

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 785/2020

Sunil S/o Wamarao Dawale,
Age about 54 years, Occu.: Service,
R/o Plot No.72, F-4, Shri Narayan
Apartment, Near Chimurkar Girls Hostel,
Khare Town, Dharampeth, Nagpur

Applicant.

Versus

- 1) The State of Maharashtra, through its
Secretary Urban Development,
Department, Mantralaya, Madam Cama
Road, Hutatma Rajguru Chowk,
Nariman Point, Mumbai.
- 2) Managing Director,
Maharashtra Tourism,
Development Corporation
R/o Apeejay House, 4th Floor, 3
Dinshaw Vachha Road, Nr.K C
College, Churchgate Mumbai
Mumbai City MH 400020.
- 3) Senior Regional Manager,
Maharashtra Development
Corporation Nagpur, Ahinsa
Chowk, Near Gramin Tahsil,
Civil Lines, Nagpur.

Respondents

Shri P.D.Sharma, Ld. counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondent no. 1.

Coram:-Hon'ble Shri M.A. Lovekar, Member (J).

Dated: - 21th March 2022.

JUDGMENT

Judgment is reserved on 11th March, 2022.

Judgment is pronounced on 21th March, 2022.

Heard Shri P.D.Sharma, learned counsel for the applicant and Shri V.A.Kulkarni, the Ld. P.O. for Respondent No.1. None for R-2 & 3.

2. Case of the applicant is as follows:-

By order dated 13.6.2014 (Annexure A-2) the applicant was transferred to M.C., Gondiya. By order dated 23.11.2015 (Annexure A-3) he was transferred to M.T.D.C., Nagpur. By order dated 15.12.2015 (Annexure A-4) he was relived for joining at M.T.D.C., Nagpur. After availing the joining period he reported to join at M.T.D.C. Nagpur (Annexure A-5). He was not allowed to join. By letter dated 30.12.2015 (Annexure A-6) Deputy Managing Director, M.T.D.C., Nagpur informed respondent no.3-

^mijDr I aHw/ku fo"K; kl vud #q Jh-I qy Mcy} LFKi R; vflk; ark Jskh
c] xln; kuxjifj"n ; lak egleMGkr ifrfu; Qrhus#tqjrk ; s ul Y; kps'kl ukl
fn-17-07-2015 jktIP; ki=Klo; sdGfo.; kr vkysvlgR; kphir I kr tMlyhvlgs

egleMGP; k vLFki uoj 0; oLFki d ½ckkde½; k l oxlr fjDr in miyC/k
 ul Y; kusegleMGPghr 'hkek.khul Y; kuso l /; k l lozfud ckldke foHkxleQr
 ifrfu; Qrhusvfhk; R; kph inshkj.; kr vkyh vlgS- r l p 'kl ulP; k foRr foHkxkrhy
 'kl u ifji=d fn-14-11-2014 P; k vuqlakusfjDr inkljht ifrfu; Qrhusdkskrgh
 inshkjrk ; s ulghr- R; keGsJhMoys; krik ifrfu; Qrhus#twd#u ?sksmfpr gskkj
 ulgh.**

3. Respondent no.3, by letter dated 8.1.2016 (Annexure A-7) informed the applicant that the applicant could not be allowed to join. By letter dated 1.2.2016 (Annexure A-8) respondent no.2 directed respondent no.3 that by terminating contractual services of one Rushiya the applicant be allowed to join on the said vacancy. Accordingly the applicant was allowed to work w.e.f. 5.2.2016. By application dated 16.4.2016 (Annexure A-9) the applicant requested respondent no.3 that he, the applicant, be paid salary for the period 16.12.2015 to 4.12.2016. In reply to this request Deputy Managing Director, M.T.D.C. informed respondent no.3 that M.T.D.C. was not liable to pay salary to the applicant for this period. The applicant made representations (Annexure A-11, A-13, A-14 and A-15) but his grievance was not redressed. Hence, this application for the following reliefs-

- i. Hold and declare that the gap of 2 months in the services of the applicant from 13/12/2015 to 04/02/2016 was a "compulsory waiting period" as per Rule 9 sub-***

rule 14 Clause (f) of Maharashtra Civil Services (General Conditions of Services) Rules, 1981.

- ii. hold and declare that the joining period from 16/12/2015 to 20/12/2015 was liable to be further extended till 04/02/2016 as per Rule 26 r/w. Rule 27(c) of Maharashtra Civil Service (Joining Time, Foreign Services and Payment During Suspension, Dismissal and Removal) Rules, 1981.**
- iii. hold and declare that the applicant is entitled for the salary with a continuity of service for period 16/12/2015 to 04/02/2016 under Rule 30 r/w. Rule 10(1) of Maharashtra Civil Service (joining Time, Foreign Services and Payment During Suspension, Dismissal and Removal) Rules, 1981.**
- iv. direct the Respondent No.3 to pay the salary of the Applicant for the aforesaid period (i.e.16/12/2015 to 04/02/2016) with a continuity of service of the aforesaid period.**
- v. direct the Respondents to pay the costs of the present unnecessary litigation.**
- vi. grant any other relief which this Hon'ble Tribunal deems fit in the facts and circumstances of the present case.**

4. It is the contention of the applicant that the period from 16.12.2015 to 4.2.2016 be treated as compulsory waiting period under Rule 9 (14) (f) of the M.C.S. (General Conditions of Services) Rules, 1981, it be treated as joining period as per Rule 30 of the M.C.S. (Joining time,

Foreign Services and the Payment During Suspension, Dismissal and Removal) Rules, 1981 and the omission to extend the joining time be supplied as per Rules 26 and 27 (c) of the said Rules.

Rule 9 (14) (f) (iii) of the M.C.S. (General Conditions of Services) Rules is as under.

(14) "Duty" duty includes-

(a) * * *

(b) * * *

(c) * * *

(d) * * *

(e) * * *

(f) the period for which a Government servant is required to wait compulsorily until receipt of his posting orders in the cases mentioned below :-

(i) * * *

(ii) * * *

(iii) who, on arrival at the headquarters of the post to which he is posted is not in a position to take charge of the post from the Government servant to be relieved.

Rule 26 of the M.C.S. (Joining time, Foreign Services and Payment During Suspension, Dismissal and Removal.) Rules 1981 reads as under.

Rule 26 Extension of joining time by Government.

Government, may in any case extend the joining time admissible under these rules.

Rule 27 (c) of said Rules reads as under.

(a) * * *

(b) * * *

(c) ***When the rules have in any particular case operated harshly, as for example when a Government servant has, through no fault on his part, missed a steamer or has fallen sick while on the journey.***

5. A conjoint consideration of afore quoted Rules fully supports contention of the applicant that the application deserves to be allowed in terms of a prayer clauses i to iv quoted above. Hence, the order.

ORDER

- (i) The application is allowed in terms of prayer clauses i to iv.
- (ii) No order as to costs.

(M.A.Lovekar)
Member (J)

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 21/03/2022.

and pronounced on

Uploaded on : 21/03/2022.