

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

WRIT PETITION NO. 4985 OF 2018

Nana S/o. Shrikrushna Thosar	...Petitioner
Versus	
State of Maharashtra & Ors.	...Respondents

Mr. Narendra D. Thombre for Petitioner.
Mr. C. P. Yadav – AGP for State – Respondent Nos. 1 to 3.

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

DATE : 11 JULY 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 27th February 2018 made by the Maharashtra Administrative Tribunal (MAT) dismissing Original Application No. 159 of 2016 instituted by the petitioner

challenging the order dated 9th February 2016, by which his services as steno-cum-typist came to be terminated - simplicitor

4] Mr. Thombre, the learned counsel for the petitioner submits that the petitioner was selected in pursuance of the recommendations of the departmental selection committee. In the advertisement in pursuance of which the petitioner had applied for selection to the said post of steno-cum-typist as well as in the appointment order issued to the petitioner, there was no mention that the services of the petitioner are liable to be terminated once a candidate selected by the Maharashtra Public Service Commission (MPSC) is available. Mr. Thombre submits that in the absence of such a clarification in the advertisement or at least in the appointment order issued to the petitioner, the respondents, were not at all entitled or justified in terminating the petitioner's services on the ground that the candidate selected by the MPSC was now available for appointment. Mr. Thombre submits that the petitioner had put in already two years of service and all such service, could not have been rendered a waste in such an arbitrary

and high handed manner. Mr. Thombre submits that for this reason, the impugned judgment and order is liable to be set aside and the petitioner is liable to be reinstated with all consequential benefits.

5] Mr. Yadav, the learned AGP submits that the petitioner had been appointed on purely temporary basis pending regular selection through the MPSC. He points out that in terms of the rules the post of steno-cum-typist falls within the purview of selection through MPSC and the State was not entitled to bypass selection procedures through the MPSC. Mr. Yadav points out that after MPSC advertised the post for regular selection, the petitioner applied and participated in the selection process. It is only after the petitioner failed to be selected, that, the petitioner instituted Original Application in order to question the termination of his services. Mr. Yadav submits that the petitioner has failed to indicate any right which can be said to have been vested in him. Mr. Yadav therefore submits that this petition is liable to be dismissed.

6] Rival contentions now fall for our determination.

7] The record, fully bears out that the post of steno-cum-typist was a post which was earmarked for selection through the MPSC. Therefore, the mere fact that the advertisement in pursuance of which the petitioner initially applied and was ultimately selected had not mentioned this fact, does not, confer any immunity upon the petitioner's appointment which was purely temporary. The appointment letter had itself stated that such appointment was temporary and in the appointment letter, there was no assurance of any continuance as such.

8] The post, was once again advertised by the MPSC and the petitioner not only applied for the same but also took part in the selection process held by the MPSC. If Mr. Thombre's contention that the petitioner's initial appointment was treated by the petitioner as regular appointment for an indefinite duration or at least till the petitioner attained the age of superannuation is correct, then, there was no reason for the petitioner to apply for selection to the very same post and participate in the selection process undertaken by the MPSC.

9] The petitioner, was not successful in the selection process. In such circumstances, the petitioner, has failed to make out any case to warrant interference that his termination order, which termination, was not on account of any reflection upon the petitioner's service or his conduct, but merely because the petitioner's appointment was temporary and the MPSC selected candidate was now available for appointment on regular basis.

10] Thus construed, we see no jurisdictional error in the view taken by the MAT in the impugned judgment and order. This petition is therefore dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

Sunita Kishandas
Chandka

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