

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

WRIT PETITION NO. 8539 OF 2014

Government of Maharashtra and ors. ...Petitioners
Versus
Arvind V. Kamble ...Respondent

Mr. O.M. Kulkarni, AAGP for the Petitioners/ State.
Mr. V.V. Pai for the Respondent.

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

DATE : 20th MARCH 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 impugned judgment and order dated 7th July 2014 made by the Maharashtra Administrative Tribunal (MAT), Mumbai, allowing the O.A. No. 230 of 2012 instituted by the respondent. The MAT has granted the respondent relief in terms of prayer clause 15(a) of O.A. No. 230 of 2012, which

reads as follows:

“15(a) This Hon'ble Tribunal be pleased to hold and declare that the impugned order dated 12.1.2012 issued by Respondent No.2 as illegal and bad in law and the same be quashed and set aside with further directions to appoint the Petitioner to the post of Forester with effect from the date on which his immediate junior was so appointed i.e. one Mr. Shaikh, along with all consequential service benefits.”

4] The matter concerns the appointment of the respondent to the post of Forester in the Forest Department. There is no dispute that in terms of the 1987 Rules (unamended rules), one of the modes for appointment to the post of Forester was by way of transfer of a suitable person from the cadre of Surveyor. In the year 1999, since a vacancy arose for the post of Forester, the Forest Training Section made enquiries as to whether any eligible candidates were available for appointment by transfer from out of the cadre of Surveyors. This was in order to enable the eligible Surveyors, if any, to undergo training for the Forester course which was to commence from 1st April 1999.

5] The Chief Conservator of Forest, Kolhapur, however, by letter dated 30th January 1999, informed the Forest

Training Section that no Surveyor was eligible. Consequently, the case of the respondent, who was very much eligible for appointment to the post of Forester by transfer, was not considered.

6] The respondent, represented against what he perceived was injustice to him. In the year 2006, one of his juniors, Mr. I.A. Shaikh was transferred as a Forester under the 1987 Rules. Again, the respondent, protested and represented in the matter.

7] On 30th June 2011 new recruitment rules came to be promulgated, in terms of which, there was no provision made for appointment of Surveyors as Foresters by way of transfer. Relying upon such new recruitment rules, the petitioners rejected the respondent's representations by order dated 12th January 2012.

8] The respondent instituted O.A. No. 230 of 2012, which has since been allowed by the impugned judgment and order dated 7th July 2014 made by the MAT. Hence, the present petition by the petitioners - State.

9] Mr. Kulkarni, learned AAGP for the petitioners – State, submits that merely because there may have been a provision in the earlier recruitment rules for appointment of Foresters by way of transfer of Surveyors, that by itself, does not mean that the petitioners – State was bound to adopt this mode of appointment. Mr. Kulkarni submits that in any case with effect from 30th June 2011, new recruitment rules came into force which do not contemplate appointment of Foresters by transfer of Surveyors. Mr. Kulkarni submits that the MAT was not at all justified in ignoring the new rules and rely upon the old rules which stand repealed since 30th June 2011. Mr.Kulkarni submits that the decision to transfer I.A. Shaikh as Forester was taken by some other Conservator of Forest from a different forest circle. He submits that the respondent can seek no reliefs on the basis of such a transfer. For all these reasons, Mr. Kulkarni submits that the impugned judgment and order dated 7th July 2014 made by the MAT deserves to be set aside.

10] Mr. Pai, learned counsel for the respondent, submits that in the present case, the Chief Conservator of Forest,

Kolhpaur, furnished wrong information to the Forest Training Section with regard to availability of eligible candidates. On basis of such wrong information, the respondent was denied appointment to the post of Forester. Mr. Pai submits that it is settled position in law that the recruitment rules in force on the date the vacancy arises, are the only relevant recruitment rules. The new recruitment rules of 2011 cannot govern the vacancies which had arisen much prior to the year 2011. Therefore, Mr. Pai submits that the case of the respondent could never have been rejected by relying upon the new rules of 2011.

11] Mr. Pai submits that there is a common seniority list of Surveyors and the promotions/transfers are to be made on the basis of such common seniority list. He submits that the theory of different Forest Circle or exercise of powers by a different Conservator of Forest is quite irrelevant. He submits that the impugned judgment and order made by the MAT is entirely correct and this petition should therefore, be dismissed with exemplary costs.

12] The rival contentions will have to be considered in the context of the facts referred to earlier, which admit of no serious dispute.

