

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.202 OF 2013

Suvarna Shrihari Sane	Petitioner
versus	
High Court of Judicature at Bombay, through its Registrar General & others	Respondents

WITH
WRIT PETITION NO.203 OF 2013

Bhagwat Arjun Kharat	Petitioner
versus	
High Court of Judicature at Bombay, through its Registrar General & others	Respondents

WITH
WRIT PETITION NO.204 OF 2013

Shashikant Ganpat Dandekar	Petitioner
versus	
High Court of Judicature at Bombay, through its Registrar General & others	Respondents

WITH
WRIT PETITION NO.205 OF 2013

Sushma Jagdishwar Mokul	Petitioner
versus	
High Court of Judicature at Bombay, through its Registrar General & others	Respondents

Mr.Mihir Desai, Senior Advocate, with Mr.Chetan Mali for Petitioners.

Mr.Kiran Bapat i/by M/s.Sanjay Udeshi & Co. for Respondent nos.1 and 2.

Mrs.PH.Kantharia, Government Pleader, with Ms.Deepali Patankar in WP Nos.202/2013, 203/2013, for State.

Ms.G.R.Shastri, Additional Government Pleader, in WP Nos.204/2013 and 205/2013.

**CORAM : SHANTANU S. KEMKAR AND
PRAKASH D. NAIK, JJ.**

DATE : 6th March 2017

JUDGMENT : (Per - Prakash D. Naik, J.) -

1. Rule. Rule is made returnable forthwith. With consent of parties, petitions are heard finally. Since the petitions involve common issue, the same are disposed of by common judgment and order.

2. The Petitioners have invoked writ jurisdiction of this Court under Article 226 of the Constitution of India challenging the order dated 31st August 2012 passed by Respondent no.2 reverting the Petitioners to the respective posts.

3. Petitioner in Writ Petition No.202 of 2013 was appointed as a Clerk on 1st October 1988 and was posted at Chief Metropolitan Magistrate's Court, Esplanade, Mumbai. Thereafter she was appointed as an Interpreter in the Family Court, Mumbai on 30th September 1999. She was promoted to the post of Cashier on 17th September 2004. Thereafter she was reverted as Interpreter vide communication/order dated 31st August 2012 passed by Respondent no.2.

4. Petitioner in Writ Petition No.203 of 2013 was appointed as a Clerk with District and Sessions Court, Thane on 7th August 1986. He was transferred to Family Court as clerk vide order dated 27th September 1989. Thereafter he was appointed as an Interpreter on 31st January 1995 and was directed to join the said post on 1st February 1995. He was promoted as Shirestedar on 17th September 2004. By communication/order dated 31st August 2012, he was reverted as Interpreter.

5. Petitioner in Writ Petition No.204 of 2013 was appointed as a Clerk in District and Sessions Court, Thane on 16th February 1985. He was posted as Clerk at Family Court on 27th September 1989. He was promoted as Assistant Shirestedar on 27th April 1995 and thereafter as an Interpreter on 31st March 2003. Subsequently he was promoted as Shirestedar on 26th November 2007 and was reverted to the post of Interpreter vide communication /order 31st August 2012.

6. Petitioner in Writ Petition No.205 of 2013 was appointed as a Clerk at District and Sessions Court, Raigad, Alibag on 11th February 1980 and thereafter she was posted as Clerk at Family Court on 27th September 1989. She was appointed as Assistant Shirestedar at Family Court on 27th April 1995 and was thereafter promoted as an Interpreter on 16th August 2002. She was reverted to the post of Interpreter vide communication/order dated 31st August 2012.

