

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

WRIT PETITION NO. 2521 OF 2015

Jahid Ali Kamruddin Shaikh	...Petitioner
Versus	
The State of Maharashtra and ors.	...Respondents

**WITH
WRIT PETITION NO. 6522 OF 2015**

The State of Maharashtra and anr.	...Petitioners
Versus	
Jahid Ali Kamruddin Shaikh	...Respondent

Appearances:

Mr. Sandip Shinde I/b Ergo Juris for the Petitioner in WP 2521/2015 and for the Respondent in W 6522/2015

Mr. C.P. Yadav, AGP for the Respondent - State in WP 2521/2015 and for the Petitioners - State in WP 6522/2015.

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

DATE OF RESERVING THE JUDGMENT	: 2 nd JULY 2018.
DATE OF PRONOUNCING THE JUDGMENT	: 05 th JULY 2018.

COMMON JUDGEMENT:

1] Heard learned counsel for the parties.

2] Both these petitions can be disposed of by common judgment and order. This is because the challenge in Writ Petition No.6522 of 2015 instituted by the State is to the order dated 13.09.2013 made by the Maharashtra

Administrative Tribunal (MAT), Mumbai allowing Review Application No. 30 of 2012 instituted by Shri. Jahid Ali Kamruddin Shaikh, the respondent in Writ Petition No. 6522 of 2015. Similarly, the challenge in Writ Petition No. 2521 of 2015 instituted by Jahid Ali Kamruddin Shaikh (Jahid Ali) is to the judgment and order dated 22.12.2014 made by the MAT, dismissing O.A. No. 579 of 2008, which was restored for reconsideration by the MAT by its aforesaid order dated 13.9.2013 in Review Application No. 30 of 2012.

3] Accordingly, Rule in both the petitions. With the consent of and at the request of learned counsel for the parties, both the petitions are taken up for consideration together and disposed of by a common judgment and order.

4] Since, the MAT, by its judgment and order dated 22.12.2014 has ultimately dismissed O.A. No. 579 of 2008, we requested Mr. Sandip Shinde, learned counsel for Jahid Ali, the petitioner in Writ Petition No. 2521 of 2015 to address us first. This is because, if we were to find no good grounds to interfere with the MAT's order dated 22.12.2014, then, there would be no need to decide Writ Petition No.

6522 of 2015 instituted by the State.

5] Mr. Shinde, learned counsel for Mr. Jahid Ali, the petitioner in Writ Petition No. 2521 of 2015, submits that as per Government Resolutions (G.Rs) dated 15.4.1991 and 6.6.2002, where, promotion from Class IV post to Class III post is not effected as soon as the employee in Class IV becomes eligible for promotion, such employee, is required to be granted a deemed date of promotion, commensurate to the date on which, he became eligible for such promotion. Mr. Shinde submits that in the present case, the petitioner Jahid Ali was appointed as a Peon (Class IV) employee on 25.4.1997. Therefore, on 25.4.2000, he became eligible for promotion to Class III post. Jahid Ali was actually promoted only on 7.8.2007. Mr. Shinde submits that notwithstanding the date of actual promotion, in terms of the aforesaid GRs., Jahid Ali is entitled to a deemed date of promotion, which should be from the year 2000.

6] Mr. Shinde submits that between 2000 and 2007, certain other Class -IV employees have been promoted. He submits that from this it is quite clear that there were

vacancies in the promotional posts. Mr. Shinde submits that this is an additional reason on account of which, deemed date was required to be granted to the petitioner Jahid Ali.

7] Mr. Shinde submits that although, the MAT, has correctly appreciated the aforesaid positions in its order dated 13.09.2013, by which, it agreed to review its earlier order dated 29.04.2009, the MAT, in the later judgment and order dated 22.12.2014, has again ignored the aforesaid crucial aspects and denied reliefs to the petitioner Jahid Ali. Therefore, Mr. Shaikh submits that this is a fit case to warrant interference with the order made by the MAT and a fit case to grant the petitioner Jahid Ali relief of deemed date of promotion along with all consequential benefits.

8] Mr. Yadav, learned AGP for the State, made several submissions in support of the State's Writ Petition No. 6522 of 2015, by urging that the order dated 29.04.2009, by which, the MAT had earlier rejected O.A. No. 579 of 2008 was corrected and that the MAT was not at all justified in reviewing this order. He submits that the scope of judicial review is extremely limited and there was absolutely no

case made out by Jahid Ali in the exercise of such restrictive jurisdiction. He therefore, submits that the MAT's order dated 13.09.2013 is itself in excess of jurisdiction and if the said judgment and order is set aside, then, as a corollary the final order dated 22.12.2014 made by the MAT also falls.

9] In the alternate and without prejudice, Mr. Yadav submits that there is no error in the judgment and order dated 22.12.2014 made by the MAT. He submits that since the matters of promotions from Class IV to Class III are governed by Recruitment Rules made under the proviso of Article 309 of the Constitution of India, there is no question of placing any reliance upon the GRs or other executive instructions. In any case, Mr. Yadav submits that the GRs do not require the State to effect promotions merely because the candidates in the feeder category may have attained the eligibility or only because some vacancy exceeds in the promotional post. Mr. Yadav placed particular emphasis on the order dated 7.08.2007, by which, the petitioner Jahid Ali and other six came to be promoted. He points out that Jahid Ali was the junior most in the feeder category. He disputes that any promotions were effected between 2000 and 2007.

