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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1994 OF 2017

Dasharath Lakhan Sonawane

...Petitioner

Vs.

The Principal Secretary
General Administration Department,
14-A, Government of Maharashtra,
Mantralaya, Mumbai & Ors.

...Respondents

Mr. Amit A. Gharte, Advocate for the Petitioner

Mrs. S.S. Bhende, A.G.P for the Respondents

CORAM : SMT. V.K. TAHILRAMANI, &

M.S. KARNIK, JJ.

DATED : 5TH APRIL, 2017

ORAL JUDGMENT [PER SMT. V.K. TAHILRAMANI, J.]

1. Heard learned Counsel for the Petitioner and learned A.G.P
for the Respondents.

2. Rule. By consent Rule is made returnable forthwith and the
matter is heard finally.

3. An advertisement was issued by the Maharashtra Public

Service Commission(MPSC) dated 19th March, 1993 to fill up 1000 posts of Clerk-cum-Typist required in Mantralaya and in various other Government offices in Mumbai. The Petitioner was selected as Clerk-cum-Typist by the MPSC in 1993 and by appointment letter dated 21st October, 1994 the Petitioner was appointed in the department of Commissioner of Labour, Mumbai. However, as there was no vacancy in the said department he was appointed in the Directorate of Art as Junior Clerk vide appointment letter 31st October, 1994. He joined the said post on 2nd November, 1994.

4. The case of the Petitioner is that the candidate higher in merit list are eligible to be posted in Mantralaya and accordingly he should have been appointed in Mantralaya and not in the department of Commissioner Labour. Hence, the Petitioner preferred an O.A. No. 743 of 2015 before the Maharashtra Administrative Tribunal at Mumbai. In the said O.A. it was contended that great injustice has been caused to the Petitioner because if he was posted to Mantralaya he would have retired as Joint Secretary whereas in post relating to Greater Mumbai a Clerk can only rise to the post of Superintendent which is a non-gazetted

class III post. In the O.A. the Petitioner had sought a declaration that due process and procedure was not followed by allotting candidates in Mantralaya and Greater Mumbai Division. He had also sought direction to the Respondent to allot / post him in Mantralaya Division and further grant deemed sanction as granted to other similarly situated candidates in Mantralaya Division. He also sought some other consequential reliefs.

5. When the O.A was preferred the Respondents contended that there was delay in preferring the O.A. Hence, Miscellaneous Application No.280 of 2016 was preferred in O.A. No. 743 of 2015 for condonation of delay. According to the Petitioner the delay is only 2 years 3 months and 20 days in preferring the O.A. This period was computed based on the fact that the provisional seniority list dated 31st May, 2012 was published on the website of the State Government and it was then that the Petitioner realized that a fraud / mistake was committed by the Government of Maharashtra while allotting the Petitioner to an office outside the Mantralaya in 1993. As the Petitioner was claiming that he should

have been posted to Mantralaya in 1993 itself on the basis of his seniority in the merit list prepared by the MPSC in 1993, the Tribunal held that the delay was, therefore, of 23 years and the O.A was dismissed as it was misconceived.

6. According to the Petitioner the candidates higher in the merit list are eligible to be posted in Mantralaya, hence, he was eligible to be posted in Mantralaya based on his merit in the selection list. However, it is an admitted fact that the decision to allot posts to candidates higher in merit list in Mantralaya was taken only in 2008 and in 1993 no such policy existed. Hence, the Petitioner cannot claim benefit of a policy which was not in existence at the time of his appointment.

7. As stated earlier in the year 1993 there was no policy to allot candidates higher in the merit list to Mantralaya. More over if the Petitioner had any grievance he should have made a representation immediately after he was posted in the office of Commissioner Labour in the year 1994. The Tribunal has rightly held that after 23 years it is not possible to consider his request. More over it is

necessary to state some development which took place after the Petitioner was appointed in the year 1994. The Petitioner joined as Junior Clerk in the office of Directorate of Art on 2nd November, 1994. However, thereafter he joined the post of Assistant in the office of Maharashtra State Commission for Women. He worked in the said Commission from 24th November, 2003 to 14th January, 2004. Thereafter the Petitioner was selected as Senior Clerk in the office of Directorate of Technical Education, Regional Office, Mumbai, which post he joined on 15th January, 2004. From this chain of events it is quite clear that the Petitioner has no locus standi to claim appointment in Mantralaya as Junior Clerk in the year 1994. It is pertinent to note that these facts were not disclosed by the Petitioner in his O.A. Moreover there is nothing on record to suggest that the posts under the aforesaid Commission are posts under the Government of Maharashtra.

9. The Tribunal has rightly held that the explanation of the Petitioner that he realized malafide action on the part of the Respondent when G.R. Dated 31st May, 2012 was published on the web site of the Respondent is utterly unbelievable. This document

is not a G.R but a circular regarding final seniority list of Clerk and Clerk-Typists working in Mantralaya as on 1st January, 2012. Such lists have been published many a times in the past and there never was any objection from the Petitioner. Learned AGP states that from the year 2009 they have started uploading such seniority list on the website. However, it is seen that the Petitioner had not raised any objection to the said seniority list prior to filing his O.A.

10. The Petitioner after changing his job probably realized that he would get better promotional opportunities in Mantralaya and he has tried to raise an issue which is already stale. The Tribunal has rightly held that the Petitioner is trying to revive a dead issue and that he has no locus standi to challenge the seniority list of Junior Clerk. The said order does not call for any interference.

11. The Writ Petition is accordingly rejected. Rule is discharged.

(M.S. KARNIK, J.)

(SMT. V.K. TAHILRAMANI, J.)