

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2932 OF 2018
WITH
NOTICE OF MOTION NO. 528 OF 2018

1. Meghana Dilip Talekar
(Meghana Chandrashekhar Itkelwar)
2. Shivdarshan Shrinivas Sathye .. Petitioners

Versus

Maharashtra Legislature Secretariat & Ors. .. Respondents

WITH
WRIT PETITION (L) NO. 3405 OF 2018

Vilas Gotiramji Athawale .. Petitioner

Versus

Maharashtra Legislature Secretariat & Ors. .. Respondents

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- Mr. A.V. Anturkar, Sr. Advocate a/w Sandeep Madhukar Phatak, Mr. Shubham Misar and Mr. Yatin Malvankar for the Petitioners in WP 2932/18
 - Mr. Sagar Talekar a/w Madhavi Ayyar i/by Talekar and Associates for the Petitioner in WPL 3405/18
 - Mr. Anil Y. Sakhare, Sr. Advocate a/w Akshay Prakash Shinde for Respondent No. 1
 - Mr. C.R. Naidu a/w Rahul Tanwani, Phiroz Mehta i/by Pradeep Gole for Respondent No. 4
 - Mr. Vijaysingh Thorat, Sr. Counsel a/w Vaibhav Sugdare for Respondent Nos. 2 and 3
 - Mrs. Jyoti Chavan, AGP for the State
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**CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

**Reserved on : JUNE 21, 2019.
Pronounced on : JULY 9, 2019**

ORAL JUDGMENT (Per Akil Kureshi, J.)

1. These petitions involve identical challenge arising in similar factual background. They have been heard together and would be disposed of by this common judgment.

2. For convenience, we may refer to the facts from Writ Petition No. 2932 of 2018.

3. The petitioners have challenged an order dated 20.8.2018 passed by Legislative Council Board (hereinafter referred to as "the Board") which comprises of the Hon'ble Chairman, Maharashtra Legislative Council and Hon'ble Speaker, Maharashtra Legislative Assmebly i.e Respondent Nos. 2 and 3 respectively. By the said order, the Board accepted representation of respondent No. 4 - Jitendra Bhole dated 19.10.2016 and rejected representations of the petitioners opposing the request of respondent No. 4 to grant

him seniority over the petitioners from the inception of their services. The petitioners have made consequential challenge to the revised seniority list dated 5.9.2018 showing respondent No. 4 senior to the petitioners in the cadre of Section Officer. We may record that in Writ Petition (L) No. 3405 of 2015, the petitioner has prayed for certain additional prayers with respect to adverse remarks etc. However, at the outset, we had made it clear that in the present proceedings, we would focus only on legality of the impugned order dated 20.8.2018 passed by the Board and action of the respondents pursuant thereto. Learned counsel for the petitioners had, therefore, asked for and was granted liberty to raise other issues in independent proceedings, if so advised.

4. Brief facts are as under:-

- (1) Respondent No. 1 - Maharashtra Legislature Secretariat issued a circular dated 1.4.1999 inviting applications through Employment Exchange from qualified candidates for four posts of Section Officers. One of these posts was for

Schedule Caste and the remaining three posts were general category posts.

- (2) Written examination for the posts in question was conducted on 8.9.1999. The petitioners of Writ Petition No. 2932 of 2018 Meghana Dilip Talekar and Shivdarshan Sathye and the petitioner of Writ Petition (L) No. 3405 of 2018 Vilas Athawale as well as respondent No. 4 Jitendra Bhole all appeared in the said written examination. Along with them, 107 candidates in all appeared in the said examination.
- (3) 19 out of these 107 candidates including all the petitioners and respondent No. 4 secured 40 or more marks in written examination which was the minimum cut off prescribed for being eligible for oral interview. During such examination, following candidates were awarded marks as indicated below:-

Sr. No.	Name of the Candidate	Marks Obtained	Category
1.	Dilip Ramkrishna Talekar	54	Open
2.	Jitendra M. Bhole (Respondent No. 4)	54	OBC

3.	Vilas G. Athavale (Petitioner in WPL 3405/18)	53	SC
4.	Meghana C. Itkelwar (Petitioner 1 in WP 2932/18)	45	OBC
5.	Shivdarshan S. Sathye (Petitioner 2 in WP 2932/18)	45	Open

- (4) The oral interviews were conducted on 21.2.2000 when all the petitioners and respondent No. 4 appeared before the Interview Committee.
- (5) On 30.3.2000, the recommendations were made for appointment of one Dilip Ramkrishna Talekar in Open Category and Vilas Athawale against Scheduled caste vacancy to the post of Section Officer. Appointment orders were issued in their favour on 30.3.2000. These candidates resumed charge on 10.4.2000 and 3.4.2000 respectively.
- (6) On 9.6.2000, further recommendations were made for appointment of Meghana Itkelwar / Talekar and Shivdarshan Sathye for appointment to the post of Section Officers. In the said recommendation, it was also noted that Mr. Jitendra Bhole - Respondent No. 4 belongs to 'OBC' category, however, presently, there is no post available for him. It was, therefore,

recommended that as soon as the post becomes vacant in future, his name may be considered on priority.

- (7) Pursuant to such recommendations, Meghana Itkelwar / Talekar and Shivdarshan Sathye were issued appointment orders and they joined duties on 20.6.2000 and 22.6.2000 respectively.
- (8) Respondent No. 4 - Jitendra Bhole was appointed to the same post of Section Officer on 30.8.2001 upon the post falling vacant.
- (9) On 30.5.2002, Seniority List for the post of Section Officers was prepared and published. Respondent No. 4 - Jitendra Bhole was shown junior to all the petitioners. In the meantime, the first appointee i.e Dilip Talekar had resigned and he was thus, no longer a contedner
- (10) The Seniority List for the post in question was thereafter published from time to time. At every

stage, the petitioners were shown senior to respondent No. 4. Admittedly, at no point of time till the year 2016, respondent No. 4 had ever objected to such seniority position.

(11) Further promotion was given to all the petitioners and respondent No. 4 to the post of Under Secretary on the basis of such seniority position. Yet another promotion to the post of Deputy Secretary was given to all the petitioners and respondent No. 4 on the basis of such seniority.

(12) Respondent No. 4 for the first time made a representation dated 19.10.2016 to the Principal Secretary, Maharashtra Legislature Secretariat in which he requested that in the original selection process of the year 1999 his name should have been shown at number 1 in the merit list since Mr. Dilip Talkear had already resigned from the service. His request was based on his assertion that since he was awarded highest 54 marks in

the written examination along with Dilip Talekar, he should have been shown as joint rank 1 holder. He pointed out that the remaining selected and appointed candidates i.e the petitioners of these two petitions had secured less marks than him. In his contention, since there was no further categorization or allotment of marks in the oral interview, the ranks of the selected candidates should have been on the basis of their performance in the written examination alone.

(13) The petitioners thereupon made a representation dated 11.11.2016 and urged the authorities to cancel the appointment of respondent No. 4 to the post of Section Officer contending that the same was illegal.

(14) On 15.5.2017, the petitioners filed their response to the representation dated 19.10.2016 of respondent No. 4. In such representation, they contended that the Selection Committee had

selected suitable candidates on merits for appointment to the post of Section Officer. They pointed out that there were only four vacancies out of which three were filled up by offering appointments to the present petitioners and Mr. Dilip Talekar. Thereafter, no further vacancy was left. The rules did not envisage wait list. The name of respondent No. 4 could not have been kept in the wait list. In any case, wait list can be operated only if an appointed candidate does not accept the appointment. In the present case, the very appointment of respondent No. 4 which was made year and a half after the entire selection and recruitment process was completed, was illegal. They further contended that respondent No. 4 has raised these issues at a late stage. On the ground of delay and laches, his request for revising the seniority cannot be granted.

- (15) On 20.2.2017, respondent No. 4 made a representation requesting that till his earlier

representation for revising the seniority is decided, no promotion to the post of Joint Secretary or to the post of Officer on Special Duty may be granted to any of the petitioners.

(16) On or around 27.11.2017, Writ Petition No. 565 of 2018 was filed by all three petitioners for a declaration that the selection process for the year 1999-2000 was valid and legal and representation dated 19.10.2016 made on behalf of respondent no. 4 suffers from gross delay and should be rejected.

(17) On 11.6.2018, the Division Bench of this Court disposed of the said Writ Petition by giving direction to consider the representation of respondent No. 4. While doing so, the Board would consider the petitioners' objection about maintainability of the representation on the ground that it was highly belated. Relevant portion of this order reads as under:-

"6. We have heard learned counsel for the parties at length. During the course of the hearing, a broad consensus is arrived at between the parties and on the basis of that we dispose of this petition by observing that it is open for the Board to consider the said representation filed by the 4th respondent. However, the Board while deciding the representation shall consider and take appropriate decision on the petitioner's objection about the maintainability of the said representation on the ground that the same is highly belated and deserves to be dismissed on the ground of delay and laches. Needless to say that if the Board find that it is highly belated and barred by laches, it need not go into the merits of the said representation. The petitioner and the 4th respondent be given due opportunity of hearing. All contentions including the maintainability of the representation as also the judgments on which the parties may place reliance, shall also be taken into consideration in the matter. While deciding the said representation of the 4th respondent, the petitioner's representations Exh. "G" and Exh. "L" shall also be taken into consideration., It is further observed that both the sides are at liberty to file their written submissions on or before 18th June, 2018.

7. The decision as aforesaid be taken within one month from the date of appearance of the parties before the Board.

8. It is also made clear that if the representation is not decided within the aforesaid period, the interim

protection granted by respondent no.2 on 20th February, 2017 shall stand vacated.

9. All contentions of the parties are kept open including the power of the Board.

10. Parties to appear before the Board on 18/06/2018 at 3 p.m.

11. With the aforesaid observations, Petition is disposed of.

12. Parties to act on the authenticated copy of this order."

(18) On 20.8.2018, the Board passed its impugned order. The Board held that respondent No. 4 Mr. Jitendra Bhole was entitled to get his seniority from the date of appointment of Mr. Vilas Athawale as Section Officer and that he would rank senior to Mr. Vilas Athawale and all other opponents therein i.e the present petitioners. The Board took note of the recruitment process undertaken in the year 1999-2000 and the fact that the petitioners were appointed prior to Mr. Jitendra Bhole in the cadre of Section Officer. However, the Board was of the opinion that no

marks, gradation or material was placed or available on record on what basis the inter-se placement between Mr. Bhole and the petitioners was made at the time of final selection process. The Board held that Mr. Bhole was more meritorious than Mr. Athawale and other petitioners. This was on the basis of his performance in the written examination. The Board, therefore, concluded that the selection process undertaken in the year 2000 was vitiated which was apparent on the face of record. The question of gross delay in making the representation by Mr. Bhole was examined. However, the Board was inclined to accept Mr. Bhole's explanation for such delay in which he had stated that the Board being a reputed institution, he assumed that the entire selection process would have been undertaken in a fair manner. However, after noticing the discussion around his colleagues, he applied for copies of the documents under Right to Information Act ("RTI"

for short). Upon receipt of such documents within 19 days, he had filed the representation. The Board observed that the delay and laches must be viewed in the facts of the case. In the opinion of the Board, the delay had not benefited Mr. Bhole but the petitioners. In view of the conclusion that the selection process was vitiated, the Board was of the opinion that mere passage of time in making the representation would not be sufficient to reject the same. The Board was of the opinion that by accepting the representation of Mr. Bhole, the Board was not disturbing the settled seniority position. Under these circumstances, the following order was passed:-

"26. In the result, we pass the following order:-

a) Without setting aside the appointments of the Opponents, it is directed that Shri. Bhole be assigned seniority in the post of Section Officer with effect from 3rd April, 2000 i.e the date of joining of Shri. Athawale on the post of Section Officer and it is further directed that Shri. Bhole be assigned seniority over all the opponents;

b) It is directed that Shri. Bhole be assigned seniority in the cadre of Deputy Secretary w.e.f.

14th December, 2010 i.e the date of joining of Shri. Athawale in the cadre of Deputy Secretary and it is further directed that Shri. Bhole be assigned seniority over all the opponents in the said cadre;

c) The representation dated 11th November, 2016 filed by Mrs. Meghana Itkelwar-Talekar and Shri. Shivdarshan Sathye is hereby rejected;

d) The Principal Secretary, Maharashtra Legislature Secretariat is hereby directed to forthwith implement this order by issuing appropriate office order in terms of this order."

5. On the basis of the revised seniority pursuant to the order of the Board, the respondent No. 4 was promoted to the post of Joint Secretary by order dated 1.11.2018.

6. The petitioners have therefore challenged the said order of the Board dated 20.8.2018 and the consequential promotion of respondent No. 4 to the post of Joint Secretary by order dated 1.11.2018. In view of such facts, learned counsel for the petitioners raised following contentions:-

(i) The representation of Mr. Bhole was highly belated. He was appointed on 30.8.2001. For the first time, he complained about his seniority by

making representation on 19.10.2016. This delay was not properly considered by the Board. In the meantime, seniority lists were published on as many as 11 occasions without any objection from respondent No. 4. Further promotions were also granted on the basis of such seniority. At this belated stage, therefore, the Board could not have unsettled long standing seniority position. It was pointed out that respondent No. 4 was working in the same department. The documents asked by respondent No. 4 under RTI were similar to what other employees of the same department had asked in the past. It was, therefore, not possible to believe that respondent No. 4 was not aware about the manner and method of recruitment process of the year 1999-2000;

- (ii) The decision of Supreme Court in the case of **Bhupendra Nath Hazarika Vs. State of Assam**¹ relied upon in the impugned order had no applicability. The facts of the present case were totally different;

¹ (2013) 2 SCC 516

- (iii) By the impugned order, the Board virtually reviewed the entire selection process conducted in the year 1999-2000. The Board had no powers of substantial review;
- (iv) The applicable rules for fixation of inter-se seniority have not been taken into consideration while passing the impugned order. The principle of continuous officiation for fixing seniority has been breached. The inter-se merit of the candidates was judged solely on their performance in the written examination. According to the learned counsel, such examination was merely qualifying in nature. The Board prescribed minimum cut off marks of 40 in such written examination to qualify for oral interview. In the impugned order, importance is attached to the marks obtained by the candidates in such written examination alone, thereby completely losing sight of the fact that such examination was merely qualifying in nature. In any case, the Board has ignored the importance of the oral interview conducted at the relevant time;

(v) Even on merits, the decision of the Board is incorrect. It was contended that very appointment of respondent No. 4 was illegal. Only four posts of Section Officer were available at the relevant time. It was contended that there was no provision for maintaining wait list. In any case, such wait list could not have been operated after one year. It was contended that once all four vacancies were filled up through selected candidates, thereafter, there was no question of appointment of respondent No. 4 by operating the wait list which goes contrary to the basic principles of service law;

(vi) In support of their contentions, learned Counsel have relied upon several decisions reference to which would be made at an appropriate stage.

7. On the other hand, learned counsel for the Board contended that the Board has passed a speaking order giving appropriate reasons and arrived at just conclusions. The previous recruitment process was defective and full of irregularities. Being an administrative decision, the Board had requisite powers to review it when correct facts are

brought to its notice. Respondent No. 4 who had got joint highest marks with Mr. Dilip Talekar in the written examination was wrongly not placed in the select list. Due to passage of time, in the meantime, the Board did not disturb the appointments of the petitioners already made, instead merely rectified the seniority position. The explanation for delay offered by respondent No. 4 was accepted. In any case, the delay did not result in any loss to the petitioners. He placed heavy reliance on the decision of the Supreme Court in the case of Bhupendra Nath Hazarika (supra). The learned counsel also relied on the decision of the Supreme Court in the case of **Haryana Suraj Malting Ltd Vs. Phool Chand**² in support of his contention that the Board had powers of procedural review.

8. Learned counsel for respondent No. 4 made detail submissions which can be summarised as under:-

- (i) Selection process was ex-facie illegal and contrary to the statutory provisions. Respondent No. 4 had received joint highest marks in the written examination. He ought to have been placed in

² (2018) 16 SCC 567

the select list at the outset. The recruitment rules did not provide for oral interview. The Board, therefore, committed an error in conducting such interview. In any case, the rules did not permit selection only on the basis of oral interview. No marks were assigned during the interview. There is nothing on record to suggest that on combined tally of the marks of written examination and oral interview, the petitioners had secured higher marks than respondent No. 4. The selection committee has not assigned any reason for placing the petitioners in the select list to the exclusion of respondent No. 4;

- (ii) There was no delay on the part of respondent No. 4 in making the representation. Respondent No. 4 was not aware about irregularities which had taken place in the selection process. Only when, he became suspicious, he applied for the copies of the documents under RTI Act. As soon as such documents were provided, he filed the representation;
- (iii) Even if there was a passage of time between

initial appointment and the representation made by respondent No. 4, the same cannot be fatal to his reliefs. He had not challenged the appointments of the petitioners. He had merely prayed for correction of the seniority position;

(iv) Learned counsel relied on several decisions reference to which will be made at an appropriate stage.

9. Learned counsel for respondent No. 1 had assisted the Court in gathering requisite information and documents.

10. Before deciding the rival contentions, we may take note of the statutory provisions. In exercise of the powers conferred by clause (3) of Article 187 of the Constitution of India, the Governor of Maharashtra after consultation with the Speaker of the Maharashtra Legislative Assembly and the Chairman of the Maharashtra Legislative Council has framed Maharashtra Legislature Secretariat, Section Officers "B" (Recruitment) Rules, 1997 (hereinafter referred to as "Recruitment Rules of 1997"). Rule 3 of the Recruitment Rules of 1997 provides that recruitment to a

post of Section Officer in Legislature Secretariat shall be made by any of the two methods namely (a) by promotion of a person considered eligible on the basis of seniority-cum-qualification from amongst the qualified assistants who have completed not less than minimum continuous service of 3 years in Legislature Secretariat and (b) by nomination, on the basis of results of the competitive examination conducted by the Legislature Secretariat. The Rule further provides that for getting admission to this examination, other than those who are working as Assistant in Maharashtra Legislature Secretariat; candidates should not be less than 19 years and more than 30 years (35 years in respect of candidates who belong to backward class). The candidate must hold a degree of statutory University or any other equivalent qualification recognized properly by written orders by Government in that respect. Rule 4 of the Recruitment Rules of 1997 provides that proportion of appointment to be made by promotion and nomination shall be $66 \frac{2}{3} : 33 \frac{1}{3}$ which will be in proportion with the total number of permanent and temporary posts of the cadre.

11. In exercise of the powers conferred by clause (3) of Article 187 of the of the Constitution of India, the Governor of Maharashtra after consultation with the Speaker of the Maharashtra Legislative Assembly and the Chairman of the Maharashtra Legislative Council has framed Maharashtra Legislature Secretariat (Recruitment and Conditions of Service) Rules, 1973 [hereinafter referred to as the "Rules of 1973"]. Clause (c) of Rule 2 defines the term 'Board' as to mean the Board consisting of the Chairman and the Speaker. Rule 4 of the Rules of 1973 provides three methods of recruitment to a post or class of posts under the Board namely by promotion, by permanent transfer or deputation and by direct recruitment. Rule 10 of the Rules of 1973 pertains to conditions of service. Sub-rule (1) thereof provides that the scale of pay, allowances and other emoluments and other conditions of service of persons appointed to any posts under the Legislature Secretariat shall be the same as applicable to the members of corresponding posts in the State Secretariat. Where there is no corresponding post in the State Secretariat, the scale of pay, allowances and other emoluments and other conditions

of service shall be such as may be determined by the Special Board.

