

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 1513 OF 2016**

1. Ms. Vaishali Ravindra Joshi

(Maiden name) alias

Mrs. Vaishali Sanjay Joshi

2. Shri. Santosh Atmaram Lohar

alias Shri. Santosh Atmaram Jadhav

3. Shri. Dhananjay Keshavrao Ingole

4. Shri. Ganesh Khalapabhai Patel

5. Smt. Jashree Waman Joshi (maiden name)

alias Supriya Sachin Malshe) PETITIONERS

: VERSUS :

1. Union of India, through Director General

2. The Chief Post Master General

3. Superintendent of Post Offices) RESPONDENTS

Mr. Vinod Tayade, Advocate for the petitioners.

Ms. Neeta Masurkar a/w. Mr. D.A. Dube, Advocate for

respondents no.1 to 3.

CORAM : S.V. GANGAPURWAL, ACTING C.J. &

SANDEEP V. MARNE, J.

Judgment Resd on : 17th January, 2023.

Judgment Pron. on : 30th January, 2023.

Judgment : (Per Sandeep V. Marne, J.) :

1. By this petition, petitioners assail judgment and order dated 3rd October, 2013 passed by the Central Administrative Tribunal (Tribunal) in Original Application No. 352/2012, so also order dated 12th August, 2014 rejecting the Review Petition. Petitioners had instituted Original Application No. 352/2012 for ante-dating their appointments either w.e.f. 1st November, 2000 or alternatively w.e.f. 17th October, 2002 so as to avail the benefit of old pension scheme. By the judgment impugned in the present petition, the Tribunal has dismissed the Original Application. Petition seeking review of the judgment has also been rejected.

2. Brief facts of the case are that, the respondent-Postal Department had sent a requisition to the Employment Exchange for filling up the posts of Postal Assistant in Navi Mumbai Division. Petitioners had apparently registered their names with the Employment Exchange and their names came to be sponsored in pursuance of the indent sent by the respondent. They participated in the selection process consisting of written test and interview, came to be provisionally selected for

appointment as Postal Assistant and were issued offers of appointment. By letter dated 10th January, 1997 they were directed to join duties within 15 days. Petitioner underwent theoretical and practical training at the costs of Respondents.

3. However later, respondents revised the merit list on 22nd January, 1997 alleging irregularity in evaluation of marks obtained by candidates in aptitude test. In the revised merit list, petitioners' names were deleted from the merit list. They were however, kept attached as Short Duty Assistant Assistants. Their names were maintained on waiting list. Representations were made by them for regular appointments on the post of Postal Assistant, which were turned down vide order dated 30th June, 2000.

4. Petitioners approached the Tribunal by filing Original Application No. 783/2001 which came to be partly allowed on 17th October 2002 with a direction to respondents to grant them regular appointments in accordance with their seniority against first available vacancies. The Order of the Tribunal was unsuccessfully challenged by Respondents before this Court and before the Supreme Court.

5. Respondents thereafter appointed petitioners as Postal Assistants by order dated 17th August, 2004, from prospective dates. They made representations for ante-dating their appointments alleging existence of vacancies, which were turned down on 14th July, 2002. This led to filing of Original Application No.1/2008 which came to be disposed of by the Tribunal by its order dated 13th January, 2010 directing the respondents to reconsider the whole matter by verifying the vacancy position, occurring as on 17th October, 2002 and in the event of availability of vacancies to ante-date their appointments.

6. By reply dated 9th May, 2011, respondents rejected their request for ante-dating of appointments on the ground of non-availability of vacancies as on 17th October, 2002. This led to filing of third round of litigation in the form of Original Application No. 352/2012 seeking ante-dating of appointments either w.e.f. 1st November, 2000 or alternatively atleast from 17th October, 2002. By judgment and order dated 3rd October, 2013, which is impugned in the present petition, the Tribunal proceeded to dismiss the Original Application. Petition seeking review of the judgment has also been rejected on 22nd August, 2014.

