

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 930 OF 2015
IN
WRIT PETITION NO. 10565 OF 2014

Kishore P. Mali .. Applicant

In the matter of :

Prashant Dattatraya Naoghare .. Petitioner

Vs.

State of Maharashtra and ors. .. Respondents

Mr.A.Y. Sakhare, Senior Advocate a/w Mr.A.V. Anturkar, Senior Advocate a/w Mr.Joel John Carlos, for the Applicant.

Mr.R.S.Apte, Senior Advocate a/w Mr.O.M. Kulkarni, AAGP for the State.

Mr.P.K. Dhakephalkar, Senior Advocate i/b Mr.J.G. Reddy (Aradwad), for the Petitioner in WP/7729/2013.

**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 11th JANUARY, 2018

ORDER (PER M.S.KARNIK, J.) :

1. The present Civil Application is at the instance of

original respondent No. 13. The applicant in Civil Application was recruited as Assistant Engineer Grade I in or around 1985. He was promoted to the rank of Executive Engineer on 25/07/1996. The State of Maharashtra published provisional seniority list in the cadre of Executive Engineer for the period 01/04/1990 to 31/03/1998 on 28/02/2000 wherein the applicant was placed in the seniority list. In OA 626 of 2009 filed before the Maharashtra Administrative Tribunal at Aurangabad, by order dated 08/10/2009, the Government was directed to publish a final seniority list by 12/05/2010. The final seniority list was published on 12/05/2010 excluding the name of the applicant. The applicant and similar situate Engineers filed OA 467/2010 and other connected matters. By judgment and order dated 25/04/2011, the Tribunal was pleased to quash and set aside the final seniority list dated 12/05/2010 with further direction to publish a revised provisional seniority list having regard to the judgment of the Apex Court in the direct recruits case.

2. According to the applicant, the respondent – State published a provisional seniority list dated 17/06/2011 in violation of the judgment and order dated 25/04/2011 passed by the Tribunal and also in violation of direct recruits case decided by the Apex Court. The applicant objected to the provisional seniority list by letter dated 29/06/2011. A final seniority list came to be published by the respondent – State on 28/02/2012. The applicant and other contesting respondents filed OA Nos. 246/258/292/275 of 2012 before the Tribunal. The Tribunal by its judgment and order dated 10/05/2013 was pleased to quash and set aside seniority list dated 28/02/2012. The order dated 10/05/2013 passed by the Tribunal was assailed by the petitioner in the Writ Petition filed at the Nagpur Bench of this Court and also by the State of Maharashtra by filing separate Petitions before this Court.

3. Learned Senior Counsel Shri Sakhare appearing for the applicant in the Civil Application and learned Senior Counsel Shri Anturkar supporting the Application invited our attention to

the interim order dated 24/10/2013 passed by this Court
relevant portion of which reads thus :

“1. The petitioner has filed the present application for directing the respondent – State Government to appoint the petitioner/applicant to the post of Superintending Engineer on the basis of the seniority list annexed along with the petition.

2. It is the contention of the petitioner/applicant that even if the seniority list, as directed by the Maharashtra Administrative Tribunal (MAT), is prepared, the petitioner can be considered for the post of Superintending Engineer in view of the vacancies available with the department. Undisputedly, the order passed by the MAT has not been stayed by this Court.

3. If the petitioner’s claim can be considered after considering the claim of the respondent nos.3 to 24, there should be no impediment with the State Government in considering the claim of the petitioner, in accordance with the seniority as prepared under the directions of the MAT.

4. We, therefore, dispose of the application by directing the State Government to consider the claim of the petitioner for promotion to the post of Superintending Engineer, in accordance with the seniority list as directed to be prepared by the learned MAT. The same shall be done within a period of six weeks from today.”

4. Thereafter Misc. Civil Application (Review) No. 1188
of 2013 was filed seeking review of the order dated
24/10/2013. This Court passed the following order.

“This review application has been filed by the review petitioner on the ground that the portion in paras 3 and 4 of the order of this Court dated 24-10-2013 passed in Civil Application (W)No.2415 of 2013 needs to be modified.

The Counsel for the review petitioner argued that the error is apparent since the direction issued by MAT to prepare the seniority list in a particular manner is under challenge in this petition; and if the error is not corrected then there remains no point in prosecuting the petition. Per contra, the Counsel for the respondents opposed the application and argued that it was the review petitioner who invited the said order.

Mr. N.W. Sambre, the learned Government Pleader stated that the period of six weeks earlier granted would shortly come to an end.