12. By virtue of such Rules of 1973, the conditions of service of the staff of the Secretariat would be those as applicable to Government Servants under the statutory Rules. The Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 have been framed by the State Government in exercise of the powers conferred by the proviso to article 309 of the Constitution of India (hereinafter referred to as the Rules of 1982). These Rules make detail provisions for fixing seniority of a Government Servant. Rule 4 of the Rules of 1982 pertains to General Principles of Seniority and reads as under:-

4. General principles of seniority.

- (1) Subject to the other provisions of these rules, the seniority of Government servant in any post, cadre or service shall ordinarily be determined on the length of his continuous service therein :

Provided that, for the purpose of computing such service any period of absence from the post, cadre or service due to leave, deputation for training or otherwise, or on foreign service or temporary officiating in any other post shall be taken into account, if the competent authority certifies that the

Government servant concerned would have continued in the said post, cadre or service during such period, had he not proceeded on leave or deputation or been appointed temporarily to such other post :

Provided further that, the service, if any, rendered by him as result of fortuitous appointment (except in a case whether the competent authority certifies that, it was not expedient / possible or practicable to make a regular appointment strictly in accordance with the ratio of recruitment as prescribed in relevant recruitment rules, with the brief reasons recorded therefor), shall be excluded in computing the length of service and for the purpose of seniority he shall be deemed to have been appointed to the post or in the cadre or service on the date on which his regular appointment is made in accordance with the provisions of the relevant recruitment rules.

(2) Notwithstanding anything contained in sub-rule(1),-

- (a) the *inter se* seniority of direct recruits selected in one batch for appointment to any post, cadre or service, shall be determined according to their ranks in the order of preference arranged by the Commission, Selection Board or in the case of recruitment by nomination directly made by the competent authority, the said authority, as the case may be, if the appointment is taken up by the person recruited within thirty days from the date of issue of the order of appointment or within such extended period as the competent authority may in its discretion allow :
- (b) the *inter se* seniority of Government servants promoted from a Select List shall be in the same order in which their names appear in such Select List. If the Select List is prepared in two parts, the first part containing the names of those selected unconditionally and the

second part containing the names of those selected provisionally. All persons included in the first part shall rank above those included in the second part :

Provided that, if the order in which the names are arranged in the Select List is changed following a subsequent review of it, the seniority of the Government servants involved shall be rearranged and determined afresh in conformity with their revised ranks:

(c) the seniority of a transferred Government servant *vis-a-vis* the Government servants in the posts, cadre or service to which he is transferred shall be determined by the competent authority with due regards to the class and pay-scale of the post, cadre or service from which he is transferred, the length of his service therein and the circumstances leading to his transfer.

(3) Where the dates of appointing in posts, cadre or service of any two or more persons determined after assigning the deemed date, if necessary, are identical the person senior in age shall be considered as senior for the purpose of determining the seniority”.

Rule 5 of Rules of 1982 pertains to assignment of deemed dates of appointment, relevant portion of which reads as under:-

"5. Assignment of deemed dates of appointment.

(1) Notwithstanding anything contained in rule 4, [on recommendation of the Competent Authority, the Government may,] in accordance with the provisions

contained in the following sub-rules, assign to a Government servant, a deemed date of appointment to a post, cadre or service which is different from the date of his actual appointment thereto; and on such a deemed date having been assigned, the length of his service in the said post, cadre or service shall be computed as commencing from that date. *[The deemed date assigned under this rule and the seniority list prepared in pursuance of the same, shall not ordinarily, be altered at the time of preparation of seniority list on the subsequent occasions or in the subsequent years.]

- (2) Where the direct recruits selected in the same batch report for duty on different dates and the actual dates on which they are appointed are not chronologically in conformity with their inter se seniority as provided in clause (a) of sub-rule (2) of rule 4, the recruit higher in rank but reporting for duty later than his junior shall be assigned, as deemed date of appointment, the date on which the recruit lower in rank reports for duty, provided the recruit higher in rank reported for duty within the period of thirty days from the date of his appointment or within such further period as may be extended by the competent authority."

Rule 7 provides that the Competent Authority shall prepare annually for each cadre a gradation list of persons under that cadre in the order of seniority as on 1st January and shall bring it to the notice of the Government servants concerned.

13. With this background, we may take a closer look at the impugned order.

14. Respondent No. 4 in his representation had explained delay as under:

" 12. The information, on basis of which I am making this application was not in my custody but was in the custody of the office. Since Maharashtra Legislature Secretariat is the topmost institution of democracy in the state, I believed that the decisions taken in the administration there would be after strictly following the laws and rules. Because all these papers were in the custody of the office and because I was relaxed due to my aforesaid belief, I could not imagine that any such irregularity or error could have occurred in the recruitment process conducted at that time. **But after noticing the discussion among my colleague officers, I applied for and received the papers under the Right to Information Act.** These papers shook by aforesaid reliefs. However, I also firmly believe that this error will definitely be rectified by the present Hon'ble Board. I am making this application soon after receiving the above mentioned confidential information under Right to Information Act. Hence, there is no delay in making this application / demand."

15. In the impugned order, the Board first considered the question of delay and laches. The Board noted that the representation made by respondent No. 4 was after 14 years from the date the inter-se seniority was published on 30.5.2002. The Board noted the explanation of Mr. Bhole

that illegality occurred in the selection process undertaken in the year 2000 came to his knowledge only on 1.10.2016 when he received documents from the Secretariat. The Board found such explanation plausible but without concluding the question of delay, proceeded to examine whether despite delay, any relief could be granted to the said respondent. The observations in the impugned order in this respect read as under:-

"12. From the record we find that the explanation given by Shri. Jitendra Bhole with regard to delay that has occurred in filing of the representation appears to be plausible and sufficient. Be that as it may, assuming everything against Mr. Bhole and in favour of the opponents, the issue of laches and not just delay, needs to be examined in the facts and circumstances of the present case. It is to be noted foremost that this delay has not at all inured to the benefit of Shri. Bhole and further that Shri. Bhole has not received any advantage out of the delay. If at all anybody is benefited, it is the Opponents who are benefited on account of the same and therefore, certainly the Opponents cannot complaint about delay. Had Shri. Bhole gained any advantage out of this delay, then the result would have been altogether different as he would not have been allowed to gain any advantage out of his own inaction."

16. The contention of the petitioners that the information on which respondent No. 4 is now relying was similar to that sought by third parties in the past and it was

processed by Mr. Bhole himself working as Assistant Information Officer - cum - Coordinator' was not taken into consideration. The Board was of the opinion that Mr. Bhole had not challenged the appointments of the petitioners and the relief he claimed was for being placed at Sr. No. 1 in the seniority list on the basis of the result of the written examination. Opining that the Board was not considering taking away accrued benefits in favour of anybody, was of the opinion that the representation cannot be rejected only on the ground of delay and laches.

17. The Board thereafter proceeded to examine the facts emerging from the record. It noted that Mr. Bhole had received highest marks in the written examination along with Mr. Dilip Talekar and opined that "he was most meritorious amongst all the parties to the present controversy". On the ground that the decision of the Board not to appoint Mr. Bhole before any of the petitioners, the Board concluded that the same vitiated the entire process and the recommendations were required to be ignored. The Board thereafter observed as under:-

"21. Once we have come to a conclusion that the recommendations of the Board made in the interview are to be ignored, then in that case, we fall back on the results and marks obtained by all the candidates at the written examination, which are not at all disputed and in any case are not at all disputable. Admittedly, Shri. Bhole in the written examination secured marks that are higher than Shri. Vilas Athawale. There being no other yardstick used, nor available, for being used, to judge the inter-se merits of the candidates, who appeared at the said selection process, than the marks secured at the written examination, which in our view, in any case is the best way to judge the inter-se merit, Shri. Bhole secures the highest position amongst all the persons involved in the present dispute before us.

