

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.05 OF 2016

DISTRICT : PUNE

Smt. Kavita Vishwanath Dwivedi.)
Age : 45 Yrs, Working as Deputy)
Commissioner (General) in the office of)
Divisional Commissioner (Revenue), Pune)
Division, Having Office at 1st Floor, New)
Building, Old Council Hall, Pune – 1 and)
Residing at Rohan Nilaya, Phase-II, Aundh,))
Pune – 7.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Add. Chief Secretary)
(Revenue), Revenue & Forest Dept.,)
Mantralaya, Mumbai - 400 032.)
2. The All India Institute of Local Self)
Government, having office at M.N.)
Roy, Human Development Campus,)
Plot No.6, Block-F, Opp. Government)
Colony, Building No.326, Bandra (E),)
Mumbai 400 051.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondent No.1.

Mr. M.A. Pathan, Advocate for Respondent No.2.



P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 03.05.2017

JUDGMENT

1. The Applicant who is a Senior Government Officer went on deputation to the 2nd Respondent – All India Institute of Local Self Government, Mumbai. She had brought this Original Application (OA) to recover Training Allowance, Vehicle Allowance, GPF Contribution and Internet and Newspaper Charges pending OA. The Respondent No.2 paid all these allowances and charges to the Applicant and the claim now remains restricted to the interest on the delayed payment at Rs.12% p.a.

2. I have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant, Mr. A.J. Chougule, the learned Presenting Officer (PO) for the Respondent No.1 and Mr. M.A. Pathan, the learned Advocate for the Respondent No.2.

3. The Applicant is in the cadre of Additional Collector and by an order dated 8th July, 2011 (Exh. 'E', Page 34 of the Paper Book (PB)), she came to be sent on deputation to the Respondent No.2 and the provisions quoted there were Maharashtra Civil Services (Joining



Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (to be hereinafter called "Joining Time Rules"). It was made clear that, it would be compulsory for the Applicant to take charge of the said post on deputation with the Respondent No.2. At Exh. 'F' (Page 35 of the PB), I find an Office Order issued by the Respondent No.2 which for facility deserves to be fully reproduced.

"OFFICE ORDER

Ref. GoM order No.TRF/11/2010 pra.kra-137/E1 dated 8.7.2011.

The Government of Maharashtra has agreed to loan the services of Mrs. Kasvita Dwivedi to the All India Institute of Local Self Government (AIILSG), Pune. The undersigned is therefore pleased to appoint Mrs. Kavita Dwivedi on deputation as Additional Collector in the All India Institute of Local Self Government, Pune with effect from 11st July 2011 until further orders. The institute is further pleased to post her as Head (Projects & Programmes) at All India Institute of Local Self Government, Pune with effect from 11th July, 2011. She will be looking




after the work related to service level bench marking project of Performance Assessment System (PAS) from AILSG Pune office. She will also be assigned other work or projects from time to time. She will report to the Director General, AILSG, Mumbai through the Director, RCUES of AILSG, Mumbai.

Mrs. Kavita Dwivedi will be paid pay, perks and other emoluments as per the Maharashtra Civil Services Rules 2009.

Sd/-
Ranjit S. Chavan
Director General."

4. It is absolutely clear from the above order that the Respondent No.2 undertook to pay to the Applicant, Pay, Perks and other emoluments as per the Maharashtra Civil Services Rules, 2009. This is an application for which one does not even have to fall back upon any other provision of law or rules. It is an undisputed fact that the Applicant went on deputation to the Respondent No.2 and they undertook as just mentioned to make payments of Pay, perks, etc. At this stage, I may also mention that knowingly or unknowingly, I have found that the parties tried to adopt a stand as to the detailed manner in which the Applicant went on deputation. One aspect of the

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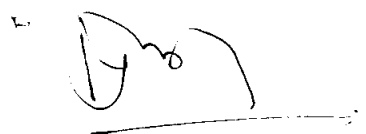
matter is that the Applicant herself requested for being sent there on deputation or may be the Respondent No.2 requested the Respondent No.1 to spare an Officer to work with them on deputation. At the end of the day, it matters not as to how it came about but the deputation is nevertheless an undeniable reality inter-partes. The Applicant was an employee of the 1st Respondent. The 1st Respondent, "loaned" her to the 2nd Respondent and the 2nd Respondent by way of Exh. 'F' undertook which undertaking is binding on them to pay to the Applicant the pay, perks, etc.

