

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

WRIT PETITION NO. 2026 OF 2019

1. Ramesh Manikrao Sontakke
Aged : 55 years, Occ.: Service,
At Present working as
Assistant Conservator of Forest,
Wildlife, Aurangabad Division,
Aurangabad.
2. Arjun S/o Mahadev Sonawane,
Aged : 50 years, Occ: Service,
At Present working as
Assistant Conservator of Forest,
in the office of Deputy
Conservator of Forests,
Aurangabad.
3. Ramakant S/o Shivajirao Bhavar,
Aged: 56 years, Occ: Service as
Assistant Conservator of Forest
(Mobile Squad), Wildlife Sanctuary
Yawal, Dist. Jalna.
4. Sanjay S/o Digambar Pande
Aged : 56 years, Occ: Service as
Assistant Conservator of Forest – 2,
In the office of Divisional Forest
Officer, Social Forestry Division,
Aurangabad.
5. Jagdish S/o Narayan Yedlawar,
Aged : 49 years, Occu: Service as
Sub-Divisional Forest Officer,
Territorial Malegaon,
Dist. Nashik.
6. Venkat S/o Nagorao Gaikwad,
Aged: 54 years, Occ: Service as

Assistant Conservator of Forest
(E.G.S. & Wildlife) in the office
of the Deputy Conservator
of Forest, Nanded.

.. Petitioners

Versus

1. The State of Maharashtra,
Through the Chief Secretary to
Government of Maharashtra,
Mantralaya, Fort, Mumbai – 2.
2. The Secretary (Forest),
Revenue and Forest Department,
Government of Maharashtra,
Mantralaya, Fort, Mumbai – 32.
3. The Maharashtra Public Services
Commission, Bank of India
Building, 3rd Floor, M. G. Road,
Hutatma Chowk, Mumbai,
Through its Secretary.
4. Ashok S/o Ram Parhad,
Aged : 30 years, Occu. : Service,
At present working as
Assistant Conservator of Forest,
in the office of Deputy
Conservator of Forests,
West Melghat Division,
Paratwada, Dist. Amaravati.
5. Makrand S/o Prakash Gujar,
Aged : Major, Occu. : Service,
At present working as
Sub Divisional Forest Officer,
Darva, Tq. Pusad,
Dist. Yeotmal.
6. Prashant S/o Popatrao Warude,
Aged : Major, Occu. : Service,

At present working as
Assistant Conservator of Forest,
Kannad, Dist. Aurangabad,
in the office of Deputy
Conservator of Forests,
Aurangabad Division,
Aurangabad.

7. Ganesh S/o Ramhari Randive,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
in the office of Deputy
Conservator of Forests,
Shahada, Dist. Nandurbar.
8. Suhas S/o Genubhau Badhekar,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
Divisional Forest Officer,
Social Forestry, Wardha,
Dist. Wardha.
9. Amol S/o Pandurang Thorat,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
in the office of Deputy
Conservator of Forests,
Pandharkavada, Dist. Yeotmal.
10. Shrikant S/o Subhash Pawar,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
Wildlife, Navegaon,
Dist. Gondiya.
11. Rajan S/o Dadarao Talmale,
Aged : Major, Occu. : Service,

At present working as
Assistant Conservator of Forest,
in the office of Divisional
forest Officer, Social Forestry,
Nagpur, Dist. Nagpur.

12. Nitesh S/o Shankar Deogade,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
in the office of Deputy
Conservator of Forests,
Allapalli Division, Dist. Chandrapur.
13. Pradip S/o Eknath Patil,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
in the office of Deputy
Conservator of Forests,
Navegaon Bandh National Park,
Navegaon, Dist. Gondiya.
14. Hemant S/o Yashwant Shewale,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
in the office of Deputy
Conservator of Forests,
Mewasi, Office at Taloda,
Dist. Nandurbar.
15. Viput S/o Amarsingh Rathod,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
in the office of Deputy
Conservator of Forests,
Yeotmal, Dist. Yeotmal.

