

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

WRIT PETITION NO. 6489 OF 2000

Shri Balasaheb Tukaram Deshmukh	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

**WITH
CIVIL APPLICATION NO. 2297 OF 2007
AND
CIVIL APPLICATION NO. 1021 OF 2009
AND
CIVIL APPLICATION NO. 1022 OF 2009
AND
CIVIL APPLICATION NO. 3007 OF 2009
IN
WRIT PETITION NO. 6489 OF 2000**

Mr. Balasaheb Tukaram Deshmukh - Petitioner in person.
Mr. Netaji Gawade i/b. M/s. Sanjay Udeshi & Co. for the Petitioner.
Mr. N. C. Walimbe - AGP for State - Respondent Nos.1 to 3.
Mr. I. J. Nankani and Mr. Huzefa S. Khokhawala i/b. Nankani & Associates for Respondent Nos. 5, 6, 10 to 12, 14, 15, 18, 19, 21, 23, 26, 29, 35, 42, 45, 46, 48, 51, 52, 57, 59 and 62.

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

Date of Reserving the Judgment : 30 July 2018
Date of Pronouncing the Judgment : 07 August 2018

JUDGMENT :

1] Mr. Balasaheb Tukaram Deshmukh, the petitioner in person states that he wishes to argue this petition in person and requests that Mr. Netaji Gawade i/b. M/s. Sanjay Udeshi & Co. be

discharged from appearance. Mr. Netaji Gawade also requests for a discharge. Accordingly, discharge as prayed for is hereby granted.

2] Heard Mr. Deshmukh, the petitioner in person, Mr. Walimbe, the learned AGP for the State and Mr. I. J. Nankani for Respondent Nos. 5, 6, 10 to 12, 14, 15, 18, 19, 21, 23, 26, 29, 35, 42, 45, 46, 48, 51, 52, 57, 59 and 62.

3] The challenge in this petition is to the judgments and orders dated 8th June 2000 and 4th August 2000 (Exhibits 'I', 'J' and 'K') made by the Maharashtra Administrative Tribunal (MAT) disposing of Original Application Nos. 966 of 1999, 112 of 2000, 154 of 2000, 181 of 2000, 188 of 2000 and 190 of 2000. The petitioner has accordingly prayed for the following substantial reliefs :

“(a) That this Hon'ble Court may be pleased to call for the records and proceedings in O.A. No. 966 of 1999, 112 of 2000, 154 of 2000, 181 of 2000, 188 of 2000 and 190 of 2000 before the Maharashtra Administrative Tribunal and after going into the legality and validity of the Judgments dated 8-6-2000 and 4-8-2000 (Exhibits “I”, “J” and “K”) quash and set aside the same by issuance of appropriate writ order and direction under Article 226 of the Constitution of India :

(b) that this Hon'ble Court be pleased to issue appropriate writ of mandamus or a writ in the nature of mandamus or any other writ order or direction under Articles 226 of the Constitution of India, whereby directing the State of Maharashtra to cancel and/or withdraw the said order of regularisation dated 4-8-2000

(Exhibit - "I") and to refrain from enforcing the said order or regularizing the promotees appointed on fortuitous basis from their dates of initial appointments."

4] The Original Applications were taken up for consideration by a Division Bench of the MAT comprising Mr. S. D. Pandit (Chairman) and Mr. V. H. Sakhalkar (Member), who by separate judgments and orders dated 8th June 2000 disagreed with one another. Accordingly, the matter was placed for further consideration before Mr. S. Ramamoorthi (Vice Chairman), who by judgment and order dated 4th August 2000 concurred with the directions contained in paragraphs 37 and 38 of Mr. Pandit's judgment and order dated 8th June 2000. Thus, the challenge by the petitioner in the present petition is to the majority view, which shall, for sake of convenience be referred to as the impugned judgments and orders.

5] The operative portion of the impugned judgments and orders is contained in paragraphs 37 and 38 of Mr. Pandit's judgment and order dated 8th June 2000 and the same reads as follows :

"37. We would, therefore, direct the respondents to issue orders regularizing the services of the promotees who were appointed on ad hoc basis as Sales Tax Officer Class I by giving them ad-hoc promotion and the order should specify the date on which each of the promotee is to be regularized as Sales Tax Officer Class I and in pursuance of the order of regularization to give placement in the final seniority list published on 10.12.1999 to those promotees

whose services could be regularized on account they being within the quota meant for promotees. No doubt for issuing said orders in view of the provisions of recruitment rules the State Government will have to take consent of the MPSC but merely because of that there should not be a delay in issuing such regularization order. We, therefore, fix the outer limit for issuing the said regularization order as 31.10.2000. In our opinion it is always open for the State Government/authorities to change the seniority list if the change is justified according to rules. The seniority list could not be said to be unchangeable once it is finalized. In our opinion after issuing of the order of regularization by which the promotions could be regularized even retrospective placement could be given to the person, whose promotion is regularized, in the seniority list.

