

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

WRIT PETITION NO. 2260 OF 2018

The State of Maharashtra	...Petitioner
Versus	
Vasant Anat Balel	...Respondent

WITH

WRIT PETITION NO. 2159 OF 2018

The State of Maharashtra	...Petitioner
Versus	
Dattatraya D. Tambe	...Respondent

WITH

WRIT PETITION NO. 2234 OF 2018

The State of Maharashtra	...Petitioner
Versus	
Deelip H. Desale	...Respondent

WITH

WRIT PETITION NO. 5123 OF 2018

The State of Maharashtra	...Petitioner
Versus	
Pandurang A. Pawar	...Respondent

WITH

WRIT PETITION NO. 5125 OF 2018

The State of Maharashtra	...Petitioner
Versus	
Sanjay C. Mhaske	...Respondent

WITH

WRIT PETITION NO. 5712 OF 2018

The State of Maharashtra	...Petitioner
Versus	
Subhash K. Marsale	...Respondent

WITH
WRIT PETITION NO. 6260 OF 2018

The State of Maharashtra	...Petitioner
Versus	
Ramesh A. Patil	...Respondent

WITH
WRIT PETITION NO. 5752 OF 2018

The State of Maharashtra	...Petitioner
Versus	
Suresh S. Deore	...Respondent

Mr. C.P. Yadav, AGP for the State / Petitioners in WP 2260, 2159, 2234, 5123, 5125, 5712 and 6260 of 2018.

Mr. S.S. Deore and Mr. C.P. Yadav, AGP for the Petitioner – State in WP 5752 of 2018

None for the Respondents.

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

DATE : 26.06.2018.

ORAL JUDGMENT:

1] Writ Petition No. 5752 of 2018 is not on board. However, at the request of learned counsel for the parties, the same is taken on board, since the challenge in this petition is to the common judgment and order dated 29.07.2016 made by the Maharashtra Administrative Tribunal (MAT), Mumbai in several O.As., out of which, the connected petitions arise.

2] In all these matters, the respondents, came to be appointed as Workshop Assistants on various dates between 1985 and 1990 in the office of Dy. Director of Technical Education, Regional Office, Mumbai.

3] Thereafter, in December 1995, the respondents were promoted as Full Time Instructors (Scooter Motorcycle Servicing) / Craft Instructors in the pay scale of Rs.1,440-2,600/-. After completion of the prescribed period of service, the respondents, consistent with the petitioner's scheme for Time Bound Promotional Scale or Assured Career Progression Scheme awarded the respondents, the prescribed higher pay scale some time in February 2009.

4] At this stage, one of the Workshop Assistant, i.e., Anupkumar Chimkar, who had stagnated in his post instituted O.A. No.642 of 2007 before the MAT seeking promotion. Therein, the said Workshop Assistant, made reference to the promotions granted to the respondents herein by way of illustration. The MAT, did not find favour in the contentions raised by the said Workshop Assistant and dismissed the O.A. instituted by the said Workshop Assistant.

5] It is the case of the petitioner- State that on the basis of certain observations in the judgment and order dated 13.11.2009 made by the MAT dismissing O.A. No. 642 of 2007 instituted by such Workshop Assistant, the petitioner – State realized that in terms of the Recruitment Rules of 1983, the Workshop Assistants were not entitled for promotion as Instructors/ Craft Instructors. Therefore, the petitioner were justified in issuing orders dated 21.03.2013 reverting the respondents and ordering the recovery of excess benefits enjoyed by them.

6] Mr. Yadav, learned AGP for the State- petitioner, in each of these petitions, submits that in terms of 1983 Recruitment Rules, the Workshop Assistants were not entitled to be promoted to the post of Inspectors/Crafts Inspectors. Their promotion in the year 1995 was therefore, a mistake. Mr. Yadav submits that in such circumstances, the State was entitled to revert the respondents and order recovery of excess benefits gained by the respondents on the basis of mistaken promotion. He submits that the MAT has viewed the matter hyper technically, inasmuch as the MAT has ruled that since 1983 Recruitment Rules has not

been gazetted, the same had not become operative. Shri.Yadav submits that even though the Recruitment Rules may not have been gazetted, such Recruitment Rules were effective and therefore, the respondents were wrongly granted promotions in the year 1995.

