

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

**CIVIL APPLICATION NO. 1019 OF 2015
WITH
CIVIL APPLICATION NO. 1771 OF 2014
IN
WRIT PETITION NO. 8412 OF 2013**

Security to the Government of Maharashtra

Public Works Department,

Mantralaya, Mumbai

.. Petitioner

Vs.

Shri L.S. Joshi & Ors.

.. Respondents

Mr.R.S. Apte, senior advocate for applicant.

Mr.Yashodeep Deshmukh h/f. Mr.H.A.Joshi for petitioner in Aurangabad Bench in WP No.5117 /2013 (Not on board).

Mr.Joel Carlos for respondent nos.3 to 24 in Nagpur Bench in WP No.10565/2014 a/w. CAW/930/2015 (Not on board) and for respondent nos.2 to 24 in Aurangabad Bench in WP No.5117 /2013 (Not on board).

Mr.A.Y. Sakhare, senior advocate a/w. Mr.Joel J. Carlos for respondent nos.1 to 3.

**CORAM : ANOOP V. MOHTA,
K.R.SHRIRAM, JJ.**

DATE : 5TH MAY, 2015

P.C.

1 Heard the learned counsel appearing for the parties. In view of the urgency so expressed by the State of Maharashtra, an application is made for modification of the order dated 31.03.2015 passed by this Court. Paragraph 3 of the order reads as under :

*“3 Therefore, at this stage, to avoid further complications, we are inclined to observe that the **State Government not to take further steps, based upon the newly prepared seniority list till next date only.** This is also for the reason that though directed, all the matters are not listed today. We will pass an appropriate order, once all the matters are listed. The respective parties to file a short synopsis, to make the position update on record, by the next date.”*

2 We have passed orders of continuation though application is filed by the applicant/State of Maharashtra on 15.04.2015 for listing other petitions. Some petitions are not traceable also. Even otherwise, these matters are pending for admission.

3 So far as urgency is concerned, it is specifically averred as in paragraph 8 of the petition thus :

*“8The progress of a project is hampered considerably if these posts are kept vacant. The applicants state that there are in all 74 posts of the Superintending Engineers all over the State of Maharashtra (sanctioned posts in department 41 and posts on deputation 33). These vacancies may vary depending upon the demands from different Government department and Government undertakings. Out of these posts, today 43 posts are vacant on account of this pending litigation. In near future, 11 posts are likely to become vacant on account of promotion or superannuation. This may add to the pending vacancies, if issue of seniority list of Executive Engineer (Civil) is not finalized.
.....”*

4 The issue in these matters are revolving around the interpretation of the Executive Engineers and Assistant Engineers belonging to the Maharashtra Service of Engineers Class I and the Maharashtra Service of Engineers Class II (Regulation of Seniority and preparation and revision of seniority lists) Rules, 1983 (The 1983 Rules). The Maharashtra Administrative Tribunal (MAT) by the impugned judgment/order dated 10.05.2013 has only disturbed the seniority list so published by the State Government. Those rules are intact. Similar challenge was raised to the earlier seniority list. After passing of impugned order dated 10.05.2013. Considering the rival contentions, there are orders dated 24.10.2013 passed by a Division bench (Coram B.R.Gavai & Z.A. Haq, JJ.) and the same was further clarified on 5.10.2014 by a Division Bench (Coram A.B. Chaudhari & Z.A. Haq, JJ.). The statement is made that those orders are not further challenged by anyone. The State Government therefore based upon those orders, proceeded and prepared a fresh seniority list which stated to be '*in accordance with Rules*'. The issue is also with regard to the terms '*in accordance with Rules*'. Further, the fact that the State Government has already acted and prepared the fresh seniority list and the same is challenged again in Original Application No.53 of 2015. On 26.02.2015, after hearing the contesting parties, the learned Chairman Shri A.H.Joshi of MAT has passed the following order :

“(5) If Government wants to issue promotion orders, it shall inform about it to applicant one week before issuance of promotion order. In this eventuality, liberty to circulate before due date.”

5 Therefore, considering the above background, it is a question of interpretation of the 1983 Rules and so also the impugned judgment/order, but the fact that the Government has already prepared the fresh seniority list after passing the impugned order and after the orders passed by this Court dated 24.10.2013 and 5.10.2014 referred above and lastly the order passed by the MAT on 26.02.2015, we see no point at this stage to halt the action of the State Government to proceed in accordance with law.

6 The learned senior advocate appearing for the applicant/original respondent conceded to the position so far as the earlier order passed by the MAT on 4.04.2014 referring to promotion of candidates belong to reserved category. Therefore, even otherwise, the State Government need to proceed with the promotion of the candidate belong to reserved category, there was no issue even in the main matter and in the impugned order. Therefore, we pass the following order :

ORDER

- (i) The order dated 31.03.2015 to the extent of the
“State Government not to take further steps, based upon the

newly prepared seniority list till next date only” and the subsequent extension of the order, is revoked with the following order :

“The State Government to proceed in accordance with the seniority list so prepared that will be subject to the order already passed in Original Application No.53 of 2015 dated 26.02.2015 which reads as “if Government wants to issue promotion orders, it shall inform about it to applicant one week before issuance of promotion order. In this eventuality, liberty to circulate before due date.”

(ii) The order which we have passed today and so also the promotion if made, will be subject to further orders of this court.

(iii) The order dated 31.03.2015 is modified accordingly.

7 Mr.Sakhare, learned senior counsel appearing for respondent nos.1 to 3 prayed for stay of this order passed by the court today. Considering the above reasons and in view of urgency expressed, we have revoked some part of the order dated 31.03.2015, therefore, no case is made out to stay this order as prayed. The oral application for stay is rejected.

8 The civil application for modification of the order is disposed of accordingly.

9 List the writ petitions on 16th June 2015 for admission along with the other connected matters.

(K.R. SHRIRAM, J.)

(ANOOP V MOHTA, J.)