

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4334/2015

(ARVIND CHIRKUTRAO DONGRE **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri P.N. Shende, counsel for the petitioner.
 Shri Nikhil Joshi, A.G.P. for the R-1 to 3.
 Shri P. Raulkar h/f Shri G.G. Mishra, counsel for the R-5 & 6.

CORAM : SMT.VASANTI A. NAIK AND
A.S. CHANDURKAR, JJ.

DATE : FEBRUARY 11, 2016.

Heard.

The challenge in the present writ petition is to the order dated 12.06.2015 passed by the Maharashtra Administrative Tribunal in Original Application No.5 of 2013, whereby the said original application preferred by the petitioner has been dismissed.

It is the case of the petitioner that he was appointed in the Maharashtra Education Services in Class-III on probation, on 16.06.1980. He was promoted in Class-II from the category of Scheduled Castes on 01.01.1990. In the seniority list, which was prepared on 13.09.2010, the petitioner's seniority was determined as having been promoted on 28.02.1993. It is on that basis, the petitioner filed the aforesaid original application and sought the relief that his seniority be corrected and he be placed in Class-II with effect from 01.01.1990. By the impugned order, the Maharashtra Administrative Tribunal held that the promotion granted to the petitioner on 01.01.1990 was fortuitous in nature. It was further held that the actual date of promotion of the petitioner was rightly shown as 28.02.1993 since that was the date when the petitioner was promoted as per his seniority.

Shri P.N. Shende, the learned counsel for the petitioner, submitted that when the petitioner had been granted promotion in Class-II cadre on 01.01.1990, his seniority was required to be reckoned from said date. According to him, there was a backlog of about 20% from the Scheduled Castes category and it is on that basis, the order of promotion in Maharashtra Education Services Class II came to be issued on 18.12.1989. According to him, said promotion being a regular promotion, his seniority could not have been determined from 28.02.1993. It is further submitted that in terms of the provisions of Rules 4 to 6 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, the determination of seniority of the petitioner from 28.02.1993, was incorrect. He, therefore, submitted that the order passed by the Maharashtra Administrative Tribunal is liable to be set aside and the prayers as made in the original application ought to be granted.

Shri Nikhil Joshi, the learned Assistant Government Pleader for the respondent nos.1 to 3, supported the impugned order and submitted that the Maharashtra Administrative Tribunal had rightly found that the earlier promotion in the year 1989 was fortuitous in nature as there was a backlog of seven candidates from the quota of Scheduled Castes for being promoted. He further submitted that the respondent nos.4 and 5 were appointed directly in Class-II cadre on the basis of the recruitments made by the Maharashtra Public Service Commission. The placement of the petitioner in the seniority list from the date of promotion was 28.02.1993 and, hence, there was no reason to interfere with the impugned order. He further submitted that no employee junior to the petitioner had been promoted prior in time to the petitioner.

Shri P.K. Raulkar, the learned counsel for the respondent nos.5 and 6, also supported the impugned order and reiterated the submissions as urged on behalf of the respondent nos.1 to 3.

The facts came on record make it clear that in the year 1989, there was backlog of candidates in the MES Class-II cadre, in which the petitioner was claiming promotion. In the meeting of the Departmental Promotion Committee held on 08.03.1989, it was found that no vacant post was available from the promotional quota till end of December-1988. As number of posts were required to be filled in by nomination, for meeting administrative exigencies, certain promotions were given on fortuitous basis. This included the promotion of the petitioner. A perusal of the order passed by the Maharashtra Administrative Tribunal indicates that a clear finding has been recorded that the respondent nos.4 to 6 were direct recruits from the quota of nomination and their entry was not by encroaching on the promotional quota. Similarly, there was no employee who was junior to the petitioner and who was granted promotion prior to the petitioner. It is, therefore, clear that the promotion of the petitioner in the year 1990 was clearly by way of a stop gap arrangement and thus, fortuitous in nature. The petitioner was actually promoted on the basis of his seniority on 28.02.1993. The reliance placed by Shri Nikhil Joshi, the learned Assistant Government Pleader for the respondent nos.1 to 3 on the judgment of the Hon'ble Supreme Court in the case of *Union of India & Others Versus S.D. Gupta & Others*, reported in **AIR 1996 SC 3325**, supports the conclusion arrived at by the Maharashtra Administrative Tribunal.

The reliance placed on the provisions of Rules 4 to 6 of the Rules of 1982 by the learned counsel for the petitioner is misplaced as the said rules contemplate the general principles of seniority and the manner in which the deemed date of appointment has to be assigned. Once it is found by the Departmental Promotion Committee that no vacant post from the promotion quota by the end of December-1988 was available, it is clear that the promotion of the petitioner on 01.01.1990 was fortuitous in nature. Thus, it cannot be said that the grant of

deemed date to the petitioner from 28.02.1993 is contrary to the aforesaid rules.

In view of aforesaid, there is no case made out to interfere in the writ jurisdiction. The writ petition is dismissed with no order as to costs.

JUDGE

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