

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

WRIT PETITION NO. 11013 OF 2018

- 1) The State of Maharashtra,
through its Secretary, Revenue
and Forest Department, Mantralaya
Mumbai-32.
- 2) The Chief Conservator of Forest
(Territory), Aurangabad Region,
Aurangabad.
- 3) The Conservator of Forest,
Aurangabad Division,
Aurangabad.

... **Petitioners**

VERSUS

Vinayak s/o Jagdishrao Gode
(died) through his legal heirs

- 1A) Smt. Shamla w/o Vinayak Gode,
Age 40 years, Occ. Household,
R/o. House No. 28/3, M-2,
HUDCO, Aurangabad.
- 2B) Tejeshwar s/o Vinayak Gode,
Age 22 years, Occ. Education,
R/o. House No. 28/3, M-2,
HUDCO, Aurangabad.
- 3C) Harish s/o Vinayak Gode,
Age 17 years, Occ. Student,
Under Guardian of respondent No. 1,
R/o. House No. 28/3, M-2,
HUDCO, Aurangabad.

... **Respondents**

...

Additional Government Pleader for the Petitioners/State : Mr. P.S. Patil
Advocate for Respondent Nos. 1A, 2B, 3C : Ms. J.P. Reddy

CORAM : **MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : **22.06.2023**

PER COURT : (PER : MANGESH S. PATIL, J.)

Heard. The Rule is made returnable forthwith. The learned advocate Ms. J.P. Reddy waives service for the respondents. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The facts leading to the present petition may be summarized as under :

(a) The respondent was selected as a forest guard by a selection committee in a recruitment process undertaken by the petitioners in the year 2003. His name appeared in the select list published on 23.01.2004. By a communication dated 15.01.2004 since he was selected for post reserved for scheduled tribe category and he claimed to be belonging to Mahadev Koli tribe he was directed to submit the tribe validity certificate.

(b) Since he was not getting the appointment, he approached this Court by filing Writ Petition No. 784/2008. By the order dated 28.03.2008 holding that no time limit was prescribed by the petitioner to obtain validity certificate and holding that the respondent was not at fault since the matter was to be considered and decided by the tribe verification committee, the petitioners were directed to immediately issue an appointment letter to him for the post of forest guard. Accordingly, they issued appointment letter on 11.04.2008.

(c) By filing Original Application No. 116/2011 before the Maharashtra Administrative Tribunal, the respondent claimed that though his date of appointment was 11.04.2008, he should be granted deemed date of appointment as 23.01.2004 on which date the select list was published.

(d) After hearing both the sides, by the order under challenge the Tribunal has allowed the Original Application by referring to the Government resolution dated 08.12.2003 which in turn referred to the

provision of Rule 4(2)(a) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 (hereinafter 'Seniority Rules'). The tribunal thus granted him deemed date of appointment as the date on which the other selected candidates were appointed by regularizing the period between such date of joining by the selected candidates and his actual date of joining on 16.04.2008. Aggrieved thereby this petition.

3. The learned A.G.P vehemently submits that since the respondent was seeking an appointment on the post reserved for scheduled tribes, it was imperative for him to have obtained the tribe validity certificate within reasonable time and failure to do so having resulted in his delayed appointment, he cannot claim seniority from the date the other appointees were permitted to join. In Writ Petition No. 784/2008, this Court had merely directed the petitioners to issue appointment letter but it had not conspicuously directed that his appointment should be considered from the date of joining of the other selected candidates. The tribunal has grossly erred in applying Rule 4(2)(a) of the Seniority Rules. He was at fault in not obtaining the validity certificate and could not have been granted deemed date of appointment anterior to his actual joining the post.

4. Per contra, the learned advocate for the respondent would support the order of the tribunal.

5. At the outset, it is necessary to note that there is no dispute about the fact that the Seniority Rules are applicable to the fact situation and regulate the relations between the parties. Rule 4(2)(a) reads as under :

“4. General principles of seniority :

(1) ...

(2) Notwithstanding anything contained in sub-rule (1) -

(a) the inter se seniority of direct recruits selection 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;"

6. Contemplating the contingencies where the selected candidates would be unable to produce caste/tribe certificate which was not in their hands, the Government issued resolution dated 08.12.2003 which was in vernacular and has been reproduced by the tribunal in its order. The sum and substance of that resolution is to the effect that the candidates who have been selected, after getting the information and called upon by the appointing authorities should within a month from such intimation submit all the documents in support of their caste/tribe claim and the concerned department should thereafter transmit it to the Caste/Tribe Verification Scrutiny Committees. It was also resolved that the committees would take decision within six months and would inform the concerned department and depending upon that the appointment orders to be issued. It also stipulated that since it was likely to take some time for deciding such caste/tribe claims by the scrutiny committees, the competent authorities should extend the time by resorting to Rule 4(2)(a) and permit the candidates to join.

7. Noticing this provision and the Government resolution, the tribunal has, and in our considered view rightly, held him entitled to protect his seniority *vis a vis* all those who were appointed as per the select list, he having subsequently obtained a validity certificate and was permitted to join by regularizing the period between the date the other selected candidates were permitted to join and his actual date of joining that is 16.04.2008. The view taken by the tribunal is clearly in consonance with the statutory provisions and the Government resolution (*supra*). No other interpretation is possible.

8. There is no substance in the writ petition and it is liable to be dismissed.

9. The Writ Petition is dismissed. Rule is discharged.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-