13] Mr. Kulkarni may be right in his submission that merely because transfer is prescribed as one of the modes for appointment to the post of Forester from out of feeder cadre of Surveyors, that by itself, does not bind the State Government to make appointments by this mode, even when there is no necessity for adoption of such a mode. However, the facts of the present case, are slightly different. The Forest Training Section had made a specific enquiry as to whether there are any eligible Surveyors in the Forest Department, who could be transferred to the post of Forester. This was in the context of the training course, which was to commence from 1st April 1999. In terms of 1987 Rules, there is no dispute that candidates have to pass the final examination of the Foresters' Training Course of one year to be conducted by the Forest Department at any of the Foresters' Training School of Government. The fact that such an enquiry was made indicates that there was necessity to fill-up the vacancy of

Foresters which had arisen in the year 1999 itself.

14] The MAT has taken cognizance of communication dated 30th January 1999 addressed by the Chief Conservator of Forest to the Forest Training Section , in which, it was stated that no candidate is available or eligible for appointment to the post of Forester by transfer. This was in the response to query from the Forest Training Section as aforesaid. Therefore, it was never the case of the petitioners - State that there was no necessity to fill - up the vacancy of Forester by transfer of Surveyors, but rather, the letter dated 30th January 1999 addressed by the Chief Conservator of Forest suggests that no such appointment by transfer was made because the Chief Conservator of Forest was of the opinion that there was no eligible Surveyor in the department for such appointment.

15] Now it is not even disputed that the respondent was very much eligible to be appointed as a Forester by way of transfer. The MAT, in the circumstances, has rightly found that the letter dated 30th January 1999 addressed by the Chief Conservator Forest to the Forest Training Section was

completely inaccurate, not to state that the same was misleading. The representations made by the respondent were, however, ignored without assigning any reasons.

16] In the year 2006, Surveyor Mr. I.A. Shaikh, who was admittedly junior to the respondent was transferred and posted as a Forester. At this stage also, the claim of the respondent was overlooked without assigning any reason. The MAT has rightly rejected the contention of the petitioners - State that Mr. I.A. Shaikh was posted in a different circle and some Chief Conservator of Forest had taken a decision to appoint Mr. I.A. Shaikh as a Forester through the mode of transfer. There is a common seniority list of Surveyors. Ultimately, this is one department. The department may have been divided into different circles, but that does not mean that the claims of eligible seniors in the other circle can be overlooked in this manner.

17] Since, vacancy had arisen in the year 2006 and the same vacancy was filled-up by transfer of I.A. Shaikh, even the contention that there was no necessity to fill-up the post, fails insofar as the 2006 vacancy is concerned.

18] Again, the representations made by the respondent were not disposed of within reasonable time. Finally, taking advantage of the circumstance that new rules were promulgated with effect from 30th June 2011, the representations of the respondent came to be rejected by simply informing him that under the 2011 Rules, the mode of appointment to the post of Forester by transfer did not exist. The MAT, quite rightly, has held that the respondent was treated quite unfairly in the matter.

19] Insofar as the vacancies of the year 1999 and 2006 are concerned, admittedly, the same had to be filled on the basis of 1987 Rules, which, had clearly provided for appointment to the post of Forester by transfer of Surveyors. 2011 Rules, which are only prospective in nature, will apply to vacancies which arise after promulgation of such rules, i.e., 30th June 2011. The respondent, as noted earlier, was seeking appointment to the vacancies, which had arisen prior to 2011 Rules, therefore, his claim could not have been rejected by relying upon 2011 Rules.

20] In ***Arjun Singh Rathore and ors. vs. B.N. Chaturvedi and ors. - (2007) 11 SCC 605***, the Hon'ble Supreme Court has held that the vacancies occurring prior to promulgation of new Rules of 1988 had to be filled up according to old Rules of 1988, even though, the interview for filling-up such posts were held in the year 2000, by which time, the new rules has already been notified.

21] In ***State of Punjab and anr. vs. Amarjit Kaur - (1997) 10 SCC 418***, the Hon'ble Supreme Court followed its earlier ruling in ***Y.V. Rangaiah vs. J. Sreenivasa Rao - (1983) 3 SCC 284*** and held that posts which fell vacant prior to the amendment of the rules would be governed by the original rules and not by the amended rules.

22] The MAT, has applied the aforesaid principles in order to grant relief to the respondent. The MAT has taken note of the incorrect information furnished by the Chief Conservator of Forest in the year 1999 and also the circumstance that I.A. Shaikh, who was admittedly junior to the respondent being appointed as a Forester on transfer in the year 2006, overlooking the claim of the respondent.

There is no jurisdictional error in the impugned judgment and order so as to warrant interference under Articles 226 and 227 of the Constitution of India.

