

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

WRIT PETITION NO. 7851 OF 2004

Jotiba T. Patil and ors. ...Petitioners
Versus
The State of Maharashtra and ors. ...Respondents

Mr. Atul Rajadhyaksha, Sr. Advocate a/w. Mr. Akhilesh Dubey, Mr. Vagish Mishra, Mr. Uttam Dubey and Mr. Dhruv Shah i/b M/s. Law Counsellors for the Petitioners.
Mr. C.P. Yadav, AGP for Respondent No.1/State

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

DATE OF RESERVING THE JUDGMENT : 07.06.2018
DATE OF PRONOUNCING THE JUDGMENT : 14.06.2018.

JUDGEMENT:

- 1] Heard learned counsel for the parties.
- 2] The challenge in this petition is to the judgments and orders dated 9.1.2004 and 23.6.2004 made by the Maharashtra Administrative Tribunal (MAT), Mumbai in O.A. No. 763 of 2003 and Miscellaneous Application No. 188 of 2004 in O.A. No. 763 of 2003.
- 3] The operative portion of the judgment and order dated 9.1.2004 reads as follows:

"ORDER

The respondent No.1 is directed to finalise the seniority list of Deputy Collectors determining the inter-se seniority among promoted Deputy Collectors and directly recruited Deputy Collectors on the basis of the relevant rules and the direction given by High Court in W.P. No. 4548 of 1983 and also after deciding the objections raised by the applicants to the provisional seniority list within a period of six months from today. The respondent No.1, however, is at liberty to make selection for promotion on the basis of the provisional seniority list subject to condition that promotions given on the basis of such selection shall be subject to the inter-se gradation in the final seniority list. O.A. is disposed of accordingly. No order as to costs".

4] After the impugned order dated 9.1.2004 was made by the MAT, the State of Maharashtra took out Miscellaneous Application No. 188 of 2004 seeking clarification in relation to operative portion of the order dated 9.1.2004 in O.A. No. 763 of 2003. This miscellaneous application was disposed of by the MAT by further order dated 23.06.2004 and the operative portion of the order dated 9.1.2004 in O.A. No. 763 of 2003 was directed to read as follows:

"The Respondent No.1 is directed to finalise the seniority list of Deputy Collectors determining the inter-se seniority among promotee Deputy Collectors and direct recruit Deputy Collectors on the basis of the relevant rules and also after deciding the objections raised by the applicants to the provisional seniority list within a period of six months from today. The Respondent No.1, however, is at liberty to make selection for promotion on the basis of the provisional

seniority list subject to condition that promotions given on the basis of such selection shall be subject to the inter-se gradation in the final seniority list. O.A. is disposed of accordingly. No order as to costs”.

5] The earlier operative part had directed the State to finalise the seniority list of Dy. Collectors by determining the *interse* seniority amongst promotees and direct recruit Dy. Collectors, on the basis of relevant rules and the direction given by this court in Writ Petition No. 4548 of 1983 and also after deciding the objections raised by the applicants to the provisional seniority list within a period of six months. By order dated 23.06.2004, however, reference to the direction given by this Court in Writ Petition No. 4548 of 1983 came to be deleted.

6] Mr. Rajadhyaksha, learned senior advocate for the petitioners, submits that the order dated 23.6.2004 made by the made by the MAT purporting to clarify the order dated 9.1.2004 was an order in the nature of a review. Mr.Rajadhyaksha submits that there is no case made out by the State for invocation of review jurisdiction of the MAT and in the absence of such a case, the MAT was not at all justified in modifying the impugned judgment and order

dated 9.1.2004.

7] Mr. Rajadhyaksha submits that the decision of this Court in ***Pandit D. Pawar & ors vs. State of Maharashtra & ors. - 1989 SCC ONLINE BOM 308*** (Writ Petition No. 4548 of 1983) was based upon the decision of the Hon'ble Supreme Court in case of ***S.B. Patwardhan and anr. vs. State of Maharashtra - 1977 (3) SCC 399*** and therefore, the MAT was not at all justified in making the order dated 23.6.2004 thereby deleting reference to the judgment in Writ Petition No. 4548 of 1983.

8] Mr. Rajadhyaksha made it clear that the aforesaid submissions are without prejudice to the basic submission of the petitioners that even the impugned judgment and order dated 9.1.2004 warrants interference. Although, no rulings were cited in support of these contentions, after the matter was reserved for orders, a compilation of judgments, i.e., ***State of West Bengal and ors. vs. Kamal Sengupta and ors. - 2008 (8) SCC 612, State Bank of India vs. S.N. Goyal - 2008 (8) SCC 92*** and

Kalabharti Advertising vs. Hemant Vimalnath Narichania & ors. - (2010) 9 SCC 437 in support of these contentions.

