

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1814 OF 2014

- 1] The State of Maharashtra
Through the Secretary,
Food, Civil Supplies &
Consumer Protection Department,
Mantralaya, Mumbai – 400 032.
- 2] The Controller of Legal Metrology,
Government Barrack,
Free Press Journal Marg,
Maharashtra State, Mumbai

PETITIONERS
[Ori. Respondents]

VERSUS

- 1] Rajendra s/o. Bhagwan Bangar,
Age: 45 Years, Occu: Service as
Asst. Controller of Legal Metrology,
[Presently posted as Assistant Controller
Of Legal Metrology, Buldhana]
R/o. C/o. D.M.Gite, 41,
“Monalisa”, Samartha Nagar,
Aurangabad

RESPONDENT
[Ori. Applicant]

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Mr. G.R.Ingole, AGP for the Petitioners – State
Mr. S.D.Joshi, Advocate for the Respondent

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**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

Reserved on : 16.04.2015
Pronounced on: 28.04.2015

JUDGMENT: [Per S.S.Shinde, J.]:

- 1] Heard.

2] Rule. Rule made returnable forthwith heard with the consent of the parties.

3] This Petition takes an exception to the Judgment and Order dated 18th April, 2013, passed by the Member, Maharashtra Administrative Tribunal, Aurangabad in Original Application No. 33/2007.

4] The Respondent herein is the original Applicant in Original Application No.33/2007. The said Original Application was filed by the Respondent with following prayers:

“B] By issue of an appropriate order or direction, the respondent Nos. 1 and 2 be directed to give an appropriate fitment to the applicant by assigning the deem date as 15.3.1995 in the cadre of Assistant Controller of Legal Metrology.

C] By issue of an appropriate order or direction, the respondent Nos. 1 and 2 be directed to give all the consequential benefits such as, arrears of pay, fixation of pay, seniority etc. pursuant to assignment of deem date as 15.3.1995.”

5] By the impugned Judgment and Order dated 18th April, 2013, the Maharashtra Administrative Tribunal issued the following directions:

[i] The respondent authorities are hereby directed to consider the claim of the applicant as on 15.3.1995 as to whether he was promoted against 30% quota of direct recruit or not. If, the authorities come to the conclusion that the applicant was promoted as on 15.3.1995 against 30% quota of direct recruits, then shall pass order of giving all benefits to the applicant of promotion from 15.3.1995. If, the authorities come to the conclusion that the applicant on 15.3.1995 was not promoted against 30% quota of direct recruits and, therefore, not entitled for benefit from 15.3.1995, then pass order accordingly. The authorities shall complete the exercise within a period of six months from the date of this order and shall communicate the order passed, in writing to the applicant.

[ii] With these directions, the original application stands disposed of. There shall be no order as to costs.

6] The learned AGP appearing for the Petitioners – State submits that, the Respondent claimed deem date of promotion as 15th March, 1995, on the post of the Assistant

Controller of Legal Metrology, and also claimed for consequential benefits i.e. arrears of pay, arrears of pay fixation, seniority etc. before the Maharashtra Administrative Tribunal. According to the Respondent, he was promoted on direct quota by the Government Resolution dated 15th March, 1995 temporarily for a period of one year or till the candidate from direct quota is available. It is submitted that, the Respondent is not at all eligible for the reliefs claimed. It is submitted that, the Government Resolution dated 1st September, 2005 on which reliance is placed by the Respondent, and the Maharashtra Administrative Tribunal has referred the said Government Resolution and issued directions to the Petitioners, though, the said Government Resolution was set aside by the Maharashtra Administrative Tribunal at Mumbai in Original Application No.88/2008 vide Judgment and Order dated 20th October, 2008.

