

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

WRIT PETITION NO. 1095 OF 2007

Van Shramik Sangh & Anr.	...Petitioners
Versus	
State of Maharashtra & Ors.	...Respondents

Mr. M. S. Topkar for Petitioners.
Mr. O.M. Kulkarni – AAGP for State - Respondent Nos. 1 to 6.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 15th MARCH 2018

ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] The petitioners challenge the judgment and order dated 28th September 2006 made by the Maharashtra Administrative Tribunal (MAT) dismissing Original Application No. 16 of 2006 instituted by them.

3] The case of the petitioners as articulated by Mr. M. S. Topkar, the learned counsel for the petitioners is that the petitioner no. 1 represents the Class IV employees of the Social Forestry Department and the petitioner no. 2 who is

a Class IV Mazoor working in the Social Forestry Department. By an executive order made in the year 1981, the earlier combined Departments of Social Forestry and Forest Department were bifurcated. However, by GR dated 28th October 1988, the Government, issued a direction for preparation of common seniority list in respect of Clerks and Accountants in the Social Forestry and the Forest Departments respectively. Similarly, under the orders of the MAT, a common seniority list in respect of Peons and Assistant Plantation Officers was prepared in respect of the two Departments. Similar common seniority list were also prepared in respect of Plantation Kotwals, again, in pursuance of the orders issued by the MAT. The petitioners, applied for similar relief of common seniority list of S.F. Mazoors in Social Forestry Department and Van Mazoors in Forest Department by instituting OA 16 of 2006. The petitioners pointed out that in absence of such common seniority list, the S.F. Mazoors in the Social Forestry Department are condemned to stagnate in the post of S.F. Mazoors. The petitioners pointed out that such S.F. Mazoors are neither beneficiaries of any promotion nor benefits of Time Bound Promotional Schemes (TBPS), Assured Career

Progression Scheme (ACPS). They point out that if common seniority lists have been prepared as regards several employees of the two Departments despite their bifurcations, there is no valid reason to follow any different course of action in so far as S. F. Mazoors and Van Mazoors employed in two Departments are concerned. The MAT by the impugned judgment and order has however dismissed OA 16 of 2006 instituted by the petitioners. Hence, the present petition.

4] Mr. Topkar, after narrating the aforesaid facts submits that there is no cogent reason for not preparing a common seniority list of S.F. Mazoors in the Social Forestry Department and Van Mazoors in the Forest Department. He points out that such common seniority list have been prepared in respect of Clerks, Accountants, Peons, Assistant Plantation Officers and Plantation Kotwal of the two Departments. The MAT, in several cases, has itself directed the preparation of such common seniority list taking into consideration the fact that there were no promotional avenues or other benefits available to the employees of the Social Forestry Department as compared to their counter

parts in the Forest Department. Mr. Topkar submits that there was absolutely no case made out to adopt any different yardstick in so far as S. F. Mazoors or other Class IV employees in the Social Forestry Department are concerned. He submits that the S.F. Mazoors hold regular employment and denial of the promotional avenues or even benefits of scheme like TBPS or ACPS, violates Articles 14 and 16 of the Constitution of India. For all these reasons, Mr. Topkar submits that the impugned judgment and order dated 28th September 2006 made by the MAT may be set aside and the reliefs applied for by the petitioners in OA 16 of 2006 be granted.

5] Mr. Kulkarni, the learned AAGP submits that the Safai Mazoors in the Social Forestry Department were in fact, casual labourers. He points out that they have received the benefit of regularization in pursuance of the court orders made before the decision of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka & Ors. vs. Umadevi (3) & Ors.**¹ He submits that since there were no regular posts available, supernumerary posts were created so as to accommodate regularization of Safai Mazoors in

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Social Forestry Department. He submits that this was not the position in so far as Clerks, Accountants, Peons etc. with whom the Safai Mazoors seek parity. He submits that on account of this distinguishing feature, it was not possible to have the common seniority list. He submits that the MAT has correctly appreciated this position and dismissed OA 16 of 2006 instituted by the petitioners. He submits that there is no jurisdictional error or perversity of approach in the view taken by the MAT. He therefore submits that there is no case made out to warrant interference of the impugned judgment and order.

6] Rival contentions now fall for our determination.

7] In the present case, there is unimpeachable material on record which establishes that Safai Mazoors were initially engaged as casual labourers. Thereafter, by virtue of court / tribunal orders, their services were regularized. However, since, there were no sanctioned posts, supernumerary posts were created in order to effect regularization. In contrast, the posts of Van Mazoors in Forest Department were not supernumerary posts. Similarly, the posts of Clerks,

Accountants, Assistant Plantation Officers, Plantation Kotwals, with whom, the Safai Mazoors claim parity were also not supernumerary posts. In such circumstances, we are unable to fault the view taken by the MAT. There is a difference between the service conditions of Safai Mazoors in Social Forestry Department and Van Mazoors in Forest Department. There is also difference between the basic service conditions of Safai Mazoors in Social Forestry Department as also to the posts with which the petitioners claim parity. On basis of such distinguishing feature, we cannot fault the view taken by the MAT in denying the reliefs claimed for by the petitioners in OA 16 of 2006.

8] As it is, no employees can claim as a matter of right that there should be a common seniority list as between themselves and possibly corresponding posts in some other departments. However, taking into consideration, the manner in which the two Departments were created, directions have been issued from time to time for creation of common seniority lists. This was on the basis even otherwise the employees of certain posts from the Social Forestry Department were eligible for appointment in the

Forest Department. The position of S. F. Mazoors is however quite different and therefore, there is no reason to fault the view taken by the MAT.

9] In so far as the grievance of the petitioners that Safai Mazoors, though regularly appointed, have no promotional avenues or further that the benefits of either TBPS or ACPS have also not been extended to them, we find that although such a grievance was raised by the petitioners in OA 16 of 2006, the same has not been considered by the MAT. However, rather than remand the matter to the MAT for consideration of this grievance, we are of the opinion that it will be appropriate if the petitioners or persons similarly placed are granted an opportunity to make a detailed representation to the respondents seeking for such reliefs.

10] Therefore, although, we see no reason to interfere with the judgment and order to the extent it denies to the petitioners relief of common seniority with Van Mazoors in the Forest Department, we grant liberty to the petitioners or persons similarly placed to make a detailed representation to the respondents for seeking reliefs in matter of their

grievances relating to lack of promotional avenues in the Social Forestry Department itself and/or denial of benefits like TBPS, ACPS etc. If such representation is made within a period of eight weeks from today, we direct the respondents to dispose of the same in accordance with law on its own merits and as expeditiously as possible and in any case within a period of eight weeks thereafter. In case, the petitioners or the other similarly placed employees are aggrieved by the said decision, which is required to be communicated to them by the respondents, they shall be at liberty to take out appropriate proceedings before appropriate forum to question the same.

11] The Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA