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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 12th May, 2021

+ **W.P.(C) 4931/2021**

HEMANTKUMAR VASANTRAO PAWAR Petitioner

Through: **Mr. Ravindra Keshavrao Adsure,**
Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: **Mr. Harish Vaidyanathan Shankar,**
CGSC with **Ms. Tejaswini Verma,**
Ms. Bushra Kazim and **Ms. Kinjal**
Shrivastava, Advocates for R-1.

Mr. Naresh Kaushik and **Mr. Anand**
Singh, Advocates for R-2 and R-3.

Mr. Rahul Chitnis, Chief Standing
Counsel, Advocate for State of
Maharashtra R-4 & R5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

RAJIV SAHAI ENDLAW, J.

[VIA VIDEO CONFERENCING]

1. This petition, under Article 226 of the Constitution of India, impugns the order dated 12th March, 2021 of Central Administrative Tribunal (CAT),

Principal Bench, New Delhi, of dismissal of O.A. No. 564/2021 preferred by the petitioner.

2. The petitioner, along with the petition, has filed 54 documents as Annexures thereto and has hidden the impugned order as Annexure 51. The same leads to a lot of delay in, while reading the file, locating the impugned order. The counsel for the petitioner is requested to, in future file the impugned order preferably as the first Annexure or at best as the last Annexure.

3. The counsels for respondent no.1 Union of India (UOI), respondent no.2 Union Public Service Commission (UPSC) and respondents no.4 & 5 Government of Maharashtra appear on advance notice and considering the nature of the controversy, we have, with the consent of the counsels, proceeded to hear the counsels finally at this stage itself.

4. The petitioner, on appearing in the Maharashtra Public Service Commission examination, on 16th June, 1987 was selected in the Scheduled Tribe (ST) Category.

5. The caste certificate of the petitioner, on the basis whereof the petitioner was selected in the ST Category, was however cancelled and the said cancellation was affirmed in an appeal preferred by the petitioner. The petitioner filed W.P. (C) No.4055/1988 in the High Court of Bombay and in which petition, vide interim order dated 13th September, 1988, the Government of Maharashtra was directed to appoint the petitioner to the post of Deputy Collector anywhere in the State of Maharashtra, clarifying that the said interim appointment was subject to the result of the petition.

6. The respondent no.4 Government of Maharashtra, during the pendency of the petition aforesaid, vide Resolution dated 15th June, 1995, took a decision that wherever the caste certificates of the candidates appointed/selected to the vacancies against the ST Categories were cancelled, the said candidates would be accommodated under the Special Backward Category, and a reservation of 2 % was created for the said purpose.

7. The writ petition aforesaid preferred by the petitioner, was finally dismissed, vide order dated 4th November, 2003, not finding any mistake or fault in the order of cancellation of the ST certificate of the petitioner. However since the petitioner, during the hearing of the said writ petition claimed that as per his School Leaving Certificate, though did not belong to the ST Category, belonged to another backward caste within the meaning of Special Backward Category for which 2% reservation had been created as aforesaid, it was observed that if the petitioner was entitled to any benefits on the basis of the caste to which he claimed to belong, the petitioner shall be entitled to approach the State of Maharashtra for necessary relief in that respect.

8. On dismissal as aforesaid of the writ petition preferred by the petitioner, the petitioner was extended the benefits under the Resolution dated 15th June, 1995 aforesaid of the Government of Maharashtra.

9. The petitioner, in the year 2000, was promoted as the Additional Collector and became eligible for consideration for promotion to Indian Administrative Service (IAS) of the Maharashtra cadre; the name of the

petitioner was also included in the list prepared of eligible officers for the said purpose.

10. However pursuant to the dicta of the Supreme Court in ***Chairman and Managing Director, Food Corporation of India Vs. Jagdish Balaram Bahira*** (2017) 8 SCC 670, holding that where a candidate has obtained an appointment to a post on the solemn basis that he or she belongs to a designated caste, tribe or class for whom the post is meant and it is found upon verification by the Scrutiny Committee that the claim is false, the services of such an individual cannot be protected by taking recourse to administrative circulars or resolutions, the Government of Maharashtra, on 21st December, 2019 took a policy decision and on 27th January, 2020 passed a General Order for creating supernumerary posts for such officers, to whom benefits as aforesaid of 2% reservation had earlier been given in pursuance to the Resolution dated 15th June, 1995 aforesaid.