9] Mr. Rajadhyaksha further submitted that in terms of the law laid down by the Hon'ble Supreme Court in case of **Maharashtra State Judicial Service Association and ors. Vs. High Court of Judicature at Bombay and ors. - 2002 (3) SCC 244**, the direct recruits Dy. Collectors can count their seniority only from the date on which they complete their period of probation. In any case, Mr. Rajadhyaksha submits that if direct recruits and promotees are appointed at the same time, it is the promotees who ought to rank senior to the direct recruits. He submits that this is also the ratio of the decisions of the Hon'ble Supreme Court in case of **Direct Recruit Class-II Engineering Officers' Assn. vs. State of Maharashtra - 1990 (2) SCC 715** and **O.P. Singla and anr. V/s. Union of India and ors. - 1984 (4) SCC 450**.

10] Finally, Mr. Rajadhyaksha submits that this issue of seniority between promotees and direct recruits has been

pending since long and it is only appropriate that this court resolves the same one way or the other in the present petition itself. He relies upon ***Keshav Deo and anr. vs. State of U.P. and ors. - (1999) 1 SCC 280*** to submit that the Hon'ble Supreme Court, when faced with a similar situation, chose to resolve the dispute itself, rather than remand the matter to the High Court for fresh consideration of the matter.

11] Mr. C.P. Yadav, learned AGP for respondent No.1-State, submits that the impugned judgments and orders had merely directed the State to consider all the objections of the applicants and thereafter finalise the provisional seniority list in accordance with the relevant rules. He submits that the State after considering the objections as well as the relevant rules has finalised the seniority list wayback in the year 2006 since there was no interim relief in the present petition.

12] Mr. Yadav submits that none of the applicants have challenged the finalised seniority list to the best of his knowledge and belief. He submits that on the basis of

instructions, that out of 17 petitioners in the present petition almost 11 petitioners have secured promotions and have also retired either on attaining the age of superannuation or by opting for voluntary retirement. He submits that even the rest of the petitioners are on the verge of retirement and the present petition is being pursued proxy by some Dy. Collectors who were never parties to the proceedings before the MAT.

13] Mr. Yadav submits that the decision of this court in Writ Petition No. 4548 of 1983 was restricted only to the recruitments made against vacancies which had arisen between 1972 to 1975, at which point of time the Maharashtra Civil Services (Regulation of Seniority) Rules 1983 were not in existence. Accordingly, the MAT clarified the position that the principles set out in the judgment delivered in Writ Petition No. 4548 of 1983 would not apply to the determination of seniority in accordance with 1983 Rules. Since, there was an error apparent on the face of record in the order dated 9.1.2004, the MAT, was entirely justified in correcting the said error. In any case, Mr. Yadav submits that the MAT in its order dated 23.06.2004 has

merely clarified its earlier order dated 9.1.2004.

14] Mr. Yadav submits that since the impugned judgments and orders had merely directed the State to finalise the provisional seniority list in accordance with the Rules, there is absolutely no good ground to interfere with the direction of this nature and that too, at this point of time. For all these reasons, Mr. Yadav submits that this petition may be dismissed.

15] The rival contentions now fall for our determination.

16] As noted earlier, the impugned judgments and orders had merely directed the respondents- State to finalise the provisional seniority list of Dy. Collectors on the basis of relevant rules and after taking into consideration the objections that may have been raised by the petitioners. Since the rulings in *Maharashtra State Judicial Service Association (supra)*, *Direct Recruits Class-II Engineering Association (supra)*, *O.P. Singla (supra)* and *S.B. Patwardhan (supra)* were very much available to the petitioners at the time of their raising objections to the

provisional seniority list, it is reasonable to proceed on the basis that the said rulings must have been pressed into service by the petitioners in support of their objections which were directed by the impugned judgments and orders to be taken into consideration for the purpose of finalising the seniority list. Ordinarily, against a direction to finalise a provisional seniority list in accordance with the rules and after taking into consideration the objections filed, there is no warrant for any interference. This is because if any of parties are ultimately aggrieved by the finalisation of the seniority list, a fresh cause of action will accrue in their favour and such finalised seniority list can always be challenged by them before the MAT. Only if, the finalised seniority list were to be challenged could the issue of whether such finalised seniority list is in accordance with the rules and the rulings would arise.

17] In the present case, Mr. Yadav, learned AGP has submitted that in compliance with the impugned judgment and orders, the State has finalised the seniority list wayback in the year 2006 or thereabouts. There is nothing on record to indicate that the petitioners, if aggrieved with

such finalisation, had challenged such finalised seniority list before the MAT.

