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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2740 OF 2021

Pratap Mahadev Garje

... Petitioner

vs.

State of Maharashtra and Anr.

... Respondents

Mr. Sidheshwar N. Biradar for the Petitioner.

Mr. M. M. Pabale for Respondent no. 1 – State.

Mr. Jitendra P. Jagtap a/w. Ms. Samruddhi Iyer for Respondent
no. 2 (MPCB).

**CORAM : S.V. GANGAPURWALA, ACJ. &
SANDEEP V. MARNE, J.**

DATED : 18 JANUARY, 2023

P.C. :-

1. Learned counsel for the petitioner submits that in the selection process for the post of 'Field Officer' of the year 2009 the petitioner was selected from V.J.(A) category. The petitioner worked for two and a half years. The appointment of the petitioner was challenged in Writ Petition No. 1293 of 2011. Under judgment dated 29 February 2012 in Writ Petition No. 1293 of 2011 the appointment of the petitioner was canceled.

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2. Thereafter the petitioner filed Writ Petition No. 5880 of 2012 before the Aurangabad bench of this court. Under judgment and order dated 20 September 2013 the Division bench of this court at Aurangabad dismissed the Writ Petition No.5880 of 2012. It further appears that the petitioner had filed Writ Petition no. 2065 of 2015 before this court. This court dismissed the Writ Petition under judgment and order dated 23 February 2017 on the ground that the earlier Writ Petition No. 5880 of 2012 is also dismissed.

3. The Judgment in Writ Petition No. 5880 of 2012 was also sought to be reviewed by filing Review Application No. 142 of 2013. The same was also dismissed by the Division bench at Aurangabad under its order dated 1 October 2013. The petitioner appears to have further filed a review of the order dated 23 February 2017 in Writ Petition no. 2065 of 2015. The Petitioner withdrew the said review and with liberty for the petitioner to approach the authority concerned. The court disposed of the review as withdrawn with liberty as sought by the petitioner.

4. The petitioner thereafter filed a representation. The representation is rejected. The petitioner has filed the instant

Writ Petition challenging the order rejecting the representation of the petitioner.

5. The learned counsel for the petitioner submits that pursuant to the liberty granted by the Aurangabad bench in the Review Application the representation was filed, the same is rejected. Fresh cause of action is accrued to him.

6. The learned counsel for the petitioner now submits that the vacancy still exists. As vacancy exists, the petitioner is entitled to appointment on the vacant post. The petitioner had worked for two and a half years in the said post. The petitioner refers to the affidavit filed by the respondent to contend that vacancy exists as on date because of promotion and/or resignation of the persons in employment. According to the learned counsel for the petitioner, case of the petitioner deserves to be considered. Learned counsel for the petitioner submits that after 2009 no further selection process has taken place. We have considered the submission.

7. The learned counsel for the respondent submits that the claim of the petitioner is already negated by the court in Writ in Writ Petition no. 5880 of 2012 and Writ Petition no. 2065 of 2015.

8. We have considered the submissions. The petitioner is harping on the affidavit that some of the post became vacant because of promotion of the candidates. Even if the post subsequently becomes vacant, the same is not available to be filled in from the wait list or select list. This court under order dated 20 September 2013 in Writ Petition No. 5880 of 2012 had observed that subsequent vacancies becoming available and not advertised in the year 2009 cannot be available for considering the claim of the petitioner.

9. This court in the said judgment observed that by accident the petitioner was appointed against vacancy not meant for him in V.J.(A) category. This court by speaking order dismissed the Writ Petition No. 5880 of 2012 filed by the petitioner by order dated 20 September 2013. The petitioner's appointment was set aside by the order dated 23 February 2012 of the Division bench of this court under Writ Petition no. 1293 of 2011. In fact the cause raised by the petitioner is already decided by this court. It is not an open to file fresh writ petition.

10. The Review Application filed by the petitioner seeking review of the order dated 23 February 2017 in Writ Petition

No.2065 of 2015 was withdrawn with liberty to make a representation. Representation has been rejected. The rejection of representation still cannot give fresh cause of action to the petitioner. The lis between the parties had already attained finality by the order dated 20 September 2013 in Writ Petition no. 5880 of 2012 and also Writ Petition no. 2065 of 2015 under order dated 23 February 2017.

11. In the light of the above, no further orders can be passed. Writ Petition as such is disposed. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)