



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

**CIVIL APPLICATION NO.13319 OF 2023  
IN  
WRIT PETITION NO.2265 OF 2023**

**THE STATE OF MAHARASHTRA AND OTHERS  
VERSUS  
SALIM MOHD. HANIF SHAIKH**

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Shri S.G. Karlekar, Special Counsel for the Applicants/ State.  
Shri A.S. Deshmukh, Advocate for the Non-Applicant/ Petitioner  
in Writ Petition No.2265/2023.

Shri R.N. Dhorde, Senior Advocate i/by Shri S.S. Wagh,  
Advocate for the Petitioner in WP/2259/2023 and for Respondent  
25 in WP/2265/2023.

Shri V.D. Sapkal, Senior Advocate i/by Shri S.R. Sapkal,  
Advocate for the Intervenor.

Shri Mahesh Deshmukh, Advocate a/w Shri U.L. Momale,  
Advocate for Respondent Nos.4 to 21, 23 and 24 in  
WP/2265/2023.

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**CORAM : RAVINDRA V. GHUGE  
&  
Y.G. KHOBRADE, JJ.**

**Reserved on : 05<sup>th</sup> January, 2024**

**Pronounced on : 07<sup>th</sup> February, 2024**

**ORDER (Per Ravindra V. Ghuge, J.) :-**

1. By this Civil Application, the State of Maharashtra  
has put forth prayer clauses A and B as under:-

- “A) *Pending hearing and final disposal of present writ petition, the direction to maintain "Status-quo" passed by this Hon'ble Court in its interim order dated 27.02.2023 may please be modified in the interest of public at large.*
- B) *Pending hearing and final disposal of present Writ Petition, directions to maintain "Status-quo" in its interim order dated 27.02.2023 may please be modified and Applicants may be permitted to fill up the vacant posts by way of promotion as per Recruitment Rules in the cadre of Superintending Engineer only on temporary/adhoc basis, subject to the outcome/decision of this Hon'ble Court in the Writ Petition No. 2265/2023.”*

2. We have heard the learned Advocates for the respective sides and have gone through the petition paper book in the light of their submissions. By an ad-interim order dated 27.02.2023 passed in Writ Petition No.2259/2023 (***Sunil Gorulal Rathi vs. The State of Maharashtra and others***) and Writ Petition No.2265/2023 (***Salim Mohd. Hanif Shaikh vs. The State of Maharashtra and others***), we had observed in paragraphs 6, 7 and 8 as under:-

- “6. *Since the issue of maintainability of Writ Petition No.2259 of 2023 has been raised by the respondents, we would consider the maintainability of the said petition on the next date.*
7. *The learned AGP submits that the formalization of the seniority list after 2018 is held up, since*

*the reservation issue is pending before the Honourable Supreme Court. The State of Maharashtra would make an endeavour to seek an early hearing in the said matter.*

8. *In view of the above, the status-quo as existing today and which was also existing during the pendency of the proceedings before the learned Maharashtra Administrative Tribunal, shall be maintained until the next date.”*

3. The Petitioner (Salim Mohd. Hanif Shaikh) was before the learned Maharashtra Administrative Tribunal in Original Application No.215/2022. By an order dated 09.03.2022, the learned Tribunal granted interim relief in the nature of restraining the State from effecting any promotions to the cadre of Superintending Engineer from the cadre of Executive Engineer, till filing of the reply affidavit. The said interim order was continued until the learned Tribunal heard the learned Advocates for disposal of the Original Application and by the impugned judgment and order dated 13.02.2023, the Original Application was dismissed.

4. The learned Special Counsel representing the Applicants/ State is right in submitting that we have passed the interim relief order dated 27.02.2023 while issuing notice and more so, since the learned Tribunal had continued the interim

relief for only two weeks and it was on the last day of this period of two weeks, that this Court heard the matter and issued notices. Hence, the ad-interim order was passed. However, we find that the State had made a statement that the formalization of the seniority list after 2018 is held up as the reservation issue is pending before the Honourable Supreme Court and that the State of Maharashtra would make an endeavour to seek an early hearing in the said matter.

5. While considering the Civil Application of the State in the light of prayer clauses A and B reproduced above for seeking modification of the ad-interim order passed by us, we have gone through the impugned judgment of the learned Tribunal. One of the original Petitioners before us, namely, Sunil Gorulal Rathi, has filed Writ Petition No.2259/2023. We find that the said Petitioner was not before the learned Tribunal in Original Application No.215/2022 at the time of the lodging of the proceeding. Vide the order dated 13.01.2023, he was allowed to be added as Respondent No.25 in the Original Application as an intervenor Respondent. However, the impugned judgment was delivered on the same day, simultaneously.

