

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

WRIT PETITION NO. 4365 OF 2017

The State of Maharashtra

...Petitioner

Vs.

Shri Santosh Appasaheb Mane

...Respondent

WITH

WRIT PETITION NO. 7840 OF 2017

Shri Santosh Appasaheb Mane

...Petitioner

Vs.

The Deputy Conservator of Forest,
Kolhapur Division, Kolhapur

...Respondent

Mr.S.H. Kankal, AGP for Petitioner in WP 4365/2017 and for Respondent in WP 7840/2017.

Mr.Sandeep S. Koregave for Respondent in WP 4365/2017 and for Petitioner in WP 7870/2017.

CORAM : S.C. GUPTE, J.

DATE : 14 JUNE 2018

P.C. :

Heard learned Counsel for the parties.

2 This petition is filed by the State challenging an order passed by the Labour Court on 29 July 2016 and revisional order passed by the Industrial Court at Kolhapur on 16 December 2016.

3 In August 2011, an advertisement was published by the State for appointments to the post of 'Forest Guards'. There were 89 posts of Forest Guards to be filled in. Out of these, 16 posts were reserved for

Scheduled Caste. Out of these 16, by parallel reservation, three posts were reserved for Ex-servicemen, 10 other posts were reserved for different other sub-categories and three posts were available generally for Scheduled Caste candidates. The Respondent herein applied for appointment to the post of 'Scheduled Caste (Ex-servicemen category)'. The application form was submitted by the Respondent claiming that the Applicant was a Scheduled Caste Ex-serviceman. The Respondent was appointed to the post of Forest Guard and posted in Dajipur Forest Wild Life Sanctuary. After he submitted his caste validity certificate, he was allowed to join duties. The appointment of the Respondent was initially on a probation of two years. During his probation period, a complaint was received by the State that the Respondent was not an ex-serviceman. Upon re-verification of the application, it was found that the Respondent had submitted wrong information concerning his status as a Scheduled Caste Ex-serviceman. The State, thereafter, issued a show cause notice on 25 June 2013 calling for an explanation from the Respondent. The Respondent failed to submit any satisfactory explanation or response to the show cause notice. In the premises, by an order dated 11 July 2013, the Respondent was removed from the services on the ground that he had not submitted any documentary evidence concerning his status as an ex-serviceman. Being aggrieved, the Respondent approached the Labour Court at Kolhapur in a complaint of unfair labour practice. Evidence was led by the parties before the Labour Court. The Respondent examined himself, whilst the State examined Chief RFO. The Labour Court, vide its order dated 29 July 2016, allowed the Respondent's complaint, quashed the termination order of 11 July 2013 and directed the State to reinstate the Respondent in the original post with continuity of service. The State carried the matter in revision before the Industrial Court at Kolhapur. The Industrial Court partly allowed

the revision application by quashing and setting aside the judgment and order of the Labour Court but directing the Petitioner to appoint the Respondent on the post of Forest Guard in S.C. category in response to the fresh recruitment advertisement issued by the State on 6 November 2016. Being aggrieved, the State has come before this court by way of the present petition. The Respondent has also challenged the impugned order of the Industrial Court by a separate petition, which is dealt with later.

4 The order of the Labour Court on the Respondent's complaint is simply on the footing that the Respondent having rendered his service for more than 240 days in a year as a workman of the Petitioner herein, he could not have been retrenched otherwise than in accordance with Section 25-F of the Industrial Disputes Act. The Labour Court held that since there was no notice or wages in lieu of notice or compensation equivalent to 15 days average pay at the time of the Respondent's retrenchment, the order of termination was illegal and hence, the Respondent was entitled to reinstatement. The Labour Court accepted, however, that the Respondent applied to the appointment as a Forest Guard in Ex-servicemen sub-category of Scheduled Caste category.

