

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

5 WRIT PETITION NO. 14187 OF 2019

YOGITA SAMEER MARKA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Mr. M.M. Bhokarika.
AGP for Respondents : Mr. S.B. Pulkundwar.

**CORAM : S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.
DATED : 13.01.2020.**

PER COURT :

. The petitioner is challenging the order of the Maharashtra Administrative Tribunal dismissing the original application.

2. At the request of learned advocate for the petitioner, leave to amend the prayer clause is granted.

3. Mr. Bhokarika, the learned counsel for the petitioner submits that petitioner's seniority needs to be counted from the date he has given the application for appointment and not from the date of appointment. The respondent illegally appointed the petitioner as a peon though he was qualified for being appointed as a clerk. Subsequently, the appointment was considered for the post of peon. The learned advocate submits that the seniority in the service

ought to have been counted from the date of application and not from the date of appointment. The application was given by the petitioner on 10.01.2008, whereas appointment has been made subsequently.

4. Mr. Bhokarikar, the learned counsel for the petitioner relies upon the judgment of the Division Bench of this Court in *Aparna Narendra Zambre nee - Aparna Mohan Kulkarni and another Vs. Assistant Superintendent Engineer, Sangli and Others*, reported in **2011 (5) AIR Bom R 352**.

5. We have heard the learned AGP. He submits that the date of seniority has to be counted from the date on which the petitioner is appointed and not the date on which the application is filed.

6. This Court in case of *Aparna* (supra) observed as under :

“20. Considering the above, both the grounds referred to in the impugned communication dated 10th November, 2010 are untenable. In that case, the basis on which the application of petitioner No. 1 for appointment on compassionate ground has been rejected by the Authority cannot be sustained. That does not mean that petitioner No. 1 would be entitled for the relief of declaration that she is appointed on a suitable post with effect from 29th July, 2004, which was the date on which she made application.

After that application, her name was included in the Wait List in August, 2005. That, by itself, did not give her right of appointment. That created only a right in her favour for being considered for appointment as and when suitable vacancy arose. That process was commenced in June, 2009, when her number in the Wait List matured for consideration, in anticipation of the vacancy of suitable post. Her proposal was processed at different levels until November, 2009. Thereafter, the impugned communication was sent. It is possible that, if the authorities were to accept her application for appointment on compassionate ground, she may have got employment some time in November or December, 2010. However, petitioner No. 1 cannot be heard to claim relief of payment of back wages and other consequential benefits from the date of her application on 29th July, 2004. For, until a right to appointment was created in favour of petitioner No. 1, she cannot claim relief of back wages as such. Accordingly, while setting aside the impugned communication, we would direct the authorities to re-consider the claim of petitioner No. 1 for being appointed on compassionate ground against a suitable vacancy expeditiously; and appoint her if she is found eligible in all other respects, including no other senior person to her in the concerned Wait Lists is yet waiting to be appointed against suitable vacancy.”

7. Seniority in the post on which the petitioner is appointed certainly will be counted from the date of appointment and not from the date of application. The Tribunal has not committed any error.

8. Writ Petition is accordingly dismissed.

(MANGESH S. PATIL, J.)

(S. V. GANGAPURWALA, J.)

S.PC.