

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

WRIT PETITION NO.6766 OF 2005

The State of Maharashtra,

1. Through the Collector,
Dhule,

2. The Collector,
Nandurbar

..Petitioners

Vs.

Rajendra Maharu Ghuge,
Age : 40 years, Occ. Nil,
r/o. House No.106,
Near Dnyaneshwar Mandir,
Gat No.2, c/o. D.R.Sangle,
Dhule (Old) Dhule

..Respondent

Ms.S.S.Raut, A.G.P. for petitioners – State

Mr.S.R.Chaukidar, Advocate i/b. Mr.S.D.Dhongade, Advocate for
respondent

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.**

DATE : OCTOBER 09, 2017

ORAL JUDGMENT (*PER SUNIL P. DESHMUKH, J.*) :

Heard

2. The petitioners – State of Maharashtra is before this Court purporting to take exception to order dated 18.03.2005 passed by the Maharashtra Administrative Tribunal in Original Application No.408 of 2002, whereunder authorities of petitioners were directed to reinstate/reappoint the respondent herein, on Class-III category post by giving him proper fitment in the pay scale having regard to his initial date of appointment in Class-III category. His period of service as a Class-IV employee during the intervening period shall be deemed to be continuous service for pay fixation and for calculating qualifying service from 1996 as well as for seniority. The order in O.A. further clarifies that no back wages shall be permissible by way of difference between the pay of Class-III post and that of Class-IV.

3. Learned AGP-Ms.S.S.Raut submits that the respondent cannot be said to be qualified for Class III post pursuant to Government Resolution dated 08.03.1999. Learned AGP puts emphasis on Clause B under the same, which read thus :-

ब) दिनांक 1 एप्रिल 1999 रोजी एक वर्षाची सलग सेवा केलेली असावी व कामाचा दर्जा किमान “चांगला” असावा.

4. She submits that order passed by the Tribunal is not on the basis of merits of case, but it entirely rests on earlier decision rendered by the Tribunal in O.A. No.269 of 2001 with O.A. No.746 of 2001. She, therefore, submits that merits have not been referred to at all in the impugned order. As such, since the respondent is not qualified to the benefit, the Writ Petition may be allowed, setting aside the order of the Tribunal. She submits that the arguments likely to be advanced that as the case of other similarly situated persons has been granted by the Tribunal and decision in their case has not been subjected to challenge, the State would be precluded from challenging the decision in O.A. No.408 of 2002, would not be proper and is unsustainable. Referring to the decision of the Hon'ble Supreme Court in the case of *Col. B.J. Akkara (Retd.) Vs. Government of India and ors., (2006)11 SCC 709*, she submits that it is open for the State to challenge a particular case and that the earlier decision of the Tribunal, would not debar the State from challenging the decision in O.A. No.408 of 2002. She points out paragraphs 25 and 26 thereof. She submits that the Writ Petition is legitimately filed by the State.

5. She further submits that 24 petitioners, who have been continued by the order in O.A.Nos.269 of 2001 and 746 of 2001, were the persons who were not assigned service elsewhere, whereas the respondent joined the service as Class-III employee. She, therefore, submits that the decision of the Tribunal in O.A. Nos.269 of 2001 and 746 of 2001, is distinguishable on facts. She further submits that the service of a Class-IV employee cannot be regularised in Class-III category.

6. Countering the aforesaid submissions, Mr.Chaukidar, learned for the respondent submits that the respondent's initial appointment was under special reserved category. While deciding the O.A.Nos.269 of 2001 and 746 of 2001, this particular aspect has been highlighted by the Tribunal in its order and as a matter of fact, extract of the order in said O.As. has been reproduced in O.A. No.408 of 2002. He submits that the observations and ratio under the same applies on all fours in the present circumstances. He submits that there is no substance in the contention that the respondent had not been working pursuant to Clause (B) under the Government Resolution dated 08-03-1999. He had been very

much working in Class-III cadre and completed an year of service. He submits that not actual working on 01-04-1999, but, by 31-03-1999 one year's service is contemplated under the condition. The respondent does and did qualify to the benefit. He submits that the observations in paragraph 26 of the judgment relied on, on behalf of the State would indicate that so far as present Writ Petition is concerned, non-granting benefit tantamounts to a pick and choose method. He further submits that it is not the case that financial implications would be of a huge magnitude in case of grant of relief claimed by the respondent. It is further not the case that the State has been prevented from challenging the decision of the Tribunal in the case of said 24 persons. He, therefore, submits that even otherwise, the Writ Petition could not have been legitimately preferred by the petitioner.

7. It appears that the respondent is similarly placed as other 24 employees. All these persons including the respondent were appointed under special drive to remove backlog of reserved category. It is also not the case that the respondent does not

possess the educational qualifications for Class-III post. In the circumstances, although it has been argued on behalf of the State that the respondent had not been working on 01-04-1999 for a period of one year, the said argument appears to be a propped up ground as there is no dispute that the respondent had, in fact, worked for a period of one year, before. Further, that the respondent being otherwise similarly situated as the 24 other employees in O.A.Nos.269 of 2001 and 746 of 2001, is not disputed. He had been working in Class IV post. The distinction is that respondent had been working as a Class-IV category employee is not a reasonable argument looking at that respondent had been rendered unemployed after having been discontinued from Class-III post.

8. We do not think that a case is made out to exercise extra ordinary powers under Constitution of India. We are, therefore, not entertaining the challenge raised in this petition. The Writ Petition is consequently dismissed.

[SANGITRAO S. PATIL, J.]
kbp

[SUNIL P. DESHMUKH, J.]