38. Thus, we hold that the present application will have to be disposed off by rejecting the claim of the applicants to quash and set aside the seniority list. Respondent No. 1 should comply with directions issued in earlier para and the rule is made absolute in above terms with no order as to costs. Interim relief granted stands vacated."

6] Mr. Deshmukh, the petitioner in person submits that the MAT has ignored the directions of the Hon'ble Supreme Court in Civil Appeal No. 5582 of 1998. In terms of such directions, the State Government was bound to determine seniority without considering the length of service put in by the promotees on fortuitous / trial basis. Mr. Deshmukh submits that the scope of the proceedings before the MAT was limited to determining whether the seniority list prepared by the State was in accordance with the directions issued by the Hon'ble Supreme Court in Civil Appeal No. 5582 of 1998. However, Mr. Deshmukh submits that the MAT has unduly widened the scope of the proceedings before it and even gone to the extent

of directing retrospective regularization of the services of the promotees. Mr. Deshmukh submits that such widening of the scope is ex facie beyond the jurisdiction of the MAT and in doing so, the MAT, has virtually ignored the directions issued by the Hon'ble Supreme Court in Civil Appeal No. 5582 of 1998.

7] Mr. Deshmukh submits that the MAT failed to appreciate that there are no provisions for regularization of promotions made on fortuitous / trial basis. He submits that seniority list prepared by the State Government was entirely consistent with the directions issued by the Hon'ble Supreme Court in Civil Appeal No. 5582 of 1998. He submits that on one hand, the impugned judgments and orders have declined to interfere with the finalized seniority list however, on the other hand directions have been issued to promotees to be promoted on fortuitous / trial basis and thereafter, liberty is granted to vary the finalized seniority list on the basis of deemed dates. Mr. Deshmukh submits that the entire exercise undertaken by the MAT is in excess of jurisdiction and in breach of the directions issued by the Hon'ble Supreme Court in Civil Appeal No. 5582 of 1998.

8] For the aforesaid reasons, Mr. Deshmukh submits that the impugned judgments and orders are required to be set aside. He submits that the seniority list now prepared by the State

Government in compliance with the impugned judgments and orders are also required to be set aside. He submits that the promotions made on the basis of such finalized seniority list are also required to be set aside.

9] Mr. Walimbe, the learned AGP submits that the issues raised in the present petition relate to seniority and promotion. He submits that the State Government has determined seniority and awarded promotions in accordance with the rules as well as the rulings of the Hon'ble Supreme Court as well as the MAT. He submits that much water has flown since the impugned judgments and orders were made. He submits that several promotions have been effected and it is possible that several promotees have since retired. He therefore, leave the matter to this Court.

10] Mr. I. J. Nankani, the learned counsel for some of the respondents has refuted the contentions raised by Mr. Deshmukh and urged for dismissal of this petition. He submitted that private respondents were accorded correct seniority positions in the seniority list which was prepared and finalised. He submits that several of the respondents secured promotions and have since retired from service. On these grounds, he submits that this petition is in fact rendered infructuous and may be disposed of as such.

11] Mr. Nankani further submitted that the entire petition proceeds on the basis of misreading and misconstruction of the directions issued by the Hon'ble Supreme Court in Civil Appeal No. 5582 of 1998. He submits that the Hon'ble Supreme Court in the said Appeal, was dealing with cases where promotions were effected in excess of the quota prescribed for the promotees. He points out that the relief granted by the impugned judgment and order is to the promotees within the quota prescribed. He submits that the petitioner can obviously have no grievance to the relief granted to promotees within the quota. He submits that the impugned judgment and order promotes substantial justice and therefore, the same may not be interfered with at that point of time in exercise of equitable jurisdiction under Articles 226 and 227 of the Constitution of India.

12] Rival contentions now fall for our determination.

13] Since, the main contention of the petitioner relates to the alleged non compliance with the directions issued by the Hon'ble Supreme Court in Civil Appeal No. 5582 of 1998 reference to the decision in Civil Appeal No. 5582 of 1998 becomes necessary.

14] Civil Appeal No. 5582 of 1998 was instituted by one Dinkar

Anna Patil and another, both direct recruits as Sales Tax Officers - Class I in the Sales Tax Department of the State of Maharashtra. The two appellants were appointed as direct recruits on or after 6th September 1998 in terms of Maharashtra Sales Tax Officers Class I (Recruitment) Rules, 1982 (for short, '1982 Rules') which came into force with effect from 14th October 1982. The respondent nos. 4 to 10 in Civil Appeal No. 5582 of 1998 were departmental promotees to the post of Sales Tax Officers - Class I (for short, 'promotees'). The appellants (direct recruits) had instituted OA No. 126 of 1995 before the MAT to question the validity of seniority list published in 1991, 1993 and 1995 in respect of Sales Tax Officers - Class I comprising both promotees and direct recruits. The MAT, had by its judgment and order dated 7th January 1997 dismissed OA No. 126 of 1995 *inter alia* on the ground of delay and laches.

