

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No. 11856 / 2022

1. Archana Shivaji Darade,
Age 43 years, Occu. Govt. Service as Awal Karkun,
R/o. Abhijeet Niwas, Vyankatesh Nagar,
Chatrapati Chowk Nanded
Tq. Dist. Nanded 431 605.
2. Prabhu s/o Kisanrao Panode,
Age 38 years, Occu. Govt. Service as Awal Karkun,
R/o. At post Devurwadi (Punarwasan),
Tq. Arni, Dist. Yawatmal 445 103.
3. Dipali Ramakant Pinjarkar,
Age : 38 years, Occ. Govt. Service as Awal Karkun
R/o Navin Hanuman Nagar,
Near Pathyapustak Mahamandal, Amrawati,
Tq. Dist. Amrawati. 444 604.
4. Hareshwar s/o Tukaram Khude,
Age : 41 years, Occ. Govt. Service as Awal Karkun
R/o Taroda (Bu.) Road, Krushna Nagar,
Nanded Tq. Dist. Nanded 431 605.
5. M. Jameeroddin Azaroddin Siddiqui,
Age : 41 years, Occ. Govt. Service as Awal Karkun
R/o House No.1-17-286, Siddiqui Building,
Nanded Tq. Dist. Nanded 431 605.
6. Pranita Pandurang Gawale,
Age : 36 years, Occ. Govt. Service as Awal Karkun
R/o NDA41/A-2/3-2, CIDCO, New Nanded,
Nanded Tq. Dist. Nanded 431 603.

7. Subhadra Nagraj Beti,
Age : 49 years, Occ. Govt. Service as Awal Karkun
R/o Nyay Nagar, Vasarni, Nanded
Nanded Tq. Dist. Nanded 431 603.
8. Ganpatrao s/o Kondbarao Shelke,
Age : 38 years, Occ. Govt. Service as Awal Karkun
R/o Suryawanshi Niwas, Manjula Nagar, Bhokar,
Nanded Tq. Dist. Nanded 431 801.
9. Digamber s/o Govindrao Gadilwad,
Age : 34 years, Occ. Govt. Service as Awal Karkun
R/o At Pandharwadi (via Barad) Post Shemboli,
Tq. Mudkhed Dist. Nanded 431 745.
10. Preeti d/o Pradiprao Dahale,
Age : 31 years, Occ. Govt. Service as Awal Karkun
R/o 34/A, Bhagwant Nagar, Malegaon road,
Nanded Tq. Dist. Nanded 431 605.
11. Vijay s/o Rameshwar Surushe,
Age : 34 years, Occ. Govt. Service as Awal Karkun
R/o At Shivpuri, Post Chaygaon,
Tq. Mehkar, Dist. Buldhana 443 301.
12. Nagesh s/o Shivshankar Swami,
Age : 38 years, Occ. Govt. Service as Awal Karkun
R/o At Plot No.60, Tirumala Gardens,
Near Maheshwari Bhawan, New Kautha,
Tq. Mehkar, Dist. Buldhana 443 603.
13. Ganga Subhashrao Suryawanshi,
Age : 41 years, Occ. Govt. Service as Awal Karkun
R/o Malegaon Road, Vaibhav Nagar,
Behind Jain Temple, Taroda (Kh.) Nanded
Dist. Nanded 431 605.

14. Ushatai Pralhadrao Subhedar,
Age : 44 years, Occ. Govt. Service as Awal Karkun
R/o A/p Yewati, Tq. Mukhed,
Dist. Nanded 431 715.
15. Munjabhau s/o Kishanrao Lokare,
Age : 40 years, Occ. Govt. Service as Awal Karkun
R/o Anusaya Nagar, Khanapur Area,
Parbhani Tq. Dist. Parbhani 431 401.
16. Kishan s/o Dagduji Gulgule,
Age : 39 years, Occ. Govt. Service as Awal Karkun
R/o Mahatama Phule Nagar, Asegaon Road,
Vasmat, Tq. Vasmat Dist. Hingoli 431 512.
17. Madhav s/o Balasaheb Pawar,
Age : 40 years, Occ. Govt. Service as Awal Karkun
R/o Near Gram Panchayat A/p Wazur,
Tq. Purna, Dist. Parbhani 431 514.
18. Vishal s/o Balakram Pendkar,
Age : 39 years, Occ. Govt. Service as Awal Karkun
R/o Swatantrya Sainik Colony,
Near Water Tank, Shobha Nagar,
Nanded Tq. Dist. Nanded 431 601. ...Petitioners