11. The petitioner filed O.A. No.125/2020 before the Maharashtra Administrative Tribunal (State Administrative Tribunal), Nagpur Bench, challenging the order dated 27th January, 2020 and vide order dated 24th February, 2020 in the said O.A. No.125/2020, the operation of the order dated 27th January, 2020, as far as it concerned the petitioner, was stayed. The said O.A. is stated to be still pending consideration.

12. The Government of Maharashtra, in pursuance to the order dated 27th January, 2020 aforesaid, vide letter dated 27th February, 2020 to UPSC, informed UPSC of the policy decision dated 21st December, 2019 and the order dated 27th January, 2020 supra and of posting of the petitioner against a supernumerary vacancy; axiomatically, the Government of Maharashtra,

replaced the name of the petitioner with another officer in the list of eligible officers, for promotion to IAS.

13. Aggrieved therefrom, the O.A., from which this petition arises, was filed, claiming the following reliefs:

“(a) Call for Record and Proceedings of file pertaining to Select List 2018 (for promotion of 25 SCS members to IAS cadre of Maharashtra) from Respondents.

(b) Issue appropriate direction or order to Respondents thereby holding that

(i) Maharashtra State Government's proposal dated 27.2.2020;

(ii) UPSC Selection Committee's meeting dated 7.8.2020;

(iii) UPSC's final Select List dated 1.9.2020 under Regulation 7(2) [published by DoPT Notification dated 3.9.2020, which is reproduced by GAD SoM notification dated 4.9.2020];

(iv) DoPT's Appointment Notification dated 3.9.2020 under Rule 8(1) r/w Regulation 9(1).

To the extent of exclusion of Hemantkumar Vasantrao Pawar (seniority w.e.f. 15.6.1995) is bad in law and unconstitutional.

(c) Issue appropriate direction or order to respondents thereby directing that

(i) revise State Government's proposal dated 27.2.2020 (including Annexure-3.1) thereby showing Hemantkumar Vasantrao Pawar at Sr.No.4 (below Uday Anantrao

Jadhav & above Vijaykumar Pandharinath Phad)
correctly considering his seniority w.e.f. 15.6.1995;

(ii) re-conduct UPSC Selection Committee's meeting as per Regulation 5(5) [with reference to Selection Committee's Meeting dated 7.8.2020] for Select List, 2018 for Maharashtra thereby considering Hemantkumar Vasantrao Pawar at Sr.No.4 (seniority w.e.f. 15.6.1995) for the purpose of selection of SCS officers to IAS cadre of Maharashtra;

(iii) direct UPSC to modify final Select List published u/R.7(1) dated 1.9.2020, thereby including Hemantkumar Vasantrao Pawar at Sr.No.3 (seniority w.e.f. 15.6.1995) in Select List 2018 for the purpose of selection of SCS officers to IAS cadre of Maharashtra;

(iv) direct DoPT, UOI to modify appointment notification dated 3.9.2020 under Rule 8(1) r/w Regulation 9(1) thereby including Hemantkumar Vasantrao Pawar at Sr.No.3 (seniority w.e.f. 15.6.1995) in Select List 2018 for the purpose of selection of SCS officers to IAS cadre of Maharashtra;

(v) direct State Government of Maharashtra to appoint Hemantkumar Vasantrao Pawar to IAS cadre of Maharashtra, on the basis of inclusion of his name in Select List of 2018 not later than his immediate junior appointed to IAS on the basis of Select List-2018;

(d) Award cost of the present proceedings to petitioners from respondent.

(e) Pass any other appropriate orders.”

14. CAT, vide the impugned order, has dismissed the aforesaid O.A. of the petitioner, reasoning that no serious flaw could be found on the part of the Government of Maharashtra, in forwarding the name of another candidate in place of the petitioner, for promotion to IAS; however, CAT, in the impugned order has clarified, that as and when the status of the petitioner becomes clear, in the proceedings pending before the State Administrative Tribunal, the petitioner can stake his claim and which could be with retrospective effect.

15. Though initially, being of the view that the petitioner having already impugned the order dated 27th January, 2020 removing him from the regular cadre of Maharashtra State Service and putting him in a supernumerary post and in which proceedings the petitioner had also been granted interim relief, the petitioner, for the grievances urged in the O.A. from which this petition arises and which grievances are also consequential to the order dated 27th January, 2020, should have approached the same Tribunal but the counsel for the petitioner has explained that the Tribunal which the petitioner earlier approached and which has granted the interim stay, being the State Administrative Tribunal and the relief claimed by the petitioner in the O.A. from which this petition arises, being composite reliefs, not only against the Government of Maharashtra but also against the UOI and UPSC, the petitioner could not have approached the same Tribunal.