18] From the perusal of the memo of petition in the present petition, it is seen that the petitioners had applied for a stay on the operation of impugned judgments and orders dated 9.1.2004 and 23.06.2004. However, no such interim relief was granted by this court whilst issuing Rule on 25.1.2005. After the finalisation of seniority list in 2006, the petitioners, did not even take out any motion for amendment of this petition to challenge the finalised the seniority list in case, they were indeed aggrieved by such finalisation. Even if, any such motion were to be taken out, it is extremely doubtful whether we would have granted leave to the petitioners to challenge the finalised seniority list before this court in the first instance when, the petitioners had an alternate and efficacious remedy available to them before the MAT. Be that as it may, the position as it stands today is that the seniority list finalised way-back in the year 2006 remains unchallenged till date. This singular but significant factor amongst other factors referred to hereafter is sufficient to decline the invitation to

attempt to resolve the seniority disputes in this petition and at this stage. This factor, amongst other factors referred to hereafter is sufficient to distinguish of the ruling in *Keshav Deo (supra)*. In the said case, the challenge was to the finalised seniority list and persons likely to be affected by the determination were very much parties to the proceedings.

19] Mr. Yadav, learned AGP has already pointed out that several petitioners have not only secured promotions in the meanwhile, but have also retired from service. Mr. Yadav has pointed out that some of the petitioners, who continue in service are also on the verge of retirement. Although, this may not be a ground for dismissal of the writ petition, these factors coupled with the circumstance that the finalised seniority list remains unchallenged is sufficient to dissuade us from attempting to resolve the seniority disputes between direct recruits and promotees in the present petition.

20] Further, since the finalised seniority list is not under challenge, it is not possible to know as to whether any of

the petitioners indeed have any surviving grievances against such finalised seniority list. Then, again, we cannot say with certainty whether all the affected parties are before us in the context of finalised seniority list. Therefore, any attempt to resolve the seniority disputes in the absence of any challenge to the finalised seniority list and in the absence of several parties who may be affected by any such resolution is not the course which commends to us in the facts and circumstances of the present case.

21] The judgment of this court in Writ Petition No. 4548 of 1983 was in the context of appointees between 1972 to 1975 when the field was not covered by the statutory rules. Thereafter, the Maharashtra Civil Services (Regulation of Seniority) Rules 1983 entered into force. The seniority, thereafter, had to be obviously determined in accordance with 1983 Rules. It is in this context, the MAT made its order dated 23.6.2004. Therefore, it cannot be said that the order dated 23.6.2004 is vitiated by any jurisdictional error so as to warrant interference at this point of time.

22] The rulings in *Kamal Sengupta (supra)*, *S.N. Goyal (supra)* and *Kalabharti Advertising (supra)* deal with the restrictive parameters of review jurisdiction. The order dated 23.6.2004 is more in the nature of a clarification than a review. However, even applying the restrictive parameters of review jurisdiction, we are quite satisfied that the error which had crept into the operative portion of the judgment and order dated 9.1.2004 was an error apparent on the face of record and was therefore, required to be corrected in exercise of review jurisdiction.

23] In fact, it is quite clear that the judgment of this court in Writ Petition No. 4548 of 1983 was in the context of appointees between 1972 to 1975 when there were no statutory rules for determination of *interse* seniority. This court, therefore, applying the principles laid down in *S.B. Patwardhan (supra)* formulated the principles to be applied in the meantime. After the 1983 Rules entered into force therefore, there was no question of once again falling back upon the principles in Writ Petition No. 4548 of 1983.

24] Significantly, it is not even the case of the petitioners that they are appointees between 1972 and 1975 or that 1983 Rules do not apply to the determination of their seniority. Therefore, we see no merit in the attack on order dated 23.6.2004 based upon the restrictive parameters of review jurisdiction or even otherwise on merits.

25] As noted earlier, all that the impugned judgments and orders had directed was the finalisation of the provisional seniority list in accordance with law and after taking into consideration the objections of the petitioners. Now that the seniority list has already been finalised and such finalised seniority list is not under challenge, we see no good ground to interfere with the impugned judgments and orders.

26] Since the finalised seniority list is not under challenge, we are not in a position to know whether such finalised seniority list is consistent with the rules as well as the law laid down by the Hon'ble Supreme Court in the decisions upon which reliance is placed by Mr.Rajadhyaksha. Suffice to note that there is no

inconsistency between the directions issued by the MAT in the impugned judgments and orders and the decisions upon which reliance is placed by Mr. Rajadhyaksha. This is because as noted repeatedly, the impugned judgments and orders had merely directed the State to finalise the seniority list in accordance with law and after taking the petitioners objections.

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

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)