16. Rajendra S/o Pundlik Nale,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
Kinwat, Dist. Nanded.
17. Amritraj S/o Ramesh Jadhav,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
Shirpur, Dist. Dhule.
18. Bapu S/o Kerappa Kare,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
(FLCS) in the office of Deputy
Conservator of Forests,
Pusad, Dist. Yeotmal.
19. Pushpa Paarasharam Pawar,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
in the office of Divisional Forestry
Officer, Social Forestry, Jalna,
Tq. & Dist. Jalna.
20. Ashwini Santosh Khopade,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
in the office of Deputy
Conservator of Forests,
Wildlife Yawal Sanctuary,
Headquarter Pal, Dist. Jalgaon.
21. Trupti Anandrao Nikhate,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,

(FLCS-2) in the office of Deputy Conservator of Forests, Nashik (West), Nashik.

22. Vidhya Prabhakar Vasav,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
in the office of Deputy
Conservator of Forests,
Yeotmal, Dist. Yeotmal.
23. Asha Guatam Bhong,
Aged : Major, Occu. : Service,
At present working as
Sub Divisional Forest Officer,
Bhor, Dist. Pune.
24. Leena Rajeshwar Aade,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
in the office of Chief
Conservator of Forests,
Territorial Nashik.
25. Geeta Vishal Pawar,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
Bhimashankar Wildlife Sanctuary,
Bhimashankar, Dist. Pune.
26. Nitin S/o Chandrabhan Gondane,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
in the office of Deputy
Conservator of Forests,
Akola, Dist. Akola.

27. Pranita Naresh Pardhi,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
in the office of Divisional Forest
Officer, Evaluation Division,
Yeotmal, Dist. Yeotmal.
28. Amol S/o Babasaheb Garkal,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
in the office of Deputy
Conservator of Forests,
Central Chanda Division,
Dist. Chandrapur.
29. Girija Narendra Desai,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
in the office of Deputy
Conservator of Forests,
Thane Division, Thane.
30. Vishal S/o Kisan Borhade,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
in the office of Deputy
Conservator of Forests,
Nagpur Division, Nagpur.
31. Kondiba S/o Baburao Shinde,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
Wildlife Division, Nashik,
Dist. Nashik.

32. Sonal Bhimrao Bhadke,
Aged : Major, Occu. : Service,
At present working as
Assistant Conservator of Forest,
in the office of Chief
Conservator of Forest,
Nashik.

.. Respondents

Shri M. B. Bharaswadkar, Advocate for Petitioners.
Shri S. G. Karlekar, A.G.P. for Respondent Nos. 1 and 2.
Shri Avinash S. Deshmukh, Advocate i/by Shri S. V. Natu,
Advocate for Respondent Nos. 4 to 32.

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

CLOSED FOR JUDGMENT ON : 09.04.2021

JUDGMENT PRONOUNCED ON : 23.04.2021

JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

02. Present respondent Nos. 4 to 32 filed Original Application before the Maharashtra Administrative Tribunal at Mumbai inter alia for declaration that they are entitled for the appointment as Assistant Conservator of Forest from the date of commencement of their training and the training undergone be considered as period in service. They also claimed directions to pay salary as per the pay scale prescribed for the post of Assistant Conservator of Forest by considering the period of training as on probation/duty. The Tribunal under the impugned judgment partly allowed the original application and observed

that, the applicants before it (present respondent Nos. 4 to 32) are declared to be entitled for appointment as Assistant Conservator of Forest from the commencement of their training on 01.02.2014 and will be entitled to regular pay after successful completion of probation retrospectively from the date of appointment, after deducting emoluments already paid to them. The Tribunal in the said judgment also made it clear that, the said judgment has no bar of any other service condition, especially, terms of their probation.

03. It appears that, the State of Maharashtra filed review application before the Tribunal. The review application filed by the State came to be dismissed by the Tribunal.

04. The Government pursuant to the impugned judgment of the Tribunal issued Government Resolution dated 14.08.2018 thereby resolving that successful completion of training period would be considered as regular service from the date of inception of training for all service purposes. The said Government Resolution also provided that Assistant Conservator of Forest appointed by nomination shall be considered from the initial date of their training and the seniority will be considered as such.