5 As rightly observed by the Industrial Court in revision, the main question before the court in the Respondent's complaint of unfair labour practice was that the Respondent, whilst applying for the post of Forest Guard, applied in the Scheduled Caste sub-category of Ex-servicemen and his appointment, which was made through a mistake based on the Respondent's own representation, could have been cancelled after the mistake or mis-representation was brought to the knowledge of the employer. No employee could be wrongly continued in a post after finding

that he was originally appointed illegally or by mistake. In such cases, there was no question of following the provisions contemplated under Section 25-F of the Industrial Disputes Act. This is no retrenchment but cancellation of an appointment, which was originally made by mistake and on a mis-representation by the employee. Yet, strangely, the Industrial Court directed the State to appoint the Respondent to the post of Forest Guard in Scheduled Caste category freshly and in response to the fresh advertisement issued by the State for appointments to the post of Forest Guards. The Industrial Court appears to have proceeded on the footing that though the Respondent was originally appointed by mistake, scrutiny committee never insisted on a certificate of ex-serviceman and presumably considered the case of the Respondent in S.C. General category and not as S.C. Ex-servicemen. The court was of the view that in any event as a Government organisation, the department was bound to perform its duties diligently particularly in the matter of appointments; though the Respondent was appointed mistakenly, he was allowed to work for more than two years and no reason was shown by the State as how and when they found the mistake in appointing the Respondent. The Industrial Court held that since there were three posts in S.C. category without any parallel reservation, in the absence of certificate of Ex-serviceman, the State could always have fitted him in one of the three open posts S.C. category based on the recommendation of the scrutiny committee, since the Respondent was otherwise found eligible and suitable for the post of Forest Guard. The court held that during the pendency of the revision application, a fresh process for recruitment of additional posts of Forest Guards, including those in S.C. category, was initiated. The court, accordingly, held that since the Respondent was otherwise found suitable for the post of Forest Guard, he could be freshly appointed in the post in S.C. category and since he had

worked earlier vide an appointment order dated 28 November 2011, he might be treated as continuous in service for the purpose of seniority and other service benefits.

6 The impugned order of the Industrial Court, to say the least, shows a strange turn of logic. In the first place, it is admitted by both courts below, including the Industrial court, that the Respondent applied for the post of Forest Guard in the sub-category of Ex-servicemen in S.C. category. The record of the case does indicate very clearly that his appointment was in the category of Ex-servicemen belonging to the Scheduled Caste. Merely because no certificate concerning his status as an Ex-serviceman was required or verified by the State, it could not be said that his appointment was treated in general category of Scheduled Castes. Merely because the Respondent was allowed to work for more than two years, though, admittedly, mistakenly and on a misrepresentation made by him as to his status as Ex-serviceman, no relief could have been granted to the Respondent. The Industrial Court holds that since there were three posts open in scheduled castes category generally without any parallel reservation, in the absence of certificate of ex-servicemen, the State could have fitted the Respondent in one of those three posts. May be the State could have. The fact of the matter is that it did not. It is the case of the State that it never realised this mistake and accordingly, appointed him in the post reserved for the category of Scheduled Caste (Ex-servicemen) and this fact is borne out by the record. On this reasoning, the Industrial court could never have ordered the State to appoint him freshly in response to a fresh advertisement issued by the State for additional appointments to the post of Forest Guards in 2016 when the revision was pending before the Industrial Court. The Industrial Court does not simply stop at that. By a

strange logic it directs the State to not only appoint the Respondent afresh in response to new advertisement but treat such appointment with continuity in service for the purposes of seniority and other service benefits. There is absolutely no basis for such an order. In the premises, the order of the Industrial court is not sustainable.

7 The rule is, accordingly, made absolute and the writ petition is allowed by quashing and setting aside the impugned orders of the Labour Court dated 29 July 2016 and of the Industrial court in revision dated 16 December 2016.

8 As for the companion petition filed by the Respondent, namely, Writ Petition No.7840 of 2017, the same challenges the award of the Labour Court to the extent that it does not award backwages to the Respondent. As I have held above, the orders of the Labour Court in the complaint and the Industrial Court in revision are wholly unsustainable and there is no question of any backwages as far as the Respondent is concerned. There is, in the premises, absolutely no merit in the challenge to denial of backwages. The rule is, accordingly, discharged and the petition is dismissed.

(S.C. GUPTE, J.)