15] The Hon'ble Supreme Court, in paragraph 6 of its judgment and order dated 9th November 1998 has noted that despite the 1982 Rules coming into force with effect from 15th October 1982, the State did not adhere to the quota rule and went on giving promotions to promotees as Sales Tax - Grade I during the period between 1982 - 1986 and no direct recruitment was resorted to. As a result almost 747 Sales Tax officers - Class II came to be promoted as Class I officers in violation of the quota rule.

16] The Hon'ble Supreme Court then noted that the 1982 Rules were amended by the State Government by inserting Rule 4A which provided that it will always be deemed to have been inserted from the date of coming into force of the 1982 Rules. The Hon'ble Supreme Court then took cognizance of the provisional and finalised seniority lists made by the State Government which were ultimately challenged by the direct recruits before the MAT by instituting Original Application No. 126 of 1995. The Hon'ble Supreme Court, however concluded that the impugned judgment and order made by the MAT was not sustainable, *inter alia* for the following reasons :

(A) That Rule 4 of the 1982 Rules had clearly provided that appointments to the post of Sales Tax Officers – Class I shall be made by promotion and nomination in the ratio of 60:40 for the first three years and thereafter in the ratio of 50:50. The promotion orders of the private respondents before the Hon'ble Supreme Court had clearly indicated that such promotions were fortuitous and made only further orders. No orders of regularization made in terms of Rule 4A of the 1982 Rules was brought to the notice of the Hon'ble Supreme Court. Therefore the effect of such promotions had to be traced under the 1982 Rules itself;

(B) Rule 3(f) of the 1982 Rules defines fortuitous appointment means temporary appointment pending a regular appointment in accordance with the rules of the relevant recruitment Rules;

(C) Second proviso to Rule 4(i) of the 1982 Rules which relate to the general principles of seniority, had specifically provided that the service, if any, rendered as a result of fortuitous appointment shall be excluded in computing the month of service and for purposes of seniority, the employee shall be deemed to have been appointed to the post or in the cadre or service on the date on which is regular appointment is made in accordance with relevant recruitment rules;

(D) Relying upon the aforesaid proviso, the Hon'ble Supreme Court concluded that any service rendered by a promotee in pursuance of fortuitous promotion, will not count for the purposes of computation of seniority.

(E) At paragraph 20, the Hon'ble Supreme Court held that the Original Application No. 126 of 1995 could not have been rejected on the ground of delay or laches, since, the direct recruits could not have challenged the seniority list prepared on 1st April 1987 because at that point of time they were not even born in the cadre. Further, the Hon'ble Supreme Court noted that as against the provisional

seniority list published in 1992-1993, the direct recruits did make representations;

(F) In paragraphs 22 and 23, the Hon'ble Supreme Court observed thus :-

“22. In view of our conclusions recorded hereinabove, the three seniority lists are unsustainable and consequently they are quashed and set aside and respondent Nos. 1 and 2 are directed to prepare a fresh seniority list of promotees and nominees on the basis of the date of appointments of the respective Sales Tax Officer Class – I in that cadre ignoring the period during situated Sales Tax Officers Class – I were appointed on fortuitous basis, until further orders or on long term basis etc. The date of regularization shall be the relevant date for the purpose of fixing the inter seniority of promotees and nominees.

23. In the result, the impugned judgment and order dated January 7, 1997 passed by the Tribunal is set aside and the respondent Nos. 1 and 2 are directed to prepare a fresh seniority list in terms of this judgment expeditiously and finalise the same within six months from today. In the circumstances. There will be no order as to costs.”

17] The review petitions instituted by the State as well as some of the respondents were dismissed by the Hon'ble Supreme Court by order dated 31st March 199;

18] Since there was some delay in compliance with the directions issued by the Hon'ble Supreme Court in its judgment and order dated 9th November 1998, the direct recruits instituted contempt

petition no. 282 of 1999 in Civil Appeal No. 5582 of 1998. This contempt petition was disposed of by the Hon'ble Supreme Court by its judgment and order dated 3rd January 2000, which reads as follows :

“ *Intervention applications are dismissed.*

As the final seniority list has now been published, we do not think it fit to proceed further with the contempt proceedings. They are, therefore, ordered to be dropped. The contempt notice is discharged accordingly. It is however, made clear that it will be open to the parties affected by the final seniority list to challenge it if they are not satisfied with it or if the same is not in accordance with the order passed by the court.”

[Emphasis supplied]

19] The respondents herein, instituted Original Application Nos. 966 of 1999, 112 of 2000, 154 of 2000, 181 of 2000 and 190 of 2000 to question the finalised seniority list dated 10th December 1999 relying upon the liberty granted by the order dated 3rd January 2000 referred to above. In such Original Applications, the petitioner and others who had been impleaded as respondents raised a preliminary objection as to the maintainability on the grounds of constructive *res judicata*. The MAT, upon a detailed reasoning rejected the contentions based upon the principles of constructive *res judicata*. However at paragraph 13 in the impugned judgment dated 8th June 2000 (Mr. Pandit, J.), the MAT made it clear that the challenge to the finalised seniority list dated 10th December 1999

will be entertained only on the following two grounds :

- “(a) *If the same is not in accordance with order passed by the Supreme Court, and,*
- (b) That if he is not satisfied with it.*

20] Elaborating further on the aforesaid aspect, the MAT, has observed thus :

“ *But, it must be remembered that claim that he is not satisfied with the publication of the seniority list will have to be read alongwith the conditions that the same is not in accordance to the order passed by the Supreme Court. What is intended by saying that he can challenge the seniority list if he is not satisfied is that even after following the order passed by the Supreme Court his placement in the seniority list is not proper and correct. **Therefore, a promotee can challenge the seniority list only in case if he could show that his placement in the seniority list is contrary to his regularization of his promotion inspite of the fact that regularization of his promotion at an earlier date he has been placed in the seniority list on the basis of subsequent date Similarly, he can challenge the seniority list if he can point out that any nominee who is placed before, him in the seniority list was as a matter of fact appointed subsequent to the date of the regularisation of his promotion. Similarly, a nominee can challenge the seniority list provided he can point out that as a matter of fact his appointment was on earlier date that the date on which he has given the placement in the seniority list or that the promotees who are generally above him had the regularisation of their promotion subsequent to the date of his appointment. Therefore, taking into consideration the above quoted order of the Supreme Court and the conditions laid down by the Supreme Court it is not possible to accept the contention of the applicants that they can challenge the seniority list on any other grounds than the two grounds mentioned above.***”

[Emphasis supplied]

21] From the aforesaid, it is quite clear that the MAT was not only fully conscious of the directions issued by the Hon'ble Supreme Court in its judgment and order dated 9th November 1998 disposing of Civil Appeal No. 5582 of 1998 but further the MAT, has very specifically, entertained objections to the seniority list dated 10th December 1999, formulated by the State in pursuance of the Hon'ble Supreme Court's judgment and order dated 9th November 1998 well within the bounds of liberty reserved by the Hon'ble Supreme Court itself in its order dated 3rd January 2000 disposing of contempt petition no. 282 of 1999. Therefore, the criticism of the petitioner that the MAT has ignored the judgment and order dated 9th November 1998 in Civil Appeal No. 5582 of 1998 cannot be accepted.

22] From the reading of the impugned judgment and order in its entirety, it is quite clear that the MAT has basically protected the interests of the promotees who had been promoted within the quota prescribed for them under the 1982 Rules. The MAT, in the impugned judgment and order has held that the services rendered by the promotees, who were promoted in excess of the quota prescribed for them, will have to be regarded as the fortuitous service and therefore, will not count for determination of seniority. However, the MAT has directed the State to take up the case of the

promotees promoted within the prescribed quota for regularization and depending upon the date of regularization, to rework the seniority. In fact, the MAT declined to interfere with the finalised seniority list dated 10th December 1991 but merely granted liberty to the State Government to consider the cases of the promotees who were promoted within the prescribed quota for regularization and depending upon the result of such exercise, the MAT clarified that there would be no bar to reformulating the seniority. Thus construed, it cannot be said that the MAT, in making the impugned judgment and order has ignored the directions of the Hon'ble Supreme Court or has acted contrary to the directions of the Hon'ble Supreme Court. Mr. Deshmukh seeks to confuse the case of the promotees, who were promoted within the prescribed quota and those who were not. The Hon'ble Supreme Court had ruled that the services rendered by the promotees in the excess of the quota prescribed will have to be regarded as fortuitous. Accordingly, we are unable to accept the contentions raised by Mr. Deshmukh in support of this petition.

23] It is also necessary to note that in pursuance of the impugned judgment and order, seniority positions were re-worked, promotions were effected and several of the respondents have already retired upon attaining the age of superannuation.

24] Upon cumulative consideration of the aforesaid, we do not deem it appropriate to interfere with the impugned judgment and order made by the MAT.

25] This petition is therefore dismissed. Rule is discharged. There shall be no order as to costs.

26] The Civil Applications do not survive the dismissal of the petition and the same are also disposed of accordingly.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA

**Sunita
Kishandas
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