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai 400 032.
2. The Divisional Joint Registrar,
Aurangabad Division, Aurangabad.
3. The District Collector,
Tq. and Dist. Nanded.

4. Vanita Kashinath Panchal,
Age 44 years, Occ. Service as Revenue Assistant
R/o House No.3-6-401, Dhupia House,
Near Maruti Temple, Gurudwara Gate No.1,
Nanded 431 605.
5. Balaji s/o Digambar Bangarwar,
Age : 40 years, Occ.: Service as
Revenue Assistant (clerk),
R/o.: c/o Yewate Patil, Nileshwari Colony,
Behind Bhavsar Chowk, Nanded 431 605.
6. Namdev s/o Vitthal Palekar,
Age 49 years, Occ. Service as Awal Karkun
R/o Shrikrishna Nagar, Taroda (BK),
Nanded 431 605.
7. Balasaheb s/o Avdhut Puri,
Age 53 years, Occ. Service as Revenue Assistant
R/o House No.68/69, Ex-Servicemen Colony,
Padhegaon Aurangabad.
8. Ankush s/o Kachru Hiwale,
Age 44 years, Occ. Service as
Revenue Assistant (clerk)
R/o Snesh Nagar, Nanded.
9. Ganesh s/o Umakant Narhire,
Age 42 years, Occ. Service as
Revenue Assistant (clerk)
R/o Shiv Nagar, Nanded.
10. Sunita Kishanrao Parodwad,
Age 42 years, Occ. Service as
Revenue Assistant (clerk)
R/o Hanuman Gad, Nanded.

11. Shankar s/o Vitthalrao Vaidya,
Age 47 years, Occ. Service as
Revenue Assistant (clerk)
R/o Prabhat Nagar, Nanded.
12. Ratnakar s/o Narayan Thakur,
Age 50 years, Occ. Service as
Revenue Assistant (clerk)
R/o Jayprakash Nagar, Asarjan, Nanded.
13. Jagdish s/o Gangadhar Bhale,
Age 38 years, Occ. Service as
Revenue Assistant (clerk)
R/o Deshmukh Galli, Gandhi Chowk,
Tq. Bhokar, Dist. Nanded.

...Respondents

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Mr. Ajay S. Deshpande, Advocate for the Petitioners

Mr. S. G. Sangle, AGP for Respondent Nos. 1 to 3/State

Mr. Shailendra S. Gangakhedkar, Advocate for Respondent
Nos.5 to 7 and 11 to 13.

Mr. Janardhan N. Murkute, Advocate for Respondent No.9

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

RESERVED ON : 04 JULY, 2023

PRONOUNCED ON : 19 JULY, 2023

JUDGMENT [PER : SHAILESH P. BRAHME, J.] :

. Heard the learned Counsel for the respective parties. Rule. With their consent, Rule is made returnable forthwith.

2. The petitioners are challenging common judgment and order dated 28.09.2022 passed by the learned Members of Maharashtra Administrative Tribunal in O.A. No.457/2022, 460/2022 and 462/2022. By the impugned judgment and order, the orders of reversion dated 13.05.2022 were quashed, orders of promotion of few of the petitioners were also quashed and direction was issued to the Committee to take a decision afresh.

3. The petitioner nos. 9 to 14 were parties before the Tribunal. Rest of the petitioners were not parties. The respondent nos. 4 to 13 are the original applicants. The parties are referred to according to their status before the Tribunal.

