

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

WRIT PETITION NO. 8374 OF 2014

Dilip s/o Akaramji Salunke and ors. ...Petitioners
Versus
State of Maharashtra and ors. ...Respondents

Mr. Nachiket V. Khaladkar for the Petitioners.
Mr. C.P. Yadav, AGP for Respondent Nos.1 to 3.
Mr. V.D. Patil for Respondent No.4.

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

DATE : 17.07.2018.

ORAL JUDGMENT:

- 1] Heard learned counsel for the parties.
- 2] Rule. With the consent of and at the request of learned counsel for the parties. Rule is made returnable forthwith.
- 3] The challenge in this petition is to the judgment and order dated 12.3.2014 made by the Maharashtra Administrative Tribunal (MAT) dismissing both the petitioners' Miscellaneous Application No. 474 of 2013 seeking condonation of delay as well as Original Application No. 1041 of 2013 instituted by the petitioners.

4] On 6.6.2018, this court, made the following order:

“1. Mr. Khaladkar, the learned counsel appearing for the petitioners states that he has instructions from petitioner No.1 – Dilip A. Salunke that he does not wish to press this petition. In this view of the matter, the petition will be heard only in relation to petitioner Nos.2 and 3.

2. On request of learned counsel for the petitioners, S.O to 26th June, 2018.”

5] Therefore, the reference to the petitioners hereinafter will mean and imply reference to only petitioner Nos.2 and 3 in the petition.

6] The petitioners, at the time of institution of this petition were Superintending Engineers, who claimed to be entitled to be considered for further promotion in the department to certain promotional posts, including the post of Chief Engineer. It is the case of the petitioners that respondent No.4 had secured appointment and promotion in the department on the basis that he belongs to Halba Tribe, which is a Scheduled Tribe (ST). It is the case of the petitioners that the Caste Scrutiny Committee (Scrutiny Committee), vide order dated 5.7.1988 has in fact, determined that respondent No.4 belongs to “Halba – Koshti caste” which is not a ST, but only a Socially and

Economically Backward Class (SEBC) in State of Maharashtra. It is the case of the petitioners that the Caste Validity Certificate dated 5.7.1988 has not been set aside by any competent court of law and therefore, the same has attained finality. On this basis, the petitioners instituted O.A. No.1041 of 2013 on 18.10.2013 before the MAT seeking *inter alia* the following reliefs:

“a) The Hon. Tribunal be pleased to hold and declared that the promotion to the post of Superintending Engineer awarded to the Respondent No.2 is illegal and by suitable order the order of the promotion dated 13.10.2006 be pleased to quash and set aside.

b) The Hon.Tribunal be pleased to direct the Respondent No.1 to place the cases of the Applicants before forthcoming DPC and consider the cases of the Applicants for the further promotion of Chief Engineer even by relaxing the criteria of experience and etc. if found necessary and by granting deemed date of promotion of SE.”

7] Since, O.A. No. 1041/2013 had been instituted beyond the prescribed period of limitation, at least insofar as prayer clause (a) was concerned, the petitioners took out M.A. No. 474 of 2013 seeking for condonation of delay.

8] The MAT, by the impugned order, has not only dismissed M.A. No. 474 of 2013 seeking for condonation of

delay, but also proceeded to make observations on merits and dismissed O.A. No. 1041 of 2013. Hence, the present petition.

9] Mr. N.V. Khaladkar, learned counsel for the petitioners, submits that the promotion secured by respondent No.4 on 13.10.2006 constitutes a fraud. This is because the promotion was on the basis that respondent No.4 belongs to ST category, when in fact, Caste Validity Certificate, has clearly ruled that respondent No.4 only belongs to SEBC. He points out that all the relevant facts were not known to the petitioners and no sooner, such information was obtained, including by resort to the provisions of R.T.I. and in the context of certain other connected litigations, the O.A. was instituted seeking to question the fraudulent promotion of respondent No.4 made on 13.10.2006. He submits that detailed reasons have been set out in the application seeking condonation of delay and the MAT was not at all justified in dismissing the M.A. No. 474 of 2013 seeking condonation of delay.

