

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

WRIT PETITION NO. 2088 OF 2017

The Chief Conservator of Forest
and anr.

...Petitioners

Versus

Shri. Damu D. Wargude

...Respondent

WITH

WRIT PETITION NO. 2119 OF 2017

The Chief Conservator of Forest
and anr.

...Petitioners

Versus

Shri. Sanjay L. Hamre

...Respondent

Appearance in both the petitions

Mr. C.P. Yadav, AGP for the State / Petitioners.

Mr. B.A. Bandiwadekar a/w. Mr. G.A. Bandiwadekar for the
Respondent.

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

DATE : 18.07.2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

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

3] Since common issues of law and fact arise in these petitions, they are being disposed of by common judgment and order. In fact, the challenge in both these petitions is to the common judgment and order dated 12.08.2016 made by the Maharashtra Administrative Tribunal (MAT), Mumbai allowing O.A. Nos. 565 and 707 of 2015 instituted by the respondent in these two petitions, therefore, it is only appropriate that both these petitions are disposed of by common judgment and order.

4] Mr. Yadav, learned AGP for the petitioners - State, submits that the impugned common judgment and order proceeds on the basis of misreading of Exhibit-D in O.A. No. 565 of 2015 at page 17 of the paper-book. He points out that as per the said document, it was quite clear that there were no reserved posts in favour of Scheduled Tribe (ST) category. He points out that the said document indicates that as against the total number of reserved posts available in the cadre, i.e., 32 posts corresponding to 7% reservation, already 35 posts had been filled up. Mr. Yadav therefore submits that the document at Exhibit-D at the relevant column, had indicated that the posts available in respect of

ST category were (-3), which means that three posts were in excess and consequently, there was no scope for providing any further reservation for the ST category in the cadre of Foresters.

5] Mr. Yadav points out that the MAT, by misconstruing this document, i.e., Exhibit-D has held that 2 posts were in fact reserved for ST category and on the said basis, ordered the promotion of the respondents under the scheme of Limited Departmental Competitive Examination (LDCE). Mr. Yadav submits that this is an error apparent on the face of record and therefore, the impugned judgment and order deserves to be set aside.

6] Mr. B.A. Bandiwadekar, learned counsel for the respondent in both the petitions, submits that the MAT has correctly construed the document at Exhibit-D. He submits that in terms of this document, it is very apparent that at least 3 posts were reserved for ST category. He points out that since the respondents, on merits, were included within the first 3 positions insofar as ST category candidates are concerned, the respondents were entitled to be promoted

under the LDCE category as Foresters. Mr. Bandiwadekar submits that there is no error, much less, any error on the face of record so as to warrant interference of the impugned judgment and order.

7] Mr. Bandiwadekar attempted to produce the covering letter as well as Annexure-II, which he submits have to be read in entirety while construing Annexure -D upon which the MAT has relied to make the impugned order. Mr. Bandiwadekar submits that from this also it is quite clear that 3 posts had in fact been reserved for the ST category. Mr. Bandiwadekar submits that there is no dispute that the respondents belong to ST category and therefore, there is no infirmity in the impugned judgment and order.

8] In the alternate, Mr. Bandiwadekar submitted that the matter may be remanded to the MAT for reconsideration, in case, this court is of the opinion that the MAT has misconstrued the document at Exhibit-D.

9] The rival contentions now fall for our determination.

10] In the present case, we are concerned with the promotions to fill-up 25% of vacancies in the cadre of Foresters by resorting to LDCE held in the year 2014. In the notice announcing LDCE, there was no reference to the number of posts to be filled-up in the cadre of Foresters. The Scheme merely provides that 25% of vacancies in the cadre of Foresters can be filled-up under the Scheme.

11] The respondents, who were Forest Guards, answered the LDCE and merit list was published by the department on 1.6.2014. From the merit list, it is apparent that no separate merit list have been prepared categorywise. This means that there was no separate merit list for general category candidates and reserved category candidates. The names of the two respondents appeared against the candidate Nos.11237, 11238 and their circle rank is indicated as 31 and 21 respectively.

12] The respondents, relying upon a truncated document, which is they styled as Exhibit-D annexed to O.A. No. 565 of 2015 at page 17 of the paper book, urge that there were 3 reserved vacancies insofar as ST category is concerned,

therefore, the respondents, should have been promoted against such reserved vacancies since they belonged to the ST category and they are included within the merit-list at the first two positions, insofar as the reserved category candidates are concerned. For this purpose, the respondents themselves annexed to their O.As., the merit list prepared by them, though, may be on the basis of their analysis of the results published by the department.

13] The MAT, on the basis of this document at Exhibit - D has concluded that 3 posts were indeed reserved for ST category and on such basis, directed the promotion of the respondents to the posts of Forester under the LDCE Scheme. Mr. Yadav, learned AGP, submits that even though, the entire position was clarified by the State in the responses filed to the O.As., such clarifications were not even considered while making the impugned judgment and order.