4. It is the case of the applicants that they had passed the requisite examination prescribed by the Maharashtra Sub-Service Departmental Examination Rules 1988 (hereinafter referred to as SSD) and the Maharashtra Revenue Qualifying Examination Rules of 1999 (hereinafter referred to as RQE for the sake of brevity), in the cadre

of clerk. They were eligible for the promotion. After following due procedure of law, they were promoted to the post of Awal Karkun by separate orders issued from 2014 to 2017. A provisional seniority list was prepared on 14.02.2020. Thereafter final seniority list was prepared on 26.05.2020.

5. The Divisional Promotional Committee (hereinafter referred to as DPC) conducted meeting on 21.03.2022. On the basis of minutes of the meeting, on 13.05.2022 distinct orders were passed reverting the applicants. On 13.05.2022 and 15.07.2022, orders of promotions were passed in favour of the opponents.

6. Being aggrieved by orders of reversion and orders of promotions, applications were filed before the Tribunal. The main plank of the ground was that the seniority list published on 26.05.2020, which was foundation for impugned orders of reversion and promotions was quashed by the Tribunal on 30.03.2022 in O.A. No.390/2020. This development during the interregnum period from

21.03.2022 to 13.05.2022 was not brought to the notice of DPC. The applicants were not heard before passing of orders of reversion.

7. The claim of the applicants was contested by the opponents mainly on the ground that they were given promotions by orders dated 13.05.2022 and 15.07.2022 on the basis of their eligibility as per SSD and RQE Rules. They were qualified for the promotion as per the guidelines given by the larger bench in O.A. No.554/2015. The applicants were not eligible to the promotion.

8. The learned Members of the Tribunal recorded in paragraph no.6 of the impugned judgment that the private respondents in the original applications did not respond and did not appear in the matter. It was recorded that before passing the orders of reversion the opportunity of hearing should have been given to the applicants. The development of quashment of seniority list dated 26.05.2020 should have been brought to the notice of the

DPC before passing impugned order dated 13.05.2022. It was further held that when impugned orders were passed, the seniority list dated 26.05.2020 was not in existence. Other issues on the merits were not dealt with by the Tribunal. The following order was passed.

ORDER

- [i] Order dated 13-05-2022 impugned in the present O.As. is quashed and set aside.
- [ii] Consequently, the respondent authorities are directed to place the applicants on their original position and cancel the promotions granted in favour of the private respondents.
- [iii] We clarify that, it would be open for the respondent authorities to take a fresh decision by giving due opportunity of hearing to the applicants as well as the private respondents and holding fresh DPC for the said purpose.
- [iv] There shall be no order as to costs.

9. Considering the pleadings and the documents placed on record, following are the undisputed facts.

(i) SSD Rules are for confirming and retaining the seniority. Whereas RQE Rules are for securing eligibility to the promotion.

(ii) OA No.354/2015 was a reference, which was decided by a Larger Bench on 02.02.2017.

(iii) OA No.390/2020 was decided by the Tribunal on 30.02.2022. Seniority list dated 26.05.2020 was quashed by part no.'C' of the operative order.

(iv) Rule 4(a) of SSD was held to be ultra vires. The directions were issued to revise the seniority list as per the provisions of SSD, with further direction to consider the eligibility for the promotion.

(v) DPC held meeting on 21.03.2022 and implemented the decision by impugned order on 13.05.2022. In the meantime, the decision in OA No.390/2020 was rendered on 30.03.2022.

(vi) The promotions given to the applicants and opponents were stated to be temporary in nature.

(vii) The petitioner nos. 1 to 8 were not parties before the Tribunal. However petitioner no. 9 to 14 were parties, but did not respond and appear.

10. Pertinently, OA NO. 390/2020 was decided by the Tribunal on 30.03.2022. The operative part of the judgment reads as follows.