05. The petitioners herein were not parties to the original application before the Tribunal. The petitioners are appointed as Range Forest Officers in the year 1987 to 1990. They were promoted to the post of Assistant Conservator of Forest in the year 2014-2015. The applicants in Original Application No. 576

of 2015 are directly selected/nominated for the post of Assistant Conservator of Forest in the year 2014.

06. Mr. Bharaswadkar, the learned advocate for petitioners strenuously contends that, while deciding the Original Application No. 576 of 2015, the Tribunal has considered Sub Rule 43 of Rule 9 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (for short 'M. C. S. Rules') along with other submissions and has granted the relief. The Tribunal has also considered Rule 6 of the notification dated 12.03.1998 concerning the rules for recruitment of Assistant Conservator of Forest. But the Tribunal has failed to consider Rule 3(b) of the Assistant Conservator of Forests in the Maharashtra Forest Service Group A (Junior Scale) (Recruitment) Rules 1998 (for short "1998 Rules"). It also failed to consider the definition of first appointment under Rule 9(12) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. In view of Rule 6 providing period of probation read with Rule 3(b) and proviso to Rule 2 of the recruitment rules 1984 for Divisional Forest Officer, the decision of the Tribunal is erroneous. The promotional post for the cadre of Assistant Conservator of Forest is Divisional Forest Officer, Class - I. The recruitment rules framed under proviso to Article 309 of the Constitution were not placed before the Tribunal. The proviso to Rule 2(B) provides that period spent on training at Government Forest College by directly appointed Assistant Conservator of Forest shall not be counted towards the requisite period of service for the purpose of appointment to the cadre of Divisional

Forest Officer. The said aspect is not considered by the Tribunal.

07. The learned advocate further submits that, reading these rules conjointly and harmoniously, the training period in the case of nominated Assistant Conservator of Forest cannot be considered as a service period. The Government pursuant to the impugned decision of the Tribunal issued Government Resolution dated 14.08.2018. The same is contrary to the law. Based on G. R. dated 14.08.2018, the Government of Maharashtra published provisional seniority list, wherein nominated Assistant Conservator of Forest are given date of appointment from the date of their training and are shown senior to the petitioners. The list is published on 18.01.2019. Thereafter, the petitioners got the knowledge about decision in Original Application No. 576 of 2015 as well as Government Resolution dated 14.08.2018. The petitioners though are promoted as Assistant Conservator of Forest before the respondent Nos. 4 to 32 were selected and sent for training, the petitioners are shown junior to respondent Nos. 4 to 32 in the seniority list of Assistant Conservator of Forest. The loss of seniority is because of the impugned judgment of the Tribunal.

08. The learned advocate further submits that, for considering the employees for promotion, the methodology is provided in G. R. dated 01.03.2017. Clause 5 of Appendix – B to the same clarifies that the departmental promotion committee should be provided with the recruitment rules of the promotional post. This makes it clear that while considering the employee from lower

cadre for promotion, one of the consideration is recruitment rules for the promotional post. The recruitment rules of the promotional post i. e. Divisional Forest Officer (Maharashtra Forest Service, Class – I) (Recruitment) Rules, 1984 (for short “1984 Rules”) specifically provide that the period spent for training shall not be counted as service. The Tribunal has passed the impugned judgment ignoring the Rules of 1984. The judgment is bad in law.

09. The learned counsel relies on the judgment of the Apex Court in a case of B. N. Nagarajan and others Vs. State of Mysore and others reported in *AIR 1966 SC 1942*. The Government Resolution has to be in consonance with the rules framed under Article 309 of the Constitution. This judgment is not considered by the Division Bench of the Bombay High Court in a case of Chandrakant Sakharam Karkhanis Vs. State of Maharashtra. The learned advocate relying upon the judgment of the Apex Court in a case of Santram Sharma Vs. State of Rajasthan reported in *AIR 1967 SC 1910* submitted that, the Government cannot amend or supersede the statutory rules. The legal rules must govern the recruitment and conditions of service and not by mere government resolution, when the legislative rules are in force, executive instructions cannot prevail. The learned counsel also relied on the judgment of the Apex Court in a case of R. S. Ajara and other Vs. State of Gujrat (supra) to submit that, administrative resolutions cannot take away the right crystallized under the service rules.