23] However, as was rightly pointed out by Mr. Kulkarni, learned AAGP, the relief in terms of prayer clause 15(a) of O.A. No. 230 of 2012 is worded in broad terms and is likely to be mis-interpreted by the respondent. Mr. Kulkarni pointed out that even under the 1987 Rules, there are certain eligibility conditions which a candidate is required to fulfill and therefore, it may be clarified that the relief granted by the MAT in the impugned judgment and order is to be construed in the context of the eligibility conditions prescribed in the 1987 Rules. There is merit in the contention of Mr. Kulkarni on this point.

24] In fact, Mr. Pai, on the basis of instructions from the respondent, who was present in the court also admitted that the respondent, will have to fulfill the eligibility requirements as prescribed in the 1987 Rules for appointment to the post of Forester.

25] Rule 3 of 1987 Rules, which is concerned with the appointment to the post of Forester in the Forests Department reads as follows:

"3. (1) Appointment to the post of Forester in the Forests Department shall be made either, -

(a) by promotion of a suitable person from the Circle Gradation List of Forest Guards, on the basis of seniority subject to fitness from amongst the persons holding the post of Forest Guard ; or

(b) by nomination from amongst candidates who,-

(i) unless already in the service of Government, are not more than twenty-eight years of age:

(ii) have passed the Higher Secondary School Certificate Examination or any other equivalent examination recognised by the Government.

(iii) possess the minimum physical standards as follows, namely:-

(a) Height 163 cms.

(b) Chest.... 79 cms. Expansion to 84 cms.

(minimum expansion of chest should be 5 cms.)

(c) Visual acuity. 6/6 each eye - OD after correction. There should be no defective condition of the external eye squin:

Provided that minimum height may be relaxed by the appointing authority in the case of candidates belonging to Schedule Tribes, upto 152.5 cms.

(iv) have passed the final examination of the Foresters' Training Course of one year conducted by the Forest Department at any of the Foresters' Training School of Government; and

(v) can read, write and speak Marathi language, or

(c) by transfer of a suitable person from the cadre of Surveyors, who possess the

requisite educational qualification and minimum physical standards prescribed in sub-clauses (ii) and (iii) of clause (b) and on such transfer, pass the examination for Forester referred to in sub-clause (iv) of clause (b) before his inclusion in the cadre of Forester.

(2) The post to be filled by nomination in accordance with sub-rule 1(b) shall not be less than 35 per cent and more than 50 per cent of the total number of posts in the cadre from time to time."

(emphasis supplied)

26] Upon consideration of the impugned judgment and order as well as 1987 Rules, it is necessary to clarify that the case of the respondent is to be considered in terms of Rule 3(1)(c) of 1987 Rules. This sub-rule, provides for appointment to the post of Forester by transfer of a suitable person from the cadre of Surveyors, who possess the requisite educational qualification and minimum physical standards prescribed in sub-clause (ii) and (iii) of clause (b). Further, such Surveyor, on such transfer has to pass the examination for Forester referred to in sub-clause (iv) of clause (b) before his inclusion in the cadre of Forester.

27] This means that the respondent, in order to be appointed and included in the cadre of Forester, must

possess the requisite educational qualification and minimum physical standards prescribed in sub-clause (ii) and (iii) of clause (b), as a pre-condition for appointment on transfer. Further, upon the respondent's appointment by transfer to the post of Forester, the respondent must pass the final examination of the Forest Training Course of one year contemplated by Forest Department at any one of the Forest Training School of the Government within the period prescribed. We clarify that nothing in the impugned judgment and order is to be construed as relaxation or exemption from compliance with what is provided in 1987 Rules including in particular, Rule 3(1)(c) of 1987 Rules.

28] Mr. Kulkarni further contended that the costs imposed by the MAT on the Chief Conservator of Forest may be set aside. Although, we agree with the MAT that the Chief Conservator of Forest furnished inaccurate information in the letter dated 30th January 1999, we note that even the respondent, had not alleged any *mala fides* against the Chief Conservator of Forest. It is possible that such information was furnished on the basis of notings prepared by some junior officers or eligible staff in the

department. As such, we are satisfied that this was not a fit case for imposition of any costs upon the Chief Conservator of Forest as has been done by the impugned judgment and order. The imposition of costs is therefore, set aside.

29] For all the aforesaid reasons, we do not deem it appropriate to interfere with the impugned judgment and order made by the MAT, except however, to clarify that nothing in the impugned judgment and order is to be construed as relaxation or exemption from compliance with what is provided in 1987 Rules including in particular, Rule 3(1)(c) of 1987 Rules. The imposition of costs is, however, set aside.

30] Rule is accordingly disposed of in the aforesaid terms. There shall however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)