

Sequeira

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

WRIT PETITION NO. 1079 OF 2001

Shri Balasaheb Nivrutti More
Aged 37 years, Occ. : Service
R/o "Mayura", Block B-7, Bapuram Nagar
Near Navnath Nagar, Kalamba, Kolhapur.

.. Petitioner

V e r s u s.

1. Kolhapur Sheti Utpanna Bajar
Samiti
at Shri Shahu Market Yard,
Kolhapur through its Chairman &
Secretary,
2. District Deputy Registrar,
Co-operative Societies,
at Bhuvikas Bank Bldg. Tarabai Park
Kolhapur
3. Director of Marketing
Central Building, Pune
4. The Member,
Industrial Court, Kolhapur.

.. Respondents

Mr.N.V.Bandiwadekar, for the Petitioner.
None for the Respondents.

***CORAM: N.M.Jamdar, J.
Wednesday 16 December, 2015***

Oral Judgment :

The Petitioner is aggrieved by the direction / observation in paragraph 19 of the impugned order in which the Industrial Court has held that the Petitioner be considered for promotion on merit the seniority, qualification, experience, even though the Respondent -management was directed to place the Petitioner at serial no.35 in the seniority list dated 2 September 1997.

2. The Petitioner had filed a Complaint under Section 28(1) read with Item Nos.5, 9 and 10 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 for a direction to place the Petitioner at serial no.35 in the seniority list and to give promotion by considering the modified seniority. The claim of the Petitioner was contested by the Respondent-management. The Industrial Court after considering the rival contentions held that the date of appointment of the Petitioner was 21 April 1988 and inspite of this position, his placement in the seniority list was at serial no.37 and those who were junior to him in service were placed higher in seniority list. The Petitioner had objected to his placement in the seniority list when objections were called for. The Industrial Court after considering the facts and circumstances and perusing the seniority list directed that the Petitioner be shown at serial no.35. The prayer of promotion of the Petitioner was rejected.

3. Writ petition No.5834 of 2000 was filed by the Respondent-

management challenging the same impugned order. Writ petition came up on board on 21 August 2015. The learned counsel for the Petitioner in that petition i.e. for management, had stated that he has no instructions to proceed with the matter and the Writ petition No.5834 of 2000 was dismissed for non-prosecution. Thereafter the petition is not restored. Therefore, as on today clause (iv) of the impugned order has become final.

4. Once the direction of the Industrial Court to place the Petitioner at serial no.35 has become final then the prayer of the Petitioner to be considered for promotion as per placement cannot be denied. Therefore, the Respondents will have to consider the claim of the Petitioner for promotion on merits, qualification, experience and as per his placement given in clause (iv) of the impugned order. If the Petitioner is found otherwise suitable for promotion, then he will have to be considered as per his seniority given in the order dated 1 October 1999. The Writ petition therefore, will have to be allowed in terms of what is stated above.

5. Accordingly, it is directed that the Respondent No.1 will consider the claim of the Petitioner for promotion as per merit, qualification and experience and as per the rules and regulations applicable to Respondent No.1 taking into consideration the placement of the Petitioner at serial no.35 in the seniority list dated 2 September 1997.

6. Since in view of the dismissal of Writ Petition No.5834 of

2000, no challenge is at present levied to the placement of the Petitioner to serial no.35, it is made clear that the rights of any person who are not party to this petition are affected they will be entitled to agitate the same independently.

6. **Rule made absolute** in above terms.

7. The Registry will take steps within period of 12 weeks from today.

(N.M.Jamdar, J.)