

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10148 OF 2019

Shri Udayraj Kashinath Chavan. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

Mr.N.V.Bandiwadekar i/b. With Mr.A.N.Bandiwadekar
for the Petitioner.

Mr.R.S.Pawar, AGP for Respondent Nos.1 and 2.

Mr.A.Y.Sakhare, Senior Advocate with Mr.R.S.Mirpury and
Mr.Swaroop Karade for Respondent No.4.

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CORAM : **NITIN JAMDAR AND
M.S. KARNIK, JJ.**

DATE : **21 January 2020.**

P.C. :

By this petition, the Petitioner has challenged the order dated 27 August 2009 passed by the Maharashtra Administrative Tribunal, Mumbai in Original Application No.422/2016. By the impugned order, the Tribunal has allowed the original application filed by Respondent No.4- Mr.Sundar M. Jadhav and has set aside the action of the Respondent- State in assigning lower placement to Respondent No.4 vis-a-vis the

Petitioner- Mr.Udayraj K. Chavan and Respondent No.3- Mr.S.B.Nakod.

2. The dispute in this petition pertains to promotion to the post of Joint Registrar, Class-I (Lower Grade) in the services of the State of Maharashtra. The Petitioner- Chavan was born on 10 September 1971, Respondent No.3- Nakod was born on 6 January 1965 and Respondent No.4- Jadhav was born on 6 October 1965. Respondent No.3- Nakod has already retired from service. As regards the dates of selection of the Petitioner, Respondent No.3 and Respondent No.4, their promotion to the posts of Sub-Registrar, Grade-I and promotion to the posts of Sub-Registrar, Class-II, there is no dispute between the parties. The dispute has arisen in respect of promotion to the post of Joint Registrar, Class-I (Lower Grade). When the promotion to the posts of Joint Registrar, Class-I (Lower Grade) was being considered, the Petitioner was at serial No.6 of the Seniority List, Respondent No.3 was at serial No.2 and Respondent No.4 was at serial No.12. On 6 September 2011, the orders of promotion were issued to 14 officers which included Petitioner, Respondent No.3 and Respondent No.4. They were placed on Select List as per their seniority. The Petitioner was posted at Pune, Respondent No.3 was posted at Sindhudurg and Respondent No.4 was posted at Jalna. The Respondent No.4 joined the

posting at Jalna on 12 September 2011. At the request of the Petitioner and Respondent No.3, the State through Revenue and Forest Department changed the postings of the Petitioner and the Respondent No.3. Petitioner was posted at Sindhudurg and Respondent No.3 was posted at the Petitioner's place i.e. Pune. Thereafter, the Petitioner joined the posting at Sindhudurg on 4 October 2011.

3. On 21 January 2013, the Respondent- State published a provisional Seniority List of Joint Registrars, Class-I (Lower Grade) wherein the Respondent No.3 and the Petitioner were placed below Respondent No.4 since their joining of promotional post was later than Respondent No.4. The Petitioner and Respondent No.3 filed objections to the provisional Seniority List. On 26 November 2013, the Respondent- State published Final Seniority List and no changes were carried out regarding placement of the Petitioner. The Petitioner filed Original Application No.954/2014. Thereafter, on 6 January 2015, the Respondent- State issued an order revising the Final Seniority List. By this order, Respondent No.3 was placed at serial No.15A against his original placement at serial No.27 and the Petitioner was placed at serial No.18A against his original placement at serial No.28 and they were placed above Respondent No.4 in the Seniority List who was at

serial No.24. In view of this position, the Petitioner withdrew Original Application No.954/2014.

4. Being aggrieved by the Seniority List wherein the Respondent No.4 came to be placed below the Petitioner and Respondent No.3, the Respondent No.4 filed original application before the Tribunal. In the original application, the Respondent No.4 prayed for setting aside the impugned final Seniority List assigning lower placement to Respondent No.4 and for suitable directions.

5. The Tribunal by the impugned order held that the final Seniority List wherein the Respondent No.4 was placed below was bad in law as, in view of the provisions of the Maharashtra Civil Services (Regulation of Seniority) Rules 1982, more particularly Rule 5 thereof, the Petitioner by joining late on the promotional post had lost his seniority to Respondent No.4 and, therefore, could not have been placed higher on the seniority list than Respondent No.4. Interpreting Rules 4 and 5 of the said Rules of 1982, the Tribunal allowed the original application holding that the impugned action of Respondent Nos.1 and 2 assigning placement to Respondent No.4 vis-a-vis Respondent No.3 and the Petitioner in the final Seniority List as on 1 January 2012, 1 January 2013 in the cadre of Joint District

Registrar, Class-1 (Lower Grade) and the final Seniority List published on 6 January 2015 are bad and unsustainable in law. Hence, this petition.

6. We have heard Mr.N.V.Bandiwadekar, learned counsel for the Petitioner, Mr.A.Y.Sakhare, learned Senior Advocate for Respondent No.4 and Mr.Pawar, learned AGP for Respondent Nos.1 and 2.

7. The facts in this petition are not in dispute. The order of promotion was passed on 6 September 2011. The Petitioner joined promotional posting at Sindhudurg on 4 October 2011 whereas Respondent No.4 joined promotional posting at Jalna on 12 September 2011.

8. The relevant Rules on which the parties have relied upon are Rules 4 and 5 of the said Rules of 1952. They are reproduced as under:

“4. General principles of seniority.