(A) Rule 4(a) of the Maharashtra Sub-Service Departmental Examination Rules, 1988 are unambiguous and therefore, attributing any restrictive interpretation to the same by way of issue of clarification/ guideline, including the Circular issued by the General Administration Department of the State Government, dated 17.11.2017 without amending "The Rules, 1988", having effect of interpreting the phrase 'number of chances' as "number of consecutive chances" are, hereby, held to be ultra vires to the said Rules, 1988.

(B) Interpretation/ clarification provided by the circular of General Administration Department, dated 17.11.2017 to the phrase "Number of Chances" for passing Sub-Service Departmental Examination as per Provisions of Rule 4(a) of The Maharashtra Sub-Service Departmental Examination Rules, 1988 is, hereby, quashed and set aside and this decision shall have only prospective effect in respect of identical cases/ claims.

(C) The seniority list dated 26.05.2020, prepared and published by the respondent no.3, the District Collector, Nanded w.r.t. 01.01.2019 is, hereby, quashed and set aside.

(D) The order dated 26.05.2020, passed by the respondent no.3, the District Collector, Nanded rejecting/ not accepting the objection filed by the applicant to the above mentioned seniority list dated 26.05.2020 is, hereby quashed and set aside.

(E) The respondents are hereby directed to accordingly revise the said seniority list for the post of Junior Clerks, as per the provisions of Rule 4(c) of the

Maharashtra Sub-Service Department Examination Rules, 1988, giving effect to the manner of counting "number of chances" as decided by this order, for the purpose of passing the sub-service departmental examination within the period and chances prescribed under Rule 4(a) of the "The Rules 1988".

(F) The respondents to consider the case of the applicant for promotion to the post of Senior Clerk as per the revised seniority, as per the seniority cum merit criterion and applicable rules, orders and guidelines. Accordingly, the applicant may be extended all the consequential benefits as per the extant rules in this regard.

(G) No order as to costs.

11. The scenario which emerges from the rival contentions is that the seniority list is required to be prepared as per guidelines given by the larger bench in OA No.354/2015. It is not necessary to comment on the validity of the promotion or the reversion given to the parties involved in the petition. The respondent nos. 1 to 3 have not carried out the exercise of preparing seniority list as per guidelines of various decisions rendered. The affidavit-in-reply filed by the respondent

nos. 1 to 3 before the Tribunal, does not make the picture clear.

12. The learned AGP appearing for the respondent nos. 1 to 3 is unable to point out how the promotions and reversions given to the parties are valid. It is the case of the petitioners that they were promoted after re-determination of the seniority list on 28.06.2022. However, the orders of promotion dated 13.05.2022 and 15.07.2022 do not refer to the seniority list finalized on 28.06.2022. The affidavit-in-reply filed by the respondent nos. 1 to 3 before the Tribunal is vague on this aspect, though there is reference to seniority list dated 28.06.2022.

13. What emerges from the decisions rendered in OA No.354/2015 and OA No.390/2020 that there is a need to prepare revised seniority list considering the relevant provision of SSD Rules and RQE Rules as interpreted by the Tribunal. The said exercise is lacking.

14. There is no infirmity in finding of the Tribunal that the decision of 30.03.2022 passed in OA No.390/2020 was required to be considered before passing orders of reversion and promotion. The directions given by the Tribunal in operative part no.2 and 3 are in-consonance with the orders passed in OA No.354/2015 and 390/2020.

15. The Tribunal rightly did not deliberate on issues like validity of promotion or reversion, validity of the seniority list or validity of the position of the individuals in the seniority list etc. As a seniority list prepared in accordance with the Rules guidelines issued from time to time by various forum was not available, it was reasonable to direct the authorities to follow the direction and to prepare seniority list by considering all the aspects of the matter.

16. We are of the opinion that the Tribunal has arrived at a plausible conclusion. Otherwise also the promotions given to the parties were temporary in nature. No

serious prejudice can be said to have been caused to the parties by the impugned order.

17. We do not find any merit in the matter. Thus the writ petition is dismissed. Rule is discharged. No order as to costs.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]