6. Vide the impugned judgment of the Tribunal, which is exhaustively written, it was concluded that the Government Resolution dated 01.08.2019 does not restrict the process of promotion to the cadre of Superintending Engineer. The basic prayer of the original Applicant, namely, Salim Mohd. Hanif Shaikh was only by way of an objection to the provisional seniority list dated 01.01.2019. The order passed on his objections by the competent Authority dated 29.11.2021, has not been challenged by him before any Court. The learned Tribunal has conclusively held that the Government Resolution issued by the General Administration Department dated 01.08.2019 is the compilation of guidelines issued from time to time in respect of promotion of officers and employees of the State Government.

7. The State has urged us to modify the ad-interim order keeping in view that there are several vacancies, which need to be filled up and permission be granted to fill up the vacant posts by way of promotion as per the recruitment rules in the cadre of Superintending Engineer, only on temporary/ ad-hoc basis. It is also brought to our notice that the objections raised by the Petitioner to the provisional seniority list dated 01.01.2019 have been dealt with by the competent Authority vide its order

dated 29.11.2021.

8. Before the Tribunal, the Original Applicant had prayed as under :-

- “A) This Original Application may kindly be allowed thereby directing Resp. No.1 to finalize the provisional seniority lists of the cadre of Executive Engineers (Civil) as on 01/01/2019, 01/01/2020 and 01/01/2021 within stipulated period of three months or within such stipulated period as deemed fit and appropriate by this Hon'ble Tribunal.*
- B) This Original Application may kindly be allowed thereby directing the Resp. No.1 not to effect any promotion to the cadre of Superintending Engineers from the cadre of Executive Engineers (Civil) before finalizing the provisional seniority lists of the cadre of Executive Engineers (Civil) as on 01/01/2019, 01/01/2020 and 01/01/2021.*
- C) Costs of this Original Application may kindly be awarded to the applicants.*
- D) Any other appropriate relief as may be deemed fit by this Hon'ble Tribunal may kindly be granted.*
- INTERIM RELIEF*
- E) Pending the admission, hearing and final disposal of this Original Application Resp. No.1 may kindly be restrained from effecting any promotion to the cadre of Superintending Engineers from the cadre of Executive Engineers (Civil).”*

8. It is, thus, apparent that the prayer of the Original Applicant was only restricted to finalization of the seniority list.

He had not sought any other final relief. On 29.22.2021, his objections have been decided by the order of the competent authority. The grievance of the Petitioner is, therefore, redressed.

9. On account of the litigation, vacant posts of Superintending Engineers have increased to 29 in the State since no promotions could be effected, even temporarily, due to the interim order of the Tribunal, which was continued by this Court under fortuitous circumstances while issuing notice. In short, the State is seriously handicapped due to ever growing vacancies under orders of the Court on account of the pending litigation.

10. In view of the above, **this Civil Application is partly allowed** by modifying our ad-interim order dated 27.02.2023 as under:-

(a) We permit the Applicants/State to follow the recruitment rules for granting promotions in the cadre of Superintending Engineer on the available vacant posts, on temporary basis, which would be subject to the result of the pending Writ Petition and any pending litigation in connection to such temporary promotions.

(b) No rights or equities would be created in favour of any of the temporarily promoted employees and they shall be

precluded from asserting any claim on the basis of such promotion.

(c) If the Petitioner (Shri Salim Mohd. Hanif Shaikh) before us or the intervenor Petitioner (Shri Sunil Gorulal Rathi) are eligible to be considered for temporary promotions, the Applicant State Authorities would consider their candidature strictly as per the rules, not with standing the pendency of this litigation.

(d) So also, if the original Petitioner (Shri Salim Mohd. Hanif Shaikh) desires to challenge the decision dated 29.11.2021 dealing with his objections to the provisional seniority list dated 01.01.2021, he would be at liberty to do so subject to the law of limitation. The time spent by the Petitioner in the Courts, from the date of the filing of his Original Application and this petition, till the passing of this order, would be a good ground for condonation of delay.

11. At this juncture, the learned Advocate for the original Petitioner prays for staying this order and continuing the earlier ad-interim order. The Respondents oppose the said request.

12. We have taken into account the conclusions drawn by the learned Tribunal and considering the equitable order that we have passed taking into account that the original Petitioner had purely wanted the seniority list to be finalized, the request is rejected.

*kps*

(Y.G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)