10. Mr. Avinash Deshmukh, the learned advocate submits that, Rule 3(b) of 1998 Rules provides for appointment by nomination. Rule 6 of the 1998 Rules specifies that person appointed to the post by nomination shall be on probation for a period of three years including two years of training and one year of field training. Prior to 1998 Rules, 1965 Rules were in force. There is marked distinction between 1965 Rules and 1998 Rules. The 1965 Rules separately referred to recruitment and appointment on probation, whereas 1998 Rules only referred to appointment on probation for three years including period of training. The 1965 Rules specify appointment on probation after completion of training. Rule 6 has to be read with Rule 3(b) of 1998 Rules. The intention and the purpose of this introduction would be clear. Referring to Rule 9(14)(a) & (b) of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981, it is suggested that a person cannot be a probationer unless he is appointed on substantive post. Referring to Rule 9(14)(a) and (b) of M. C. S. Rules 1981, it is submitted that, duty includes service as probationer and a course of instruction or training respectively. The 1998 Rules did not provide for consideration of seniority of direct recruits vis-a-vis promotees. Therefore, the General rules governing the seniority viz M. C. S. (Regulation of Seniority) Rules 1982 and more particularly Rule 4 will be applicable. The conditions stated in D. F. O Recruitment Rules 1984 for promotion cannot be relied upon while deciding issue of counting service or seniority for feeder cadre of Assistant Conservator of Forest. The proviso to Rule 2 of 1984 Rules stands negated in view of G. R. dated 17.02.1997,

wherein the condition of probation period not being considered as period of experience has been removed as general application. It is further submitted by the learned advocate that, grant of benefit of seniority by G. R. dated 14.08.2018 merely declares that necessarily flows from the correct interpretation of Rule 6 of 1998 Rules.

11. The learned advocate relies on the judgment of the Apex Court in a case of R. S. Ajara and other Vs. State of Gujrat (supra) and submits that, the facts in the said case are similar to the present case. The Assistant Conservator of Forests were not considered as in service trainees. The dispute was in respect of seniority between promotees and direct recruits in A. C. F. Cadre in the Gujrat Forest Service. The Apex Court held that, even training period prior to the appointment can be considered for the purpose of seniority. In the present case, training period is considered as probation period and for the purpose of seniority, Regulation of Seniority Rules 1982 are already in operation. The learned counsel relying on the judgment of the Full Bench of this Court in a case of Chandrakant Sakharam Karkhanis Vs. State of Maharashtra reported in *AIR 1977 Bom. 193* submits that, when circular/resolutions lay down rules or principles of general application for fixation of seniority of the government servants, generally or a particular class of them can amend the rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution. In view of that, proviso to Rule 2 of 1998 Rules relied by the petitioners is misplaced. The learned counsel further submits that, in a case of V. Jagannadha Rao Vs.

State of A. P reported in *2001 (10) SCC 401*, the Apex Court has held that, 1998 Rules will have to be read as a whole and a particular rule cannot be read in isolation. The learned counsel also relies on the judgment of the Apex Court in a case of Prafulla Kumar Swain Vs. Prakash Chandra Misra and others reported in *1993 AIR SCW 671*.

12. Before we proceed to deal with the submissions of the learned advocates for the parties, it will be relevant to refer to the Rules relied by the parties and subject matter of consideration.

The Divisional Forest Officer (in Maharashtra Forest Service Class I) (Recruitment) Rules 1984.

1.

2. Appointment to the post of Divisional Forest Officer in the Maharashtra Forest Service, Class I, shall be made by promotion from amongst the officers in the Maharashtra Forest Service, Class II, in the Forest Department of the Government of Maharashtra, who have put in not less than three years of service in the Maharashtra Forest Service, Class II posts :

Provided that, in the case of persons directly appointed as Assistant Conservator of Forests, the period spent on training at the Government Forest Colleges and the period of probation, including the extended period of probation, if any, shall not be counted towards the requisite period of service.

The Assistant Conservator of Forest in the Maharashtra Forest Service Group – A (Junior Scale) (Recruitment) Rules, 1998.

