

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

WRIT PETITION NO. 4015 OF 2012

The State of Maharashtra & Anr.	...Petitioners
Versus	
Jitendra Pandurang Shinde	...Respondent

Mr. N. C. Walimbe – AGP for Petitioners – State.
Mr. Manoj Patil for Respondent.

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

DATE : 22 JUNE 2018

ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 29th January 2010 made by the Maharashtra Administrative Tribunal (MAT), partly allowing Original Application No. 1449 of 2009 instituted by the respondent.

3] The operative portion of the impugned judgment and order reads as follows :

“Hence, we direct the respondent no. 2 that the entries in C.Rs. for the years 2003-2004, 2004-

2005, 2006-2007 and 2007-2008 of the applicant be communicated to him within three weeks from today. On receipt of the said C.Rs., the applicant is at liberty to make representation for upgradation of the said C.Rs. If after considering his representation, the C.Rs. are upgraded, then the applicant should be considered forthwith for promotion as Superintending Agriculture Officer retrospectively with effect from the day, when his case was placed before the D.P.C. for the first time for promotion in the year 2009."

4] Mr. Walimbe, the learned AGP for the petitioners State submits that the petitioners have applied the GR of 1st February 1996, in terms of which, the requirement was for communication of only adverse entries. He submits that the directions now issued by the MAT in the impugned judgment and order, for communication of the entries in the confidential reports for the relevant years is not at all consistent with what is set out in GR dated 1st February 1996. Accordingly, he submits that the impugned judgment and order warrants interference.

5] Mr. Manoj Patil, the learned counsel for the respondent points out that the impugned judgment and order is almost entirely based upon the law laid down by the Hon'ble Supreme Court in the case of **Dev Dutt vs. Union of India**

& Ors. (2008) 8 SCC 725, which view, has been reiterated in ***Sukhdev Singh vs. Union of India & Ors. 2013 AIR (SC) 2741***. He submits that in terms of these rulings, it was mandatory for the petitioners to communicate the entries in the confidential rolls. For these reasons, Mr. Patil submits that this petition may be dismissed.

6] Rival contentions now fall for our determination.

7] As is clear from the orders dated 16th January 2013 and 6th February 2013 made in this petition, Rule was issued in this petition mainly because the ruling in *Dev Dutt* (supra) had been referred to for consideration by a Larger Bench by the Hon'ble Supreme Court in SLP (C) No. 15770 of 2009 on 29th March 2010. In the order dated 6th February 2013, this Court had further made it clear that in case the Apex Court upholds the view taken in *Dev Dutt's* case (supra) it will be open to the respondent to apply for vacating the interim relief. The reference to the Larger Bench has been disposed of on 23rd April 2013 in the case of *Sukhdev Singh* (supra). The view taken in *Dev Dutt* (supra)

and *Sukhdev Singh* (supra) has been reiterated. This is a good ground not just for vacating the interim relief but for not interfering with the impugned judgment and order, which is quite consistent with the ruling in *Dev Dutt* (supra) and *Sukhdev Singh* (supra).

8] From the perusal of the impugned judgment and order, it does appear that the view taken by the MAT is consistent with the rulings of the Hon'ble Supreme Court in the case of *Dev Dutt* (supra) and *Sukhdev Singh* (supra). Besides, in the present case, the respondent, was not considered for promotion in the year 2009 on the ground that he did not have average grade as B+. This means that even though, there may not have been any adverse entries in the C.Rs of the respondent, nevertheless, since the respondent, could not attend the average grade as B+, he missed his opportunity to be considered for promotion.

9] The MAT, has only directed the communication of the entries in the C.Rs and thereafter, representation for upgradation. The MAT has held that it is only if after considering the respondent's representation, the entries in

the C.Rs are upgraded, then, the respondent should be considered for promotion by constituting the review DPC. Such order, in the facts and circumstances of the present case is quite reasonable and warrant no interference.

10] For the aforesaid reasons, the petition is dismissed. Rule is discharged. Interim relief is vacated. There shall be no order as to costs.

11] Time limit for compliance is now extended by a period of six weeks from today.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA