

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 1750 OF 2015**

The Secretary,
Public Works Department .. Petitioner
versus
Dilipkumar Raosaheb Bhamre .. Respondent

Mr. P. G. Sawant – AGP for Petitioner.

Mr. A. V. Joshi for Respondent.

**CORAM: D. H. WAGHELA, C. J. AND
M. S. SONAK, J.**

DATE : 7 MARCH 2016

P.C.:

1] By this petition under Articles 226 and 227 of the Constitution of India, the petitioner – State of Maharashtra challenges the judgment and order dated 15 September 2014 made by the Maharashtra Administrative Tribunal (MAT) in Original Application No. 1038 of 2013, by which, the petitioner, has been directed to accord the respondent his appropriate position in the seniority list.

2] Mr. P. G. Sawant, the learned AGP has submitted that in terms of the G.R. dated 30 November 1993, only such of the Assistant Engineers who report for joining within 15 days from

the date of offer of appointment / re induction are entitled to have their seniority determined as per the said G.R. dated 30 November 1993. In the present case, the respondent was issued order of re inductment on 21 December 1993, but the respondent, actually joined the duty only on 18 March 1994 i.e. beyond the prescribed period of 15 days, and therefore, the MAT erred in awarding the benefit of seniority to the respondent in terms of the G.R. dated 30 November 1993. For this reason, Mr. Sawant, the learned AGP submitted that the impugned judgment and order made by the MAT warrants interference under Articles 226 and 227 of the Constitution of India.

3] Having heard the learned counsel for the parties and perused the record, in our judgment, there is no case made out to interfere with the impugned judgment and order made by the MAT. A brief reference, to certain admitted facts, will however be necessary to sustain the view taken by the MAT.

4] The respondent was appointed and joined as Assistant Teacher Grade II on the Work Charged Establishment of the Superintending Engineer, Osmanabad on 17 January 1986. This was in pursuance of appointment order dated 2 December 1985. However, on 30 August 1987, the respondent along with several other Assistant Engineers, who were similarly placed, were declared as surplus and their services were terminated on account of surplusage.

5] The State Government, in the year 1993 took a policy decision to re-induct such Assistant Engineers who were initially appointed on Work Charged Establishment until 31 July 1987 and thereafter terminated on grounds of surplusage. This policy decision is reflected in the G.R. dated 30 November 1993, which provides that Assistant Engineers appointed before August 1986 on the Work Charged Establishment and who were in service as on 31 July 1987 are to be re-inducted and accorded seniority position and other benefits as specified in the G.R. dated 30 November 1993. Since, the respondent was appointed as Assistant Engineer on 17 January 1986 (date of joining) and his services were terminated on grounds of surplusage on 30 August 1987, his case was clearly covered by the G.R. dated 30 November 1993. This position is in fact not even disputed by the petitioner – State.

6] By order dated 21 December 1993, issued by the Superintending Engineer, Aurangabad, the respondent, was granted the benefit of the G.R. dated 30 November 1993 and directed to be re-inducted in service. The order dated 21 December 1993, consistent with the provisions of the G.R. dated 30 November 1993 required the respondent to report for duties within 15 days. In the order dated 21 December 1993 however, the respondent's name was incorrectly indicated as '*Dilip Sahebrao Bhamre*', when in fact, the respondent's correct name was '*Dilip Raosaheb Bhamre*'.

7] The respondent, it appears, reported for duties in pursuance of the order dated 21 December 1993, on the next date itself. However, on account of discrepancy in the name, the respondent was not permitted to join. The respondent therefore, addressed representation dated 23 December 1993, for correction of his name. The MAT, in the impugned judgment and order has observed that the circumstance that the respondent had reported for duties within 15 days is corroborated by communication dated 28 February 1994 addressed by the Superintending Engineer, Aurangabad to Superintending Engineer, Nagpur, wherein it is stated that the respondent submitted the necessary clarification with regard to his name on 4 January 1994. There is no perversity in the record of this finding of fact. Ultimately, even the State, corrected the respondent's name and thereafter, permitted the respondent to join as Assistant Engineer, in pursuance of the order dated 21 December 1993.

8] From the aforesaid facts, which are clearly borne from the record, it is quite clear that the respondent consistent with the provisions contained in the G.R. dated 30 November 1993 had reported for duties within 15 days from the date of re-induction order dated 21 December 1993, but was not permitted to join, on account of the mistake on the part of the State Government in stating the respondent's correct name upon the re-induction order dated 21 December 1993. Upon correction of that mistake, the respondent was ultimately permitted to join duties in pursuance of re-induction orders dated 21 December 1993. In such

circumstances, the respondent cannot obviously be deprived of the benefits of seniority in terms of the G.R. dated 30 November 1993, as otherwise, it would amount to penalising the respondent for no fault on his part. The MAT has correctly appreciated both the factual as well as the legal position. There is neither any jurisdictional error nor any illegality in the approach adopted by the MAT.

9] This petition is accordingly dismissed. There shall be no order as to costs.

CHIEF JUSTICE

(M.S.SONAK, J.)