

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8514 OF 2019

AMOL SHIVAJIRAO DIWATE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri Manoj Dond Patil h/f Shri Wagh Shirinivas
S.

AGP for Respondents 1 and 2 / State : Shri V.M.Kagne
Advocate for Respondent 3 : Shri S.T.Shelke

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**CORAM : S.V. GANGAPURWALA
&
SHRIKANT D. KULKARNI, JJ.**

DATE :- 28th January, 2020

Per Court :-

1 The petitioner along with one Mrs.Gosavi were selected through competitive examination for the posts of Senior Assistant. The petitioner was initially working as Junior Assistant. Mrs.Gosavi secured 111 marks and the petitioner secured 110 marks. However, the petitioner was not given the appointment order on the ground that the departmental enquiry was pending against the petitioner. The petitioner was subsequently issued with the appointment order on 07.03.2015 subject to the departmental enquiry. The petitioner is seeking deemed date as 04.09.2008. The Zilla Parishad forwarded the proposal to the Commissioner. The Commissioner recorded the finding that he has no

jurisdiction.

2 It appears that the petitioner was working as Junior Assistant and after passing the competitive examination, he was eligible to be appointed as Senior Assistant. However, his appointment was withheld on the ground that the departmental enquiry is pending. The same was also pending on 07.03.2015 when the petitioner was given the appointment order. Subsequently, the petitioner is exonerated. Clause 5 of the Maharashtra Civil Services (Regulation of Seniority), Rules, 1982 would apply and the same is not disputed by either of the parties. In that case also, the deemed date of appointment can be given.

3 In the light of the above, the respondent No.3 shall take a decision with regard to the claim of the petitioner with regard to the deemed date considering the Rules of 1982. The decision shall be taken within THREE MONTHS from today. Writ Petition is, accordingly, disposed of.