22. The net result of the aforesaid discussion is that Shri. Bhole is entitled to get seniority from the date of appointment of Shri. Athawale as Section Officer and Shri. Bhole would rank senior to Shri. Athawale and all the other opponents."

The Board also rejected the contention of the petitioners that it had no power to review the earlier decision of the Selection Committee.

18. For several reasons, we find that the impugned decision of the Board is legally unsustainable. Our reasons are as under:-

(i) Delay and laches:

18.1 Undisputed facts are rather glaring. The selection process for notified vacancies to the post of Section Officers was initiated in April 1999. After conducting written examination and oral interviews, two appointments were made by an order dated 31.3.2000. Two more appointments were made by order dated 9.6.2000. All the three petitioners joined duties on the post in April and June 2000. Respondent No. 4 was not recommended for appointment. The Board at the relevant time, however, passed a resolution to keep his name in the wait list to be offered appointment whenever the post for OBC falls vacant. He was appointed vide order dated 30.4.2001 and joined service on 3.9.2001. Thus, the appointment of respondent No. 4 was made more than a year after all the petitioners were appointed and had joined duty. If Respondent No. 4 had any dispute about his initial non-selection and appointment, he ought to have raised the grievance before the appropriate authority or Court within reasonable time. He accepted his appointment without any demurrer. He continued to discharge his duties accepting all the petitioners as his seniors.

18.2 The first seniority list was published on 30.5.2002 in which respondent No. 4 was shown junior to all the petitioners. Respondent No. 4 raised no objection to such seniority position. Successive multiple seniority lists were published thereafter from time to time. At no point of time, respondent No. 4 raised any objection to such seniority position. The petitioners and respondent No. 4 were promoted to the next higher post of Under Secretary and thereafter to the post of Deputy Secretary. The petitioners were promoted earlier than respondent No. 4. Again, respondent No. 4 did not raise any objection.

18.3 Respondent No. 4 made a representation for the first time questioning his seniority on 19.10.2016. It is well settled that no person who is tardy in pursuing his legal rights, can claim relief in a Court of law. In the context of service law, it is settled through series of judgments that settled seniority position should not be upset after a long period of time. Reference in this respect can be made to a decision of the Supreme Court in case of **K.R. Mudgal & Ors Vs. R.P. Singh & Ors.**³ . The Court made following

³ (1986) 4 SCC 531

observations:-

"7. The respondents in the writ petition raised a preliminary objection to the writ petition stating that the writ petition was liable to be dismissed on the ground of laches. Although the learned Single Judge and the Division Bench have not disposed of the above writ petition on the ground of delay, we feel that in the circumstances of this case the writ petition should have been rejected on the ground of delay alone. The first draft seniority list of the Assistants was issued in the year 1958 and it was duly circulated amongst all the concerned officials. In that list the writ petitioners had been shown below the respondents. No objections were received from the petitioners against the seniority list. Subsequently, the seniority lists were again issued in 1961 and 1965 but again no objections were raised by the writ petitioners, to the seniority list of 1961, but only the petitioner No. 6 in the writ petition represented against the seniority list of 1965. We have already mentioned that the 1968 seniority list in which the writ petitioners had been shown above the respondents had been issued on a misunderstanding of the Office Memorandum of 1959 on the assumption that the 1949 Office Memorandum was not applicable to them. The June 1975 seniority list was prepared having regard to the decision in Ravi Varma's case (supra) and the decision of the High Court of Andhra Pradesh in the writ petitions filed by respondent Nos. 7 and 36 and thus the mistake that had crept into the 1968 list was rectified. Thus the list was finalised in January, 1976. The petitioners who filed the writ petition should have in the ordinary course questioned the principle on the basis of which the seniority lists were being issued from time to time from the year 1958 and the promotions which were being made on the basis of the said lists within a reasonable time. For the first time they filed the writ petition in the High Court in the year 1976 nearly 18 years after the first draft

seniority list was published in the year 1958. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties. Unfortunately in this case even after nearly 32 years the dispute regarding the appointment of some of the respondents to the writ petition is still lingering in this Court. In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches. The facts of this case are more or less similar to the facts in *R.S. Makashi Vs. I.M. Menon*; (1982) 2 SCR 69. In the said decision this Court observed at page 100 thus:

"In these circumstances, we consider that the High Court was wrong in over-ruling the preliminary objection raised by the respondents before it, that the writ petition should be dismissed on the preliminary ground of delay and laches, inasmuch as it seeks to disrupt the vested rights regarding the seniority, rank and promotions which had accrued to a large number of respondents during the period of eight years that had intervened between the passing of the impugned resolution and the institution of the writ petition. We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 22, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition in so far as it related to the prayer for quashing the said Government Resolution should have been dismissed."

8. We are in respectful agreement with the above observation."

18.4 The Supreme Court in the case of **Malcom Lawrence Cecil D'Souza Vs. Union of India & Ors.**⁴ observed that it is essential that anyone who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter raking up old matters like seniority after a long time which is likely to result in administrative complications and difficulties.

18.5 The Supreme Court in the case of **Shiba Shankar Mohapatra & Ors Vs. State of Orissa & Ors.**⁵ observed as under:-

"30. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.

4 (1976) 1 SCC 599

5 (2010) 12 SCC 471

31. The Tribunal ought to have dismissed the case of Parsuram Sahu (supra) only on the ground of delay and the laches, as the applicant approached the Tribunal at the verge of his retirement and after getting two promotions while the other parties have got three promotions. In the said case, the private respondents have not considered it proper to contest the case because both of them were likely to superannuate just thereafter on attaining the age of retirement. Undoubtedly, the said judgment and order has not been challenged by anybody and it attained finality but that remained the judgment in personem. More so, there is nothing on record to show as to whether the said applicant Parsuram Sahu could ever get any relief from the State Government. "

18.6 The Board ignored such legal position and entertained the representation of respondent No. 4 which was grossly belated.