7. One Priti Padwal preferred Writ Petition No.2575 of 2010 before this Court. In the said petition, it was contended that although

the said Petitioner's case was accepted by the Advisory Committee of Family Court, as mentioned in the communication dated 2nd January 2008, to the effect that she may be considered for promotion to the post of Superintendent/Shirestedar as and when vacancy for that post would arise, her case was finally rejected. The Petitioner in the said petition was promoted from the post of Assistant Shirestedar to the post of Interpreter. During the course of arguments, the Petitioner in the said petition contended that three other persons are already promoted from the cadre of Interpreters, to the posts of Shirestedar/Superintendent after 2003. This Court vide order dated 23rd March 2011 dismissed the said Writ Petition No.2575 of 2010. The Court, however, made an observation that in case the promotions/appointments of three other persons referred to by Priti Padwal are not in consonance with the statutory Rules, she cannot be extended benefit as claimed by her. It was further observed that as a matter of fact, it is a matter to be inquired into by appropriate authority as to why said appointments of ineligible persons to the posts of Superintendent/Shirestedar have been made by Family Court and the Family Court was directed to take corrective measures forthwith to bring it in consonance with requirements of statutory Rules being Maharashtra Family Court (Recruitment to the Non-Gazetted Posts) Rules, 2002. The Registrar General of this Court was directed to take necessary measures in that behalf forthwith.

8. It appears that in pursuant to the aforesaid observations of this Court, the Respondent no.1 called upon Respondent no.2 to make appropriate reversion orders. Finally, by office order No.163 of 2012, the Petitioners were directed to be reverted to the respective

posts. The details of reversions vis-a-vis Petitioners have been mentioned hereinabove. The Petitioners thereafter made a representation to the Registrar General of this Court protesting the order dated 31st August 2012. The Petitioners were intimated about rejection of said representation by communication dated 10th December 2012 issued by Respondent no.2. However, no reasons were assigned for rejection.

9. The Petitioners have challenged the order dated 31st August 2012 whereby Petitioners were reverted from their promotional posts to the earlier posts held by them, as stated hereinabove.

10. Mr.Mihir Desai, learned Senior Advocate representing the Petitioners in all the petitions, has raised several issues challenging the impugned order dated 31st August 2012. Although Petitioners had challenged the validity of Rule 4 of Maharashtra Family Court (Recruitment to the Non-Gazetted Posts) Rules, 2002 (hereinafter referred to as "Rules of 2002" for the sake of brevity) being unconstitutional to the extent that it disallows promotion to the posts of Interpreters and Cashiers to the posts specified in Rule 4, however, vide order dated 6th December 2016, it was recorded that Petitioners are not challenging the said Rule 4 and would restrict their challenge to the reversion of Petitioners from the posts they were holding to the one they are now working.

11. Learned counsel for Petitioners submitted that impugned order is violative of principles of natural justice. It was also contended that the order is contrary to Rules 4,5 and 7 of the Rules of 2002. He

further submitted that the representations of the Petitioners were rejected without assigning any reasons.

12. Learned counsel Mr.Kiran Bapat for Respondents countered the submissions made by the Petitioners. It was submitted that the promotions/ appointments of the Petitioners were contrary to the Rules of 2002 and, therefore, they were required to be reverted. It was further submitted that the decision was taken in pursuant to the directions issued by the Division Bench of this Court vide order dated 21st March 2011. He submitted that there is no violation of principles of natural justice. He also submitted that the impugned order does not call for interference and the petitions are devoid of any merit.

13. We are not advertent to all contentions raised by the respective parties. We are inclined to dispose of this petition on the basis of first submission canvassed by learned counsel for Petitioners, that the order dated 31st August 2012 is violative of principles of natural justice, as the same was passed without giving hearing to the Petitioners. Learned counsel for Petitioners submitted that the Petitioners were holding the posts to which they were promoted for a long period of time. He submitted that without notice to the Petitioners, the impugned order was passed and all of a sudden they were reverted to the posts, as stated hereinabove. He, therefore, submitted that reversion has caused grave prejudice to the Petitioners and they ought to have been heard by the authority before taking such a drastic decision. He submitted that the case of Petitioner in Writ Petition No.2575 of 2010 in which directions were

