IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1558 OF 2002

The State of Maharashtra ...Petitioner
Versus
Shri G. D. Sudke & Ors. ...Respondents

Mr. N. C. Walimbe – AGP for Petitioner – State.
Mr. Huzefa S. Khokawala i/b. M/s. Nankani & Associates for Respondent Nos. 1 to 30.

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

Date of Reserving the Judgment : 02 August 2018
Date of Pronouncing the Judgment : 07August 2018

JUDGMENT :

1] Heard the learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 20th July 2001 made by the Maharashtra Administrative Tribunal (MAT) in Original Application Nos. 184 of 2001 and 541 of 2001 instituted by some of the respondents.

3] The reasoning and the operative portion of the impugned judgment and order is contained in paragraphs 7 to 12, which read as follows :

“7. A common ground in both the cases is that the reserved category candidates have been enbloc shown senior to the applicants. It is contended by the applicants that the promotion of reserved category candidates and open candidates to the cadre of Sales Tax Officer Class I is through one event and therefore there is no justification for placing officers belonging to reserved category earlier to the officers belonging to open category.

8. It appears that the latest decision of Hon'ble Supreme Court viz. Ajit Sing and others (II) Vs. State of Punjab and others, 1999 Supreme Court Case (L. & S.) 1239 on the point of seniority of reserved category promotees vis-a-vis general category promotees, has not been taken into consideration. Hence redrawing a fresh seniority list of Class I will have to be ordered.

9. The applicants in O.A. No. 541/2001 have also made a grievance that apart from 71 persons in reserved category shown in Class I list as senior to them, 41 persons belonging to open/general category are also shown senior to them. These 41 Sales Tax Officers Class II of the open/general category are promotees to posts of Sales Tax Officers Class II from the lower cadre of Sales Tax Inspector. In this connection it need only to be pointed out to the said applicants who have categorically admitted that the seniority list of Class II is correct that the promotees from the lower cadre join the higher cadre, they loose their birthmarks and in the higher cadre the said promotees and direct recruits of that cadre from one class, and they are to be treated as such when all are considered for still higher cadre.

10. Similarly, it is curious to note that the applicants in O.A. No. 184/2001 while basing their entire claim on the seniority list (dated 11.10.2000) of Class II cadre, having raised an objection by making a statement in paragraph 6.7(d) that the final seniority list published by the Government on 11th October, 2000 does not give placement relating to 94 posts above the promotee officers and that in this seniority list finalized by the Government the placement to direct recruit officers in Class II have not been given to their earmarked quota. The remarks made earlier apply here as well. However, the respondents may consider the said point while redrawing the list.

11. The said applicants in O.A. No. 184/2000 have also sought a declaration that during the year 1982-83 the quota rule collapsed in Sales Tax Officer. Class I cadre, as creating certain number of posts in Class I cadre and abolishing equal number of posts in Class II cadre, did create an exigency before the Government to make promotions of 419 officers from lower cadre. But there is hardly any substance in this contention which we hereby reject. As regards the contention by way of an objection raised in paragraph 6.8 of O.A. No. 184/2001 above one single order for 419 promotees instead of applying caste quota rules to the split portions from 1982 to 1988, it may be stated that the same be considered in the light of the case laws such as Ajit Singh II above as also the Government Circulars if any, while redrawing the seniority list of Class I.

12. In the result, we hereby direct the Respondents to redraw the seniority list of Sales Tax Officers, Class I in the light of the above. The exercise be done within two months. With these directions both the Applications stand disposed off with no orders as to costs."

4] There is no clarity from the records as to whether the Rule in this petition has been served upon all the respondents, even though, the same was issued way back on 12th July 2004. That apart, there is no serious dispute that fresh seniority list as directed in the impugned judgment and order was in fact drawn out by the State and even acted upon. This means that on the basis of such re-drawn seniority list several promotions were effected and as the position now stands, several of promotee respondents have also retired from service on attaining the age of superannuation.

5] In the affidavit in reply dated 5th July 2004 filed by Mr. Shashank D. Mathane, the respondent no. 2, in the present petition, it is stated that several of the respondents depending upon their positions in the relevant seniority were promoted to the higher cadre and appointed as Deputy Commissioner of Sales Tax, Senior Assistant Commissioner of Sales Tax or Assistant Commissioner of Sales Tax as the case may be. The affidavit makes reference to several litigations in the matters of seniority pending or disposed of by the Tribunal, this Court as well as the Hon'ble Supreme Court. The affidavit also states that regularisation orders have been issued in respect of Sales Tax Officers Class I appointed between the years 1982-1991 on 28th February 2002. On basis of the same, the finalised seniority list in the cadre of Sales Tax Officer – Class I was also drawn on 28th February 2002.

6] All the aforesaid subsequent developments render it unnecessary to examine the challenge to the impugned judgment and order in any great details at this stage. Besides, we find that the MAT, in the impugned judgment and order had merely directed the State Government to comply with the rulings of the Hon'ble Supreme Court, which in any case, were binding upon the State Government. The role of the State Government in matters of *inter se* seniority disputes should really be a role akin to that of an *amicus curiae*. We have disposed of writ petition no. 6489 of 2000, which again involve disputes relating to seniority and promotion as between the officers of the Sales Tax.

7] Therefore, upon cumulative consideration of the aforesaid, we see no ground ground to interfere with the impugned judgment and order at this point of time. Rule is therefore discharged. There shall be no order as to costs.

(M.S. SONAK, J.) **(ACTING CHIEF JUSTICE)**

CHANDKA