16. The counsels for the Government of Maharashtra, UOI and UPSC have contended that the main grievance of the petitioner, of substitution of his name in the list of eligible officers for promotion to IAS, with the name of another officer, is against the Government of Maharashtra only and all the

other reliefs claimed against UOI and UPSC, are consequential thereto and it was thus open to the petitioner to approach the State Administrative Tribunal only.

17. However, since the consequential reliefs were also available to the petitioner on the date of filing of O.A., it cannot be said that the petitioner was wrong in filing the O.A. with composite reliefs, before CAT.

18. The counsel for the petitioner has argued, that the order dated 27th January, 2020, of which State Administrative Tribunal, in the O.A. preferred before it by the petitioner has granted interim stay, envisaged further steps, of transferring the petitioner from the post in the regular cadre of State Service, to a supernumerary post and which steps have not been taken, and thus the petitioner continued in the regular cadre of State Service. It is contended that once the petitioner continues in the regular cadre of State Service, the name of the petitioner could not have been substituted in the list of eligible officers for promotion to IAS.

19. What follows for adjudication in this petition is, whether the interim stay granted by the State Administrative Tribunal in the O.A. preferred by the petitioner impugning the policy decision dated 21st December, 2019 and the order dated 27th January, 2020 extends to permitting the petitioner to avail all the benefits which the petitioner could have availed only as an officer of regular cadre of State Service and from which he was purported to be removed by the order dated 27th January, 2020.

20. A reading of the interim order of the State Administrative Tribunal, of stay of the order dated 27th January, 2020, shows that the same was granted,

not for the reason of finding any *prima facie* merit in the claim of the petitioner, but merely because in some other O.A.s preferred before the State Administrative Tribunal, the same relief had been granted. There is nothing in the said interim stay order of the State Administrative Tribunal, to show, that the petitioner, owing to the interim stay granted, was entitled not only to the maintenance of *status quo* but also to benefits of promotion etc. as a cadre officer of the State Service. The grant of interim stay, ordinarily entitles the beneficiary only to maintenance of *status quo* and not to seek alteration of the said status to his benefit, notwithstanding that by the impugned action/order the said beneficiary is not entitled thereto.

21. Though we have hereinabove observed that it was open to the petitioner to file a petition claiming composite reliefs before CAT, but we must say that since the main grievance of the petitioner in the O.A. from which this petition arises, is also with respect to the State action stemming from the same order dated 27th January, 2020 which is already under challenge before the State Administrative Tribunal, it would have been better if the petitioner had approached the State Administrative Tribunal for clarification of the order of interim stay granted by it. It was the said Tribunal only, which was best equipped to consider, whether the interim stay should extend to permitting the petitioner to avail of the benefits of promotion etc. as a cadre officer of the State Service.

22. We may in this context record another contention of the counsel for the petitioner, that the petitioner, on attaining the age of superannuation of 58 years, in the State Service, on 31st March, 2021 has already

superannuated and if he had been promoted to IAS, he would have enjoyed the age of superannuation of 60 years.

23. What we have wondered is, that when the challenge by the petitioner to the policy decision dated 21st December, 2019 and the order dated 27th January, 2020 of the Government of Maharashtra is still pending consideration and the said policy decision and the order have not been struck down, whether the petitioner, in the interregnum, can be permitted to avail the promotion, and to which the petitioner would admittedly not be entitled to under the policy decision dated 21st December, 2019 and the order dated 27th January, 2020.

24. We have further wondered, whether not allowing the reliefs to the petitioner would tantamount to permitting the petitioner to serve in the IAS till the age of superannuation of 60 years, literally making the O.A. pending before the State Administrative Tribunal infructuous, inasmuch as the petitioner would thereafter be not concerned even if the said O.A. were to be dismissed.

25. In our opinion, while the clock cannot be turned back, the petitioner, if succeeds in the O.A. pending before the State Administrative Tribunal, would definitely be entitled to claim the consequential reliefs, as already held in the impugned order.

26. The counsel for the petitioner at this stage contends that the policy decision dated 21st December, 2019 and the order dated 27th January, 2020 of Government of Maharashtra wrongly rely on *Jagdish Balaram Bahira* supra.

27. However the policy decision dated 21st December, 2019 and the order dated 27th January, 2020 are not under challenge before us nor were under challenge in the O.A. from which this petition arises. The said argument thus has to be made by the petitioner before the State Administrative Tribunal.

28. We thus do not find any merit in the petition and the same is dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

MAY 12, 2021
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