

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 159 OF 2016

DISTRICT : MUMBAI

Shri Nana Shrikrushna Thosar,)
Occ : Steno cum typist,)
R/at Room No 1501, Building No. 1F)
MHADA Sankul, Rambhau Bhogle Marg,)
Mazgaon, Mumbai.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai.)
2. The District Collector for Mumbai City)
Old Custom House,)
Shahad Bhagat Singh Road,)
Fort, Mumbai 4000 001)
3. The Secretary,)
General Administrative Department,)
Mantralaya, Mumbai.)
4. Smt Rekha Pratap Kave,)
Working as Steno typist in the office of)
Dist. Collector for Mumbai City,)
Fort, Mumbai – 1.)...**Respondents**

Shri K.R Jagdale, learned advocate for the Applicant.

Shri N.K Rajpurohit, learned Presenting Officer for the Respondents.

CORAM : **Shri Justice A.H Joshi (Chairman)**
Shri P.N Dixit (Member) (A)

RESERVED ON : **16.02.2018**

PRONOUNCED ON: **27.02.2018**

PER : **Shri Justice A.H Joshi (Chairman)**

ORDER

1. Heard Shri K.R Jagdale, learned advocate for the Applicant and Shri N.K Rajpurohit, learned Presenting Officer for the Respondents.

2. Applicant has filed this Original Application challenging termination of his services issued by the Collector, Mumbai City on 9.2.2016.

3. Applicant's services have been brought to an end because furtherance to the requisition sent by the Government to the Maharashtra Public Service Commission, duly selected candidate by M.P.S.C for appointment to the post of Stenographer is received.

4. Applicant has agitated as grounds of challenge points namely:-

(a) Applicant had applied for appointment furtherance to an advertisement by a duly constituted Selection Committee and on his own merits after complying with all eligibility criteria.

- (b) His service record is good.
- (c) His ACR shows his ranking as 'B'+, i.e. positively good and that the termination of his services is illegal and erroneous.

5. In reply to the Original Application, the Respondents have averred that applicant was appointed on a vacancy which is liable to be filled in by a candidate duly selected through M.P.S.C. At the time of advertisement it was notified that the post to be held by the applicant was temporary.

6. Even appointment order mentions that by Government Resolution dated 6.4.2011, ad hoc post was created and for its selection Collector was empowered to fill in the post, and applicant was appointed on temporary basis.

7. The plea contained in the affidavit in reply that the post held by the applicant was liable to be filled in through M.P.S.C as narrated in para 3 of the affidavit dated 13.4.2016, reads as follow:-

“3. With reference to Para 7.15 of the application, I state that the posts of steno cum typist in the jurisdiction of Greater Bombay fall under the purview of Maharashtra Public Service Commission. The department/offices who have filled up these posts by temporary appointments through other methods, should terminate the services of such temporary candidates after the candidates for the posts of steno-cum-typist recommended by MPSC become available. The selection of applicant was not made by MPSC, therefore, the Respondent No. 2 has rightly terminated the services of the applicant and issued appointment order to Respondent No. 4, Smt Rekha Kave as steno cum typist. Respondent No. 4, i.e. Smt Rekha Kave is the candidate recommended by MPSC for the post of steno cum typist and she was allotted to the office of Respondent no. 2 by memo dated 14.1.2016 issued by General Administration Department.”

8. Though rejoinder have been filed the fact that post already occupied by the applicant falls under the purview of M.P.S.C is not denied.

9. On the other hand, during the course of hearing, this Tribunal has queried the learned advocate for the applicant that:-

- (a) Whether M.P.S.C has issued advertisement?
- (b) Has applicant applied?
- (c) If the applicant has applied, what is the fate thereof.

10. Learned Advocate for the applicant replied as follows:-

- (i) M.P.S.C had advertised the post, is a fact.
- (ii) Applicant had applied for the said post by securing consent of the appointing authority.
- (iii) Applicant had undergone process of selection and has not been selected by M.P.S.C.

11. In the aforesaid background following facts emerges:-

- (i) The post of Stenographer in the office of Collector, Mumbai City is earmarked for selection through M.P.S.C.
- (ii) The post was notified immediately after applicant was appointed.
- (iii) Applicant had applied for the said post.
- (iv) Applicant has undergone process of selection.
- (v) Applicant has not been selected.

12. In the background noted in the foregoing paragraph, the applicant having participated in the selection process, now cannot question the same in a circuitous manner by questioning the

process of law, by challenging his termination order. Admittedly selected candidate has joined.

13. Learned Advocate for the applicant has placed reliance on following judgments:-

- (i) Nepal Singh Vs. State of U.P & Others 1985 AIR (SC) 84.
- (ii) Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors, 1999 AIR (SC) 983

14. Perused the judgments cited by learned Advocate. These judgments will not in any manner be applicable to the present case in the background that present case is a case of failure of the applicant to withstand the bench mark.

15. In this premises, Original Application has no merit and is dismissed.

16. Parties are directed to bear their own costs.

Sd/-
(P.N Dixit)
Member (A)

Sd/-
(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 27.02.2018
Dictation taken by : A.K. Nair.