

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2208 OF 2020

Shri Roshan s/o Gangadharrao Bezalwar,
Aged about 36 years, Occupation – Service,
R/o. C/o. Shri Gangadharrao Annaldewar's
House, Near Dakshin Mukhi Hanuman
Mandir, R./o Allapalli, Tahsil – Aheri,
District – Gadchiroli – 442705.

.... **PETITIONER**

VERSUS

1) The State of Maharashtra,
through Secretary to the Government
of Maharashtra, Revenue & Forest
Department, Mantralaya, Mumbai -
400032.

2) Principal Chief Conservator of Forests,
Maharashtra State, Vanbhawan, Ramgiri
Road, Civil Lines, Nagpur – 440001.

3) Chief Conservator of Forests (Territorial),
Dr. Ambedkar Samajik Nyay Bhawan
Complex, Gadchiroli – 442605.

.... **RESPONDENTS**

Mr. S.A. Pathak, Counsel for the petitioner,
Mr. N.S. Rao, AGP for the respondents/State.

CORAM : ROHIT B. DEO & Y.G. KHOBRADE, JJ.
DATED : 12th JANUARY, 2023

ORAL JUDGMENT : (PER : R.B. DEO, J.)

The challenge is to the order dated 03-8-2014 issued by the

Deputy Chief Conservator of Forest, Allapalli Forest Division, reverting the petitioner from Group-C to Group-D and the consequential downward revision in pay scale and the order dated 09-1-2020 passed by the learned Maharashtra Administrative Tribunal, Nagpur (MAT) in Original Application 447/2017 whereby the Original Application is dismissed.

2. Facts are brief, and are broadly admitted.

3. Respondent 3-Chief Conservator of Forests (Territorial), Gadchiroli published advertisement dated 29-12-2012 inviting applications for vacancies in Group-D. It is made clear at various places in the advertisement that the recruitment is for vacancies in Group-D. Holistic reading of the advertisement reveals that the qualifications and experience are prescribed on the basis of the extant rules applicable for posts in Group-D.

4. The advertisement was issued in respect of various posts, one of which was Arekas (Sharpner) from the Open Category.

5. The petitioner applied for the post of Arekas and was appointed vide order dated 21-3-2013 in the pay scale of Rs.5200-20200 with

Grade Pay Rs.2400/-.

6. We note that the appointment order dated 01-4-2013 refers to the post of Arekas as Group-C.

7. A revised order dated 03-8-2014 came to be issued stating that in the appointment order dated 01-4-2013 it is inadvertently mentioned that the post to which the petitioner is appointed is Group-C post and that the appointment order is, therefore, corrected to clarify that the petitioner is appointed to post in Group-D with the corresponding pay scale.

8. The petitioner approached the MAT contending that he is informed by the Public Information Officer of the office of the Principal Chief Conservator of Forest, Nagpur that the post of Arekas or Sharpner is Group-C post. The petitioner further contended that the expression "Sharpner" and "Arekas" refer to the same post. The petitioner then contended that he sought copies of the Recruitment Rules for the post of Arekas or Sharpner and he was supplied the Recruitment Rules for the post of "Saw Sharpner".

9. The petitioner challenged the correction in the appointment order

and the downward revision of pay scale on the ground that his fundamental rights are violated.

10. The State contended that the concerned officer erred in including the post of Arekas in Group-D. The thrust of the submission was that there is nothing wrong in correcting an obvious mistake. The State specifically submitted that there is a separate post of Saw Sharpner on the establishment of the Forest Department which the petitioner is eligible to hold. The submission is that the petitioner, as a fact, was appointed as Saw Sharpner (Arekas) and he cannot take advantage of the obvious error committed while issuing the advertisement which referred to the post of "Arekas" as Group-D post. The State asserted that the post of "Arekas" cannot be confused with the post of Saw Sharpner/Arekas. While the post of Arekas is Group-C, the post of Saw Sharpner to which the petitioner is eligible is Group-D post.

11. The consideration by MAT reads thus :

"2. As submitted by the learned counsel for the applicant, the respondent no.3 i.e. the Chief Conservator of Forests (Territorial) Gadchiroli published an advertisement dated 29-12-2012 (A-1, P-25) for filling various posts of Group-D category. One of these posts was also the post of Arekas (Sharpner) in Forest Department in the pay scale of Rs.4400-7440/- Grade Pay Rs.1300/- (P-26). The applicant was selected and recommended for the post of 'Arekas' (Sharpner) in Allapalli Forest Division vide order dated 21-3-2013 (A-2, P-

32). *Consequent to this order appointment letter of the applicant was issued vide order dated 01-4-2013 (A-3, P-34) by the Competent Authority.*

3. *Since the advertisement was for appointment of Group-D post, appointing the applicant on Group-C post was illegal and it was realised by the concerned authorities. Consequent to that, order dated 3-2-2014 (A-4, P-37) was issued wherein it was mentioned that earlier order dated 1-4-2013 was cancelled and order dated 3-2-2014 was given effect from 1-4-2013 i.e. from first date of appointment.*

4. *The learned counsel for the applicant has relied on previous order dated 1-4-2013 which has been already cancelled by subsequent order dated 3-2-2014.*

5. *The respondents in their reply para nos. 5 & 6 page no.122 have mentioned about this mistake and subsequent correction. It is also mentioned in para 8 that as per “AKRUTI BAND” of Forest Department Arekas post is not a Class-C post. Since advertisement dated 29-12-2012 (A-1, P-25) itself was clear that appointment was only to Group-D posts and the applicant was fully aware of details of the advertisement and in response to that made an application and became successful candidate. Now it is illogical to claim to be Group-C employee.”*

12. We agree with the stand of the department that while issuing the advertisement an error was committed and the petitioner cannot take advantage thereof. While we agree with the stand of the department and the conclusion of the MAT, there is a more formidable reason for dismissing the petition.

13. The advertisement concerned is issued only to fill in post in Group-D. If any post which is described in the advertisement as of

Group-D cadre turns out to be Group-C post, the advertisement stands vitiated. The advertisement must confirm to the basic notions of fair play and transparency. The eligible candidates must be aware of the precise status and pay scale of the post. It is conceivable that had the advertisement spelt out that the post of Arekas is Group-C, then many other aspirants may have applied. As a fact, in our considered view, the petitioner has been shown indulgence. If the contention of the petitioner is that the post to which he was appointed is Group-C post, he was liable to be straight away terminated inasmuch as the advertisement made no reference whatsoever to Group-C post and rather made it explicit that every post covered by the advertisement is of Group-D. The petitioner is indeed lucky that he is only reverted. We say nothing more.

14. The petition is frivolous and is dismissed with costs of Rs.10,000/- (Rupees Ten Thousand) to be deposited in the account of the High Court Legal Services Sub-Committee, Nagpur, within three weeks.

(Y.G. Khobragade, J.)

(Rohit B. Deo, J.)

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