1.

2. In these rules unless the context requires otherwise :

(a) “Assistant Conservator of Forests Training course” means a training course conducted by the State Forest Service College recognized by the Government of India for imparting training in forestry and allied subjects, for the Assistant Conservator of Forests after their selection by the state Government, in accordance with the rules prescribed by the Government of India in that behalf.

3. Appointment to the post of Assistant Conservator of Forest in the Maharashtra Forest Service, Group A (Junior Scale) shall be made either –

(a) by promotion of a suitable person on the basis of seniority subject to fitness from amongst the person holding the post of Range Forest Officer in the Maharashtra Forest Service, Group – B having not less than three years regular service in that post, or

(b) by nomination from amongst candidates who are selected for the Assistant Conservator of Forests training course, on the basis of result of the competitive examination held by the commission in accordance with the rules made in this behalf from time to time and have successfully completed the training course.

5. Appointment to the post by promotion and nomination shall be made in the ratio of 50 : 50.

6. A person appointed to the post by nomination shall be probation for a period of three years including two years of Assistant Conservator of Forests training course and 1 year field training as decided by Principal Chief Conservator of Forests, Maharashtra State, Nagpur.

7. The inter-se seniority of the Assistant Conservator of Forests, appointed by nomination shall be determined by adding the marks obtained by the candidate in the examination held by the Commission and marks obtained by the candidate in the final examination of the Assistant Conservator of Forests Training courses.

13. The recruitment, appointment, seniority, promotion and all service conditions are governed by the statutory rules in force and in absence thereof the Executive Instructions.

14. The present list gives rise to an anomalous situation of considering inter-se seniority amongst the persons working as Assistant Conservator of Forest appointed through nomination vis-a-vis appointed by promotion.

15. The Assistant Conservator of Forests are appointed by promotion as well as nomination. Rule 5 of 1998 Rules prescribes that appointment to the post of A. C. F. by promotion and nomination shall be made in the ratio of 50 : 50. The appointment to the post of Divisional Forest Officer in the Maharashtra Forest Service, Class I is only made through promotion from amongst the officers of Maharashtra Forest Service Class – II, who have put in not less than three years of service in the forest department of the Government of Maharashtra.

16. The petitioners herein are appointed as Assistant Conservator of Forests by promotion and the respondent Nos. 4 to 32 are appointed as Assistant Conservator of Forest by nomination and selected for the Assistant Conservator of Forest post on the basis of result of the competitive examination held by the Maharashtra Public Service Commission.

17. The 1998 Rules, so also the 1984 Rules are framed in exercise of powers under proviso to Article 309 of the Constitution. In view of that these rules shall have statutory force.

18. The petitioners herein would not be affected by the order of the Tribunal to the extent directing payment of salary and the pay scale to the original applicants from the date of initiation of training period. The petitioners herein are appointed by promotion to the post of Assistant Conservator of Forest. The rights of the petitioners as claimed by them would only be affected while considering the seniority vis-a-vis promotion to the post of Divisional Forest Officer.

19. Rule 3(b) of the 1998 Rules states that, appointment to the post of Assistant Conservator of Forest would be by nomination from amongst the candidates who are selected for the A.C.F. post on the basis of result of competitive examination held in accordance with rules made in this behalf and have successfully completed the training course. It is not a matter of debate that, such candidates are issued with the appointment order only and only after successful completion of training course. Rule 6 of the 1998 Rules clarifies that a person appointed to the post by nomination shall be on probation for a period of three years including two years of A. C. F. training course and one year field training. Rule 6 specifies that, training period shall be considered to be probation period and it needs no debate that, a person is appointed on probation only, if, a substantive post

exists. The 1965 Rules stand superseded by 1998 Rules had no provision similar to Rule 6 of 1998 Rules. Rule 3 of 1965 Rules specifies that appointment on probation shall be made after completion of training, whereas under Rule 6 of 1998 Rules, the period of training is to be treated as on probation.

