

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4737 OF 1998

Shri. Vinayak Anant Joshi

... Petitioner

V/s.

State of Maharashtra & Anr.

... Respondents

Mr. Sanjay Kshirsagar for the Petitioner

Mr. Manish Pabale, AGP for the Respondent Nos. 1 and 2.

CORAM : A.S.OKA &

SMT. VIBHA KANKANWADI, JJ.

DATE : 28th JULY, 2017

:JUDGMENT: (PER VIBHA KANKANWADI, J.)

1. The Petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, in order to challenge the Judgment in O.A. No. 1054 of 1996 dated 20th March, 1998 passed by the Maharashtra Administrative Tribunal, Mumbai and for direction to the Respondents to give him deemed promotion from 01st July 1978 as well as for the consequential benefits.
2. The factual matrix leading to the petition is required to be considered. The Petitioner joined the Government service on 18th June 1970 as a Junior Clerk in the office of Government Photo Registry, Pune. He passed departmental examination in September, 1977 thereby, becoming eligible for the promotion. By an order dated 16th June 1978, he was promoted as a

Film Recorder. Thereby, he had joined the said promotional post on 01st July 1978. He further contents that the Recruitment Rules of Photo Registrar, Film Recorder and other equivalent posts were framed and the pay scale of all those posts have been made at par from 01st April 1976. Therefore, there was a common gradation list. Despite the fact that the post of Film Recorder and that of Sub-Registrar Grade-II are inter-transferable and equivalent posts and the Petitioner was working continuously from 1978 on the aforesaid Class-III post, he has been given seniority only from 1978 without any rationality behind it. He further contents that the pay scales of the posts of Sub-Registrar, Grade-II, Senior Clerk, Head Clerk, Photo Registrar, Film Recorder, Supervisor were same from 1976. The Recruitment Rules for the post of Sub-Registrar Grade-II were amended from 15th July 1980. In fact, a Photo Registrar was eligible to be promoted for the post of Sub-Registrar Grade-II only after completion of four years of service as a Photo Registrar. But, by the amendment, the condition of four years was deleted. All the persons on the posts of Senior Clerk, Film Recorder, Photo Registrar etc have been given seniority in the cadre of Sub-Registrar Grade – II from 01st April 1976. Thus, the persons who have not even passed departmental examination prior to 1977 have also been given seniority from 01st April, 1976 in the cadre of Sub-Registrar, Grade-II. In the provisional Seniority list of 1986, the Petitioner's name appears at Serial No. 192 and the deemed date has been shown as 01st August 1984. The said date has been Arbitrarily fixed by the Respondents. Thereafter, the Respondents have published the seniority list of Sub-Registrar Grade-II in 1995. However, it was provisional and till the date of petition, no seniority list of Sub-Registrar Grade-II was finalized. The Petitioner had made a representation to the Respondent on 14th March,

1995 making a grievance about the seniority list. He had prayed for holding his seniority from 01st July 1978 in the Cadre of Sub-Registrar Grade-II. Thereafter, some persons juniors to the Petitioner were promoted as Class-II Officers on 04th January 1996, though, the representation filed by the Petitioner was pending. In fact, the Petitioner was entitled to get promotion as Class-II officer. However, thereafter, the Petitioner has been given promotion as Sub-Registrar Grade-I on 20th January 1996 which is in fact Class-III post, though he was entitled to the promotion of Class-II. Therefore, he approached the Tribunal by filing O.A. No. 262 of 1996 which came to be dismissed on 04th April 1996. The representation of the Petitioner was rejected by the first Respondent on 23rd August 1996 without giving clear reasons. Therefore, he filed O.A. No. 1055 of 1996 seeking a direction that he should be given promotion from 01st July 1978 in the Cadre of Sub-registrar, Grade-II before the Maharashtra Administrative Tribunal, Mumbai. The Tribunal has dismissed the petition on 20th March 1998. Hence, this Writ Petition challenging the order of the Tribunal.

3. An affidavit-in-reply has been filed by one Basappa Malkappa Koli on behalf of the second Respondent. It has been contended that mere passing of departmental examination does not make a candidate eligible for promotion. The Petitioner was working as a clerk. Thereafter, as a pure time- gap-local arrangement, he was promoted as a Film Recorder from 16th June, 1978. The Petitioner's claim is based on the presumption that the said order dated 16th June 1978 is an order of regular promotion. The question of applicability of the Recruitment Rules for the post of photo Registrar and other equivalent posts does not arise. He has denied the