7] On the other hand, the learned counsel appearing for the Respondent submits that, the Respondent was promoted against the quota meant for direct recruits. It is submitted that, it was the case of the Respondent before the Tribunal that, by order dated 15th March, 1995,

23 Inspectors including the deponent were promoted to the post of Assistant Controller for the period of one year. At the relevant point of time, the Government Resolutions governing the subject were holding the field. The Respondent's caste was included in Nomadic Tribe. It is submitted that, the earlier Government Resolution was cancelled, however, by another Government Resolution dated 23rd March, 1994, and more particularly para 6 of the said Resolution, it was directed by the State Government that, the reservation stipulated in para 1 is applicable only for the direct recruitment, however, if any promotions have been effected either on temporary basis or permanently, the same would not be affected and the same would continue for the period of 5 years from the date of the Judgment rendered by the Hon'ble Apex Court on 16.11.1992 i.e. up to 16.11.1997. It is submitted that, this important aspect of the matter was lost sight of by the Departmental Promotion Committee, while continuing the promotions of those incumbents, who were promoted *vide* order dated 15.03.1995. The Departmental Promotion Committee, while continuing the promotions of other excluding the Respondent herein, has spelled out the reason for non promotion of the answering Respondent. It

is submitted that, it has been stated by the DPC that, the answering Respondent was promoted against the roaster point meant for V.J.N.T. and that as per the subsequent Resolution, his case cannot be considered for V.J.[N.T.]. These observations of the Departmental Promotion Committee were in total disregard of the directions of the Government to the effect that, in case of promotions already made, they shall continue for the period of 5 years. The case of the answering Respondent was squarely falling within the four corners of the said Resolution, and more particularly in para 6 of the Government Resolution dated 23.03.1994. However, the D.P.C. has lost the sight of the same and has not promoted the deponent.

8] It is further submitted that, because of the wrongful denial of promotion under order dated 16th March, 1996, all those who were promoted along with the answering respondent by order dated 15th March, 1995 were continued as such and under the Government Resolution dated 01.09.2005, the promotions of all the incumbents promoted temporarily or against the quota meant for direct recruits in accordance with the ratio were regularized. It was only because the present deponent was

subsequently promoted by order dated 27.04.2000, he is away from the benefits of the said policy decision. It has also further substantially affected the seniority of the answering respondent in the cadre of Assistant Controller of Legal Metrology. It is further submitted that, the answering respondent while issuing the promotion order dated 16th March, 1996, the Government Resolution dated 23rd March, 1994 was not placed before the Departmental Promotion Committee or having been placed the same was not considered in its proper perspective, and more particularly in view of the language implied in para 6 of the Government Resolution. It is submitted that, the protection was afforded to the promotions already done and the said protection was to continue for the period of 5 years i.e up to 1997 which was well beyond 16th March, 1996. Had the deponent been afforded the protection already extended by the Government, he would have been on par with all those incumbents, who were promoted along with him by promotion order dated 15th March, 1995. It is submitted that, the petitioner has nowhere averred as to how the order of the Tribunal is incorrect or is contrary to the record. Moreover, no prejudice is shown to have been caused to the petitioner in case if they are required to take

the decision giving deem date to the present deponent. The deponent is the only left out person from the said batch. In any case, the order passed by the Tribunal is based on the record, Government Resolution holding the field, and therefore, no interference is warranted in the order of the Tribunal. The learned counsel appearing for the Respondent submits that, Petition is devoid of merits, same may be dismissed.

9] We have given careful consideration to the submissions of the learned AGP appearing for the Petitioners State, and the learned counsel appearing for the Respondent. With able assistance of the learned counsel appearing for the respective parties, we have perused the pleadings in the Petition, annexure thereto, affidavit in reply filed by the Respondent, the impugned Judgment and Order passed by the Maharashtra Administrative Tribunal and all other documents placed on record, and also original record and proceedings received from the registry of the Maharashtra Administrative Tribunal, and we are of the opinion that, the impugned Judgment and Order deserves interference for the reasons set out herein below.

10] This Court on 20th January, 2015, heard the learned counsel appearing for the parties and passed the following order:

"1. Heard.

2. We have heard learned counsel for respective parties. The prima dona submission of the Incharge Government Pleader is that the judgment of the Tribunal is based on the Government Resolution dated 1.9.2005. The said Government Resolution is set aside by the Maharashtra Administrative Tribunal, at Mumbai in O.A.No. 88/2008 vide judgment and order dated 20.10.2008. However, this fact is not brought to the notice of the Tribunal in the proceedings in O.A.No. 33/2007. The incharge Government Pleader submits that the work of preparing the seniority list is in progress as per the judgment of the Maharashtra Administrative Tribunal, at Mumbai delivered in O.A. No. 88/2008.