20. It is trite that, the rules in its entirety will have to be read to reckon the intention of legislation and isolated reading of the rules may not necessarily clarify the intention of the framers of the rules. Rule 3(b) of 1998 Rules read in isolation would lead us to believe that the appointment has to be made only after completion of the training course. Rule 6 of 1998 Rules treats the period of training as probation period. Reading the rules cohesively, it appears that, the period of training is considered as probation period and for that purpose direction of the Tribunal to pay the salary to them as per the prescribed pay scale appears to be reasonable and to that extent the petitioners need not be affected.

21. The petitioners would certainly have a point to agitate while considering the interse seniority for the purpose of promotion.

22. The seniority is to be normally determined on the basis of length of service rendered on the post. Normally the date of entry in a particular service is supposed to be a safest criteria for fixing seniority. In a case of R. S. Ajara and other Vs. State of Gujarat (supra) relied by the learned counsel for both the parties, the

rules did not make any mention with regard to the fixation of seniority of the persons appointed to the post of Assistant Conservator of Forest. In absence of the rules to that effect, the Government Resolution was issued suggesting the determination of seniority of directly recruited Assistant Conservator of Forest in the Gujrat State Forest Services Class II by taking into account period of training. The Apex Court in that context held that, in absence of any provision and the rules it was open to the State Government to lay down principle for fixation of seniority by an administrative order.

23. In a case of Prafulla Kumar Swain Vs. Prakash Chandra Misra and others (supra) regulation 12(c) of the Orissa Forest Services Class II Recruitment Rules 1959 provided that, appointment to service is to be commenced only after successful completion of training. In that contest, the Apex Court held that, the date of recruitment cannot be said to be relevant date for the purpose of reckoning seniority and the seniority would be reckoned from the date of appointment.

24. In the present case, no such Government Resolution providing for fixation of seniority exists as was subject matter of consideration in the case of R. S. Ajara and other Vs. State of Gujrat (supra), nor a regulation similar to Regulation 12(c) of the Orissa Forest Services Class II Recruitment Rules 1959 as was subject matter of consideration before the Apex Court in a case of Prafulla Kumar Swain Vs. Prakash Chandra Misra and others (supra) exists.

25. The A.C.F. is a feeder cadre to the post of Divisional Forest Officer. The appointment to the post of D. F. O. are governed by the 1984 Rules. Rule 2 of 1984 Rules requires that appointment to the post of D. F. O. Class – I shall be made by promotion from amongst the officers in Maharashtra Forest Service Class – II in the department of Government Maharashtra who have put in not less than two years of service in the Maharashtra Forest Service Class – II post. The minimum requirement of appointment to the post of Divisional Forest Officer, which necessarily has to be by promotion is that a person should have put in not less than three years of service. Proviso to Rule 2 of 1984 Rules unambiguously provides that in case of persons directly appointed as Assistant Conservator of Forest (A.C.F.), the period spent on training at Government Forest Colleges and the period on probation including extended period of probation, if any, shall not be counted towards the requisite period of service. The proviso to Rule 2 of 1984 Rules in no uncertain words provides that the period spent on training at the Government Forest Colleges and the period on probation, including extended period of probation, if any, shall be excluded for computing requisite period of service.

26. The Government Resolution dated 17.02.1997 providing that the probation period shall be considered for the purpose of experience is issued by General Administration Department of the Government of Maharashtra and is general in nature. The said Government Resolution would not have an overriding effect

upon the 1984 Rules. The 1984 Rules as observed supra are framed under proviso to Article 309 of the Constitution and have statutory force. The executive instructions issued under Article 162 of the Constitution cannot override or negate the statutory rules under proviso to Article 309 of the Constitution. The 1984 Rules are not superseded. They still hold the field. The State has powers to frame policies resorting to Article 162 of the Constitution. The said powers have inherent limitation in as much as while exercising powers under Article 162 of the Constitution, the executive cannot supplant the statutory rules. If the rules are silent with regard to any matter, the same can be clarified and/or provided by executive instructions, however cannot override the existing legal rules. The Apex Court in a case of Prafulla Kumar Swain Vs. Prakash Chandra Misra and others (supra) has observed that, Rules framed under proviso to Article 309 of the Constitution are not mere administrative instructions, but have statutory force. The Apex Court in a case of Santram Sharma Vs. State of Rajasthan (supra) has observed that, the Government cannot amend or supersede statutory rules by administrative instructions, if rules are silent on any particular point, Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. In a case of Ramchandra Shankar Deodhar and others Vs. The State of Maharashtra and others reported in (1974) 1 SCC 317, the Apex Court has held that, in absence of legislative rules, the State Government was competent to take decision in exercise of executive powers under Article 162 of the Constitution. It was also observed that, rules made under proviso to Article 309 of the

Constitution are statutory rules.

