

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

WRIT PETITION NO. 11708 OF 2014

Shri. Prakash Maruti Patil	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

Mr. Utkarsh Desai I/b Mr. Prashant Bhavake, Advocate for the Petitioner.

Mr. N.C. Walimbe, AGP for the State.

Mr. Prathamesh Mondal, Advocate for Respondent No. 5.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

Date : 06.08.2018

ORAL JUDGMENT :

- 1] Heard the learned counsel for the parties.

- 2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

- 3] The challenge in this petition is to the judgment and order dated 23.06.2014 made by the Maharashtra Administrative Tribunal (MAT) disposing of Miscellaneous Application No. 529 of 2013 as well as Original Application No. 978 of 2012 instituted by the petitioner.

4] Mr. Utkarsh Desai, learned Counsel for the petitioner points out that by Miscellaneous Application No. 529 of 2013, the petitioner, had applied for leave to amend the Original Application No. 978 of 2012. The MAT, while disposing of the application for amendment, proceeded to dismiss OA No. 978 of 2012 as well, without stating any reasons. Mr. Desai submits that, while there was no good reason to deny leave to amend the Original Application, there was absolutely no reason to dismiss the OA itself without even afford of any opportunity of hearing to the petitioner on the merits of OA No. 978 of 2012. On these grounds, Mr. Desai submits that the impugned judgment and order be set aside and the matter be remanded to the MAT for fresh disposal.

5] Mr. Prathamesh Mondal, the learned Counsel for the respondent No. 5 submits that, there is no infirmity in rejecting the MA No. 529 of 2013 seeking leave to amend. He submits that once leave to amend was rejected, nothing really survives in OA No. 978 of 2012 which was quite rightly dismissed by the MAT.

6] Mr. Walimbe learned AGP for the State, left the matter

to the determination of the Court.

7] Rival contentions now fall for our determination.

8] From the perusal of the impugned Judgment and order, we find that almost entire discussion is on the MA No. 529 of 2013 by which the petitioner had applied to leave to amend the Original Application. After conclusion of such discussion, the MAT, in the impugned order has proceeded to not only dismiss the MA No. 529 of 2013 but also OA No. 978 of 2012 by observing the following :-

“10. All the issues raised in the MA are post-appointment and the same cannot be incorporated in the OA. The MA No. 529 of 2013 is thus dismissed in view of the facts narrated in the foregoing Paras. The applicant has not made out any case to prove that the appointment of respondent no. 5 is bad in law. In view thereof, the OA No. 978 of 2012 is dismissed. No order as to costs.

9] The impugned judgment and order neither states that with the dismissal of MA No. 529 of 2013 nothing further survives in the OA No. 978 of 2012 nor does it reflect any consideration of the issue raised in the OA on its own merits. The impugned judgment and order also does not

reflect as to whether the parties were at all heard on the merits of OA No. 978 of 2012. The observations in paragraph 10 are in the nature of conclusions. However, there are no reasons in support of such conclusions.

10] In view of the aforesaid, whilst not interfering with the dismissal of MA No. 529 of 2013, we set aside the impugned judgment and order to the extent it dismisses OA No. 978 of 2012.

11] Accordingly, OA No. 978 of 2012 is restored to the file of the MAT with directions to dispose of the same on its own merits and in accordance with law as expeditiously as possible and in any case within a period of 9 months from the date of production of authenticated copy of this judgment and order.

12] In case, OA No. 978 of 2012 is ultimately dismissed by the MAT and the petitioner is desirous of challenging such dismissal then liberty is reserved to the petitioner to challenge the impugned order dated 23.06.2014 to the extent it dismisses MA No. 529 of 2013 as well. This is because we have not examined the matter of dismissal of

MA No. 529 of 2013 on merits but we have declined to set aside such dismissal, mainly because MA no.529 of 2013 was in the nature of an interlocutory application.

13] Accordingly, we make it clear that we have not examined the merits of OA No. 978 of 2012 and it is for the MAT to dispose of OA No. 978 of 2012 on its own merits and in accordance with law without being influenced by the impugned judgment and order dated 09.06.2014.

14] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

15] All parties to appear before the MAT on 27.08.2018 at 11.00 a.m. and produce authenticated copy of this judgment and order.

16] All concerned to act on basis of authenticated copy of this judgment and order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)