In any case, he disputes that any juniors to the petitioner Jahid Ali were promoted during this period. He points out that the O.A. had been instituted by Jahid Ali and Malu Rane. He points out that Malu K. Rane has expressed satisfaction with the promotion order dated 7.8.2007 and therefore has not persuade the matter any further. For all these reasons, Mr. Yadav submits that Writ Petition No. 6522 of 2015 may be allowed and Writ Petition No. 2521 of 2015 may be dismissed.

10] Mr. Shinde did attempt to answer learned AGP's contentions that in Writ Petition no. 6522 of 2015. He submits that there was an error apparent on the face of record in the earlier order made by the MAT and therefore, there is nothing wrong in the order dated 13.09.2013 made by the MAT in the exercise of its review jurisdiction

11] The rival contentions now fall for our determination.

12] As indicated earlier, if we find that there is no good ground to interfere with the MAT's final order dated 22.12.2014 dismissing Jahid Ali's O.A. No. 579 of 2008, then,

there is really no necessity of adjudicating the issues in Writ Petition No. 6522 of 2015.

13] Admittedly, by order dated 7.08.2007, Jahid Ali and five others came to be promoted from Class -IV to Class - III post. The names of in all such six promotees including Jahid Ali alongwith the dates of their appointments to Class -IV posts read as follows:

Sr.No.	Names	Date of appointment as Peon (Class-IV)	Category
1	Shri. V.R. Katkari	02.03.1987	ST
2	Shri.Baban L. Pandit	19.12.1994	SC
3	Shri.Narendra Sangle	11.01.1994	NT(D)
4	Shri.Durgasingh Rathod	01.09.1992	SBC
5	Shri.Male K. Rane	11.01.1994	Open
6	Shri.Jahid Ali K. Shaikh	25.04.1997	Open

14] From the aforesaid, it is apparent that the petitioner Jahid Ali has secured promotion Class IV to Class III post with effect from 7.08.2007. In the aforesaid order, it is also evident that from out of six promotees, the petitioner Jahid Ali was in fact junior most. Further, there was no question of any comparison between the petitioner Jahid Ali and Class -

IV employees at Sr.Nos.1 to 4 above, since, admittedly, the said employees belonged to certain reserved categories in contrast to the petitioner Jahid Ali, who belongs to the open category.

15] Learned AGP has stated that between 2000 and 2007, there were no promotions effected from Class IV to Class III posts and in any case, none of the juniors of Jahid Ali were promoted during the said period. The MAT, in its order dated 22.12.2014, at paragraph 8, has clearly recorded the findings of fact to the effect that there were no promotions during this period or in any case, no employees junior to the petitioner Jahid Ali were promoted during this period. Mr.Shinde did produce on record a letter dated 26.09.2006 received by the petitioner Jahid Ali under R.T.I. to submit that some promotions had taken place during this period. The letter is not at all clear. In any case, the letter only gives the dates on which, six employees referred to in the aforesaid promotion order dated 7.08.2007 became eligible for promotion. This is not the same thing as saying that the said persons were actually promoted earlier than 7.08.2007 or were actually promoted on the date they acquired the

eligibility qualification. In any case, these are the very six names which are referred to in the promotion order dated 7.08.2007. There is nothing shown to us in order to interfere with the findings of fact recorded by the MAT in its order dated 22.12.2014.

16] The two GRs, upon which, the petitioner Jahid Ali places reliance do not mandate award of promotions no sooner the employee in the feeder category attain eligibility qualifications. The GRs, at the highest, state that if some employees are denied promotions on the dates they were due for promotions, then, the question of deemed dates can be construed. No sooner an employee attains the eligibility qualifications, it cannot be said that he has become due for promotion. Then again, the issue of vacancies is also relevant in this regard. As long as there is no arbitrariness or discrimination, employees cannot insist on promotion, no sooner they acquire the eligibility qualifications. In the present case, as noted earlier, the order dated 7.08.2007 makes it clear that the petitioner Jahid Ali was the junior most member in the feeder cadre. Accordingly, based upon the two GRs or even otherwise, the petitioner Jahid Ali has

not made out any case for grant of deemed date.

17] Admittedly, the petitioner Jahid Ali, had not made any of the employees referred to in the promotion order dated 7.08.2007 as parties to his O.As. If, at this stage, the deemed date from the year 2000 or 2003 is to be granted to the petitioner Jahid Ali, then, the petitioner Jahid Ali might as well claim seniority over such remaining employees who were in fact, senior to the petitioner Jahid Ali in the feeder category. The grant of any such relief is therefore, bound to affects the rights and interests of such employees. Apart from the fact that the petitioner Jahid Ali had made out no case for grant of any relief on merits, it is quite clear that the O.A. was required to be dismissed for non-impleadment of necessary parties. This is an additional ground for dismissal of Writ Petition No. 2521 of 2015.

18] For all the aforesaid reasons, we see no good ground to interfere with the judgment and order dated 22.12.2014 dismissing the petitioner Jahid Ali's O.A. No. 579 of 2008. Accordingly, Writ Petition No. 2521 of 2015 is liable to be dismissed and is hereby dismissed.

19] Consequent upon dismissal of Writ Petition No. 2521 of 2015, the issues raised in Writ Petition No. 6522 of 2015 are only academic and therefore, there is no necessity to decide such issues. Accordingly, we dispose of Writ Petition No. 6522 of 2015 as infructuous.

20] For all the aforesaid reasons, we dismiss Writ Petition No. 2521 of 2015 and dispose of Writ Petition No. 6522 of 2015.

21] In the facts and circumstances of the present case, there shall however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)