

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 5488 OF 2011
WITH
CIVIL APPLICATION (St.) NO.16416 of 2017
WITH
CIVIL APPLICATION (St.) NO.12258 of 2017**

Sadashiv Santaram Survase	...	Petitioner
vs.		
Government of Maharashtra & Ors.	...	Respondents

Mr. Suresh Dhole a/w. Mr. Pravin Mengane for the petitioner/applicant.
Mr. B.V. Samant, AGP for the respondent/State.

**CORAM : DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE : AUGUST 11, 2021

PC :

1. The petitioner is aggrieved by the judgment and order dated April 20, 2011 passed by the Maharashtra Administrative Tribunal (for short '**the tribunal**') whereby the Original Application No. 455 of 2010 filed by respondent no.3 stood allowed. By the impugned order, the final seniority list dated January 1, 2008 of the cadre of "Industries Deputy Director (Technical) Class I" published in July, 2008, was quashed and set aside to the extent of the *inter se* seniority between respondent no.3 and the petitioner, inter alia with a direction that the *inter se* seniority of respondent no.3 and the

petitioner shall be reckoned with reference to October 9, 1997 and December 5, 1997 respectively, being the dates of their continuous officiation in the cadre. We find it appropriate to note the operative directions of the tribunal, which are as under:-

“4. In the light of above, we decide and direct as follows:

- (a) The impugned final seniority list as on 1st January, 2008 in respect of the cadre of Industries Deputy Director (Technical), Class I published in July, 2008 is quashed and set aside to the extent of the inter se seniority of the Applicant and Respondent No. 3 is concerned and it is directed that the inter se seniority of the Applicant and Respondent no. 3 shall be reckoned with reference to 9th October, 1997 and 5th December, 1997 respectively, the dates of their continuous officiation in the cadre.
- (b) The letter dated 22nd October, 1997 of Industries, Energy and Labour Department, Government of Maharashtra by which extension of joining time was allowed to respondent no. 3, as also its letter dated 24th November, 2009, by which the representation of the applicant against the change made in the inter se seniority of the applicant and respondent no. 3 in the final seniority list published in July, 2008 was rejected, are also quashed and set aside.
- (c) The case of the applicant for promotion to the post of Superintending Industries Officer (Group A) shall be considered afresh by Respondent no. 1 with reference to his seniority reckoned with reference to 9th October, 1997 as the date of his continuous officiation in the cadre of Deputy Director (Technical), Class I and, if he is found fit, he shall be promoted and posted within three months of the communication of this judgment to Respondent no. 1. If necessary, the promotion will be effected by reversion of Respondent no. 3 from the post of Superintending Industries Officer (Group A).
- (d) In case it is decided to promote the applicant as Superintending Industries Officer (Group A) without reverting his junior/s, the Applicant shall be assigned an

appropriate deemed date of promotion and all admissible consequential benefits shall be given to him. This direction shall be implemented within three months of the issue of promotion order."

2. The relevant facts are required to be noted: The Maharashtra Public Service Commission recommended the petitioner and respondent no.3 alongwith two others for appointment as "Industries Deputy Director (Technical), Class I", in pursuance of which the State Government by Government Resolution dated August 27, 1997 notified the appointments of the petitioner and respondent no.3. In pursuance of such Government Resolution, the Development Commissioner (Industries) issued an office order dated September 19, 1997, posting respondent no.3 as General Manager, District Industries Centre, Sindhudurg, Oras and the petitioner as Industries Deputy Director (Technical), Directorate of Industries, MMRDA Division, Mumbai. Respondent no.3 joined the post assigned to him on October 9, 1997 whereas the petitioner joined the post on December 5, 1997.

3. On January 1, 2008 a provisional seniority list of the cadre of "Industries Deputy Director (Technical), Class I", was

published thereby calling upon responses to the provisional seniority list which were to be submitted to the Development Commissioner (Industries). In such provisional seniority list, respondent no.3 was shown at Sr.no.58 and the petitioner was shown at Sr.no.55. By Government Resolution dated July 15, 2008, the seniority between respondent no.3 and the petitioner came to be finalized as it stood in the provisional seniority list.

4. Respondent no.3 being aggrieved by his seniority being placed at Sr. no. 58 below the petitioner, submitted a representation dated July 14, 2009 requesting that the seniority be changed by showing him to be senior to the petitioner, on the ground that the petitioner had failed to join duties within one month of the posting order. Respondent no. 3 asserted that in accordance with the provisions of Rule 4(2) (a) of the Maharashtra Civil Services (Regulation of Seniority) Rules,1982 (for short "**the said Rules**"), the petitioner, having failed to join within the prescribed 30 days from the date of appointment, he had lost his initial seniority, making respondent no.3 senior to him. Such representation of

respondent no.3 was rejected by respondent no.1 by its letter dated November 24, 2009, which recorded that the petitioner was granted extension of time till December 13, 1997 vide letter dated October 12, 1997 to join his first posting and that the petitioner had accordingly joined within the extended period on December 5, 1997, and as permissible under the Rules. It was hence, recorded that respondent no.3 could not claim seniority over the petitioner. Respondent no.3 being aggrieved by such communication, approached the tribunal by the original application in question.