given by this court, was based on a different facts. Although the Court had directed that an inquiry should be conducted, there was no observation that the Petitioners were promoted without following the provisions of law and that they are required to be reverted. The observations of the Court were based on the submissions made by learned counsel for Petitioner therein that three other personnel are promoted from the posts of Interpreters to the posts of Superintendent/Shirestedar. He submitted that the order of reversion ought not to have been passed without giving the Petitioners an opportunity to present their case. He submitted that the Petitioners would have made an endeavour to point out to the authorities that their case is distinct from the Petitioner in Writ Petition No.2575 of 2010, or that the Rules are not applicable to the Petitioners.

14. Learned counsel for Petitioners placed reliance upon a decision of Supreme Court in case of **M.S.Usmani and others Vs. Union of India and others**¹. In the said decision, it was observed by Apex Court that the department, after a lapse of long period from the date of promotion in higher scale, reverted the appointees to their original posts with bottom seniority, without affording any opportunity. In such circumstances, the order of reversion was held unjust and illegal and violative of principles of natural justice.

15. Learned counsel for Petitioners also placed reliance upon another decision of Apex Court in case of **State of West Bengal and others Vs. Debasish Mukherjee and others**². In the said decision,

1 (1995)2-SCC-377

2 (2011)14-SCC-187

the Apex Court had observed that in a democracy governed by rule of law, where arbitrariness in any form is eschewed, no government or authority has right to do whatever it pleases. Where the rule of law prevails, there is nothing like unfettered discretion or unaccountable action. Even prerogative power is subject to judicial review, but to a very limited extent. The extent, depth and intensity of judicial review may depend upon the subject matter of judicial review.

16. Learned counsel for Petitioners, therefore, contended that the order dated 31st August 2012 deserves to be set aside. He submitted that the Petitioners may be afforded an opportunity to present their say before the concerned authority by setting aside the impugned order.

17. Learned counsel for Respondents submitted that the impugned order is not violative of principles of natural justice. The said order was passed in compliance of the directions issued by this Court in Writ Petition No.2575 of 2010, as stated above. The Petitioners had no right to hold the posts to which they were promoted, being contrary to the Rules of 2002 and in such an eventuality, the question of giving any hearing to the Petitioners does not arise. The authorities have corrected the error committed by promoting the Petitioners, which does not accrue any right of hearing to the Petitioners. He relied upon the decision of Apex Court in case of **Punjab Electricity Board and another Vs. Baldev Singh**³. In the said decision, it was observed that in the facts and circumstances of

3 (1998)5-SCC-450

the case, the question of giving an opportunity of hearing to the Plaintiff therein before passing the impugned order, does not arise, since the Plaintiff's appointment/promotion was on ad-hoc basis and the higher authorities directed to discontinue such ad-hoc appointment. Therefore, the competent authority passed the impugned order posting the Plaintiff against the substantive post of Charge-1. It was further observed that Plaintiff therein had not acquired any right to the post of of Assistant Lineman and the order in question cannot be held to be penal in nature. In that view of the matter, the Apex Court observed that the question of giving an opportunity of being heard does not arise.

18. On hearing both the sides and on perusing the documents on record, we are of the opinion that the impugned order dated 31st August 2012 is violative of principles of natural justice. The Petitioners were promoted/appointed to the respective promotional posts and they were holding the said posts for a long period of time. Suddenly they were intimated that they were reverted to the earlier posts. The directions issued by this Court in Writ Petition No.2575 of 2010 were to conduct an inquiry as to how the appointments of ineligible persons were made to the posts of Superintendent/Shirestedar in the Family Court. The said directions were issued in light of the submissions made by Petitioner in the said writ petition (Priti Padwal) that other persons who were similarly placed, are being promoted to the posts of Shirestedar/Superintendent. The Family Court was, therefore, directed to take corrective measures. The order of this Court cannot be interpreted to the extent that no opportunity of hearing be given to the Petitioners herein while taking

