IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10780 OF 2017

The State of Maharashtra & Ors. .. Petitioners

Versus

Ganesh Gopalrao Patil .. Respondent

WITH
WRIT PETITION NO. 10782 OF 2017

The State of Maharashtra & Ors. .. Petitioners

Versus

Sanjiv Rangnath Kadam .. Respondent

WITH
WRIT PETITION NO. 10784 OF 2017

The State of Maharashtra & Ors. .. Petitioners

Versus

Prakash Dagdu Bharambe .. Respondent

WITH
WRIT PETITION NO. 10792 OF 2017

The State of Maharashtra & Ors. .. Petitioners

Versus

Vilas Shambhai Patil .. Respondent

WITH
WRIT PETITION NO. 10781 OF 2017

The State of Maharashtra & Ors. .. Petitioners

Versus

Uttam Kashiram Patil .. Respondent

WITH
WRIT PETITION NO. 10783 OF 2017

The State of Maharashtra & Ors. .. Petitioners

Versus

Prakesh Dhadku Bhadane .. Respondent

Mr.S.P.Sonpawale, AGP for the petitioners.
Mr.Arvind Deshmukh, Advocate for the respondents.

CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE,JJ.
DATED : 04.10.2018

P.C. :-

1. Present respondents had filed Original Application before the Maharashtra Administrative Tribunal seeking deemed date of promotion in the cadre of

Class-II. According to the respondents, juniors to the respondents were promoted and the same date needs to be given to them. The Maharashtra Administrative Tribunal allowed the Original Applications and directed present petitioners to consider the cases of the present respondents for promotion in the cadre of Class-II since the date on which their juniors were promoted to such post.

2. Mr.Sonpawale, learned AGP submits that the Tribunal has relied upon the date of promotion of one Mr.Kothawale. He was appointed as Agriculture Officer in different department. The respondents cannot claim same date. According to learned AGP, the seniority list published on 26.12.1995 has not been finalized. On 31.08.1995, no persons junior to the respondents were shown senior to the respondents. The Tribunal failed to consider that Mr.Kadam is appearing at Sr.No.67 and he was junior to other persons. The date of appointment of Mr. Kothawale as per the seniority list is 01.02.1980 and

his seniority is separately maintained for agriculture group of employees, who are directly appointed on merit basis in Class-III cadre as Agriculture Officer. Present respondents are from dairy technology and management group as Dairy Supervisor in Class-III cadre. Present respondents were first recommended for Class-III cadre on respective dates as Dairy Supervisor and thereafter promoted to the post of Dairy Manager Class-III from dairy technology and management group. By considering the seniority list, promotional benefit under time bound promotion scheme is awarded to these persons. Even with retrospective effect second time bound promotion benefit is given except to Mr.Kadam with retrospective effect on 01.10.2006. The Tribunal has failed to consider said aspect.

3. Mr.Deshmukh, learned Counsel for the respondents submits that the Tribunal has rightly considered all the aspects. The present petitioners admitted that some juniors to the present respondents have been promoted

earlier to the respondents. Earlier seniority list was quashed by the Tribunal in O.A. Nos.691 of 2006 and 420 of 2007 under order dated 17.06.2008. In the final seniority list published on 28.10.2010 seniority of the respondents have been changed and they have become more senior. Some juniors have been promoted earlier to respondents. The Tribunal has rightly considered the same. Learned Counsel also relies on the recruitment rules dated 10.02.1995.

4. We have considered the submissions canvassed by the learned Counsel for the respective parties. The respondents, it appears, were appointed as Supervisors and thereafter were posted as Shift Manager, Class-III, as mentioned in Schedule “A”. Learned Counsel relies on Schedule-8 of the Rules. We have considered the submissions. It is not disputed that the respondents herein were appointed as Supervisors and subsequently posted as Shift Managers, Class-III. As per the existing Dairy Development (Recruitment) Rules, 1995, the

appointment to the post in General State Service Class-II in Technical Group specified in Schedule-7, shall be made either by promotion of a suitable person on the basis of seniority subject to fitness amongst the persons holding posts of Class-III cadre specified in Schedule-8 having not less than three years continuous service in Class-III post specified in Schedule-8, in technical group in the department or by nomination.

5. In the present case, we are concerned with the appointment by promotion of Shift Manager and Agriculture Officer. Both find place in Schedule-8, Class-III posts. The respondents stake their claim to the class II post. The promotion to Class-II post from amongst persons holding Class-III cadre is purely on the basis of seniority subject to fitness. There is no dispute about the fitness of the respondents as they have been promoted. The only question is deemed date, the date when the juniors are promoted. The posts Shift Manager and Agricultural Officer both find place in Schedule-8.

Promotion from amongst persons from Schedule-8 has to be on the basis of seniority.

6. The Tribunal has observed that the present petitioners are admitting that the some juniors to the respondents have been promoted prior to the respondents and in the seniority list published on 28.10.2010, respondents are shown senior.

7. Considering the above, the order passed by the Tribunal directing present respondents to consider roster of the applicants for promotion in the cadre of Class-II since the date on which their junior are promoted to such posts does not suffer from any illegality. The Tribunal was also conscious of the fact that it would not be appropriate to grant financial benefit since first day and same has been restricted for three years prior to filing of the application.

8. In view of above, no case is made out for interference. The writ petitions are disposed of. No costs.

[S.M.GAVHANE,J.] **[S.V.GANGAPURWALA,J.]**

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