5. Mr. Pathan, the learned Advocate for the Respondent No.2 challenged the jurisdiction of this Tribunal based on Respondent No.2's status as a Public Trust registered under the Societies Registration and Bombay Public Trust Act. He told me that the Respondent No.2 would not be liable to be brought within the mischief of the Administrative Tribunals Act, 1985 because the service conditions of the Applicant cannot be enforced against them. He, in this connection, referred me to the provisions of Section 3(q) of the Administrative Tribunals Act which defines the words, "service matters" and Section 15 thereof which enumerates the various heads under the common umbrella of service conditions. Now, in my

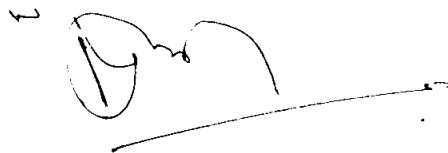


opinion, in the first place, it is not at all necessary for me to enter into the detailed academic exercise in this behalf, broadly for two reasons if not more. In the first place, the Applicant continued to be a Government servant under Respondent No.1 and there was a tripartite agreement and/or arrangement amongst the parties hereto which has already been made clear hereinabove. Therefore, if the Respondent No.2 availed of the services of the Applicant who had come on deputation from Respondent No.1, then even otherwise, they would be liable to make payments to her under all the heads that she was getting them at the time of the commencement of deputation. This deputation was from 11.7.2011 to 7.9.2015. It is, in my opinion, quite clear that in the absence of any express or implied agreement or contract *inter-partes* during the subsistence of the Foreign Service (deputation), the liability to pay would rest on the Foreign Employer viz. the Respondent No.2. In that connection, I have in store a discussion of my own Judgment in **OA No.15/2016 (Shri Arun J. Thakare Vs. The Education Commissioner & 2 others, dated 5.1.1997)**.

6. However, the second important event that has happened is the amount towards the allowances, contribution and charges referred to at the outset, have



since been in fact actually paid by the Respondent No.2 to the Applicant and that amount totaled Rs.23,64,840/-. That in fact, takes care of the main part of the claim of the Applicant and now, only the claim remained restricted to the amount of interest which is Rs.5,92,119/-. Now, pertinently, the Applicant received these particular amounts under protest as would be exemplified by her communication to the 2nd Respondent which is at Exh. 'Q' (Page 76 of the PB). She made it clear that the amounts represented in the Cheque dated 29.1.2016 was accepted under protest, subject to the honoring of cheque and this pending OA. The claim for interest at 12% p.a. was specifically set out and also it was subject to any enhancement which she might be entitled to in the meanwhile. This fact has also been pleaded in the Affidavit-in-rejoinder filed by the Applicant in Para 5 (Page 122 of PB). Significantly, no such caveat in the form of payment being made under protest by the 2nd Respondent. The fact of the Respondent No.2 having not put the payment under protest while the Applicant having received it under protest is quite pertinent. Therefore, once the principal amounts were paid without any let or demur by the 2nd Respondent, then in my opinion, the Applicant cannot be driven to some other authority to recover the



amount of interest that accrued on account of delayed payment.

7. Mr. Pathan, the learned Advocate for the Respondent No.2 tried to contend that these amounts were paid under mistaken belief, and therefore, it can hardly better the case of the Applicant in so far as the claim is concerned which he contended the Respondent No.2 was entitled to claim back and further the issue of jurisdiction which I have already alluded to hereinabove still remains. As to this submission of Mr. Pathan, I find that the matters if on a proper evaluation of the facts and the legal positions such as it obtains, it is found that, under a tripartite arrangement or agreement, this is a properly constituted proceeding, then in my opinion, even as theoretically and academically, the 2nd Respondent might be free to take recourse to the legal remedy as advised, but this Tribunal otherwise competent to deal with the matter hereof cannot stay its hands awaiting the outcome of a proceedings which may or may not be adopted and keep the matter impermissibly pending.

