

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

PRACHI PRANESH
NANDIWADEKAR

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WRIT PETITION NO.2111 OF 2023

Krishna Chintamani Jadhavar & Ors. .. Petitioners
Versus
State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO.294 OF 2024**

Gautam Budhaji Raut & Ors. .. Petitioners
Versus
State of Maharashtra & Ors. .. Respondents

Mr.A.Y. Sakhare, Senior Advocate a/w Mr.Amit A. Gharte for the petitioners in both petitions.

Mr.N.C. Walimbe, Addl.G.P. a/w Mr.S.P. Shetye, AGP and Mr.J.P. Patil, AGP for respondents-State in WP/2111/23.

Mr.N.C. Walimbe, Addl.G.P. a/w Mr.S.P. Shetye, AGP for respondents-State in WP/294/24.

Mr.Ashish D. Girdekar for respondent nos.2 & 3 in both petitions.

**CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ.
DATE : 14th February 2024**

PC.:-

. Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. In both these writ petitions, the challenge is raised to the order dated 7th February 2023 passed by the Maharashtra Administrative

Tribunal in Original Application No.988 of 2022. By the said order, the communication dated 29th June 2022 that was issued by respondent no.1 in the matter of getting promotion on the post of 'Supply Inspecting Officer, Grade-B' came to be set aside on the ground that it was contrary to the Government Resolution dated 28th December 2017.

3. The present petitioners are aggrieved by the aforesaid order on the ground that their rights were affected with the setting aside of the communication dated 29th June 2022. Since they were not impleaded as respondents in the Original Application, they have challenged the aforesaid judgment.

4. Having heard the learned counsel for the parties and after perusing the documents on record as well as the affidavit-in-reply, we find that the ratio of the decision in *Ajay Kumar Shukla Vs. Arvind Rai*¹ is squarely attracted to the facts of the present case. Undisputedly, the rights of the present petitioners were affected by setting aside the communication dated 29th June 2022. If the promotional rights of the petitioners were prejudiced by the order of the Tribunal, they ought to have been heard prior to setting aside the same.

1 2021 SCC OnLine SC 1195

5. The aforesaid decision of the Hon'ble Supreme Court has been followed by the co-ordinate Bench of Nagpur Bench in ***Ninand Ashokrao Lande & Ors. Vs. The State of Maharashtra & Ors.***²

6. Though learned counsel for respondent nos.2 & 3 submits that new recruitment Rules have come into force w.e.f. 27th March 2023, we find that the communication set aside by the Tribunal is dated 29th June 2022. Since the petitioners contend that they are entitled to be considered for promotion they ought to have been heard while considering challenge to the said communication. The recruitment rules have been issued thereafter.

7. Hence on the ground that the parties affected by the adjudication in Original Application No.988 of 2022 were not impleaded atleast in representative capacity, the order passed by the Tribunal on 7th February 2023 is liable to be set aside.

8. Accordingly, the following order is passed :-

- (i) The order dated 7th February 2023 in Original Application No.988 of 2022 is set aside. The Original Application is restored to file.
- (ii) The applicants before the Maharashtra Administrative Tribunal

2 Writ Petition No.3165 2022 decided on 3rd April 2023

shall implead the present petitioners as non-applicants in the said proceedings.

- (iii) After the pleadings are complete, the Original Application shall be decided expeditiously on its own merits. The Original Applicants are at liberty to make fresh prayer for grant of interim relief before the Tribunal. All the questions on merits are kept open for being raised before the Tribunal.

9. Rule is made absolute in aforesaid terms with no order as to costs.

JITENDRA JAIN, J.

A.S. CHANDURKAR, J.