

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

WRIT PETITION NO. 1396 OF 2018

The State of Maharashtra and ors. ...Petitioners

Versus

Jayesh A. Shirode ...Respondent

Mr. Akshay Shinde, 'B' Panel Advocate for the State.
Mr. Amol Gatne for the Respondent.

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

DATE : 07.06.2018.

PC:

1] Heard learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 13.04.2017 made by the Maharashtra Administrative Tribunal (MAT), Mumbai allowing O.A. No. 575 of 2016 instituted by the respondent seeking appointment to the post of Talathi.

3] By the impugned judgment and order, the MAT has directed the petitioners herein to offer the respondent appointment as Talathi, if he is otherwise found fit within

four weeks from date of the order.

4] There is no dispute that the petitioners have already complied with the direction in the impugned judgment and order in pursuance of the same, appointed the respondent as a Talathi with effect from 3.11.2017. However, Mr.Shinde, learned B-Panel counsel for the State, points out that the respondent is still pursuing Contempt Application No. 57 of 2017 and therein, the respondent is seeking salary of the post of Talathi with effect from 12.05.2017, i.e., about six months prior to the date of his actual appointment as Talathi. Mr. Shinde submits that the view taken by the MAT in the impugned judgment and order is in fact contrary to the law laid down by the Hon'ble Supreme Court in case of ***Rakhi Ray vs. High Court of Delhi - (2010) 2 SCC 637*** and ***Gujarat State Dy. Executive Engineers Association vs. State of Gujarat and ors. - 1994 Supp. (2) SCC 591*** and therefore, if such view is permitted to prevail and is treated as a precedent by the MAT, then, serious prejudice might occasion the State. Mr.Shinde, fairly submits that the State will be satisfied if the contempt proceedings initiated by the respondent

before the MAT are struck off and in directions are issued not to treat the impugned judgment and order as a precedent for future cases.

5] Mr. Amol Gatne, learned counsel for the respondent, on the basis of instructions from the respondent, makes a statement that the respondent will not press his claim for salary or any other benefits with effect from 12.05.2017 but will be satisfied with the appointment and consequential benefits with effect from 3.11.2017 itself. As noted earlier, there is no dispute that the petitioners have already appointed the respondent as a Talathi with effect from 3.11.2017 and the respondent is in receipt of benefits as Talathi from 3.11.2017. The statement now made by Mr. Amol Gatne, on behalf of and on the basis of instructions from the respondent, is now accepted.

6] In view of the aforesaid statement, nothing really survives in Contempt Application No. 57 of 2017 instituted by the respondent. Mr. Gatne on the basis of instructions from the respondent undertakes to formally withdraw Contempt Application No. 57 of 2017. This may be done by

the respondent within a period of four weeks from today.

7] As a matter of academics, it is not necessary to go into the issue as to whether the view taken by the MAT in the impugned judgment and order is contrary to the decisions of the Hon'ble Supreme Court referred to by Mr.Shinde. However, in the facts and circumstances of the present case, it will be appropriate to observe that the issue raised in the present petition is left open for determination in an appropriate case and therefore, the impugned judgment and order, may not be treated as a precedent in the future. This clarification is issued because we are not setting aside the impugned judgment and order, which in any case already stands complied with by the petitioners and the apprehension expressed by Mr.Shinde that the same may be cited as a precedent cannot be ruled out.

8] This petition is therefore, disposed of in the aforesaid terms. There shall, however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)