corrective steps. The enquiry as directed by this Court was apparently conducted by Respondents without hearing the Petitioners. The Petitioners could have been afforded an opportunity of being heard to contend that the case of Petitioner in Writ Petition No.2575 of 2010 was distinct or that the promotion of Petitioners is not in conflict with the Rules of 2002 or any other contention which they deem fit and proper. Petitioner in Writ Petition No.202 of 2013 was promoted as a Cashier on 17th September 2004 and was reverted as an Interpreter on 31st August 2012. Petitioner in Writ Petition No.203 of 2012 was promoted as Shirestedar on 17th September 2004. Petitioner in Writ Petition No.204 of 2013 was promoted as Shirestedar on 26th November 2007 and Petitioner in Writ Petition No.205 of 2013 was promoted as Assistant Shirestedar on 27th April 1995 and on 25th August 2002 was promoted as Superintendent Shirestedar. They were all reverted to the posts of Interpreters on 31st August 2012. In the light of the observations of Apex Court in the judgments relied upon by learned counsel for Petitioners, an opportunity of being heard ought to have been afforded to the Petitioners before issuing the order dated 31st August 2012. In the decision relied upon by the learned counsel for Respondents, the Plaintiff had filed a suit challenging the order of termination on the ground that no opportunity of hearing was given to him before issuance of the said order. The Defendant/Electricity Board, who had preferred the appeal before the Apex Court, had contended that the Plaintiff's adjustment as Assistant Lineman was purely on ad-hoc basis and when he was ordered to work as Charge-I mate, which is the substantive post, question of giving an opportunity of hearing does not arise. It was also contended that

ever since he was posted as Charge-I mate, he had remained absent and did not assume the charge. The Apex Court has apparently made the observations as stated in the relevant paragraph in the light of these factual aspects.

19. We are, therefore, of the opinion that the Respondents ought to have given hearing to the Petitioners in the subject matter of their reversion to the earlier posts. It is noted that the order dated 31st August 2012 has already come into effect and Petitioners are already reverted to their earlier posts and are working on the said posts. Therefore, we are not setting aside the impugned order or granting stay to the said order. However, on hearing the Petitioners, it would be open to the Respondents to recall the order dated 31st August 2012. We have noted that in pursuant to the directions issued by this Court vide order dated 23rd March 2011, the Respondent no.2 had forwarded communication dated 6th June 2012 to Respondent no.1 stating that the Petitioners were reverted to the earlier posts in consonance with directions issued in order dated 23rd March 2011 passed by this Court in Writ Petition No.2575 of 2010. Learned counsel for Respondent nos.1 and 2 has, however, clarified that communication dated 6th June 2012 was placed before Respondent no.1 only by way of an intimation and not for confirmation of the decision of reversion.

20. We, therefore, pass following order :

(a) Respondent no.2 is directed to afford an opportunity of hearing to the Petitioners in respect to the subject matter of reverting them to the earlier posts;

(b) The Petitioners are directed to appear before Respondent no.2 or any other authority as may be indicated by Respondent no.2, on 10th April 2017 and the said authority may afford hearing to the Petitioners qua the inquiry of reverting them;

(c) The Respondents would conduct the hearing in respect to the subject matter of reversion of posts held by Petitioners, uninfluenced by its earlier decision dated 31st August 2012 and would take appropriate decision in accordance with law. The Respondents are at liberty to recall the order dated 31st August 2012;

(d) The Respondents are directed to complete the hearing and take appropriate decision with regard to the subject matter of these petitions, within a period of eight weeks from the date of appearance of Petitioners before the concerned authority;

(e) Writ Petition Nos.202/2013, 203/2013, 204/2013 and 205/2013 stand disposed of in above terms, with no order as to costs.

(PRAKASH D. NAIK, J.)

(SHANTANU S. KEMKAR, J.)

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