- (1) Subject to the other provision of these rules, the seniority of a 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 officiation 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 a result of a fortuitous appointment except in a case where 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 the relevant recruitment rules, with the brief reasons recorded therefor, shall be excluded in computing the length of service and for the purposes 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, seniority of the Government servants involved shall be re-arranged and determined afresh in conformity with their revised ranks;

- (c) the seniority of a transferred Government servant vis-a-vis the Government servant in the posts, cadre or service to which he is transferred shall be determined by the competent authority with due regard 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 appointment in posts, cadre or service of any two or more persons determined after assigning the deemed dates, if necessary, are identical the person senior in age shall be considered as senior for the purpose of determining the seniority.

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 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 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.

- (3) Where two or more Government servants who are eligible for promotion to any higher posts, cadre or service according to any Select List are promoted to such higher posts, cadre or service and the actual dates on which such Government servants report for duty in such higher posts, cadre or service are not chronologically in conformity with their inter se seniority as provided in clause (b) of sub-rules (2) of rule 4, the senior person, who reports for duty later than his junior, shall be assigned, as deemed date of appointment, the date on which the the junior reports for duty.

Provided that, in a case where a Government servant himself is deemed responsible for delay in assuming charge of the promotional post, his interse seniority shall be fixed with reference to the date he actually assumes charge of such post.

- (4)
 (5)
 (6)
 (7)”

The dispute centers around Rule 4(2) and Rule 5(3).

9. Two contentions were advanced by Mr.Bandiwadekar, learned counsel for the Petitioner. Firstly, that the Petitioner was senior to Respondent No.4 and though he had joined the promotional post later than the Respondent No.4, it cannot be said that it was because of delay on his part. He submitted that the Petitioner requested for exchange of postings with Respondent No.3 and was, accordingly, granted by the Respondent- State and once that is granted without any

condition, then it cannot be said that the delay as contemplated under proviso to Rule 5(3) has occurred. The second contention that is advanced is that though Rule 5 does not stipulate any time limit for joining the post, the period of 30 days mentioned in Rule 4 can be applied to the contingencies contemplated under Rule 5 by way of analogy. It is submitted that the order of promotion was dated 6 September 2011 and the Petitioner joined the promotional posting on 4 October 2011 at Sindhudurg, therefore, it was within 30 days. Mr.Sakhare, learned Senior Advocate appearing for Respondent No.3 supported the impugned order and submitted that the Tribunal has rightly interpreted the Rules and the delay referable to proviso to Rule 5(3) would be in case of administrative exigencies for which the Government servant cannot be held responsible, which is not the present case.

10. We have gone through the order of the Tribunal and the relevant Rules. The contention of Mr.Bandiwadekar that stipulation of 30 days in Rule 4 should be applied to Rule 5 is concerned, the same cannot be accepted. The service conditions are governed by statutory rules. Once there is a specific mention of a particular time limit for one contingency covered under a particular Rule, then the absence of such stipulation cannot simply be considered as an omission to be supplied. The time

limit of 30 days in Rule 4 is in respect of initial appointment and fixation of seniority at that stage. Rule 5 operates in a different sphere and is for assignment of a deemed date. There is no mention of any time limit in Rule 5. Sub-rule (3) of Rule 5, in fact, makes it very clear that if a senior person reports for duty later than his junior, shall be assigned, as deemed date of appointment, the date on which the junior reports for duty. Proviso to sub-rule (3) provides that in a case where a Government servant himself is deemed responsible for delay in assuming charge of the promotional post, his *inter se* seniority shall be fixed with reference to the date he actually assumes charge of such post.

11. In view of this clear language of both the rules, there is no warrant to incorporate a time limit in Rule 5, specifically not mentioned therein, by an interpretative process. The first rule of interpretation is of literal interpretation. If literal interpretation results in absurdity or is unworkable, then by interpretative process an omission can be supplied. There is no such warrant in the present case and merely because inclusion of some time limit will be beneficial to the Petitioner, rule cannot be rewritten. We have not been shown any decision of any Court which has interpreted Rule 5 in this manner.

12. Turning now to the contention of Mr.Bandiwadekar that the Petitioner cannot be considered as responsible for delay in assuming charge of the promotional post. It is to be noted that when the order of promotion was passed on 6 September 2011, the Respondent No.4 immediately joined on 12 September 2011 at Jalna. The Petitioner instead of joining the promotional post at Pune sought to join at Sindhudurg which was the place of allotment of Respondent No.3. Till the order was passed on 1 October 2011 changing the places of allotment of the Petitioner and Respondent No.3, the Petitioner had not joined any promotional post. No explanation is given to us, much less a satisfactory reason, as to why the Petitioner did not join at the promotional post allotted to him at Pune. The Petitioner seems to have waited till the placement of Respondent 3, which was more suitable to him, was allotted to him. Therefore, the delay that has occurred in assuming the charge of the promotional post was purely a personal choice of the Petitioner. The argument of Mr.Bandiwadekar that the State Government had subsequently allowed the change of posting will not take the case further as what was permitted was only a change of posting. This delay is not referable to a circumstance beyond the control of the Petitioner. It is directly attributable to the Petitioner. It is in this circumstances, the Tribunal took a view that the Petitioner being responsible for the delay in assuming the charge of the

promotional post could not have been placed in Seniority List above Respondent No.4. On this premise, the Tribunal has proceeded to allow the original application filed by Respondent No.4. We do not find any error in the same.

13. Having found no merit in the aforesaid two contentions advanced on behalf of the Petitioner, the petition is rejected.

14. At this stage, the learned counsel for the Petitioners seeks continuation of ad-interim relief. Ad-interim relief granted earlier to continue for a period of two weeks from the date on which this order is uploaded on server of this Court.

(M.S. KARNIK, J.)

(NITIN JAMDAR, J.)