

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 385/2021(D.B.)**

Sandeep Kumar Tiwari,  
aged 33 years, Occ. Service, R/o A-09, Type-3,  
Adhikari Niwas, Government Polytechnic,  
Dhamangaon Road, Yavatmal - 445001.

**Applicant.**

**Versus**

1. The State of Maharashtra,  
Through Its Secretary,  
Higher and Technical Education Department,  
Mantralaya, Mumbai 32.
2. Director of Technical Education 3,  
Mahapalika Marg, Dhobi Talao,  
Chhatrapati Shivaji Terminal Area, Fort,  
Mumbai - 400001.
3. Joint Director,  
Technical Education, Regional Office,  
Government Polytechnic Campus,  
New Cotton Market Road,  
Sahkarnagar, Amravati 444603.
4. The Principal Government Polytechnic College  
(Old Government Residential Women Polytechnic),  
Dhamangaon Road, Yavatmal.

**Respondents.**

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Shri S.P.Palshikar, Ld. Counsel for the applicant.  
Shri M.I.Khan, Ld. P.O. for the respondents.

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**Coram:-** Hon'ble Shri Justice M.G.Giratkar, Vice Chairman &  
Hon'ble Shri Nitin Gadre, Member (A).

**Dated:-** 09<sup>th</sup> September, 2024.

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### **JUDGMENT**

Heard Shri S.P.Palshikar, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the Respondents.

2. The case of the applicant in short is as under.

The applicant is having qualification of B.E. M.Tech.. The M.P.S.C. has issued advertisement in the year 2014 for the purpose of recruitment of various posts mentioned in the advertisement. The applicant applied for the post of Assistant Professor in Electronics and Telecommunication Engineering from open category. On 27.07.2014, the applicant received Hallticket. The applicant was successful in the examination. The applicant was asked to remain present before the Competent Authority to furnish certain documents, as per letter dated 22.02.2017. On 24.11.2017, the applicant was informed that he has been selected for the post which he had applied.

3. Prior to his selection and prior to apply as per advertisement in the year 2013, the applicant has applied for the post of Lecturer in Government Polytechnic College. The entire selection

process was carried out by the M.P.S.C.. On 13.01.2017, the applicant was informed that he was selected for the post of Lecturer in the Government Residential Women Polytechnic College at Yavatmal. On 18.01.2017, he has joined the said post. From that time he is working there.

4. The applicant applied for the post of Assistant Professor as per the advertisement of the year 2014. The applicant was selected / appointed for the post of Assistant Professor, but he was not relieved by the parent department. Hence, the applicant has approached to this Tribunal for the following reliefs-

- i) quash and set aside impugned communication dated 22/01/2021 (Annexure- A-27) as illegal, bad in law;*
- ii) further be pleased to hold and declare that the applicant is entitled for appointment as Assistant Professor, Government Engineering. College, Chandrapur;*
- iii) further be pleased to direct the respondent No.1 to issue appointment order in favour of the applicant as Assistant Professor, Government Engineering College, Chandrapur;*
- iv) further be pleased to direct the respondent No.1 to grant deemed date of appointment in favour of the applicant as of 24/11/2017 to meet the ends of justice;*
- v) grant any other relief which deems fit including cost in the facts and circumstances of the present case.*

**9. Interim relief:-**

*During the pendency of the original application applicant prays for following relief: -*

*Direct the respondent No.1 not to fill in one post of Assistant Professor, in Electronic and Telecommunication*

***Branch, Government Engineering College, Chandrapur, during the pendency of the original application.***

5. The O.A. is strongly opposed by the respondents. In para 16 of the reply, it is submitted that three extensions were granted to the applicant to join the selected post. It is submitted that the parent department of the applicant not relieved him. Therefore, he could not join the selected post. Hence, the O.A. is liable to be dismissed.

6. During the course of submission, the learned counsel for the applicant has submitted that the applicant was not at fault. The extension was granted by the department to join the selected post, but the parent department wrongly not relieved him. Therefore, he could not join the selected post.

7. The learned P.O. has pointed out (pg.116) opinion of G.A.D., it is reproduced below-

श्री. तिवारी यांना नियुक्तीचे आदेश दिल्यानंतर त्यांच्या एम.टेक. पदवीच्या तपासणीचा मुद्दा (प्र. ३ टीपणीवरील परी. मधील 'अ' नुसार ) उपस्थित होण्याचा प्रश्न उद्भवत नाही. श्री. तिवारी यांना दोन वर्षांची मुदतवाढ दिली होती. त्या मुदतीत ते रुजू झाले नाहीत म्हणजे त्यांना सहायक प्राध्यापक पदाच्या सेवेची आवश्यकता दिसून येत नाही असे स्पष्ट होते.

8. The learned P.O. has pointed out the order issued by Government of Maharashtra dated 22.01.2021. As per this order, the appointment of applicant is cancelled, because he has not joined on the post within stipulated time.

9. The learned P.O. has pointed out the Judgment of the Hon'ble Supreme Court in the case of **Haryana Vidyut Prasaran Nigam and another Vs. Mukesh Kumar (2004) 13 SCC 596.** It is submitted that the applicant has not joined on the selected post. Therefore, he cannot claim that he should be allowed to join on the selected post. The Judgment of the Hon'ble Supreme Court clearly shows that there was legal obligation on the respondents to verify from the appellant about the documents etc.. On facts and circumstances, it is held that appellant was justified in rejecting the request of the respondent to grant him further time to join and deny him benefit of his selection.

10. The parent department of the applicant not relieved him and therefore the respondents not allowed him to join on duty. It was for the applicant to convince his parent department to relieve him to join at the selected post. The respondents / Government by order dated 22.01.2021 cancelled the appointment of the applicant, because he could not join on the selected post within reasonable time. As per the Judgment of the Hon'ble Supreme Court, extension of time to join cannot be granted.

11. The learned P.O. has pointed out the Judgment of the Hon'ble Supreme Court in the case of **State of Bihar and Others Vs. Amrendra Kumar Mishra (2006) 12 SCC 561.** The Hon'ble Supreme

Court has held “in absence of any legal right, High Court should not have issued mandamus only on the basis of sympathy---.” The Hon’ble Supreme Court has held in para nos.17 and 18 as under-

*17. It is now also well settled that in absence of any legal right, the Court should not issue a writ of or in the nature of mandamus on the basis of sympathy.*

*18. We, therefore, are of the opinion that the High Court committed a manifest error in allowing the writ petition of the respondent. It is set aside accordingly. The appeal is allowed. However, no recovery shall be made for the period he has actually worked. No costs.*

12. This Tribunal cannot issue any direction to the respondents to allow the applicant to join on the selected post. The applicant has no any legal right. The appointment of the applicant is already cancelled by the Government as per order dated 22.01.2021. Hence, we do not found any merits in this O.A.. Therefore, we proceed to pass the following order-

### **ORDER**

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

**(Nitin Gadre)**  
**Member(A)**

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

Dated – 09/09/2024.  
rsm.

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 Vice Chairman  
& Hon'ble Member (A).  
Judgment signed on : 09/09/2024.  
and pronounced on

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