8. Mr. Pathan's client has been raising the belated plea as discussed just now. However, it will be most pertinent to peruse their own additional Affidavit-in-reply

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filed on 2nd January, 2017 by Mr. Shekhar V. Naik. In Para 2 thereof, it is mentioned quite categorically that an amount of Rs.23,64,840/- had been paid by them (wrongly mentioned as Respondent No.1, "on his own accord"). In Para 4, it is pleaded as to how during the period of deputation, the amounts accruing as a result of 6th Pay Commissioner were paid to the Applicant by them. In Para 5, it is pleaded that the Applicant was working with the Government as an Additional Collector and the Respondent No.2 by the letter dated 5.5.2011 requested the Government to post the Applicant to the Respondent No.2 and the Government accepted the said request and deputed the Applicant to the Respondent No.2. I cannot imagine any other clearer statement than this to furnish a refutation to all that they would turn around and try to say in good measure and in fact, it lends support to the case of the Applicant. In Para 6 of the said Additional Affidavit-in-reply which is confirmed by the Respondent No.2 that, a separate order which has already been quoted above viz. Exh. 'F' was made. The details are furnished as to what would be the work that the Applicant was supposed to be doing there. In Para 7, it is pleaded that the Applicant was not entitled to the various amounts therein mentioned, but these amounts were paid by mistake. This is a lame excuse and is not even corroborated by Respondent No.2's



own conduct of having made the payments above referred to. There are further pleas based on a few GRs mentioned therein and apparently thereby the 2nd Respondents want to take a plea that under their establishment, the Applicant was not entitled to lay a claim under those heads. In my view, it should be quite clear that, at the time the Applicant went on deputation, whatever she was getting under the Respondent No1, she would be entitled to get it from the Respondent No.2 also. Regardless of whatever be the state of affairs, vis-à-vis those employees that were the employees of the Respondent No.2 not being on deputation like the Applicant.

9. In the said Affidavit-in-reply, it is pleaded and I am unable to comprehend its meaning that the payments were not as per the directions of this Tribunal. It is then pointed out that the Applicant has not indicated as to under which GR, she has calculated the interest. Now, as to this aspect of the matter, I find that, if it was found that there was a delayed payment and that was inexplicable and in the manner of speaking unpardonable, then of course, the liability to pay interest cannot be denied. The 1st Respondents have filed their Affidavit-in-reply through Mr. Santosh V. Gavde, an under Secretary in the Office of Principal Secretary, Revenue and Forest. It is pleaded

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therein that the Respondent No.2 was under the administrative control and supervision of union of India, and therefore, the Applicant was sent on deputation to them. It is pleaded that this Tribunal is legally competent to deal with the dispute such as it is. The liability of the Respondent No.1 to pay anything to the Applicant is disowned and Rule 40 of the Joining Time Rules is invoked for the proposition that the liability will be of the 2nd Respondent.

10. It is a matter of some significance as discussed above that, even as the Applicant received the amounts sans interest under protest, the amounts were paid by the 2nd Respondent without any such stipulation of the payment being made under protest. Further, in my view, the mere fact that the Respondent No.2 may have been registered under Societies Registration Act and Public Trust Act does not *ipso-facto* mean that it by itself will be circumstance to hold them immune from the jurisdiction of this Tribunal, when the Respondent No.1 is very much a party hereto and the Applicant went on deputation to the Respondent No.2 while still in the service of the 1st Respondent. The plea of the 1st Respondent referred to just now will also have to be borne in mind.