18.7 The explanation of respondent No. 4 was that he was not aware about the so called irregularities having been committed in the selection process. Being an august body, he was carrying a belief that the selection process would have been carried out in accordance with the rules. **In his own words, "But after noticing the discussion among my colleague officers, I applied for and received the papers under the Right to Information Act".** His application under RTI was also made sometime in the year

2016. His one line explanation that he learnt from the discussion among his colleagues which made him to apply for the documents under RTI, simply cannot be accepted to ignore delay of nearly a decade and a half. He has not given details of such discussion among his colleagues which prompted him to make further inquiries. This is far loose and general a statement for explaining delay of over 15 years. If he was dissatisfied with his non selection and consequential non appointment on the four notified vacancies, he ought to have made inquiries at appropriate time and pursue his legal remedies. He simply cannot activate the machinery decade and a half later and challenge the appointment of the petitioners and consequential seniority over him. The Board simply did not take into account the contention raised by the petitioners that the information on which respondent No. 4 is relying upon in his representation, was similar to what other officers of the Board had asked for and which in his official capacity, respondent No. 4 had the occasion to process. If this was true, it would have a bearing on the explanation for delay rendered by respondent No. 4. In their representation dated 15.5.2017 made to the Board for opposing the

representation of respondent No. 4, the petitioners had contended as under:-

" Now, we would like to invite Hon. Board's attention to another extremely important and noteworthy point which shines a clear light on the case upon which the entire representation of Shri. Bhole is stand. Shri. Bhole is not the first applicant to seek information regarding the examination in question under Right to Information Act but, since the year 2006 to this date, there have been 6 to 7 applicants who have obtained all the concerned documents in context of the said examination.

Shri. Bhole is well aware of all the information and status of the aforementioned applications. Moreover, the application made by one Shri. Prakash Deshmukh dated 3rd November, 2006 and the application made by Shri. Nitin Dalvi dated 4th January 2007 were processed and dealt with by Shri. Bhole himself in capacity of the Assistant Information Officer cum Coordination Officer. The said two applications even bear his signature (a copy of the same is attached herewith for the special perusal of Hon. Board). All the said applications were clearly seek the information about the process adopted to conduct examination of the year 1999-2000, names of candidates therein, marks obtained by them, report of Hon. Board and appointment of the fifth post when only four posts were available. These are the very same points are also mentioned in Shri. Bhole's representation. Here it was Shri. Bhole himself who had forwarded the said applications to the Establishment Branch after exclusively studying the same. Then a question arise as to why Shri. Bhole intentionally chose to slumber over for so many years when all the aforesaid applications had objected to the appointment on the fifth post (i.e Shri. Bhole himself) and when the said matter was related to his own appointment and when he had all the opportunity to examine his position in the merit list of the recruitment

procedure in question? Or else Shri. Bhole was waiting for convenient opportunity? This issue begs to be enquired into at the very outset. Shri. Bhole's act of demanding for superiority in seniority in service after a good 16 years without using any of the opportunities he had from time to time certainly renders it as suspicious and time-barred (under Law of Limitation). Shri. Bhole has now very conveniently obtained information under Right to Information Act and created a make-believe about the so-called injustice inflicted upon him to misguide all the dignitaries. Thus, he has painted a unilateral picture wherein he is giving vent to a great injustice by bringing such a grave irregularity (fancied by himself) to the notice of the Hon. Board. Against all this background, the stand adopted by Shri. Bhole that he is submitting a representation only because the aforementioned matter has come before due to the information obtained through Right to Information can not be deemed acceptable at all. On the contrary, Shri. Bhole's claim becomes non-cognizable on a single point of being 'time-barred' and 'unreasonable delay'. Thus, this matter does not merit any importance or urgency. Consequently, the same becomes destined to be disposed off without being subjected to any further details."

The Board in the impugned order has not adverted to this important contention raised by the petitioners. In the Writ Petition No. 2932 of 2018 also, the petitioner has argued as under:-

"48. The petitioners state that around 2006, one Shri. Prakash Deshmukh, has also made an application on 1st November, 2006, asking for very same particulars of recruitment process held in 1999-2000, on which the respondent No. 4 is now relying. The true copy of the application with the endorsement made by respondent No. 4 along with its true translation is enclosed to the memo of this Writ

Petition and is marked as Exhibit U.

49. The petitioners state that thereafter, again in 2007, another person by name Shri. Nitin Shivram Dalvi, whose name can be found item No. 4 in table given in paragraph 7[f] of impugned order, made an application under the Right to Information Act on 4th January 2007, asking the very same particulars, on which the Respondent No. 4 is now relying. At the relevant time, the present Respondent No. 4 was the Assistant Information Officer and he has made the endorsement, on the same RTI application in the year 2007. The true copy of the endorsement, made by respondent No. 4 in his capacity as the Assistant Information Officer on the application made by the said Shri. Nitin Shivram Dalvi along with its true translation is enclosed to the memo of this Writ Petition and is marked as Exhibit V."

In his reply affidavit dated 14.6.2019, respondent No. 4 has admitted that such applications were made and that he was aware about such applications. He has stated as under:-

"30. With reference to paragraphs 47-51, the contents thereof are erroneous, misconceived and whatever is contrary to what is stated herein is denied in toto. I say that I was appointed as an Assistant Information Officer (Co-ordination) vide Circular No. 35526/E2 dated 31st August, 2005. According to the said Circular I was required to receive all applications under the RTI Act, collect information from other branches and then provide this information to the applicants. However, thereafter vide Circular No. 38754/C-1 dated 20th July, 2006 ("2006 Circular") section-wise independent Information Officers were appointed. I say and submit that pursuant to the 2006 Circular my role changed and was limited i.e I now only had to receive the

applications under the RTI Act and forward these applications to the concerned branches. The Public Information Officers of each branch upon receipt of these applications are then required to send the information requested directly to the applicant, and was not sent to me for my perusal. The said Circulars are annexed as Exhibit AR4A and AR4B and Exhibit AR5A and AR5B respectively to the Affidavit in Reply of respondent No. 1 dated 3rd April, 2019. The RTI Applications of Mr. Prakash Deshmukh and Mr. Nitil Dalvi are dated 3rd November, 2006 and 4th January, 2007 respectively i.e after the 2006 Circular was issued. Thus, although both these applications were received by me, I only forwarded them to the concerned branch i.e C-1 Branch, Asst. P.I.O. i.e Petitioner No. 2. The information was provided to the applicants directly by the C-1 Branch, Asst. P.I.O. i.e Petitioner No. 2 and was never sent to me for my perusal. Hence, I was never aware of the information received by the aforesaid applicants. Hence, the contention of the petitioners in this regard is completely false and erroneous."

18.8 The Board without elaborate reasons found the explanation of respondent No. 4 plausible. The Board not having conclusively decided to accept the explanation, could not have proceeded to examine the grievance of respondent No. 4 on merits. Even on the question of balancing equities in the facts of the case, the Board has committed serious error. Once the claim of respondent No. 4 was hit by delay and laches as we have held, there was thereafter no question of looking into the grievance of respondent No. 4 on merits and examining the legality of the selection process.

(ii) Acquiescence:

19. As noted respondent No. 4 raised no objection to selection and appointment of the petitioners at the relevant time. He did not object when his name was kept in wait list which was operated year and half later when new vacancy arose and he was offered appointment. He did not raise objection to the seniority list which was first published in the year 2002, nor did he complain about his seniority position in subsequently published seniority lists. He did not object when all the petitioners were granted promotions to the next higher cadre earlier than him. He had thus, clearly acquiesced in his being junior to all the petitioners.

