

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

12 WRIT PETITION NO.8881 OF 2022

RAHUL SAHEBRAO SHIRSATH
VERSUS
THE STATE OF MAHARASHTRA
THROUGH THE SECRETARY AND ANOTHER

...

Advocate for Petitioner : Mr. Sujeet D. Joshi
AGP for Respondent / State : Mr. A.S. Shinde

...

CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.

DATE : 29-08-2022

ORAL ORDER (*PER* SANDEEP V. MARNE, J.) :

. The case of the petitioner before the Tribunal was that he ought to have been granted seniority on the post of clerk-cum-Typist with effect from 20.01.2015 instead of 07.12.2016. The prayer was essentially premised on the contention that not only a vacancy of Clerk-cum-Typist was available on 20.01.2015, but the petitioner was fulfilling all the eligibility criteria for being so promoted.

2. In our opinion, the Tribunal has correctly invoked two settled principles of service jurisprudence that seniority cannot be claimed by any person before he is borne in the cadre and mere existence of vacancy does not create a right of promotion. In our opinion, these reasons were sufficient for dismissal of the Original

Application.

3. There is another ground on which the original application of the petitioner could have been dismissed. Perusal of prayers made in the Original Application indicates that the petitioner never sought a prayer for his promotion to the post of Clerk-cum-Typist with effect from 20.01.2015. It is a settled law that unless promotion is sought, consequential seniority cannot be claimed. A useful reference can be made to the decision of the Apex Court in **Amarjeet Singh & Ors. Vs. Devi Ratan & Ors [(2010) 1 SCC 417]**.

4. In our opinion, we do not find any infirmity being committed by the Tribunal while dismissing the impugned Original Application.

5. Writ Petition is accordingly dismissed. No order as to costs.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)