10] Mr. Khaladkar submits that in any case from reading of O.A. No. 474 of 2013 in its entirety coupled with prayer clause (b) referred to above, it was quite clear that the petitioners, apart from questioning respondent No.4's promotion vide order dated 13.10.2006 to the post of Superintending Engineer were also questioning entitlement of respondent No.4 to any further promotion in the department. Mr. Khaladkar submits that it is for this reason that the petitioners had sought for relief of placement of their own cases before the DPC. Mr. Khaladkar submits that the reliefs insofar as the dis-entitlement of respondent No.4 to further promotions or consideration of case of the petitioners themselves for further promotions, was not at all barred by limitation. Therefore, Mr. Khaladkar submits that the MAT was not right in dismissing the O.A. insofar as such reliefs are concerned as barred by limitation.

11] Mr. Khaladkar submits that the MAT has clearly exceeded its jurisdiction in clubbing and deciding the issue of condonation of delay as well as the merits at one and the same time. Mr. Khaladkar submits that the decision of the MAT on merits is clearly excess of jurisdiction. He points out

that the State Government has no right or authority to tinker with Caste Validity Certificate issued by the Scrutiny Committee, which had clearly indicated that respondent No.4 belongs to Halba-Koshti which is a SEBC. In the absence of Caste Validity Certificate being set aside by any of the competent court of law the State Government, could not have ignored the same or varied the same and on such basis, only awarded promotion to respondent No.4, but insist upon consideration of the candidature of respondent No.4 for further promotion on the basis that he belongs to ST category.

12] Mr. Khaladkar submits that the MAT has also not at all examined the aspect of fraud which is apparently involved in the matter and the MAT has failed to appreciate that fraud vitiates the most solemn proceedings. For all these reasons, Mr. Khaladkar submits that this petition may be allowed or in any case, the delay in institution of the O.A. may be condoned and the matter be remanded to the MAT for fresh adjudication in accordance with law.

13] Mr. C.P. Yadav, learned AGP for respondent Nos.1 to 3, defends the impugned judgment and order by pointing out that the challenge to respondent No.4's promotion made on 13.10.2006 by instituting the O.A. only in the year 2013 was barred by limitation and since, there was no sufficient cause shown, the MAT, was quite justified in dismissing the application for condonation of delay. He submits that there is no infirmity in the impugned judgment and order made by the MAT and therefore, this petition may be dismissed.

14] Mr. V.D. Patil, learned counsel for respondent No.4, also adopts the submissions of learned AGP and urges for dismissal of this petition. He points out that the Scrutiny Committee indicated in the Caste Validity Certificate that respondent No.4 belongs to Halba-Koshti caste was an obvious error and the State was therefore, well within its powers to ignore such error or to correct such error by passing appropriate orders. He points out that such orders have never been challenged by any parties. He points out that respondent No.4 has been promoted in the meanwhile and is on the verge of being considered for the post of Chief Engineer.

15] Mr. Patil points out that the relief in prayer clause (a) of the O.A. was the main relief and the remaining reliefs were only incidental. He points out that since the main relief was barred by limitation and there was no sufficient cause shown to explain delay of almost 7 years, the MAT was quite justified in dismissing M.A. No. 474 of 2013. He points out that although the MAT was not bound to go into the merits, still, since the contentions on behalf of the petitioners were totally untenable, the MAT, chose to consider the same and reject the same. He points out that the petitioners cannot claim to be aggrieved by the consideration of their contentions on merits, even though the OA was held to be barred by limitation. He submits that there is no jurisdictional error or any illegality in the impugned judgement and order and therefore, this petition may be dismissed.

16] The rival contentions now fall for our determination.

