

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.13087 OF 2022**

MAHARASHTRA ROAD TRANSPORT CORPORATION
THROUGH GENERAL MANAGER E AND IR OFFICE AND
ANOTHER
VERSUS
BAHUJAN RAJA PARIVAHAN KARMACHARI SANGHATANA
THROUGH ITS PRESIDENT AND ANOTHER

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Mr. D. S. Bagul, Advocate for the Petitioner.

Mr. B. V. Gawali, Advocate for Respondent Nos.1 and 2.

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**CORAM : SANDEEP V. MARNE, J.
DATED : 22nd DECEMBER, 2022.**

PER COURT:-

1. By this petition petitioner-Corporation challenges order dated 29.09.2022 passed by the Member, Industrial Court, Latur on application for interim relief filed in Complaint ULP No.128/2022 thereby restraining petitioner-Corporation from declaring result of the examination dated 18.09.2022 till the correction of seniority lists or until decision of the complaint whichever occurs earlier. Petitioner-Corporation is also restrained from giving appointments on the basis of impugned lists on the posts of Accountant or Office Superintendent/Establishment Supervisor Officer – Class II (Junior) till the correction of the seniority lists or until decision of the complaint whichever occurs earlier.

2. Respondents have filed Complaint ULP No.128/2022 challenging the seniority-cum-eligibility lists of employees for the promotion to the posts of Office Superintendent, Traffic/Establishment Supervisory Officer Class II (Junior) and Accountant. It is the contention of respondents that the seniority-cum-eligibility list has been published in violation of the

Government Resolution dated 07.05.2021 adopted by petitioner-Corporation. The Government Resolution dated 07.05.2021 has been issued in pursuance of the judgment and order dated 04.08.2017 passed by this Court in Writ Petition No.2797/2015 consequent to the declaration of law that reservation will not be applicable for promotions. It is directed *inter alia* in the Government Resolution that in respect of employees appointed after 25.05.2004, they shall be considered for promotions in accordance with the seniority at the time to their recruitment. It is on the basis of this provision in the Government Resolution dated 07.05.2021 that respondents have approached the Industrial Court with a grievance that seniority list of Senior Clerk has not be corrected in accordance with the Government Resolution dated 07.05.2021.

3. The Industrial Court has compared the cases of the employees in tabular chart in paragraph no.15 of its judgment which apparently show that the candidate belonging to the reserved category candidate on the same day as that of open category candidate, has marched ahead on the post of Senior Clerk whereas candidate belonging to Open category has followed him at the later date. This has possibly led to supersession of the Open category candidate by the reserved category candidate. However, it also appears that for securing promotion of the post of Senior Clerk, one has to pass examination. The seniority list is also prepared on the basis of the date of passing of examination for the post of Clerk.

4. Learned counsel for respondents would urge that the candidates are permitted to appear in the examination for

promotions to the post of Senior Clerk only in accordance with the seniority.

5. Be that as it may. Arguable questions have been raised before the Industrial Court in Complaint ULP No.128/2022. Respondents having promoted to the post of Senior Clerk from the year 2016 onwards, their seniority must have been fixed from time to time from the year 2016. What they have challenged before the Industrial Court is essentially the eligibility list published on 18.08.2022. They may or may not have a valid grievance and their claim may or may not ultimately sustain before the Industrial Court. Also of relevance is the fact that respondents have not impleaded persons likely to be adversely affected by the outcome of the complaint before the Industrial Court as party respondents.

6. Even otherwise, the Industrial Court could not have passed sweeping order staying of the promotions till the seniority list gets corrected as per the desire of respondents. Even if respondents ultimately succeed in their complaint, they can be granted deemed dates of promotion. The Industrial Court staying the entire process of selection which would put a spoke in the wheels of the administration of petitioner-Corporation. The order passed by the Industrial Court is thus unsustainable and the same deserves to be quashed and set aside.

7. Writ Petition is accordingly allowed. The order dated 29.09.2022 passed by the Member, Industrial Court, Latur on application for stay filed in Complaint ULP No.128/2022 is set aside.

8. It is further clarified that all the promotions that may be effected as a result of ongoing process shall be subject to the result of Complaint ULP No.128/2022 and petitioner-Corporation shall give an intimation to the promoted candidates about pendency of the said complaint.

9. Learned counsel appearing for respondents requests that the Industrial Court be directed to expedite the hearing of the complaint. Considering the fact that some of the members of respondent-Union are on the verge of retirement, the Industrial Court will bear this factor in mind and shall make an endeavour to decide the complaint in an expeditious manner.

(SANDEEP V. MARNE)
JUDGE