

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.545 OF 2015**

**DISTRICT : PARBHANI**

**Rajesh s/o Prabhakarrao Unhale,** )  
Age: 42 years, Occu: Lawyer, )  
R/o. Oppo. Balaji Xerox, )  
Nanal Peth, Parbhani. )...**Applicant**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Secretary, )  
Home Department, )  
Maharashtra State, )  
Mantralaya, Mumbai -32. )
2. **The District Magistrate,** )  
Parbhani. )
3. **The Director of Public Prosecution,** )  
M. S., Mumbai. )
4. **The Assistant Director &** )  
**Public Prosecutor,** Parbhani. )...**Respondents**

-----  
**Shri A.S.Deshmukh, Advocate for the Applicant.**  
**Shri M.S.Mahajan, Chief Presenting Officer for Respondents.**  
-----

**CORAM** : **B. P. PATIL, ACTING CHAIRMAN**  
**AND**  
**P. N. DIXIT, VICE CHAIRMAN**

**RESERVED ON** : **15.11.2019.**

**PRONOUNCED ON** : **16.11.2019.**  
-----

**O R D E R**

1. The Applicant who had been appointed as a Special Assistant Public Prosecutor has challenged the termination order

dated 01-08-2015 issued by the respondent no.2 by filing the present O.A.

2. We have heard Shri A.S.Deshmukh, learned Advocate for the Applicant and Shri M.S.Mahajan, learned Chief Presenting Officer for the Respondents on the point of maintainability of the O.A. and whether the O.A. filed by the applicant is tenable before this Tribunal.

3. Learned Advocate for the applicant has submitted that the applicant was appointed as Special Assistant Public Prosecutor by the appointment order dated 03-08-2006 and since then he was rendering services but his services had been terminated by order dated 01-08-2015. Learned Advocate for the applicant has submitted that the applicant has been appointed as per the provisions u/s.25(3) of Criminal Procedure Code, 1973 and he was paid fees for work discharged by him, and therefore, he is a Government servant within the meaning of Maharashtra Civil Services Rules, therefore this Tribunal is competent to entertain the O.A. in view of the provisions of S.15 of the Administrative Tribunals Act, 1985.

4. Learned C.P.O. has submitted that the applicant is not a Government servant in view of the provisions of the Maharashtra Civil Services Rules. He was enrolled on the panel of the Special Assistant Public Prosecutors appointed by the respondent no.1 u/s.25(3) of the Criminal Procedure Code, 1973 and hence he cannot be termed as a Government servant. He has submitted that the appointment of the applicant was made on the panel for a temporary period and he was entitled to get fees for the services rendered by him. He was not on the fixed pay on any substantial post. Therefore, this Tribunal has no jurisdiction to entertain the O.A. Hence, he has prayed to dismiss the O.A. on that ground alone.

5. On going through the provisions of S.15 of the Administrative Tribunals Act, 1985 it reveals that the Tribunal shall exercise, all the jurisdiction, powers and authority in relation to recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State and all service matters concerning a person or civilian appointed to any civil service of the State or any civil post under the State. Said provisions are material and relevant, therefore, those are reproduced hereinbelow:

**“15. Jurisdiction, powers and authority of State Administrative Tribunals.—**

*(1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court \*\*\*) in relation to—*

*(a) recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State;*

*(b) all service matters concerning a person [not being a person referred to in clause (c) of this sub-section or a member, person or civilian referred to in clause (b) of sub-section (1) of section 14] appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation [or society] owned or controlled by the State Government;*

*(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b), being a person whose services have been placed by any such local or other authority or*

*corporation [or society] or other body as is controlled or owned by the State Government, at the disposal of the State Government for such appointment."*

6. The term "Government Servant" has been defined in Rule 2(b) of the Maharashtra Civil Services (Conduct) Rules, 1979, which is reproduced as under:

**"2. Definitions:**

(a) ....

(b) "Government servant" means any person appointed to any civil service or post in connection with the affairs of the State of Maharashtra, and includes a Government servant whose services are placed at the disposal of a company; corporation, organization, local authority or any other Government, notwithstanding that his salary is drawn from sources other than from the consolidated fund of the State;

7. In the instant case, the applicant has been appointed on the panel of Special Assistant Public Prosecutor in view of S.25(3) of the Criminal Procedure Code, 1973 by order dated 03-08-2006 by the respondents on temporary basis. It is evident from the conditions mentioned in the appointment order that he was entitled to get fees in view of the Government letter dated 21-08-1999 and he is not entitled to get any other allowances or

honorarium other than the fees. It means that the applicant has not been appointed on the fixed pay or salary. His appointment is at the pleasure of the Government and respondents. He is not holding a Civil post under the State Government. Therefore, he cannot be termed as a Government employee as defined u/s.2(b) of the Maharashtra Civil Services (Conduct) Rules, 1979. Therefore, his termination from the post of Special Assistant Public Prosecutor does not amount to service matter in relation to the Government servant. Hence, this Tribunal cannot entertain the O.A. of the applicant in view of the provisions of S.15 of the Administrative Tribunals Act, 1985.

8. Considering the above situation, in our view the O.A. is not maintainable in view of S.15 of the Administrative Tribunals Act, 1985. Hence, the O.A. deserves to be dismissed as not maintainable.

9. In view of the abovesaid facts, O.A. stands dismissed as it is not maintainable in view of S.15 of the A.T. Act, 1985 before this Tribunal. There shall be no order as to costs.

**(P. N. DIXIT)**  
**VICE CHAIRMAN**

**(B. P. PATIL)**  
**ACTING CHAIRMAN**

**PLACE :- AURANGABAD.**

**DATE :- 16.11.2019**

YUK DB O.A.NO.545 of 2015 termination