3. Stand over to 17.3.2015.

4. In the meantime, there shall be ad-interim stay to the impugned judgment."

11] Upon considering the submissions of the learned counsel appearing for the respective parties and

perusal of the impugned Judgment, would make it abundantly clear that, the Maharashtra Administrative Tribunal while passing the impugned order and issuing the directions to the present Petitioners, has placed reliance on the Government Resolution dated 1st September, 2005. As it is clear from the submissions made across the bar that, it is admitted position that, the Government Resolution dated 1st September, 2005 was the subject matter of Original Application No.88/2008 and *vide* Judgment and Order dated 20th October, 2008, the said Government Resolution is set aside. The learned AGP has made available the copy of the Judgment and order dated 20th October, 2008 in Original Application No. 88/2008 decided by the Maharashtra Administrative Tribunal for our perusal, and upon perusal of the said Judgment, it is abundantly clear that, the Government Resolution dated 1st September, 2005 was the subject matter of the said Original Application and by the said Judgment, Resolution is set aside. The Maharashtra Administrative Tribunal in para 18 has made reference to the Government Resolution dated 1st September, 2005, and relying upon the said Resolution issued the directions to the Respondents i.e. petitioners herein. The relevant portion from the said paragraph reads thus:

“18. The reasons recorded in the GR dated 1.9.2005 with cause and circumstances for giving promotion to the employees holding the post of Inspectors to the post of Assistant Controller even from the 100% direct recruits quota were under consideration. With this situation, if all other persons, including the applicant, who were promoted with first promotion order dated 15.3.1995 against 70% quota of promotion or 30% quota of direct recruits, their promotions can be regularized as per this GR. As referred hereinabove all employees were promoted against 100% quota of direct recruits. Thus clause 02 gives benefit to those employees, who were promoted against the 30% quota of direct recruits. In this situation on record, it can be said that, though applicant was entitled for promotion along with others for three months period and thereafter for subsequent limited period as he was promoted along with others with first promotion order dated 15.3.1995 and all of them including applicant were entitled for benefit of clause 02 of this GR against 30% quota of direct recruits and not 100% direct recruit quota. As such, if applicant is falling within 30% quota as per clause 02 of the GR, then he can claim promotion as per GRs in field from 15.3.1995. For the present, nothing is placed by both sides on record, in order to verify as to whether applicant was promoted against 30% quota for direct recruits with then prevailing seniority.

Consequently, it is necessary to give directions to the authorities to verify as to whether applicant was promoted against 30% quota of direct recruits on the basis of seniority of Inspectors then prevailing and if he is not against 30% quota he is not entitled for benefits of the GR and the relief claimed in this matter.

Therefore, there is no doubt that, the Maharashtra Administrative Tribunal unaware of the fact that, the Government Resolution dated 1st September, 2005 is set aside by the Principal Seat of Maharashtra Administrative Tribunal at Mumbai in Original Application No.88/2008, proceeded to place reliance on the said Government Resolution and issued directions. On this ground alone, the Judgment and Order of the Maharashtra Administrative Tribunal deserves interference.

12] Once the Government Resolution dated 1st September, 2005 is set aside, no reliance whatsoever should have been placed by the Maharashtra Administrative Tribunal on the said Government Resolution, while issuing directions to the State and the Respondents i.e. the petitioners herein. Therefore, the impugned Judgment and Order of the Maharashtra Administrative

Tribunal deserves to be quashed and set aside, accordingly same is quashed and set aside.

13] However, we make it clear that, the order passed by the Maharashtra Administrative Tribunal, reproduced herein above in para No.5 can be taken into consideration as guiding factor / recommendation and not direction in the mandatory form, during preparation of the seniority list, which is already in progress.

14] Rule is made absolute in above terms. Petition is allowed to above extent, and same stand disposed of.

Sd/-
[P.R.BORA]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE

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DDC