14] The document at Exhibit-D is now found at pages 42 as well as 63 of the paper book in Writ petition No. 2088 of 2017. Since, there was some confusion, we have perused

O.A. No. 565 of 2015, copy of which, was handed in by the learned AGP and from the same, it is evident that Exhibit-D which is referred to by the MAT in the impugned judgment and order is the document at page 42 and 63 in the paper book in Writ Petition No. 2088 of 2017.

15] The document at Exhibit-D indicates the positions of reservation. Insofar as the ST category is concerned, percentage of reservation prescribed is 7%. This document indicates the total cadre and strength of Foresters is 461. The document, therefore, indicates that on the basis of percentage of reservation, 32 posts, which corresponding to 7%, have to be reserved for the ST category. The document further indicates that on 30.4.2015, there were 35 Foresters belonging to the ST category in the Foresters cadre. For this reason, the document indicates that as on 30.4.2015 the number of vacant posts of Foresters in the category reserved for ST is (-3).

16] Mr. Yadav explains that (-3) means and implies that there are already 3 posts held by the members of ST category in excess of prescribed percentage of reservation

of 7%. There is no good reason as to why such explanation cannot be accepted. Besides, the State, in its reply before the MAT has also in the present petition, asserted that this is the correct and factual position. The fact that the cadre strength is 461 is not disputed. The fact that the percentage of reservations for ST category is 7% is also not disputed. This means that the posts reserved for ST category has to be computed at 32 posts. The document at Exhibit-D, clearly indicates that as against 32 posts meant to be reserved for the members of the ST category, there are already 35 members belonging to ST category in the cadre. In such circumstances, the explanation that the figure (-3) in the document at Exhibit -D implies that there are 3 posts held by the members of the ST category in excess of prescribed percentage of reservation of 7% will have to be accepted. The MAT, without examining such aspects was therefore, not right in proceeding on the basis that 3 posts had in fact been reserved for the members of the ST category and on such basis, ordering the promotions of the respondents.

17] In the document at Exhibit-D, there is clear reference to almost 35 incumbents in the post of Foresters belonging

to ST category, when, as per percentage of reservation provided, this should have been 32 posts. The document, therefore, indicates that there are 3 excess candidates. Therefore, there is no question of any further ST candidates insisting upon reservation in the cadre of Foresters until, the position of Foresters belonging to the ST category undergoes variation. We, therefore, agree with Mr. Yadav that there is misreading of the document at Exhibit-D, which misreading vitiates the impugned judgment and order.

18] Mr. Bandiwadekar tried to support the impugned judgment and order by making reference to covering letter dated 14.6.2014 and Annexure-II, between which Exhibit-D finds place. In first place, the respondents, who had filed O.As., were duty bound to place the entire document on record. Secondly, it is quite clear that the entire document was not before the MAT, when the impugned judgment and order was made. The impugned judgment and order is only based upon the document at Exhibit-D, which is only a part of the annexure to the communication dated 14.6.2014. For these reasons, we might have been justified in not looking

at the covering letter dated 14.6.2014 and Annexure - II thereto.

19] However, in the interests of justice, we have looked into the documents handed in by Mr. Bandiwadekar at the time of arguments. From the perusal of covering letter dated 14.6.2014, we find that the same is a covering letter addressed by Chief Conservator of Forest to the Principal Chief Conservator of Forest. In that sense, this is only an internal document and it is possible that the respondents did not annex the entire document because the respondents might have had to explain the manner in which they obtained the same.

20] Even after examination of the covering letter dated 14.6.2014 and Annexure -II thereto, it is quite clear that the Chief Conservator of Forest, had in no unambiguous terms informed the Principal Chief Conservator of Forest that there were no vacancies in the reserved ST category, which could be filled in under the LDCE Scheme. Therefore, even upon examination of the entire document, we do not see how any

conclusion can be drawn that there were in fact 3 posts reserved for the ST category.

21] The petitioners, who were respondents before the MAT had filed affidavits explaining the position of the facts and asserting that there were no vacancies, insofar as the reserved ST categories are concerned in the cadre of Foresters. They have stated that the candidatures of the respondents in this petition were therefore, considered for promotion to the open categories. The result published indicated a common merit list and the respondents were not justified to formulate some merit list on their own. From the perusal of the impugned judgment and order, it appears that all these aspects have not been considered.

22] In view of above, the impugned judgment and order warrants interference. The impugned judgment and order is therefore, set aside. Rule is made absolute in terms of prayer clause (a) in each of the petition.

23] Mr. Yadav points out that since the respondents had instituted contempt petitions before the MAT, the

petitioners, without prejudice, to their rights and contentions in the present petitions had complied with the common impugned judgment and order. Now that the common impugned judgment and order has been set aside, needless to add that the petitioners shall be at liberty to make consequential order restoring the respondents to their former post of Forest Guards. However, taking into consideration the circumstance that the respondents may have actually worked as Foresters for some time, following the principles in case of ***State of Punjab and ors vs. Rafiq Mashih (White Washer) and ors. - (2015) 4 SCC 334***, we restrain the petitioners from recovering any excess payments from the respondents in both the petitions.

24] Rule in both the petitions is made absolute in the aforesaid terms. There shall, however, be no order as to costs.

25] All concerned to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

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Sherla

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page 12 of 12