

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1419 OF 2011

The State of Maharashtra
& others

..Petitioners

Vs.

Shri Vijay s/o. Pandhari Narwade
& others

..Respondents.

.....

Mr. O.M. Kulkarni, AAGP for the State/petitioners.

Mr. G.B. Pawar, Advocate for the respondent Nos.2, 3, 6 and 7.

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**CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 18th DECEMBER, 2017.

ORDER (PER : M.S. KARNIK, J.) :-

The petitioners – State of Maharashtra has filed the present petition challenging the order dated 7/9/2009 passed by Maharashtra Administrative Tribunal, Mumbai, (“the Tribunal” for short) in O.A. No.361 of 2009.

2. The present petition is pursued by the petitioner – State of Maharashtra against the respondent Nos.5, 6 and 7 only. The petition as against the respondent Nos. 1 to 4 was disposed of by an order dated 11th April, 2007 passed by this Court in view of the communication dated 10/4/2017 whereby the petitioners had agreed to comply with the order passed by the Tribunal and grant to the respondent Nos. 1 to 4 seniority from the date of initial appointment.

3. The respondent Nos. 5 to 7 at the time of filing O.A. were working as Clerk-Typist in Law and Judiciary Department in various offices of the Charity Commissioner in the State of Maharashtra. The respondent Nos. 5 to 7 were initially appointed in the year 1990, 1996 and 1997 in the Irrigation Department, Government Milk Scheme and the Irrigation Department respectively. The respondent No.5 was initially recruited as a Typist whereas the respondent Nos. 6 and 7 were initially appointed a Clerk-Typist. There is no dispute that the respondent Nos.5 to 7 were appointed on regular and

substantive basis in the respective departments and are confirmed permanent Government employees. Before the Tribunal, the respondents pointed out that in the year 1999, the petitioners – State of Maharashtra pursuant to the Government Resolution dated 1/11/1999, formed Excess Cell for taking a review of the posts that had become surplus in various departments. The Secretary, GAD, under whom the said Cell was formed by the said Government Resolution was to examine whether the surplus posts should be abolished and the persons appointed thereon on substantive and regular basis could be accommodated in other departments.

4. The respondent Nos. 4 to 7 were absorbed as Junior Clerk in the office of Joint Charity Commissioner at Latur during the year 2002-2003. Sometime in December, 2003 the petitioner No.3 published a provisional seniority list of Clerk-Typist as on 1st January, 2003 wherein the names of the respondent Nos. 5 and 6 did not appear in the list because they entered the service of petitioner No.3 after 1/1/2003. The name of respondent No.7

appeared at Serial No.211 in the said provisional seniority list. The respondent Nos. 5 and 6 thereupon made a representation that the name of respondent Nos. 5 and 6 should be included in the seniority list from the original date of appointment.

5. It appears that the provisional seniority list was finalised on 29/1/2004 thereby the respondent No.7 was granted seniority as per the date of initial appointment. The petitioner no.3 on 12th May, 2005 issued a seniority list of Clerk-Typist on the establishment which was revised based on a Government Resolution dated 26th March, 2004 applying a different criteria. The seniority of the respondents was fixed from the date of their absorption in the Law and Judiciary Department. As a result of the Government Resolution dated 26th March, 2004 the respondents were denied their claim of the services rendered by them from the date of initial appointment and on account of the said Government Resolution the seniority of respondents was counted from the date of joining of Law and Judiciary Department which was treated as a fresh appointment.

6. The Tribunal by the impugned order allowed the O.A. and granted the benefit of seniority to the respondents from the date of their initial entry into the service.

7. Learned AGP assailing the order of the Tribunal placed reliance on the Government Resolution dated 26th March, 2004 which provides that those employees who were absorbed later in another department would lose the period service rendered in the earlier department. In the submission of the learned AGP the seniority was revised based on the said Government Resolution and in his submission, the Government Resolution dated 26th March, 2004 has retrospective effect. In the submission of the learned AGP this was necessary as the respondents who are from some other department would affect the seniority of the existing employees in Law and Judiciary Department. Learned AGP relied upon the decision of the Apex Court in the case of **Union of India V/s. K. Savitri and others, 1998 (4) SCC 358** where the Apex Court was considering the question whether the past services can be counted as experience

for promotion.

8. Learned AGP also relied upon the decisions of the Apex Court in the case of **Renu Malik Vs. Union of India, 1994 (1) SCC 173** and **Union of India V/s. K.Savitri & others (supra)** in support of his contention that the Government Resolution dated 26th March, 2004 was issued on the basis of the judgments of the Apex Court.

9. Learned Counsel for the respondent Nos. 5 to 7 on the other hand supported the order passed by the Tribunal and invited our attention to the reasons recoded by the Tribunal while allowing O.A. In his submission, the respondents were appointed on regular and substantive basis in one department of the State Government and later on were absorbed in Law and Judiciary Department. In his submission, it would be unfair to deprive the respondents the benefit of the past service rendered in another department of State Government. Learned Counsel for the respondents relied upon the decision in the case of (1) **S.I. Rooplal and another Vs. Lt. Governor through Chief**

Secretary, Delhi and others, (2000) 1 SCC 644, (2) Tamil Nadu Khadi and Village Industries Board Vs. M.S. Krishnaswamy, AIR 2001 SC 2761, (3) Banney Singh Rathore and another Vs. State of Rajasthan and others, 2003 LAB I.C. 655, (4) K. Madhavan Vs. Union of India, AIR 1987 SC 2291 and (5) R.S. Mokashi Vs. L.M. Menon (1982) 1 SCC 379 in support of his submissions.

10. Heard learned Counsel. It is not in dispute that in O.A. No.351 of 2006 filed by Shri Uday Laxman Sawant Vs. The State of Maharashtra and others decided on 21st March, 2007 (in respect of other department of the State Government) by the Tribunal, it has been held that employees who were rendered surplus and later absorbed in another department cannot be derived of their seniority specially in light of the Government Resolution dated 26th March, 2004. It is pointed out that even the Writ petition filed against this order was dismissed by this court. The Tribunal had recorded that the judgment in O.A.No.351 of 2006 still holds the field. In the light of the view

taken by the Tribunal in O.a.N.351 of 2006 where it has been held that employees who were rendered surplus and later absorbed in another department cannot be deprived of their seniority specially in light of the Government Resolution dated 26th March, 2004, which view has been confirmed by this Court, in our opinion, it would be unjust to deny to the respondents herein benefit of the services rendered by them for the purpose of seniority prior to their absorption in Law and Judiciary Department. The petitioners are relying upon the Government Resolution dated 26th March, 2004 itself to deny the benefits of the previous services rendered in another department.

11. The Tribunal relying upon the decision in **S.I. Rooplal's** case (supra), was of the opinion that the service rendered by the respondents in the earlier department before being absorbed in another department cannot be ignored and the same will have to be taken into account while revising the seniority list. When the seniority list was finalized on 29th January, 2004, by taking into consideration the service rendered

by the respondent Nos.4 to 7 in the earlier department, to retrospectively deny to the respondents benefit of service rendered in the earlier department on the basis of the Government Resolution dated 26th March, 2004, in our opinion, is unsustainable.

12. The order passed by the Tribunal, therefore, warrants no interference in the exercise of our writ jurisdiction under Article 226 and 227 of the Constitution of India. The present petition is, therefore, dismissed with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)