dictation taken by : A.K. Nair.