7. Appearing for the petitioner, Mr. Tayade, the learned Counsel would submit that there were 41 unfilled vacancies of Postal Assistants available in Navi Mumbai Division as on 17th October, 2002 and this information was conveyed under the Right to Information Act, 2005 vide letter dated 5th February, 2010. He would further submit that appointments were given to the candidates borne on select list upto the year 2000, as and when vacancies arose and that no recruitment was undertaken in Navi Mumbai Division during 1996 till 2004. That during pendency of litigation initiated by the petitioners, recruitment process for Navi Mumbai Division was undertaken through other Division and after completion of pre-appointment formalities, appointments were given in Navi Mumbai Division for vacancies for the year 2001-2002. That while commuting vacancies of Postal Assistants for the year 2001, 2002 and 2003, a remark was passed to the effect that vacancies were reserved for 7 Short Duty Postal Assistants candidates from outsider quota who had passed selection in 1996 and completed theoretical training, as well as, practical training.

8. Lastly, Mr. Tayade would reply upon the Office Memorandum dated 17th February, 2020 issued by the Department of Pension and Pensioners Welfare, under which a special provision is made for application of provisions of Old

Pension Scheme to candidates selected through common selection process finalised prior to 1st January, 2004, who were issued actual appointment orders after 1st January, 2004 due to administrative reasons. Mr. Tayade would in support of his contention rely upon the judgments in **Nirmal Chandra Bhattacharjee and Others Versus. Union of India & Ors.** 1991 Supp (2) SCC 363 and **Rakesh Ranjan Verma and Ors. Vs. State of Bihar and Ors.** 1992 Supp (2) Supreme Court Cases 343.

9. *Per-contra*, Ms. Masurkar the learned Counsel appearing for the respondents would oppose the petition and support the order passed by the tribunal. She would submit that it is beyond purview of judicial review either for the Tribunal or for this Court to direct filling of vacancies, even if they existed. She would submit that the Department successfully demonstrated before the Tribunal that no vacancies existed for appointment of the petitioners as on 17th October, 2000. She would dispute application of provisions of Office Memorandum dated 17th February, 2020 submitting that the petitioners had no right of appointment prior to 1st January, 2004 and that the provisions of the said Office Memorandum have no application to the facts of the present case. In support of her contentions, Ms. Masurkar, would rely upon the judgments of the Apex Court in the case of **Rakesh Ranjan Verma** (supra) and **State of**

Uttaranchal and Another Versus. Dinesh Kumar Sharma,
(2007) 1 SCC 683.

10. Rival Contentions of the parties now fall for our consideration.

11. Petitioners do not dispute correctness of revision of the merit list after revaluation of marks and deletion of their names from the select list. This issue has already attained finality in view of the judgment and order dated 17th October, 2002 passed in Original Application No. 783/2001. Therefore having upheld deletion of their names from the merit list, petitioners actually lost any right to be appointed in the Postal Department. However, an equitable relief was granted by the Tribunal in its judgment and order dated 17th October, 2002 in favour of the petitioners for consideration of their cases for appointments against first available vacancies. This was done possibly because the petitioners were issued with offers of appointments, were imparted theoretical & practical training and were adjusted as Short Duty Postal Assistants pending their regular appointments. The Tribunal while deciding Original Application No. 783/2001, arrived at a finding that none of the advertised vacancies were available for Petitioners' accommodation. It further held that they could not have laid

their claims for appointment in other divisions. However, only because they were accorded both theoretical and practical training at the cost of the Department, by applying the principle of promissory estoppel, the equitable relief for consideration of their cases for regular appointments against first available vacancies was granted.

