

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.528/2024 (S.B.)

Ramesh S/o Bhaguji Jaid,
Aged 60 years, Occ. Service,
R/o Room No.502, Daga Layout-3,
Dharampeth, Nagpur.

... **APPLICANT**

// V E R S U S //

- 1] The State of Maharashtra,
Through its Additional Chief Secretary,
Finance Department,
Mantralaya, Mumbai-32.
- 2] The President,
Maharashtra Sales Tax Tribunal,
Having its office at 7th floor,
State GST Office, Mazgaon,
Mumbai 400010.

... **RESPONDENTS**

Shri S.P. Palshikar, Advocate for the Applicant.

Shri S.A. Deo, learned C.P.O. for the Respondents.

**Coram :- Hon'ble Shri Justice M. G. Giratkar,
Vice Chairman.**

Dated :- 16/12/2024.

J U D G M E N T

Heard Shri S.P. Palshikar, learned counsel for the applicant and Shri S.A. Deo, learned C.P.O. for the respondents.

2. The learned C.P.O. Shri S.A. Deo has raised preliminary objection on the ground that applicant is selected / appointed as a Technical Member in Maharashtra Sales Tax Tribunal, Nagpur. He is not a Government Servant and therefore the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "Transfers Act, 2005") is not applicable. As per his submission, the applicant is a Public Servant in view of Section 13 of the Sales Tax Authorities and Tribunal Act. Therefore, it is clear that he is not a Government Servant, his appointment is after his retirement after completion of the age of superannuation. The applicant is appointed for a specified period of 2 years, therefore, he cannot claim that the Maharashtra Civil Services Rules is applicable to him. The post at Pune is not vacant and therefore applicant cannot be accommodated at Pune Bench. As per his submission, this O.A. itself is not tenable, hence, liable to be dismissed.

3. Learned Counsel for the applicant Shri S.P. Palshikar has pointed out the appointment order dated 18/10/2022. As per his submission, Clause nos.2 and 3 clearly shows that Maharashtra Civil Services Rules are applicable to the applicant. Hence, the Transfers Act, 2005 is also applicable to the applicant. Applicant is pursuing his Ph.D. Degree at Pune and therefore he seeks transfer / deputation at Pune. He has pointed out the Government Resolution dated 21/11/2022. As per his submission, the post of applicant is transferrable. He has submitted that applicant is a Government Servant and therefore he can claim relief from this Tribunal.

4. Learned C.P.O. has submitted that the applicant is working in the Sales Tax Tribunal. He cannot claim relief from this Tribunal. At last submitted that this Tribunal has no jurisdiction to entertain and decide the Original Application in view of Section 15 of the Administrative Tribunals Act,1985.

5. The applicant is appointed as a Technical Member of Sales Tax Tribunal. When he was appointed, he was a retired employee. After retirement, he was appointed as per order dated

18/10/2022. Clause 2 and 3 of the appointment order is reproduced below:-

“ २) मा. न्यायाधिकरणाचे बिगर न्यायिक (तांत्रिक) सदस्य म्हणून नेमणूक करण्यापूर्वी शासनाचे जे सेवानियम त्यांना लागू असतील त्यानुसार त्यांना विक्रीकर न्यायाधिकरणातील त्यांचे वेतन व सेवा ही सेवानिवृत्तीवेतनासाठी अर्हताकारी सेवा म्हणून धरली जाईल.

३) महाराष्ट्र नागरी सेवा नियमातील तरतूदीनुसार शासनाच्या सेवेतून नियत वयोमानाने शासन सेवेतून सेवानिवृत्त होतील. सेवानिवृत्तीनंतर त्यांची महाराष्ट्र नागरी सेवा नियमातील तरतूदीनुसार बिगर न्यायिक (तांत्रिक) सदस्य पदावरील पुन्हा वेतननिश्चिती करण्यात येईल.”

6. Learned counsel for the applicant has pointed out Clause No.2 and 3 and submitted that as per these clauses Maharashtra Civil Services Rules are applicable.

7. From the plain reading of Clause No.2 and 3 of the appointment order, it is clear that the Maharashtra Civil Services Rules is applicable in respect of pay and pensionary benefit. Clause No.3 shows that if he is re-appointed again, then his pay shall be fixed as per the Maharashtra Civil Services Rules. Both Clause Nos.2 and 3 show that the Maharashtra Civil Services Rules is applicable in respect of the fixation of pay, etc. It is not in respect of other service conditions of Maharashtra Civil Services Rules.

8. Learned counsel for applicant has also pointed out the Government Resolution dated 21/11/2022. The material part of the G.R. is reproduced below:-

प्राध्यान्य क्रमांक	प्राधान्यक्रमाचे वर्णन
७	शासकीय कर्मचारी पुनर्नियुक्त माजी सैनिक असल्यास व त्याबाबतचे सक्षम प्राधिकाऱ्याचे प्रमाणपत्र दि.३० एप्रिल पूर्वी बदली प्राधिकाऱ्याकडे सादर केल्यास त्यांची प्रशासकीय सोयीनुसार व पद उपलब्धतेनुसार त्यांच्या सोयीच्या ठिकाणी बदली करण्यात यावी.

9. From the reading of G.R. dated 21/11/2022, it is clear that the transfer can be made on administrative ground and whenever post is vacant. In the present matter, as submitted by learned C.P.O. no post is vacant at Pune. Applicant is pursuing his Ph.D. from the year 2018. He was well aware that he is posted at Nagpur. The said post is not transferrable. Even in respect of other Tribunals also the posts are not transferrable. As per Section 13 of the Sales Tax Authorities and Tribunal Act, the applicant is a Public Servant and not a Government Servant, therefore, he cannot claim that the Maharashtra Civil Services Rules is applicable to him. Appointment order shows that the Maharashtra Civil Services Rules is applicable in respect of pay fixation, etc. Appointment order nowhere shows that other

conditions as per the Maharashtra Civil Services Rules is applicable. The Government Resolution dated 21/11/2022 also shows that transfer can be made on administrative ground and as per the vacancy available. There is no vacancy at Pune. There is no administrative ground for the respondents to transfer the applicant from Nagpur to Pune and therefore the present O.A. is not maintainable. Hence the following order:-

O R D E R

The O.A. dismissed with no order as to costs.

**(Justice M.G.Giratkar)
Vice Chairman.**

**Dated :-16/12/2024.
PRM.**

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

Name of Steno : Piyush R. Mahajan.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 16/12/2024.