5. The primary contention of respondent no. 3 before the tribunal was to the effect that the extension granted to the petitioner to join duties was invalid, as it was not granted by the Competent Authority. Respondent no. 3 asserted that the Competent Authority, as contemplated under Rule 4(2)(a) of the said Rules was the State Government and not the Deputy Director (Technical) or the Section Officer of the State Government who had granted two extensions. The tribunal, considering Rule 4(2)(a), accepted respondent no. 3's contention and allowed the Original Application.

6. Mr. Dhole, learned counsel for the petitioner, in assailing the impugned orders passed by the tribunal, has contended that the seniority as originally fixed on January 1, 2008 and subsequently confirmed in July 2008, ought not to have been disturbed by the tribunal for two fold reasons – firstly, for the reason that the extension dated November 7, 1997 granted to the petitioner by the Deputy Director (Technical) and second extension which was granted by the Section Officer of the Department of Industries, Mantralay, Mumbai, upto December 13, 1997 were acted upon and in pursuance of which the petitioner had joined service on his first posting; Secondly, it is submitted that neither respondent no. 3 had challenged such extensions nor the State Government had withdrawn and/or cancelled such extensions. It is, hence, his submission that the tribunal could not have overlooked such vital issues in allowing respondent no. 3's Original Application.

7. Mr.Dhole has fairly stated that there are subsequent developments, namely, that the petitioner has now been promoted to a higher post of Joint Director (Industries), whereas respondent no. 3, for reasons not relevant for the

present proceedings, is working on a lower post to the petitioner, namely, on the post of General Manager, District Industries Centre. He, however, submits that it is quite possible that if the situation as brought about by the impugned order is not remedied, it is likely that the petitioner may suffer prejudice in the remaining tenure of his service.

8. On the other hand, Mr. Samant, learned AGP for the State would refer to the affidavit filed on behalf of the State Government, which in fact supports the contentions as urged on behalf of the petitioner. Mr. Samant would not dispute that the extensions, which were granted, were acted upon.

9. Respondent no. 3 although is served is not represented, however, his reply affidavit is placed on record, which has been considered by us. The case of respondent no. 3 is not different from what was asserted by him before the tribunal.

10. We have heard learned counsel for the parties. We have also perused the record.

11. At the outset, it would be appropriate to note the relevant Rules, being Rule 3(a), which defines "Competent Authority" and Rule 4(2)(a) to the extent it is relevant. They read thus:

"3 (a). "*Competent authority*" means an authority competent to make appointment to any post, cadre or service"

"4. General principles of seniority:

(1)

(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."

12. Having noted the rules, we may observe that this is a peculiar case for the reason that although *stricto sensu*, the Deputy Director and/or the Section Officer cannot be the Competent Authority to grant extension as per the provisions of Rule 4(2), however, the fact remains that such extensions were acted upon inasmuch as the petitioner was permitted to

join duties beyond the 30 days time as prescribed by Rule 4(2)(a), for the reason that he was not relieved from his earlier service with the Government Engineering College, Pune. The seniority of respondent or the petitioner was fixed by respondent no.1 as per the recommendation of the Maharashtra Public Service Commission, which was according to their respective ranking.

13. It thus appears to us to be quite peculiar that as extensions granted as per the provision of Rule 4(2)(a) permitting the petitioner to join beyond the period of 30 days, were acted upon, brought about a situation of deemed relaxation in favour of the petitioner to join duties within the prescribed period of 30 days by exercising the power under Rule 8 of the said Rules. If the contentions as urged on behalf of respondent no. 3 and as accepted by the tribunal is to be accepted, the legal consequences would be quite grave inasmuch as it would be required to be construed that although the petitioner joined duties on December 5, 1997, and worked for all these years since 1997, he would be required to be treated to have illegally joined, which is nobody's contention. It was never the case of respondent

no.3 that the extension(s) granted to the petitioner be declared to be illegal.

14. Be that as it may, with the passage of time much water has flown under the bridge. The petitioner is admittedly in a senior cadre by virtue of his subsequent promotion and respondent no. 3 is working in a cadre subordinate to that of the petitioner. By reason of subsequent promotions the issue of seniority in the present facts is rendered academic. This position certainly cannot be disturbed. We, accordingly, dispose of this petition, with a direction that the State Government shall not act upon the impugned order passed by the tribunal, in the event an occasion in future arises, of any conflict of seniority between the petitioner and respondent no. 3.

15. Writ Petition is disposed of in the above terms. No costs.

16. Civil application (St) No.16416 of 2017 and Civil Application (St.) No.12258 of 2017 would also not survive. They are accordingly disposed of.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)