(iii) Impermissible review:

20. In the process of entertaining the representation of respondent No. 4 and passing the impugned order, the Board has virtually reviewed the entire selection process undertaken in the year 1999-2000 by the then members of the Board. The decision was minutely dissected in order to come to the conclusion that the selection process has been vitiated. All these observations were on facts which as we

would see shortly were not even correctly appreciated. The Board virtually acted as an Appellate Authority over various decisions taken by the Board during the previous selection process. Merely because the composition of the Board had changed, would not permit re-examination of the selection process as if an appeal was being heard against the previous decisions. Thus, the impugned decision suffers from lack of jurisdiction.

(iv) Incorrect Decision:

21. Even on facts and in law, the decision rendered by the Board is wholly incorrect. It was noticed that all the qualified candidates were first called for written examination. After applying the cut of standard of 40 marks, all those who had secured the minimum qualifying marks were called for oral interview. It is accepted that the oral interviews were conducted. This is not even disputed by respondent No. 4. The Board has also proceeded on such basis. Despite this position, the recommendations of the selection committee for appointing Mr. Dilip Talekar and Mr. Athawale in the first lot and Ms. Meghana Itkelwar-Talekar and Mr. Shivdarshan

Sathye in the second lot were found objectionable by the Board in the impugned order on the ground that respondent No. 4 had secured highest marks in the written examination. This in the opinion of the Borad had vitiated the entire selection process. In our opinion, this thought process and the conclusions of the Board in the impugned order completely loose sight of the role of the oral interview during such selection process. It is not the case of the Board, contrary to what the respondent No. 4 has argued before us that, such oral interview was not permissible under the rules. When such oral interviews were conducted, the performance of the candidates during such interviews would be an extremely relevant consideration for offering appointments. Whether the written examination was merely qualifying examination for being called for the oral interview or whether the marks secured in the written examination would be carried forward, to be combined with the performance of the candidate in the oral interview is not clearly emerging from the record. The Board also in the impugned order has not clarified this position. The Board merely proceeded on the basis that since no separate marks were awarded in the oral

interviews, selection of the candidates ought to be based only on their performance in the written examination. This is wholly fallacious logic. The Board in the process, completely discarded role of the oral interview in judging the candidate's suitability for the post in question. Merely because separate grading or marks are not found on record at this point of time, would not be a ground to hold that the original selection committee had committed a legal error in recommending the petitioners for appointments on the posts in question ahead of respondent No. 4. This conclusion, the Board in the impugned order has arrived at only on the basis of the relative marks secured by the candidates in the written examination, thereby completely ignoring the role of the oral interview. Assuming for a moment that no marks were awarded in the oral interview, the decision of the original selection committee can at the best be seen as irregular, not grading the candidates. This itself cannot be seen as an illegality which goes to the root of the matter, so as to vitiate the entire selection process and which can be questioned at this distant point of time.

21.1 The Board has also proceeded on the basis of unclear and hazy facts as is bound to happen when one undertakes the exercise of unearthing old facts. For example, respondent No. 4 had secured 54 marks in the written examination, Mr. Athawale, a Scheduled Caste candidate had secured 53 marks. Even if one has to go by the logic of the Board that the select list could have been prepared only on the basis of marks awarded in the written examination, there is nothing to suggest that respondent No. 4 could have been included in the select list ahead of Mr. Athawale who was a reserved category candidate and admittedly, one reserved post of Scheduled Caste candidate was notified. Whether respondent No. 4 would find the place in the select list ahead of Mr. Athawale or vice versa would depend upon the roster point position of the reserved category seat. In absence of requisite material available at this point of time, it was simply not possible for anyone to conclude this issue with any degree of certainty. In short, the belated challenge to the selection and recruitment of the petitioners by respondent No. 4 has left one and all to make guesses about the most vital aspect of the matter.

(iv) Wrong Refixation of Seniority :

22. As per sub-rule (5) of Rule 4 of Rules of 1982, seniority of government servants would be determined on the length of his continuous service. As per sub-rule (2), notwithstanding this provision, inter se seniority of direct recruits selected in one batch for appointment would be determined according to their ranks. Both ways on the basis of continuous officiation as well as on the basis of rank, the petitioners were all along shown senior to respondent No. 4. Their seniority is upset by the impugned order and in the process, respondent No. 4 has been granted seniority from a date, he was not even born in the cadre.

23. Learned counsel for respondent No. 4, however, had vehemently argued that the action of the selection committee to conduct oral interview was illegal and impermissible. He contended that the Recruitment Rules do not envisage oral interview. Neither the notification nor the advertisement for recruitment referred to any oral interview.

According to him, the decision of the Committee to conduct the oral interview was, therefore, taken after recruitment process had started.

24. This contention cannot be accepted. Firstly because respondent No. 4 who had participated in the oral interview cannot turn back, that too after a decade and a half and question the very validity of the oral interview. It is well settled through series of judgments that a candidate who participates in the selection examination willingly cannot question the validity of such examination. Surely, if respondent No. 4, had been selected after such oral interview, he would not have challenged the validity of the same. Secondly, there is nothing in the rules which would debar the selection committee from conducting oral interviews. The rules merely envisaged recruitment through nomination "on the basis of the competitive examination conducted by the Legislature Secretariat". The rules, thus, referred to competitive examination. There is no warrant to presume that such competitive examination comprises only of the written examination. The word "competitive

examination" is wide enough to include within its purview written examination followed by oral interview. Statutory rules thus left sufficient scope for the Board to conduct oral interviews. The allegation that the decision to conduct oral interview was taken after the recruitment process had started is also based on mere conjectures. There is nothing on record collected more than a decade and a half to suggest that the recruitment process did not envisage conducting oral interviews and that the oral interviews were conducted as an afterthought.

25. The contention that respondent No. 4 had not challenged the appointments of the petitioners but merely their seniority is also not correct. Respondent No. 4 had claimed higher seniority over the petitioners on the ground that his non appointment was bad in law and consequently, the appointments of the petitioners were also illegal. In essence, he was questioning the very appointments of the petitioners. The contention that when the appointments are wholly fortuitous, seniority can be corrected at any point of time, also in the present case cannot be accepted. Firstly,

we have already given our detailed reasons why in our opinion the Board committed an error in coming to the conclusion that the selection process had been vitiated. Secondly, in effect what respondent No. 4 requested for was to give him seniority over the petitioners. He had neither questioned his lower seniority nor prior promotions of the petitioners on the basis of such seniority nor his non appointment pursuant to the selection process when the petitioners were appointed against the notified vacancies.