12. The department has come out with a specific case that no vacancies were available as on 17th October, 2002 for appointment of petitioners. Infact if the vacancies were indeed available, the Tribunal would have directed appointments by its order dated 17th October, 2002. The very fact that the tribunal used the words 'in the first available vacancies' itself imply that, vacancies were not available as on 17th October 2002 and the Petitioners acquiesced in the position that they were to be appointed against vacancies that were to arise after 17th October 2002. They did nit challenge order of the Tribunal directing appointments 'in the first available vacancies'. Now they cannot be permitted to take a *volte face* and contend that they should have been appointed on 1st November, 2000 or alternatively w.e.f. 17th October, 2002.

13. After vacancies became available, petitioners were granted regular appointments by order dated 4th October, 2004.

It appears that the real cause for heartburn amongst the petitioners is coming into effect of the New Defined Contributory Pension Scheme w.e.f. 1st October, 2004. On account of they being recruited on regular basis on 4th October, 2004, they are being governed by the New Defined Contributory Pension Scheme. This appears to be the reason why they are litigating strenuously to seek antedating of their appointments.

14. Some effort is made by petitioners to demonstrate existence of vacancies prior to 17th August, 2004. Though in the light of our observations made above, it is not really necessary to go into the material produced by them to show existence of vacancies, we did embark upon that exercise as well to examine whether vacancies (capable of being filled up) did exist and whether Petitioners were wrongfully denied appointments. Reliance is placed on information supplied under the Right to Information Act (page-45 of the paper-book) about the vacancy position during the years 2002-2005 in Navi Mumbai Division. From that information, it is difficult to draw a concrete inference that vacancies were indeed available prior to 17th August, 2004 for appointment of petitioners. Reliance is also placed on following remark made by the Superintendent of Post Offices, Navi Mumbai Division, Panvel in the undated 'Chart

of Computation of vacancies in P.A. Category for the year 2001” :

“Note- 7 SDPA candidates from outsider quota passed in 1996; And who have completed theoretical training and practical training are on waiting list and still to be absorbed”.

The above remark, in our view, cannot lead to drawl of an inference of existence of 7 vacancies. The remark only suggests availability of petitioners on waiting list for being appointed.

15. The Tribunal in the impugned judgment, has gone through the pleadings and documents placed before it and has arrived at a finding that vacancies were not available for being filled up. The Tribunal has gone a step further to hold that there is difference between “vacancies” and “vacancies approved to be filled up”. It has further held that it is always open to the Government to decide, whether vacancies are to be filled up or not having regard to various factors. In this connection, reliance of Ms. Masurkar on the judgment of the Apex Court in ***Dinesh Kumar Sharma*** (supra) is apposite in which the Apex Court has held that, employee has no right to claim promotion or seniority from the date the vacancy arose.

16. Both petitioners, as well as, respondents have placed reliance on the judgment in ***Rakesh Ranjan Verma*** (supra). In

our opinion, the judgment, far from assisting the case of petitioners, actually militates against them. The Apex Court has held that, mere existences of some vacancies alone is not sufficient to confer right upon employees until the Board decided to fill them. However, the Undertaking given by the employees therein were held to be not estopping them, as the Supreme Court, with a view to do complete justice in the case, directed issuance of fresh advertisement for filling up the post of Junior Electrical Engineers, for consideration of the cases of the appellants before it by ignoring the age bar. Such relief seems to be granted in exercise of power under Article 142 of the Constitution of India.

17. Reliance of the petitioners on the judgment in *Nirmal Bhattacharya* (supra), is of little assistance to them. The Apex Court has held that a beneficial rule or order should not be construed so as to result in hardship to employee, when he is not at fault. In the present case, no hardship is caused to petitioners on account of interpretation of the Tribunal's beneficial order dated 17th October, 2002. The order is fully complied with by granting appointments to them against available vacancies.

18. Resultantly, we do not find any error being committed by the Tribunal in dismissing the Original Application, as well as, Review Petition filed by petitioners. The petition is devoid of merits and the same is dismissed with no order as to costs.

(SANDEEP V. MARNE, J.)

(ACTING C.J.)

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