

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

**REVIEW PETITION NO. 17 OF 2018
IN
WRIT PETITION NO. 9291 OF 2016**

**WITH
REVIEW PETITION NO. 18 OF 2018
IN
WRIT PETITION NO. 8859 OF 2016**

**WITH
REVIEW PETITION NO. 19 OF 2018
IN
WRIT PETITION NO. 8860 OF 2016**

Sudhakar Baburao Nangnure

... Petitioner

Versus

Noreshwar Raghunathrao Shende and others ... Respondents

.....

Mr. S. B. Talekar i/b Sidheshwar Namdev Biradar for the
Petitioner.

Mr. Rafiq Dada, Senior Advocate along with Mr. N.V.
Bandiwadekar i/b Sagar Ashok Mane for the Respondent.

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

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**CORAM : SMT. V. K. TAHILRAMANI ACTING CJ &
M. S. KARNIK, J.**

RESERVED ON : 6th MARCH, 2018

PRONOUNCED ON: 21st MARCH, 2018

ORDER [PER M. S. KARNIK, J.]:

1. Inviting our attention to the order dated 12/12/2017 passed
by the Hon'ble Supreme Court, learned Counsel for the Petitioner

urged that the present review petitions are filed as the issue of catch-up though was raised before this Court, the same has not been considered.

2. Learned Counsel for the review petitioner once again placed reliance on the decision of the Apex Court in the case of ***Ajit Singh and others (II) Vs. State of Punjab and others*** reported in ***(1999) 7 SCC 209*** [paras 72, 77, 81] ; ***S. Paneer Selvam and others Vs. State of Tamil Nadu and others*** reported in ***(2015) 10 SCC 292***, more particularly paras 26, 31, 34, 36 and 37; ***B. K. Pavitra and others Vs. Union of India and others*** reported in ***(2017) 4 SCC 620*** [paras 28, 29 and 30].

3. In para 24 (K) of our judgment and order dated 16/11/2017 we have recorded the submission of the learned Senior Counsel who had appeared for the review petitioner as regards the catch-up rule.

4. Learned Senior Counsel appearing for Respondent No.1 invited our attention to para 36 of the decision of the Apex Court in the case of ***S. Paneer Selvam (supra)*** which reads thus:

“36. In the absence of any provision for consequential seniority in the rules, the “catch-up rule” will be applicable and the roster-point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, general candidates will regain their seniority. The Division Bench appears to have proceeded on an erroneous footing that Article 16(4-A) of the Constitution of India automatically gives the consequential seniority in addition to accelerated promotion to the roster-point promotees and the judgment of the Division Bench cannot be sustained.”

He further invited our attention to para 30 of our order wherein the relevant provisions of the reservation Act and the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, are quoted. Rule 3(f) defines is “Fortuitous Appointment”. Rule 4 provides for the General Principles of Seniority.

5. We have arrived at a finding that the promotion of Respondent No.1 cannot be said to be fortuitous having regard to the definition of Rule 3(f) of the Regulation of Seniority Rules. Rule 4 is categorical, inasmuch as it clearly provides that subject to

the other provisions of the rules, the seniority of a Government servant in any post, cadre or service shall ordinarily be determined on the length of his continuous service therein.

6. In our order, we have come to the conclusion that the Tribunal was not justified in proceeding on the footing that the appointment of Respondent No.1 is “fortuitous appointment”.

7. We therefore do not find any error apparent on the face of record to entertain the Review Petitions. The same are accordingly dismissed with no order as to costs.

(M. S. KARNIK, J.)

(SMT. V. K. TAHILRAMANI, ACJ.)