

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

WRIT PETITION (ST) NO. 2914 OF 2018

Shri. Ganesh C. Dalvi ...Petitioner
Versus
Union of India and ors. ...Respondents

Mr. Vicky A. Nagrani for the Petitioner.
Mr. Neel Helekar a/w. Mr. D.R. Shah for the
Respondents/UOI .

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

DATE : 15th MARCH 2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of
learned counsel for the parties, Rule is made returnable
forthwith.

3] The petitioner challenges the judgment and order
dated 30th November 2017, by which, the Central
Administrative Tribunal (CAT), Mumbai has dismissed the
petitioner's O.A. No. 210/00790/2016, in which, the
petitioner had applied for the following substantive relief:

“a. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same direct the Respondents to allow the Applicant to continue as GDS, BPM wakas till the regular selected candidate is not appointed purely on provisional basis in the light of order passed by this Hon'ble Tribunal in original Application NO.588 of 2009.”

4] Mr. Vicky Nagrani, learned counsel for the petitioner, submits that in the village Wakas, Karjat (Raigad District) there are two posts to Man Postal Service, i.e., G.D.S. (Gramin Dak Sevak) B.P.M. (Branch Post Master) and G.D.S. (Gram Dak Sevak) M.D. (Mail Delivery). He submits that the petitioner who belongs to the Other Backward Community (OBC) was appointed as B.P.M. and continues to hold the said post till date. Mr. Nagrani submits that the respondents have now purported to make an appointment to the post of M.D. and on the said basis seek to discontinue the appointment of the petitioner. Mr. Nagrani submits that in O.A. No. 588 of 2009 instituted by the petitioner, there is already a direction that the appointment of the petitioner should not be disturbed until regular appointment is made to the post of B.P.M. Mr. Nagrani submits that admittedly no regular appointment has at all been made to the post of B.P.M.. Therefore, on the basis of

the order made by the CAT in O.A. No. 588 of 2009 and even otherwise, the respondents are not entitled to discontinue the petitioner's services as a B.P.M.

5] Mr. Nagrani submits that the relief of regularization have been denied to the petitioner earlier on the basis that as post of B.P.M. was as post reserved for the members of SC/ST. However, since such posts has now been de-reserved or in any case, since now the appointment is proposed to be made by treating the post as an unreserved post, the petitioner, is entitled to re-visit the issue of his regularization and therefore, this Court ought to issue directions for regularization of the petitioner's services to the post of B.P.M.

6] Mr. Nagrani submits that since the CAT while disposing of O.A. No. 210/00790/2016 has failed to take into consideration the aforesaid aspect, the impugned judgment and order dated 30th November 2017 made by the CAT warrants interference.

7] Mr. Helekar, learned counsel for the respondents, submits that the petitioner, has no right to post of which the petitioner purports to hold on despite termination of his services. Mr. Helekar points out that the petitioner's claim for regularization has not only been rejected by the respondents. Further, such rejection has been confirmed by the CAT in the earlier round of litigation. Mr. Helekar points out that the petitioner has not even challenged the earlier orders passed by the CAT on the aspect of regularization, therefore, the petitioner, is not entitled to re-agitate such issues in the present petition. Mr. Helekar points out that even in O.A. No. 210/00790/2016, the only relief claimed by the petitioner was for a direction to allow the petitioner to continue as G.D.S., B.P.M. Wakas till the regular selected candidate is appointed. Mr. Helekar submits that the petitioner is therefore, not entitled to broaden the controversy originally raised before the CAT in O.A. No. 210/00790/2016.

8] Mr. Helekar points out that regular appointment has been made to the post of G.D.S., M.D. He points out that in terms of the policy of the respondents consequent upon

such regular appointment being made, the regular appointee can be required to discharge the duties of G.D.S., B.P.M., in addition to his own duties as G.D.S., M.D.. Therefore, there is absolutely no necessity to continue the petitioner as G.D.S., B.P.M. at Wakas. Mr. Helekar submits that the CAT has correctly appreciated this position and since there is no jurisdictional error, this petition may be dismissed with costs.

9] There is merit in the submission of Mr. Helekar that the petitioner cannot be permitted to broaden the controversy in this petition. In O.A. No. 210/00790/2016, in which, the impugned judgment and order came to be passed, as noted earlier, only substantive relief claimed by the petitioner was for a direction to allow the petitioner to continue as G.D.S., B.P.M. Wakas till the regular selected candidate is appointed on provisional basis in the light of the order passed by the tribunal in O.A. No. 588 of 2009. At this stage, therefore, it will not be appropriate for us to consider the submissions of Mr. Nagrani on the issue of the petitioner's regularization to the post of G.D.S., B.P.M.. In case, the petitioner, has any grievances in this regard,

then, the petitioner, may raise such grievances before the appropriate forum in accordance with law. But however, we make it clear that we are neither inclined to re-visit this issue ourselves nor should our observations be construed as some sort of liberty to the petitioners to reopen any concluded issues, if indeed, such issues have really been concluded. In short, we make it clear that we are not adjudicating upon this issue, therefore, all contentions of all parties are kept open.

10] Admittedly, the respondents have not yet made any regular appointment to the post of G.D.S., B.P.M. Wakas. Mr. Helekar, learned counsel for the respondents, submits that the regular selection process has commenced, on-line applications have already been invited and the same are being considered in accordance with law. From this, it is clear that at least as yet, there is no regular appointment made to the post of G.D.S., B.P.M. at Wakas.

11] It is settled position in law that normally, one ad-hoc appointment is not to be substituted by another ad-hoc appointment. To the same effect are the directions in O.A.

No. 588 of 2009 to which both the petitioner as well as the respondents were parties.

12] Taking into consideration this position, we feel that there is no reason to deny the petitioner the limited relief claimed by him in O.A. No. 210/00790/2016, i.e., to allow him to continue as G.D.S., B.P.M. Wakas on purely provisional basis till the regularly selected candidates is appointed to the post of G.D.S., B.P.M. at Wakas.

13] This petition is therefore, partly allowed. The respondents are directed to allow the petitioner to continue as G.D.S., B.P.M. at Wakas as purely on provisional basis till regular appointment is made to the post of G.D.S., B.P.M. at Wakas. The impugned order is modified accordingly.

14] Rule is disposed of in the aforesaid terms. There shall however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)