17] Insofar as the relief in terms of prayer clause (a) is concerned, by which, the petitioners have challenged the order dated 13.10.2006, by which, respondent No.4 came to

be promoted as Superintending Engineer, we find that there is no sufficient cause shown to explain the delay of almost 7 years in the institution of the O.A.

18] The petitioners and respondent No.4 are in one and same department. The petitioners, who were very much aware of the promotion order dated 13.10.2006, cannot take shelter by contending that they were not aware of the precise status of respondent No.4's caste or tribe. The efforts, by which, the petitioners obtained such details at a later stage, could very well have been taken by the petitioners within some reasonable period from the date of promotion of respondent No.4. Merely stating that they were not aware of all the details and on such basis, seeking condonation of delay, would not be appropriate.

19] Therefore, the impugned judgment and order to the extent, it holds that the relief in terms of prayer clause (a) to the O.A. is barred by limitation and further, there is no sufficient cause shown for explaining the delay in challenging respondent No.4's promotion by order dated 13.10.2006 calls for no interference.

20] However, on perusal of the petitioners' O.A. in its entirety and upon reading the relief in terms of prayer clause (b) in consideration with the averments in the O.A., it does appear that the case of the petitioners was that whatever be status of the promotion of respondent No.4 to the post of Superintending Engineer, at least, in future, respondent No.4, should not be considered for promotion on the basis that he belongs to the ST category. The petitioners, in their O.A. have prayed that it is they, who ought to be considered for future promotion and not respondent No.4. The petitioners have contended that the Scrutiny Committee has clearly indicated that respondent No.4 belongs to Halba – Koshti caste, which is only a SEBC and not a ST.

21] The relief that respondent No. 4 be not considered for any further promotions or that the relief that the petitioners be considered for further promotions, was not barred by law of limitation. In any case, once the petitioners came to know that respondent No.4 belonged to Halba-Koshti caste and not to Halba caste, they were entitled to urge that respondent No.4 be not granted any further promotions on

the basis that he belongs to ST category, since according to the petitioners, Halba -Koshti caste is only SEBC. This was a case of recurring cause of action and therefore, the MAT was not justified in rejecting O.A.No.1041 of 2013 in its entirety.

22] The MAT, was also not justified in making any observations on the merits after it came to the conclusion that M.A. No. 474 of 2013 was required to be dismissed. The occasion for making such observations might have arisen only if the MAT were to have condoned the delay and thereafter proceeded to examine the matter on merits.

23] Accordingly, we partly allow this petition. We hold that the MAT was quite justified in holding that the petitioners' challenge to order dated 13.10.2006, by which, respondent No.4 came to be promoted as Superintending Engineer was barred by limitation and further, there was no sufficient cause shown by the petitioners to entertain any challenge to the promotion order dated 13.10.2006. However, we set aside the MAT's impugned judgment and order to the extent it refuses to consider the petitioners' prayer that respondent No.4 be not considered for any further promotions or that

the petitioners themselves be considered for further promotions.

24] Rule is made partly absolute in the aforesaid terms and the matter is remanded to the MAT for reconsideration of O.A. No. 1041 of 2013 (except relief in terms of prayer clause (a) of the O.A.) The MAT to decide the remanded matter in accordance with law and on its own merits.

25] We clarify that none of the observations in this judgment and order be construed as any observations on the merits of the rival contentions in the O.A., which we have now remanded to the MAT for reconsideration on all issues except the relief in terms of prayer clause (a) of the O.A. Similarly, the MAT, should also not be influenced by any observations in its judgment and order dated 12.3.2014, which in any case, stands partly set aside by this judgement and order.

26] Parties to appear before the MAT at 10.30 am on 6.8.2018 and produce the authenticated copy of this order.

27] All concerned to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

Dinesh
Sadanand
Sherla

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by Dinesh
Sadanand
Sherla
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2018.07.20
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