IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Writ Petition No.4631 of 2019
[Kishor Marotrao Wankar Vs. The State of Mah., Revenue & Forest Deptt. & others]

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. A. P. Thakare, Adv., for the petitioner.
Mr. B. Lonare, AGP for respondent nos. 1 to 4.
Mr. Vishal Anand, Adv., for respondent no.5.

CORAM : PRADEEP NANDRAJOG,
CHIEF JUSTICE AND
R. K. DESHPANDE, J.

DATE : 16th August, 2019

P.C. :

01. Heard learned counsel for the parties.

02. In view of the peculiar facts which we would be hereinafter noting, the Writ Petition requires to be disposed of, quashing the impugned order dated 19th March, 2019 passed by the Maharashtra Administrative Tribunal in Original Application No. 167 of 2013 to the limited extent the promotion granted to petitioner as a Chief Accountant on 8th February, 2013 has been set aside.

03. Relevant facts are that the writ petitioner joined service as a Junior Clerk before the respondent No.5 was appointed as a Junior Clerk. As per the Government Order dated 5th December, 1980, notifying Post-recruitment Training Examination for Clerks and Accountants in the Forest Department Rules, 1980, vide Rule 4, to be appointed by promotion as an Accountant, a Clerk had to clear a Departmental Examination for which three opportunities could be availed of within a period of four years from the date of appointment. Upon clearing the examination, appointment by promotion had to be on the basis of seniority, meaning thereby Departmental Examination was a qualifying examination. Under Rule 4 (2) (c) and (d), the Chief Conservator of Forests, in exceptional circumstances, could allow one extra opportunity to a clerk to clear the examination. As per Clause (b) of Rule 5, a clerk would lose seniority if he passed the examination subsequently, i.e., beyond the fourth attempt permissible under Rule 5.

04. The petitioner cleared the examination in the sixth year of his appointment as a Clerk and, thus, obviously would lose the seniority – vis-a-vis – the respondent No.5 to be promoted as an Accountant. This was recognized by the Department, evidenced by the fact that in the Seniority List of Accountants published on 1st January, 2012, the respondent No.5 was shown at Sr. No.5 and the petitioner at Sr. No.14. Notwithstanding that, the petitioner was promoted as a Chief Accountant on 8th February, 2013 and this led the respondent no.5 to file Original Application No. 167 of 2013.

05. Noting aforesaid facts, the Original Application has been disposed of, quashing the promotion of the petitioner as a Chief Accountant. The respondent No.5 was directed to be promoted as a Chief Accountant with effect from 11th February, 2013. But before the impugned order dated 19th March, 2019 was passed, the respondent No.5, who was the applicant before the Tribunal, superannuated on 31st October, 2014 and while in service, he was promoted as a Chief Accountant on 1st November, 2013.

06. Thus, the question of directing reversion of the writ petitioner did not arise when the Tribunal decided the Original Application. At best, the direction could be to create a supernumerary post of Chief Accountant to accommodate the claim of the respondent No.5 with effect from 11th February, 2013.

07. Accordingly, we dispose of the Writ Petition, quashing the impugned order in so far as it quashes the promotion of the Writ Petitioner to the post of Chief

Accountant. In harmony with signature tune of the impugned order concerning the right of respondent no.5, we declare that he would be entitled to be promoted as a Chief Accountant with effect from 8th February, 2013 requiring his promotion order dated 1st November, 2013 to be ante-dated to 8th February, 2013. The consequential benefits as per the impugned order would be paid to the respondent No.5.

Judge **Chief Justice**

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