

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

WRIT PETITION NO. 5462 OF 2016

Kiran Manohar Shardul	...Petitioner
Versus	
The Hon'ble Chairman / Secretary Maharashtra Public Service Commission & Ors.	...Respondents

Mr. P. M. Mokashi for Petitioner.
Mr. Rohan Sawant – AAGP for State – Respondents.

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

DATE : 07 JUNE 2018

ORAL JUDGMENT :

- 1] Heard the learned counsel for the parties.
- 2] Rule. With consent and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the judgment and order dated 24th March 2015 made by the Maharashtra Administrative Tribunal (MAT) dismissing the petitioner's Original Application No. 319 of 2012 seeking several reliefs

in relation to his appointment to the post of Assistant.

4] Mr. Mokashi, the learned counsel for the petitioner submits that the MAT has in fact accepted all the contentions raised by and on behalf of the petitioner but for the reasons which are not at all germane denied relief to the petitioner. Mr. Mokashi submits that this is a clear case where the respondents have changed the rules of the game after the commencement of the game. This Mr. Mokashi submits is contrary to the law laid down by the Hon'ble Supreme Court in the case of ***State of Bihar & Ors. vs. Mithilesh Kumar (2010) 13 SCC 467***. On this ground itself, Mr. Mokashi submits that this petition is liable to be allowed and the petitioner be granted a deemed date from January 2006, since in the meanwhile from 2008 onwards the petitioner has already been promoted to the post of Assistant.

5] Mr. Mokashi, the learned counsel for the petitioner submits that in the present case, the advertisement inviting applications was issued some time in the year 2004. The departmental examination was held on 23rd January 2005

and even the results were declared on 23rd January 2006. On the date of the advertisement and even on the date of the conduct of the examinations, the rules in force, did not contemplate any re-moderation in marks. However, by standing order No. 5 of 2005 dated 4th August 2005 re-moderation was introduced. This was to apply only prospectively. However, the respondent no. 1 applied this standing order dated 4th August 2005 to the examination held on 23rd January 2005 and on the said basis re-moderated the examination results thereby reducing the petitioner's original marks from 22 to 21 and the moderated marks from 30 to 21. As a result, the petitioner secured 111 marks out of 200 when the cut off mark was 117. Mr. Mokashi submits that in case the standing order dated 4th August 2005 were not to be applied, the petitioner, would have secured more than 117 marks out of 200 and thereby be promoted to the post of Assistant in the year 2006 itself. Mr. Mokashi repeats that though the petitioner's contention has been accepted by the MAT, relief has been declined.

6] Mr. Rohan Sawant, the learned AAGP, on behalf of the State submits that the instructions as regards corrections of

papers cannot be strictly speaking regarded as rules for appointment or promotion to the post of Assistant. Therefore, there was no infirmity on the part of the MPSC examiners resorting to re-moderation. He submits that this is not a case of change of rules after the commencement of the selection process.

7] Be that as it may, Mr. Sawant submits that admittedly the cause of action, if any, had accrued to the petitioner in the year 2006. However, the petitioner instituted the OA only in the year 2012. Further, the petitioner has already been promoted to the post of Assistant in the year 2008 and the issue which survives for consideration is whether the petitioner should be given a deemed date from 2006. Mr. Sawant submits that grant of such relief at such a belated stage would occasion serious prejudice to the Assistants appointed between 2006 and 2008 is on the basis of deemed date, the petitioner will claim for re-fixation of seniority. He submits that all such affected parties were never impleaded by the petitioner to the OA. Any relief as against them was barred by limitation even in the year 2012 when the petitioner instituted his OA No. 319 of 2012.

For all these reasons, Mr. Sawant urges the dismissal of this petition.

8] Rival contentions now fall for our determination.

9] The MAT has found some merit in the contention of the petitioner that the standing order dated 4th August 2005 ought not to have been applied to the selection process which had commenced in the year 2004 and pursuant to which, the written examination had been held on 23rd January 2005. This is on the basis of the decision in the case of *Mithilesh Kumar* (supra) which provides that norms or rules as existing on the date when the process of selection begins will control such selection and any alteration to such norms would not affect the continuing process, unless the same were specifically given a retrospective effect.

10] However, we find that in the peculiar facts and circumstances of the case, the MAT has neither exceeded jurisdiction nor taken any unreasonable view in declining any relief of deemed date of promotion to the petitioner. The MAT, has rightly taken cognizance of the circumstance

that though the results of the written examination were declared on 23rd January 2006, the OA came to be filed only in the year 2012. In the meanwhile i.e. in the year 2008, the petitioner had already been promoted as an Assistant. Grant of any deemed date at this belated stage would undoubtedly affect the rights of several Assistants promoted between 2006 to 2008. All such Assistants were not parties before the MAT. These are, in our opinion, cogent as well as germane reasons for denying relief to the petitioner.

11] The case of the petitioner is that he obtained information under the Right to Information Act and only thereafter he was in a position to institute the Original Application. The cause of action, if any, accrued to the petitioner in the year 2006 itself. To say that a period of 5 years was required to secure all the information and on that basis, to seek to disturb settled appointments and settled seniority positions may not be appropriate. This is not a case where the petitioner was ultimately denied promotion. The petitioner has secured promotion in the year 2008, though, his claim was for promotion w.e.f. 2006. The

affected parties were not impleaded before the MAT. All these are good reasons not to interfere with the view taken by the MAT.

12] The jurisdiction under Articles 226 and 227 of the Constitution of India is not to be exercised to correct any and every error that may be pointed out. Writs are not to be issued merely because it may be legal to do so. The court is required to exercise its discretion after examining the pros and cons of the case and the effect which grant of any particular relief may have not only upon the parties to the proceedings but also persons, who have not been impleaded as parties to the proceedings.

13] In ***Rajasthan State Industrial Development & Investment Corporation vs. Subhash Sindhi Cooperative Housing Society, Jaipur & Ors. (2013) 5 SCC 427***, the Hon'ble Supreme Court has held that the primary purpose of the writ is to protect and establish rights, and to impose a corresponding imperative duty existing in law. It is designed to promote justice (*ex debito justitiae*) and its grant or refusal is at the discretion of the

court. Therefore while dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, *inter alia*, the facts of the case, the exigency that warrants exercise of discretion, consequences of grant or refusal of the writ and the nature and extent of injury that is likely to ensue by such grant or refusal. Discretion must be exercised by the court on grounds of public policy, public interest and public good. Since writs are equitable in nature, its issuance is governed by the equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for issuance of the writ is, whether or not substantial justice will be promoted. *Promptitude in approaching the court is also one of the consideration in such matters.*

14] According to us, the denial of relief by the MAT in the facts and circumstances of the present case is for reasons which are cogent and germane. Grant of any relief in favour of the petitioner in the facts and circumstances of the present case would have affected the rights of several Assistants, who are not even parties to these proceedings.

This is not a case where the petitioner was denied promotion as Assistant rather, perhaps this is a case where such promotion can be said to have been delayed. The petitioner was also not prompt in seeking redressal before the MAT. The issue of delay and laches is also not an irrelevant consideration in a matter of this nature. Upon cumulative consideration of a variety of such circumstances, it cannot be said that the view taken by the MAT warrants interference in the exercise of equitable jurisdiction under Articles 226 and 227 of the Constitution of India in the facts and circumstances of the present case.

15] For all the aforesaid reasons, we dismiss this petition. Rule is discharged. There shall however be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)