

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**WRIT PETITION NO.1260 OF 2011**

Mahesh Sampatrao Rakh,  
Age – 39 years, Occu. Service,  
R/o. N-4-C-54, CIDCO,  
Aurangabad, at present  
working at M.P.C.B.,  
Chandrapur.

... **Petitioner**

Versus

1. The State of Maharashtra,  
Through its Principal Secretary,  
Department of Environment and  
Forest, Mantralaya, Mumbai-32.
2. The Chairman,  
Maharashtra Pollution Control Board,  
Having office at “Kalpataru”,  
3<sup>rd</sup> and 4<sup>th</sup> Floor, Opp. Cine Planet,  
Sayan – Matunga Scheme Road,  
Sayan (E), Mumbai.
3. H Maharashtra Pollution Control Board,  
Having office at “Kalpataru”,  
3<sup>rd</sup> and 4<sup>th</sup> Floor, Opp. Cine Planet,  
Sayan – Matunga Scheme Road,  
Sayan (E), Mumbai.  
Through its Member Secretary.
4. Sandeep S/o Lahu Tope,  
Age – 30 years, Occu. Service,  
Regional Office,  
Maharashtra Pollution Control Board,  
“Paryawaran Bhavan”, A-4/1,  
Chikalthana, M.I.D.C.,  
Near Seth Nandlal Dhoot Hospital,  
Aurangabad-431 210.

5. Anant S/o Nana Harshavardhan (Kamble),  
Age – 45 years, Occu. Service,  
Sub Regional Officer,  
Maharashtra Pollution Control Board,  
Shri Chatrapati Shivaji Maharaj Mandai,  
Municipal Corporation Building,  
4<sup>th</sup> Floor, Mata Ramabai Ambedkar Road,  
Mumbai.

... **Respondents**

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Mr. S.G.Jadhavar, Advocate for Petitioner  
Mr. V.S.Badakh, AGP for Respondent No.1  
Mr. P.P.More, Advocate for Respondent Nos.2 & 3  
Mr. R.S.Deshmukh, Advocate for Respondent No.4  
Mr. V.D.Salunke, Advocate for Respondent No.5

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**CORAM : ANOOP V. MOHTA AND  
SUNIL K. KOTWAL, JJ.**

**RESERVED ON : 15<sup>th</sup> June, 2017**  
**PRONOUNCED ON : 29<sup>th</sup> June, 2017**

**JUDGMENT : (Per Sunil K. Kotwal, J.) :-**

1. Petitioner is a citizen of India, who has filed this petition for direction to respondent Nos.1 to 3 to change cadre of petitioner from scientific cadre to technical cadre with effect from 05.05.2000 and with consequential relief to appoint the petitioner as 'Sub-Regional Officer' with effect from 16.10.2007. Petitioner has also claimed the reversion of respondent Nos.4 and 5 from their respective posts of Field Officer and Sub Regional Officer. Respondent No.3, is the Maharashtra Pollution Control Board (in brief "Board"). Respondent No.2 is Chairman of the Board. Petitioner and

respondent Nos.4 and 5 are the employees of the Board.

2. Undisputed facts in between the parties are that, on 09.01.1999, petitioner was appointed as 'Junior Scientific Assistant' in the Board in scientific branch. On 15.06.2005 petitioner was promoted as 'Junior Scientific Officer'. It is not disputed that, initially, respondent No.4 was appointed as 'Junior Scientific Assistant' on 29.05.2004 and he was promoted on 15.06.2005 to the post of 'Junior Scientific Officer'. Respondent No.5 was appointed on the post of 'Junior Scientific Officer'.

3. The grievance of the petitioner is that, on 05.05.2000, 20.01.2004, 10.03.2005 and 16.10.2010, he requested respondent No.3/Board to change his cadre and appoint him as 'Field Officer'. However, his request was turned down by respondent Nos.1 to 3. On the other hand, on 26.12.2005, respondent No.4 was given charge of 'Field Officer' and on 10.02.2006, respondent No.5 was given charge of 'Regional Officer', in technical cadre. Being aggrieved with this order passed by respondent No.3/Board, petitioner filed Writ Petition No.2640 of 2008 and sought relief from this Court to appoint him in technical branch as a 'Field Officer'. However, that Writ Petition was disposed off for a reason that, person from scientific branch cannot be

appointed to technical branch. So also as appointment of respondent Nos.4 and 5 was on *ad-hoc* basis, the relief claimed by the petitioner against respondent Nos.4 and 5 was also rejected. Even, thereafter petitioner has filed this Writ Petition claiming almost same reliefs.

4. Learned Advocate for the petitioner submits that, an act of respondent Nos.1 to 3 regarding regularizing the *ad-hoc* appointment of respondent Nos.4 and 5 as 'Field Officer' and 'Regional Officer' respectively is bad in law, as it was made without following due procedure of regulations applicable to the Board. He submits that, no advertisement was published and process for appointment by nomination was not followed by respondent No.3, as prescribed under the Maharashtra Pollution Control Board Employees Recruitment Regulations, 1996 (hereinafter referred as "Recruitment Regulations"). Learned Advocate for the petitioner has drawn our attention to the cases -

- (a) **"State of U.P. and others Vs. Rekha Rani"**, reported in [AIR 2011 Supreme Court, 1893],
- (b) **"Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava"**, reported in, [AIR 1992 Supreme Court, 2070],
- (c) **"State of Haryana and others Vs. Piara Singh and others"**, reported in [AIR 1992 Supreme Court 2130].

