

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 5741 OF 2003  
WITH CA/739/2014 IN WP/5741/2003

Bhanudas Pundalik Vispute  
Age 47 years, Occ. Service  
R/o. Kasar Galli, Tq. Sakhari  
District Dhule

...Petitioner

versus

1. The State of Maharashtra  
(Through its Secretary  
Forest Department, Mantralaya,  
Mumbai – 32)

(Copy to be served on Govt.  
Pleader, High Court  
bench: Aurangabad)

2. The Joint Director,  
Social Forestry Circle,  
Nashik

3. The Deputy Director,  
Social Forestry  
Division, Jalgaon

...Respondents

... ..  
Miss. Pradnya S. Talekar h/f Mr. S.B. Talekar, advocate for petitioner  
Mr. S.A. Ambad, AGP for Respondents 1 to 3  
.....

**CORAM : A. V. NIRGUDE AND  
V. K. JADHAV, JJ.**

**DATED : 9<sup>th</sup> MARCH, 2015**

**JUDGMENT (PER V.K. JADHAV, J.):**

1. The petitioner has challenged the judgment and order dated

31.10.2001 in Transfer Application No. 31 of 2001 passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad to the extent of denial of benefits of permanency including deemed date of seniority from the date of initial appointment. The petitioner also seeks directions to the respondents to grant all benefits of permanency, including deemed date of seniority, annual increments, promotion and time bound promotion treating that his services were regularized w.e.f. 10.3.1988.

2. The petitioner was initially appointed as Ropvan Kotwaal in Social Forestry Department, Chalisgaon on daily wages on 10.3.1988. The petitioner continued to work as Ropvan Kotwal without any break in his service till he was further appointed as Forest Guard in certain pay scale. However, on 16.1.1989, he was terminated on the ground that neither the post on which he was working is sanctioned nor such post was receiving grants. The petitioner therefore, had approached this Court by filing writ petition No. 2896 of 1989. This Court by order dated 24.1.1990, has stayed the order of termination and further directed the respondents to continue the services of the petitioner. The aforesaid writ petition was subsequently transferred to the Maharashtra Administrative Tribunal, Bench at Aurangabad. The learned Member of the Tribunal by judgment and order dated 31.10.2001 disposed of the application as

infructuous by observing that during pendency of writ petition the Deputy Director of Social Forestry appointed the petitioner to the post of Ropvan Kotwal in regular pay scale. The learned Member of the Tribunal however, has rejected the claim of the petitioner to give him seniority from the date of initial appointment with other benefits of regularization on the ground that he was not occupying civil post. Being aggrieved by the same, the petitioner has preferred this writ petition.

3. During pendency of this writ petition, the respondents have also preferred Review Application before the Maharashtra Administrative Tribunal however, the same was also dismissed by the judgment and order dated 18.6.2007.

4. The learned counsel for the petitioner submits that whenever services of any employee are regularized, they are regularized from the date of initial appointment. The petitioner was appointed as Ropvan Kotwal in the year 1988, he was therefore, entitled to all benefits of regularization from the date of his initial appointment. The learned counsel in order to substantiate her contentions, placed reliance on the judgment of Supreme Court in the case of **S. Sumnyan and others vs. Limi Niri and others, reported in (2010) 6 SCC 791.**

5. The learned A.G.P. for the respondents submits that by protection of interim order passed by this Court, the petitioner was appointed in the year 1990 as Ropvan Kotwal with fixed pay scale. Initially, he was appointed on daily wages. The petitioner was not holding any sanctioned, vacant and permanent post. Thus, the learned Member of the Tribunal has not granted benefit of seniority to the petitioner. The services of the petitioner were continued in consequence of the interim order passed by this Court in writ petition No. 2896 of 1989. The learned A.G.P. therefore, submits that the writ petition is devoid of any merits and deserves to be dismissed.

6. On perusal of order dated 1/2 December 1990, Exh. B, issued by the Deputy Director, Social Forestry Department, Jalgaon, it appears that the petitioner was regularized in the services. It also appears that the regularization of services of the petitioner has come subsequently. Even assuming that initial appointment of the petitioner was not made in accordance with the procedure established but if his services later on came to be approved and regularized, then it will relate back to the date on which his first appointment was made.

7. In the case of ***S. Sumnyan and others vs. Limi Niri (supra)***

and others (supra), relied upon by learned counsel for the petitioner, in para 44 and 45 of the judgment, the Hon'ble Supreme Court has made following observations:-

"44. We may here also appropriately refer to another decision of this Court in G.P. Doval v. Govt. of U.P. wherein this Court held that regularization of the services of a person, whose initial appointment although not in accordance with the prescribed procedure but later on approved by an authority having power and jurisdiction to do so would always relate back to the dates of their initial appointment. Para 13 is reproduced herein below:

"13. ....If the first appointment is made by not following the prescribed procedure but later on the appointee is approved making his appointment regular, it is obvious commonsense that in the absence of a contrary rule, the approval which means confirmation by the authority which had the authority, power and jurisdiction to make appointment or recommend for appointment, will relate back to the date on which first appointment is made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. That has not been done in this case."

45. We may also usefully refer to the judgment of this Court in Direct Recruit Class II Engg Officers' Assn. v. State of Maharashtra, which reads as follows:

"47. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation."

8. Even though the petitioner was regularized on 1/2 December, 1990, by the order of this Court, the petitioner is entitled to all benefits of permanency, including deemed date of seniority and other consequential benefits with effect from the date of his initial appointment i.e. 10.3.1988.

9. In view of this, writ petition is allowed in terms of prayer clauses "A" and "B". Rule made absolute accordingly. In the circumstances, there shall be no order as to costs.

10. Civil application No. 739 of 2014 is also disposed of.

**( V. K. JADHAV, J.)**

**( A. V. NIRGUDE, J. )**

rlj/