27. The 1984 Rules are having statutory force. These rules are not challenged by the present respondents. Said rules still hold the field. The 1984 Rules are unambiguous. In view of Rule 2 of proviso to the 1984 Rules, the seniority vis-a-vis promotion to the post of D. F. O. will have to be in consonance and in tune with 1984 Rules.

28. The necessary conclusion that can be drawn from Rule 2 of 1984 Rules is that assuming the appointment of respondent Nos. 4 to 32 as A.C.F. from the initial date of their training as on probation, the said period cannot be counted for the purpose of three years service, inter alia, the period spent on probation and/or training shall have to be excluded and only the period after appointment order is issued to them as A.C.F. upon successful completion of training and/or probation shall be computed for the purpose of promotion to the post of D. F. O.

29. Assuming that the Rule of promotional post may not be determinative for fixation of seniority, perpending Rules of 1998 governing recruitment of A.C.F. would not lead us to different conclusion.

30. Rule 7 of the 1998 Rules prescribes that the interse seniority of Assistant Conservator of Forest appointed by nomination shall be determined by adding marks obtained by the candidate in the examination held by the Commission and marks

obtained by the candidate in the final examination of Assistant Conservator of Forest training course.

31. The 1998 Rules prescribe for fixation of seniority amongst the persons appointed by nomination. Their seniority is not fixed unless and until they pass the final examination of Assistant Conservator of Forest training course.

32. The Entrance and Training Rules (Revised) 2004 for the State Forest Service Officers (for short “Rules of 2004”) would also be relevant for consideration. Under Rule 2(ix) of the Rules of 2004, officer Trainee means a candidate who conforms to this rule and deputed by the Sponsoring Authority. The course is defined under Rule 2(ii). Course means training programme of two years duration that is training course under Rule 14 of the Rules of 2004. Under Rule 14 of the Rules of 2004 is for duration of two years after completion of initial 16 months first phase of the course, the Officer Trainee shall go back to the State to undergo field training. Thereafter Officer Trainee shall report to the college for subsequent training for a period of four months. Rule 16 (a) of the Rules of 2004 prescribes that, in addition to the subjects enumerated in Rule 15 of the Rules of 2004, study tours and field exercises are conducted during the course as decided by the Principal. Study tours cover the practical aspects of training. The officer trainee shall be considered to be on field training under Rule 16(b) of the Rules of 2004. Under Rule 18 of the Rules of 2004, a officer trainee who fails to obtain at least 50% of the total marks in a subject listed under Rule 17, shall be

considered to have failed in that subject. Under Rule 19 of the Rules of 2004, if an officer trainee misses more than 10% of any tour, he shall have to repeat the missed portion unless exempted by the Principal. If officer trainee fails in not more than three subjects, he is required to appear in supplementary examination in the papers he has failed. If he fails in more than three subjects or again in supplementary examination, even in one subject, he will have to repeat the course for the whole academic year. The performance of officer trainee is assessed during the study tour and field exercise under Rule 21 of the Rules of 2004. The viva voce is conducted at the end of the second phase. Each officer trainee has to appear for viva voce before a panel of experts under Rule 23 of the Rules of 2004. Total 200 marks are allocated for viva voce. There are marks awarded under Rule 24 of the Rules of 2004 for conduct. Under Rule 25 of the Rules of 2004 abstract of marks is specified and under Rule 25 of the Rules of 2004 at the end of the course list is prepared showing final order of merit based on the marks obtained in the examination and as per the assessment under Rule 16 to 25 of the Rules of 2004 and the seniority amongst the directly appointed candidates is maintained.