contention of the Petitioner that the posts of Film Recorder, Photo Registrar, Sub-Registrar Grade-II, Supervisor, Head Clerk, Store Keeper and Senior Clerk are equivalent posts and are inter-transferable since pay scale of all these posts have been made equal as well as by common gradation list. It has been reiterated that the Petitioner was enjoying fruits of pure-stop-gap-local arrangement order issued by the second Respondent. It is stated that the Petitioner was not eligible for the promotion in 1978. The Petitioner's contended that as per the Rules, then prevailing prior to 15th July 1980 a Photo Registrar was eligible to be promoted to the post of the Sub-Registrar, Grade-II after completion of four years of service in that cadre. But, after the amendment on 15th July 1980, the said condition in respect of four years service was modified. Taking into consideration the fact of promotion to the post of Sub-Registrar Grade-II as per the Recruitment Rule 1971, the Petitioner was given regular promotion on the post of Sub-Registrar Grade-II by order dated 30th April 1985, but since Petitioner himself joined the post of Sub-Registrar Grade-II on 23rd May, 1985, therefore, the said date has been considered for counting as the day from which his seniority can be considered. The promotion which was given as a stop-gap arrangement will not be counted towards the seniority in the cadre of Sub-Registrar, Grade-II and Photo Registrar in the year 1980. The representation on the Petitioner has been rightly rejected. He has therefore, supported the reasons given by the Maharashtra Administrative Tribunal in rejecting the application filed by the Petitioner.

4. Heard the learned Counsel appearing for the Petitioner and the learned AGP for the first and second Respondents.
5. It has been submitted on behalf of the Petitioner that the Petitioner was

appointed as a Junior Clerk on 18th June 1970. He was promoted by an order dated 16th June, 1978 to the post of Sub-Registrar, Grade-II. By that time, he had attended the eligibility criteria by passing the departmental examination. The said order has been placed on record as Annexure 'A'. Though, the said order mentions that the promotion is provisional as local arrangement but how long the said local arrangement continued has not been clarified by the second Respondent. Thereafter, on 06th July 1984, the Petitioner who was then the Photo Registrar has been said to have been promoted as Sub-Registrar Grade-II. The said order is filed at Annexure "G". It was submitted that the local arrangement could not have been stretched till 1984, when the Petitioner was working on the same post. Annexure "G" could not be said to be the promotion. It can be only termed as transfer. When the gradation list was prepared, the deemed date of entry in the Grade II in respect of the Petitioner ought to have been shown as 16th June, 1978. The learned Counsel appearing for the Petitioner has also taken us through the observations made by the Tribunal and submitted that it has been wrongly inferred that since the order dated 16th June, 1978 was specifically as a local arrangement, it could not be treated equivalent to the regular promotion. It has also been wrongly observed that since the promotion of the concerned persons to the grade of Photo Registrar is presumably regular, and since the grade of Photo Registrar and Sub-Registrar Grade II were equivalent from 01st April, 1976, after the merger of the two cadres and formation of the common seniority list of a single cadre, other two persons were given deemed dates of 01st April 1976.

6. Per contra, it has been argued by the learned AGP that the Tribunal has given elaborate reasons. Taking into consideration the fact that the order

dated 16th June 1978 was only by way of a local arrangement, the Petitioner cannot get seniority from that date. He was promoted only by virtue of order dated 06th July 1984.

7. The facts which emerge are that the Petitioner joined the service on 18th June, 1970 as a Junior Clerk. Though, he had passed the departmental examination in September 1977, his passing by order dated 16th June, 1978 was provisional as a local arrangement. It has been specifically mentioned in the said order itself that “ *the period of service rendered in local arrangement will not be counted towards seniority in the cadre of Sub-Registrar Grade-II*”. The change of Recruitment Rules thereafter, have no effect. By way of change in the Recruitment Rules, the post of Sub-Registrar Grade – II, Photo Registrar, Film Recorder, Supervisor, Head Clerk, Store Keeper and Senior Clerk were made equivalent. When the order dated 16th June 1978 was specific that it was by way of a local arrangement only, it cannot be treated on par with “regular promotion”. We do not agree with the submissions made on behalf of the Petitioner that the said local arrangement cannot be indefinite. The Petitioner was promoted on 06th July 1984 and then transferred. It is pertinent to note that after the said promotion and transfer, the seniority list was prepared and the deemed date was made known to the Petitioner. He had not challenged it. Only after the seniority list was prepared in 1995, he has made the representation.
8. Initially, the Recruitment Rules of 12th October 1971 were applicable and at that time, the grade of Photo Registrar was below that of Sub-Registrar Grade-II. Naturally, the person who was employed as a clerk in the office of Photo Registrar was required to go through the level of Photo

Registrar before he could aspire to become a Sub-Registrar Grade II. The matter centers around the first order i. e. the order dated 16th June 1978, which it was only by way of local arrangement. By no stretch of imagination, it can be said that the Petitioner was substantively promoted for a post equivalent to the post of Sub-Registrar Grade II on the basis of said local-arrangement. Therefore, the dismissal of the Application preferred by the present Petitioner by the Tribunal was perfectly justified. We do not find any illegality or error in the said order.

9. In consequence thereof, the Writ Petition deserves to be dismissed. Hence, we pass the following order.

ORDER

Writ Petition is rejected. Rule is discharged.

(SMT. VIBHA KANKANWADI, J.)

(A.S.OKA, J.)