Heard. We are told that some petitions have been filed before the Principal Bench of this Court as also before the Aurangabad Bench by the State Government arising out of the impugned Judgment of the MAT. We think there is error in mentioning in accordance with the seniority list as directed to be prepared by the MAT, because the said direction of MAT is under challenge in the instant petition. At any rate since there is a move to consolidate all the matters at one Bench, we make the following order:-

Order

The words in accordance with the seniority as directed to be prepared by the learned MAT appearing in paras 3 and 4 of the order under review dated 24-10-2013 of this Court be replaced by the words in accordance with law. The period of six weeks is extended by another ten weeks.”

5. Learned Senior Counsel Shri Sakhare urged that the State Government has prepared a seniority list to suit its own convenience in complete contravention of the order dated 10/05/2013 passed by the Tribunal. In his submission the order dated 10/05/2013 passed by the Tribunal has not been stayed by this Court. According to him, it is therefore imperative that the State Government has to proceed with the finalisation of the

seniority list in accordance with the directions contained by the Tribunal in its order dated 10/05/2013. He would submit that interim order dated 05/12/2013 passed by this Court in Review Application is conveniently misconstrued by the State Government to the detriment of the applicant and other similar situate. He submits that in the interest of justice it is necessary for this Court to clarify that the words in the operative part of the order dated 05/12/2013 passed by this Court viz. "in accordance with law" clearly means :

"i) the order dated 10/05/2013 passed by the Ld.Maharashtra Administrative Tribunal, Mumbai is not replaced.

i) The seniority list concerning the present cadre must be prepared in accordance with the direction of the Hon'ble Supreme Court in the Direct Recruit Class II V/s State of Maharashtra (AIR 1990 SC 1607) and the order dated 10/05/2013 passed by the Ld.MAT in Original Application Nos. 246/258/292/275 of 2012 impugned in the present Petition."

6. Learned Senior Counsel Shri Anturkar also submitted that while passing the order dated 05/12/2013 it is clear that this Court meant 'in accordance with law' is with obvious reference to the order passed by the Tribunal viz. in accordance with the directions of the Tribunal in its order dated

10/05/2013. Learned Senior Counsel therefore submits that interim order dated 05/12/2013 needs to be clarified in the interest of justice. He supports the submissions advanced by learned Senior Counsel Shri Sakhare.

7. On the other hand, learned Senior Counsel Shri Apte appearing for the State Government and learned Senior Counsel Shri Dhakephalkar opposed the application. In their submission, in view of the subsequent developments that have taken place after the order dated 05/12/2013 passed by this Court, it would not at all be necessary to consider the request made by the applicant. Our attention is invited to the affidavit in reply filed by Shri S.S.Salunke working as Executive Engineer/PWD (East Division), Pune. It is pointed out that pursuant to the order dated 10/05/2013 passed by the Tribunal & after interim order dated 05/12/2013 passed by this Court, seniority list was prepared by the State Government during the pendency of this Petition on 29/01/2015. This seniority list prepared on 29/01/2015 is already under challenge before the Tribunal in

OA No. 53/2015. The applicants therein have failed to get interim reliefs before the Tribunal. By order dated 05/05/2015 passed in connected matter, after referring to all the earlier interim orders passed by this Court and after taking into consideration the aspect that seniority list dated 29/01/2015 has been challenged before the Tribunal in OA 53/2015, this Court has passed the following order.

“ ORDER

(i) The order dated 31.03.2015 to the extent of the “State Government not to take further steps, based upon the newly prepared seniority list till next date only” and the subsequent extension of the order, is revoked with the following order :

“The State Government to proceed in accordance with the seniority list so prepared that will be subject to the order already passed in Original Application No.53 of 2015 dated 26.02.2015 which reads as “if Government wants to issue promotion orders, it shall inform about it to applicant one week before issuance of promotion order. In this eventuality, liberty to circulate before due date.”

(ii) The order which we have passed today and so also the promotion if made, will be subject to further orders of this court.

(iii) The order dated 31.03.2015 is modified accordingly.

8. It would also be material to refer to paragraphs 7 & 8 of this order dated 05/05/2015 which reads thus :

“7. Mr.Sakhare, learned senior counsel appearing for respondent nos.1 to 3 prayed for stay of this order passed by the court today. Considering the above reasons and in view of urgency expressed, we have revoked some part of the order dated 31.03.2015, therefore, no case is made out to stay this order as prayed. The oral application for stay is rejected.

8 The civil application for modification of the order is disposed of accordingly.”

9. In the light of the subsequent developments and the fact that this Court has already passed the order that promotion if made will be subject to further orders of this Court, we are not inclined to entertain the application made by the applicant for clarification of the order dated 05/12/2013 passed by this Court. We are of the view that filing of the present application is completely misconceived and hence, the same stands rejected with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)