33. The persons appointed as A. C. F. by promotion do not have to undergo the rigour of training as is compulsory for A.C.F. selected and appointed by nomination. The promotee directly starts functioning as A. C. F. from the date he is promoted on the post of A.C.F. Though Rule 6 of 1998 Rules states that period undergone for training and one year field training is to be

considered as a candidate to be on probation, still they are required to pass final examination of the A. C. F. training course before issuance of the appointment order of A. C. F. The same is in consonance with Rule 3(b) of the 1998 Rules. Under Rule 3(b) of the 1998 Rules, the appointment to the post of A.C.F. in Maharashtra Forest Service Group – A is by nomination amongst the candidates who are selected for A.C.F. training course on the basis of result of the competitive examination held by the Commission and have successfully completed the training course.

34. As per Rule 3(b) of the 1998 Rules, the Commission selects the candidates for the A.C.F. training course on the basis of the competitive examination held by it and it is only after the candidate successfully completes the training and passes the final examination of A.C.F. training course is issued with the appointment order of A.C.F. These persons appointed by nomination actually perform the work of A.C.F. only and only after successfully completing training course viz two years A.C.F. training course and one year field training, whereas persons appointed by promotion to the post of A.C.F. start functioning as A.C.F. from the day they are promoted to the said post and assume the charge. As observed supra, the safest mode of computing the seniority would be the date of entry in the particular service and the continuous officiation on the said post.

35. Though Rule 7 of the 1998 Rules prescribes the methodology for fixation of interse seniority of the A.C.F. appointed by nomination, the rules do not provide for the fixation

of seniority between those appointed by promotion and nomination, though appointment to the post by promotion and nomination has to be made in the ratio of 50 : 50. In such a scenario, this Court will have to rely on various provisions of the 1998 Rules. The interse seniority of the A.C.F. appointed by nomination is fixed under Rule 7 of the 1998 Rules. The same would be dependent upon the marks obtained by the candidate in the examination held by the Commission and the marks obtained by the candidate in the final examination of the A.C.F. training courses. The seniority amongst A.C.F. appointed by nomination is determined only after successful completion of the A.C.F. training course and depending upon the marks obtained in the final examination of A.C.F. training course. The same is fixed only at the time of issuance of appointment order and not prior to it. The person appointed as A.C.F. by promotion joins as a A.C.F. from the date of promotion and/or he takes charge and a person appointed by nomination to the post of A.C.F. would come in the cadre of A.C.F. only after he is issued with the appointment order after successfully completing the A.C.F. training course. In that event, he would be below the persons who are already promoted to the post of A.C.F. before issuance of appointment order.

36. The different provisions in the Statute are to be so construed as to give effect to all the provisions, so as to avoid repugnancy. The two provisions in the Statute should be so construed as to be consistent with each other. The provisions have to be considered harmoniously so that none of the

provisions is rendered as otiose or dead letter.

37. Reading Rule 3(b), Rule 6 and Rule 7 of the 1998 Rules along with Rules of 2004 irresistible conclusion is that, the seniority of the persons selected for the post of A.C.F. by nomination shall be counted from the date of issuance of appointment order after successful completion of training qua a person appointed as A.C.F. by promotion.

38. In the light of the above, the impugned Government Resolution for the purpose of seniority amongst the A.C.F. appointed by nomination and promotion shall be read down in a manner that the period of training undergone by A.C.F. appointed after completion of training shall be computed from the date of issuance of appointment order after successful completion of training qua A.C.F. appointed by promotion.

39. It is held that, the service of Assistant Conservator of Forest appointed by nomination for the purpose of seniority shall be counted from the date of issuance of appointment order after successful completion of training course vis-a-vis the persons appointed to the post of Assistant Conservator of Forest by promotion.

40. Rule accordingly is made absolute in above terms. No costs.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]

41. At this stage, Mr. Deshmukh, the learned counsel for respondent Nos. 4 to 32 requests that, the position as existing today with regard to the seniority be maintained and also consequential promotions.

42. For a period of four (04) weeks the status quo with regard to the persons to be promoted pursuant to the seniority list in vogue shall be maintained.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]

bsb/April 21