7] As noted earlier, the respondents were promoted in the year 1995 by the petitioner themselves. Further, in the year 2009, the respondents were granted the benefit of TBPS or ACPS Scale. The reversion orders coupled with the orders for recovery of so called excess benefits were made by the petitioner- State in March 2013, i.e., after a period of almost 18 years from the dates on which the respondents were promoted by the petitioner themselves. The MAT, it appears, had granted interim relief restraining reversion and recovery and finally, the MAT has set aside the orders dated 21.03.2013.

8] This is not a case where the respondents had secured any promotions by practising fraud or misrepresentations. In such circumstances, the petitioners cannot simply wake-up after 18 years and state that the promotions granted to the

respondents were a mistake and therefore, the respondents should not only suffer reversion, but also refund the amount earned by them in the promotional posts, notwithstanding the fact that the respondents may have worked in the promotional posts for all these years. There is absolutely no explanation as to why the respondents were promoted in the first place and thereafter, permitted to continue for over 18 years in the promotional posts, if indeed the 1983 Rules were in force.

9] It is in this context that the MAT has observed that so called Recruitment Rules of 1983 were never made effective, possibly, for want of publication in the Official Gazette. The petitioners concede that the Recruitment Rules of 1983 were never published in the Official Gazette. Further, the circumstance that despite the so called existence of the unpublished Recruitment Rules of 1983, actually promoted the respondents as Instructors/Craft Instructors and further, continued them in the said position for a period of over 18 years, clearly implies that even the petitioner did not treat the so called 1983 as operative for all this while.

10] The MAT has rightly emphasized that the petitioner have not even made slightest allegation that the respondents secured promotions wayback in the year 1995 by misrepresentation or practising any fraud. The MAT has observed that it was not even remotely suggested that the respondents were in *pari-delicto* with the petitioner. There was no material to indicate any complicity on the part of the respondents, insofar as their promotions of the year 1995 was concerned.

11] The MAT has also explained the observations in case of *Anupkumar Chimkar*, Workshop Assistant, who had approached the MAT seeking promotion and who had by way of illustrations cited the case of the respondents. The MAT has noted that the fact that 1983 Rules had never been made effective was not even brought to the notice in *Chimkar's case*. But for the observations in *Chimkar's case*, the petitioner on their own had never regarded the promotions granted to the respondents as any mistake or vitiated by any illegality. The approach of the MAT, in such facts and circumstances, cannot be said to be illegal or perverse.

12] It was brought to our notice that Shri. S.K. Marsale and Mr. R.A. Patel, the respondents in Writ Petition No. 5712 of 2018 and 6260 of 2018 have already retired on 31.05.2013 and 30.06.2016. Further, it was pointed out that Shri. D.D. Tambe, the respondent in Writ Petition No. 2159 of 2018 is due to retire on 30.06.2018. One of the contention of the petitioner before the MAT was that in the meanwhile, even the post of Workshop Assistants from which the respondents were promoted to the post of Instructors/Craft Instructors in the year 1995 stand abolished. These all are additional factors, which dissuade us not to interfere with the reasonable view taken by the MAT in the facts and circumstances of the present case.

13] Upon cumulative consideration of all such factors, we find no good ground to interfere with the impugned common judgment and order made by the MAT. The impugned judgement and order promotes substantial justice and mainly turns on the peculiar facts and circumstance of the case. In exercise of extraordinary and equitable jurisdiction, therefore, no case is made out to warrant interference.

14] These petitions are therefore liable to be dismissed and are hereby dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)