The ratio of these authorities is that, *ad-hoc* appointment for short period does not confer right to regularize the service. However, these authorities are of no help for the reason that respondent Nos.4 and 5 do not claim right of regularization on the basis of their *ad-hoc* appointment.

5. In reply, learned counsel for the respondents opposed this petition, on the first ground that, after decision of Writ Petition No.2640/2008, the petitioner cannot claim change of cadre or appointment on the post of 'Field Officer' in technical cadre, when Recruitment Regulations do not permit the same. Learned counsels for the respondents pointed out that, on 21.01.2009 in response to advertisement published by the Board, petitioner applied for the post of 'Field Officer', but he could not qualify for the post of 'Field Officer'. Therefore, petitioner has no *locus-standi* to challenge the appointment of respondent Nos.4 and 5 on the post of 'Field Officer' and 'Regional Officer' respectively.

6. It is not disputed that, as per Recruitment Regulations, on the establishment of Board, there are different branches such as, Technical, Scientific, Legal, Accounts and Administration respectively. These branches are having different channels of

promotions and these are not inter mixing. For clarity, the channel of promotions in technical and scientific branches of the Board is given as under :

| <b>Sr. No.</b> | <b>Technical Branch</b>                                                                                | <b>Scientific Branch</b>                                                       |
|----------------|--------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| 1              | Field Inspector<br>(Pay scale : 4500-125-7000)<br>↓                                                    | Laboratory Assistant with B.Sc. Qualification<br>(Pay scale 3200-85-4900)<br>↓ |
| 2              | Field Officer<br>(Pay scale : 5500-175-9000)<br>↓                                                      | Junior Scientific Assistant<br>(Pay scale 5000-150-8000)<br>↓                  |
| 3              | Deputy Engineer / Sub-Regional Officer<br>(Pay scale 8000-275-13500)<br>↓                              | Junior Scientific Officer<br>(Pay scale : 6500-200-10500)<br>↓                 |
| 4              | Regional Officer<br>(Pay scale : 10000-325-15200)<br>↓                                                 | Scientific Officer<br>(Pay scale : 7450-225-11500)<br>↓                        |
| 5              | Water Pollution Abatement Engineer / Air Pollution Abatement Engineer<br>(Pay scale : 12000-375-16500) | Senior Scientific Officer<br>(Pay scale : 10000-325-15200)<br>↓                |
| 6              |                                                                                                        | Principal Scientific Officer<br>(Pay scale : 12000-375-16500)                  |

7. Thus, after going through the Recruitment Regulations of the Board, it becomes absolutely clear that, employee of the Board from scientific channel cannot be transferred to technical channel. Therefore, petitioner, who is working in scientific cadre as 'Junior Scientific Officer' cannot be transferred in technical cadre as 'Field

Officer' or cannot be promoted as 'Regional Officer'. On this sole ground, the main prayer of the petitioner deserves to be rejected.

8. Otherwise also, after going through the judgment passed by this Court in Writ Petition No.2640 of 2008, dated 29.07.2008, it reveals that, this Court has already negated the claim of the petitioner to change his cadre from scientific to technical branch. Review application No.157 of 2008 filed by the petitioner was also dismissed on 15.01.2010. Against that order, no remedy has been availed by the petitioner. Therefore, the order passed by this Court in Writ Petition No.2640 of 2008 has reached to finality and petitioner cannot repeatedly claim the same relief from this Court. On this ground, the petition deserves to be dismissed.

9. Otherwise also, as pointed out by the respondents when petitioner applied for the post of 'Field Officer' in response to the advertisement published by the respondents on 21.01.2009 and when the petitioner failed to qualify for appointment on the post of 'Field Officer' by nomination, the petitioner has no *locus-standi* to challenge the appointment of respondent Nos.4 and 5 on the post of 'Field Officer' and 'Regional Officer' in technical cadre respectively. Respondent No.2 and 3 have clarified in their reply that, the appointment of the respondent No.4 to the post of Field Officer was

made on *ad-hoc* basis initially in order to cope up with the increased work load and subsequently taking into consideration his long standing *ad-hoc* experience to the post of FO, the appointment authority has decided to regularize his services on the post of Field Officer. So as to the appointment of respondent No.5 has been made in order to fill up the vacancies of handicapped persons in compliance of order passed in PIL 70/2002 and PIL 129/2003. After approval from Environment Department Government of Maharashtra, he was given a regular appointment to the post of Sub Regional Officer in the handicapped category, taking into consideration his additional qualification i.e. Ph.D. in Environment and his *ad-hoc* experience to the post of Sub Regional Officer. Therefore, the prayer of the petitioner regarding reversion of respondent Nos.4 and 5 needs to be rejected. It follows that, this petition, being devoid of merits, deserves to be rejected. Hence, following order.

**ORDER**

1. Petition is dismissed.
2. No order as to costs.
3. Rule discharged.

**(SUNIL K. KOTWAL, J.)**

**( ANOOP V. MOHTA, J.)**

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