

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3879 OF 2016**

Mohan M. Mankar

.. Petitioner.

vs.

The State of Maharashtra and ors.

.. Respondents.

Mr. Vinay Masurkar a/w. Ms Neeta Masurkar for the petitioners.
Mr.C.P. Yadav, AGP for the State/respondent No.1.

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

DATE : 02 APRIL 2016.

P.C.:

1] The challenge in this petition is to the judgment and order dated 2 March 2016 made by the Maharashtra Administrative Tribunal (MAT), dismissing Original Application No. 138 of 2015 instituted by the petitioner and partly allowing Original Application No. 1079 of 2014 instituted by respondent no.4.

2] Mr. Vinay Masurkar, learned counsel for the petitioner, has submitted that the State in issuing order dated 10 February 2015 has disturbed the seniority position, after unreasonable delay. He submitted that the seniority position, had already been acted upon and both the petitioner as well as respondent no.4 had secured further promotions on the basis of same. Relying upon the decision of the Hon'ble Supreme Court in *B.S. Bajwa and anr. Vs. State of Punjab and ors.*¹, Mr. Masurkar submitted that such

¹ (1998) 2 SCC 523

action on the part of State was unreasonable and arbitrary. He submitted that the MAT, therefore, erred in dismissing Original Application No. 138 of 2015, in which, the petitioner had challenged the order dated 10 February 2015, by which the seniority position came to be varied after unreasonable delay.

3] Mr. Masurkar further submitted that the Division Bench of MAT by order dated 30 July 2009 had already granted some reliefs to the petitioner in the matter of further promotions. By the impugned order, which has been made by only the Vice-Chairman of MAT, directions have been issued, which virtually take away the benefits granted by the Division Bench in its order dated 30 July 2009 in Original Application 19 of 2008 instituted by the petitioner. Mr. Masurkar submitted that since this is not permissible, the impugned order made by the MAT is liable to be set aside.

4] Upon hearing learned counsel for the parties and perusing the material on record, we are satisfied that this is not a fit case for exercise of extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

5] In this case, although the seniority position has been altered, the MAT, has in no manner disturbed the promotions already obtained by the petitioner as well as respondent no.4, in pursuance of the earlier seniority position, even though, the MAT has recorded the conclusion that the earlier seniority position was incorrect. In fact, on the basis of incorrect seniority position, the

petitioner has obtained no less than four promotions and the impugned order has, in no manner, disturbed such benefits, which the petitioner has already availed. The petitioner, however, cannot claim some vested interests that incorrect seniority position continues, until the petitioner attains the age of superannuation, which according to learned counsel for the petitioner, will be in another four months.

6] This is not a case where respondent no.4 has approached the CAT either after expiry of the period of limitation as prescribed in Section 21 of the Administrative Tribunals Act, 1985 or approached the Tribunal after some unreasonable delay or laches. The representations made by the petitioner, were in fact favourably considered by the State which culminated into making of the order dated 10 February 2015 by the State itself restoring the correct seniority position as between respondent no.4 and the petitioner. The decision in *B. S. Bajwa (supra)* is therefore, not applicable to the facts and circumstances of the present case. In the said case, the petitioners, had approached the High Court after considerable delay and laches and it is in these circumstances that the Hon'ble Supreme Court has held that the settled position should not be disturbed at the instance of the petitioner, who is guilty of unexplained and unreasonable delay and laches.

7] In the present case, respondent no.4, relying upon the order dated 10 February 2015 had approached the MAT, in the matter of grant of deemed date of promotion, particularly, since

the State had itself informed respondent no.4 that such grant is under consideration. Besides, the MAT, upon consideration of the facts and circumstances in some details has held that the delay, if any, on the part of respondent no.4 in reacting to incorrect seniority position has been sufficiently explained by respondent no.4. The MAT has held that since such explanation has found favour with the State, there was really no case made out to interfere with the order dated 10 February 2015 at the behest of the petitioner herein, particularly, since there was no proposal to disturb the promotion already obtained by the petitioner, on the basis of incorrect seniority position. The MAT has also recorded the finding that on account of any delay on the part of respondent no.4, no irreversible situation, particularly concerning the petitioner herein can be said to have come into existence. There is neither any illegality nor perversity in the reasoning of MAT.

8] Even the petitioner has not seriously disputed the fact that respondent no.4 had been appointed as Junior Clerk on 14 December 1982. The petitioner was appointed as a Junior Clerk on 23 June 1978. However, since his selection was not through the MPSC, such appointment of the petitioner could never have been regarded as regular appointment. Ultimately, the petitioner's appointment came to be regularised only on 23 March 1984. In these circumstances, the State was justified in placing respondent no. 4 at a position senior to the petitioner herein. Similarly, the MAT was justified in not interfering with the decision of the State as expressed in the State's order dated 10 February 2015.

9] Insofar as MAT's order dated 30 July 2009 in Original Application No. 19 of 2008 is concerned, it must be noted that the petitioner, had not impleaded respondent no.4 as a party in the said proceedings. Besides, the said order dated 30 July 2009, was made on the basis of incorrect seniority position. Obviously, therefore, on the basis of the order dated 30 July 2009, there was no question of denying relief to respondent no.4. The MAT, has appreciated the matter in its proper perspective and there is no reason to interfere with the impugned order.

10] Finally, it must be noted that in this case, none of the promotions secured by the petitioner have been disturbed by the State Government or the MAT, although, both the State Government and the MAT have accepted that respondent no.4 was in fact, senior to the petitioner. The only relief now granted to respondent no.4 is to consider her case for the purposes of grant of deemed date of promotion. In the exercise of our extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India, therefore, we do not deem it appropriate to interfere with the order of the MAT.

11] This petition is therefore, dismissed. There shall be no order as to costs.

CHIEF JUSTICE

(M.S.SONAK, J.)