26. We may now refer to the decisions relied upon by the learned counsel for respondent No. 4. In case of Bhupendra Nath Hazarika (*supra*), the facts were that the selection to the notified vacancies of Assam Police Services (Junior Grade) was conducted by the Assam Public Service Commission in the year 1992-93. Recruitment was made in two parts; in special batch and regular batch. The candidates included in the special batch were shown senior to those in the regular batch which was disclosed at the time of confirmation of the services of the employees in the year 1999. The concerned employees had immediately submitted

their representations to the department. When these representations were pending, the department published inter-se seniority list on 12.3.1999 at which stage the officers belonging to regular batch approached the Central Administrative Tribunal. The Supreme Court came to the conclusion that the selection committee had not recommended the case of special batch recruits to the Assam Public Service Commission. The Court, therefore, held that their selection was *dehors* the rules. The Court, therefore, decided to push down the seniority of the officers of the special batch recruits, however, due to passage of time, the Court refused to quash their appointments.

27. Two things thus emerge from this judgment. In the said case, the officers of the regular batch had acted promptly. As soon as inter-se seniority was disclosed, they made representation and soon after publication of the first seniority list, they approached the Central Administrative Tribunal. Thus, there was no delay on the part of these officers in filing appropriate proceedings. The Supreme Court refused to quash the appointments of the special batch

officers due to passage of time by the time the Court declared its verdict. Second aspect is that the Court decided to push down the seniority of these officers upon coming to the conclusion that their appointments were totally dehors the rules since no recommendations in their favour were made by the selection committee to the State PSC. The facts in this case are therefore vitally different.

28. Reliance was placed on the decision of the Supreme Court in the case of **Ranajit Kumar Meher Vs. State of Orissa & Ors.**⁶ to contend that eligibility should be adjudged with reference to statutory rules and not advertisement inviting applications. We fail to see how these observations of the Supreme Court would apply in the present case. It is nobody's case that the petitioners were not eligible for appointment as per the advertisement or the recruitment rules.

29. Reliance was placed on the decision of the Supreme Court in the case of **A. Umarani Vs. Registrar,**

⁶ (2017) 4 SCC 568

Co-operative Societies & Ors.⁷ in which it was held that when appointments were made by the Government in contravention of mandatory provisions of the Act and statutory rules and ignoring essential qualifications, the same would be illegal and cannot be regularized. Again no such facts arise in the present case.

30. Reliance was placed on the decision of this Court in the case of **Kiran Rajaram Nimbalkar Vs. State of Maharashtra**⁸ in which it was observed that in absence of any grading or marking system followed by the selection committee, the process of selection by the committee was vitiated. These observations cannot be seen in isolation. It was a case in which appointment of respondent No. 5 to the post of lecturer in a college was challenged. The guidelines prescribed by the Central Council of Indian Medicine for appointment to the post of lecturer postulated that if the postgraduation holders in the concerned subject are not available, then the candidates from the allied subjects could be considered. The petitioner and the another candidate

⁷ (2004) 7 SCC 112

⁸ 2007(4) Mh.L.J. 775

were having post-graduation qualification in the concerned subject i.e Agad Tandra from among 5 candidates who had appeared in the interview. Despite availability of such candidates respondent No. 5 who had post-graduation in an allied subject i.e. Kayachikitsa was selected and appointed on the basis of the performance in oral interview. It was in this background that the Court had held that his appointment was illegal observing that since the petitioner and the another candidate having post graduation in the same subject were available, why their cases were overlooked and respondent No. 5 was preferred cannot be known from the record and proceedings of selection committee in absence of any grading or marking system. The Court found that respondent No. 5 was not qualified on the age criteria also.

31. Reliance was placed on the decision of the Supreme Court in the case of **Bishnu Biswas & Ors. Vs. Union of India**⁹. It was a case in which the criteria for selection was challenged in the midst of selection process. 50% marks each were allotted for oral interview and the

⁹ AIR 2014 SC 1570

written test though the rules did not envisage holding of oral interview at all. In such background, it was found that the selection was faulty.

32. Reliance was placed on a decision of the Supreme Court in the case of **Sanjay K Sinha-II Vs. State of Bihar**¹⁰ in support of the contention that the appointment made contrary to the rules are fortuitous and do not confer seniority on the appointees over and above substantive appointees. It was a case in which promotions were granted although sanctioned posts for promotion were not available at the relevant time. It was in this background held that such promotions cannot be regarded as substantive appointment to the service and therefore, would not confer any benefit of seniority over the direct recruits who were substantially appointed to the same post.

33. Reliance was placed on the decision of the Supreme Court in the case of **Tukaram Kana Joshi Vs. MIDC**¹¹ to overcome the opposition of delay and latches.

¹⁰ (2004) 10 SCC 734

¹¹ (2013) 1 SCC 353

The observations made in the said judgment of ignoring long delay were in the context of a litigant whose land was taken away by the Government without authority of law.

34. Reliance was placed on the decision of the Supreme Court in the case of **Collector, Land Acquisition Vs. Katiji**¹² in which the Court had observed that while considering sufficient cause for the purpose of condonation of delay under Section 5 of the Limitation Act, the Courts should adopt liberal approach.

35. Reliance was also placed on the decision of the Allahabad High Court in the case of **Nand Lal Jaiswal Vs. The Secy. Govt. of U.P. Energy Deptt.**¹³ to contend that the delay could not have been the sole ground for rejection of representation. Reliance was also placed on the decision of the Supreme Court in the case of **Rajesh Awasthi Vs. Nand Lal Jaiswal & Ors.**¹⁴ to contend that when the appointment is in violation of the statutory rules, the incumbent would have no authority to hold the posts. For

¹² (1987) 2 SCC 107

¹³ 2012 SCC OnLine All 81

¹⁴ (2013) 1 SCC 501

the same purpose, reliance was also placed on a decision of the Supreme Court in case of **Ramchandra Shankar Deodhar Vs. State of Maharashtra**¹⁵. All these judgments are clearly distinguishable in facts.

36. For the reasons stated above, we find that the impugned order of the Board suffers from illegality. The same is, therefore, quashed and set aside. Consequently, the revised seniority granted to respondent No. 4 over the petitioners from inception would stand withdrawn. The original seniority position between the petitioners and respondent No. 4 is restored.

37. Respondent No. 4 has received promotion to the post of Joint Secretary on the basis of re-fixed seniority pursuant to the impugned order. In our opinion, this promotion should be withdrawn as a consequence of striking down the re-fixed seniority of respondent No. 4. Learned counsel for respondent No. 4, however, submitted that the said promotion was based on merit-cum-seniority and not only seniority. However, when seniority is one of the factors

¹⁵ (1974) 1 SCC 317

which would weigh with the Authorities, such promotion cannot be saved. Such promotion shall be withdrawn within a period of one month from today. This would not prevent the Department from considering the case of respondent No. 4 along with other eligible candidates for promotion on the said post in accordance with rules.

38. Both the petitions are disposed of. In view thereof, Notice of Motion No. 528 of 2018 is also disposed of.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]

At this stage, the learned counsel for respondent No. 4 stated that this order may be stayed for a period of four weeks from today. In the order itself, we have given time of one month to the official respondents to carry out consequential steps. The request of stay is, therefore, refused.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]