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11. In the matter of jurisdiction and for the proposition that an order passed without jurisdiction would be a nullity, Mr. Pathan, the learned Advocate for the 2nd Respondent relied upon a Judgment of the Hon'ble Supreme Court in **Civil Appeal No.5059/2007 (Union of India and another Vs. Association of Unified Telecom Service Providers of India, dated 11th October, 2011.**

The factual matrix of that particular matter was entirely different. The issue was with regard to the jurisdiction of Telecom Dispute, Settlements and Appellate Tribunal. Under Section 18 of the TRAI Act, the scope of the appeal fell for the consideration of the Hon'ble Supreme Court. The substantial issues of law came to be raised. In Para 28, it was held interpreting Section 4(1) of the Telegraph Act that the Central Government was the exclusive authority for establishing, maintaining and working Telegraphs. Some earlier Judgments of the Hon'ble Supreme Court were considered. Further, the issue was considered as to whether the enactment of TRAI Act has affected in any manner the privileged position of the Central Government. In Para 40, it was held that TRAI and the Tribunal had no jurisdiction to decide the fact at issue of adjusted gross revenue in the license agreement. And then, in Para 41 (Page 61 of the PB), after referring to a number of Judgments of the Hon'ble Supreme Court, a



quote from one of the Judgments was reproduced which is what Mr. Pathan has heavily relied upon. That quote was "an order passed without jurisdiction would be a nullity. It will be a coram *non-judice* and *non-est* in the eye of law. Principle of *res-judicata* would not apply to such cases."

12. Now, in the first place, I find that it is nowhere laid down by Their Lordships in the above Judgment that, any judicial forum should just on a mere say so of a party accept absence of jurisdiction. Further, as a matter of fact, no orders have been made by this Tribunal and the 2nd Respondent made the payments all by themselves pending OA though it was open to them to move the Tribunal before whom this matter was pending and bring to its notice the then proposed move to make the payments. That was something which was not done. In the first place, I do not subscribe to the view that this Tribunal has no jurisdiction over the subject matter hereof. Secondly, the amounts were paid by the 2nd Respondent all by themselves without any protest while quite pertinently the Applicant accepted it under protest. If the amounts were paid, then the liability to pay interest flows as a natural consequence. Therefore, the factual matrix of **Union of India** (supra) and the present one are completely different and so also, are the applicable legal principles. I must repeat that, Their



Lordships have not held that, any judicial forum should just for the asking duck under the jurisdiction and/or decline to accept it.

13. Turning now to my own Judgment in **Arun Thakare** (supra). There, the 1st Respondent was the Education Commissioner, 2nd Respondent was Municipal Commissioner, Mumbai and the 3rd Respondent was the State of Maharashtra in School Education Department. The controversy got narrowed down there also on the issue of payment of interest. The Applicant was a retired Joint Director of Education. The main controversy had been settled by this Tribunal's order in an earlier OA. The issue was with regard to the payment of pensionary benefits and interest thereon, to which the provisions of the Maharashtra Civil Services (Pension) Rules would apply. The Applicant there was apparently on deputation with the Municipal Council. It was observed by me in Para 7 that a depute did not cease to be an employee of his principal employer merely by going on deputation. But, very pertinently there, regard being had to the claim of pension involved, that liability was undoubtedly of the State, and therefore, reserving the right of the State to recover the amount from the borrowing institution, in fact, the State was directed to make the payment of interest.

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14. It must have become quite clear from the above discussion that the present facts, by virtue of the heads of the various claims is by no means a claim for pension, and therefore, **Arun Thakare** (supra) will not be applicable hereto and the Respondent No.2 would not be able to avoid their responsibility and liability to pay to the Applicant the interest and that is particularly because without any murmur, they have already paid the principal amount to the Applicant.

15. For the foregoing, the Respondent No.2 is hereby directed to pay to the Applicant within six weeks from today the amount of Rs.5,92,119/- towards the interest on the allowances, contribution and charges hereinabove referred to. In the event of failure to comply herewith, the amount of Rs.5,92,119/- shall carry a further interest of 12% p.a. from the date of the expiry of six weeks till actual payment. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
03.05.2017

Mumbai

Date : 03.05.2017

Dictation taken by :

S.K. Wamanse.