



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2248/2023

- PETITIONERS :**
1. Vikrant S/o Sudhakar Jugade
aged about 36 years, Occ. : Service,
R/o Plot No.57, Avdhut Nagar No.2,
Manewada, Nagpur – 440 034.
 2. Nilesh S/o Gopalrao Todsam,
aged about 45 years, Occ : Service,
Plot No.6, near Mahajan Hardware,
Gondwana Nagar – 2, Vivekanand Nagar,
Nagpur – 440 015.
 3. Prashant S/o Digambar Mandpe
aged about 43 years, Occ. : Service,
R/o Plot No.18, Wardha Road, Near
Sai Mandir, Borkute Colony, Nagpur – 440 015.

...VERSUS...

- RESPONDENTS :**
1. The State of Maharashtra Through its
Housing Secretary, Mantralaya, Mumbai.
 2. Maharashtra Housing and Area Development
Authority, through its Secretary, having
office at MHADA, Grihanirman Bhawan,
Bandra (E.), Mumbai – 400 051.
 3. Nagpur Housing and Area Development
Board, through its Secretary, having office
at Grihanirman Bhavan, Temple Road,
Nagpur, Maharashtra 440001, Nagpur Office.
 4. Shri Vishal Manikrao Dhole,
aged about 43 years, Occ. Service,
having office at Mumbai Housing & Area
Development Board, MHADA Grihanirman
Bhawan, Bandra (E), Mumbai.

5. Shri Chakshupal Digambar Ghadale
aged about 42 years, Occ. Service, having
office at Mumbai Building Repair &
Reconstruction Board, Grihanirman Bhawan,
Bandra (E), Mumbai.
6. Shri Ramkrushna Shriram Lende,
aged about 35 years, Occ. : Service,
having office at Maharashtra Housing &
Area Development Authority, Grihanirman
Bhawan, Bandra (E), Mumbai.
7. Shri Atul Ashok Bagde,
aged about 38 years, Occ. : Service,
having office at Mumbai Building Repair &
Reconstruction Board, Grihanirman Bhawan,
Bandra (E), Mumbai.
8. Smt. Meenakshi Vijay Chadankhede
aged about 40 years, Occ : Service, having
office at Mumbai Housing & Area Development
Authority, Grihanirman Bhawan, Bandra (E),
Mumbai.
9. Shri Nilkanth R. Jamotkar
aged about 39 years, Occ. Service,
having office at Maharashtra Housing &
Area Development Authority, Grihanirman
Bhawan, Bandra (E), Mumbai.
10. Shri Praful Rameshrao Khandar,
aged about 38 years, Occ. : Service, having
office at Mumbai Housing & Area Development
Board, Grihanirman Bhawan, Bandra (E),
Mumbai.
11. Smt. Poonam Govind Vaygankar
aged about 33 years, Occ. Service, having
office at Mumbai Building Repair &
Reconstruction Board, Grihanirman Bhawan,
Bandra (E), Mumbai.

12. Shri Harish Kothari,
aged about 44 years, Occ. Service,
having office at Kokan Housing & Area
Development Board, Grihanirman Bhawan,
Bandra (E), Mumbai.

Mr. S.P. Bhandarkar, Advocate for petitioners
Mr. N.R. Patil, AGP for respondent No.1
Mr. M.V. Samarth, Senior Advocate i/b Mr. A.R. Fule, Advocate for respondent Nos.2 & 3

**CORAM : NITIN W. SAMBRE AND
SACHIN S. DESHMUKH, JJ.**

DATE : 17/07/2025

ORAL JUDGMENT : (PER : SACHIN S. DESHMUKH, J.)

1. Heard. Rule. Rule made returnable forthwith. By consent of the parties, the petition is heard finally at the stage of admission.

2. The petitioners are aggrieved by the order dated 02/01/2023, issued by the respondent - Maharashtra Housing and Area Development Authority (MHADA), by which the respondent Nos.4 to 12 are promoted to the post of Assistant (Class-III) in ignorance of the seniority of the petitioner, by virtue of their continuous officiation.

3. Mr. Bhandarkar, learned Counsel for the petitioners submits that the respondent – MHADA had issued advertisement dated 29/08/2008 inviting applications for filling up 121 posts including posts

of clerk. The said advertisement contains various stipulations including Stipulation Nos.12 and 13, which specify that the candidates belonging to reserved category will be appointed subject to submission of caste validity certificate and its verification by the concerned Committees. Accordingly, the petitioners herein were appointed in the year 2010, whereas the respondent Nos.4 to 12 are concerned, the appointments were issued at a deferred juncture i.e. in 2013. So far as the petitioner Nos.1 and 2 are concerned, they were appointed on 11/11/2010, whereas petitioner No.3 was appointed on 20/04/2011. Appointments of respondent Nos.4 to 12 were deferred on account of the fact that they belong to reserved category on respective dates of appointment. As such, in the wake of mandate of Clause 13 of the advertisement till the respective respondents were armed with the caste certificate and its validity, their appointments were deferred.

4. Further submissions on behalf of petitioners is that considering the actual date of officiation, initially the seniority list was prepared by the respondent – MHADA, depending upon the actual officiation of its employees and the said seniority list was finalized in December, 2013. In the said seniority list, the name of petitioner No.1 finds place at serial No.11, petitioner No.2 at serial No.32 and petitioner

No.3 at serial No.48, whereas the respondent Nos.4 to 11 were at serial Nos.58, 88, 61, 59, 62, 44, 45 and 92 in the seniority list.

5. Having considered the seniority of the petitioners herein, which was finalized by the end of December, 2013 it appears that thereafter seniority list was prepared on the basis of merit of the candidates/employees in select list and eventual promotion orders were issued. The same was put to revision on 21/04/2015. During the process of revision of the seniority list, the determination of seniority was done and the office noting as has been recorded in the minutes establishes the fact that the officiation of the petitioners herein is recorded from April, 2011, whereas in case of candidates belonging to the reserved category, the date of actual appointment which is essentially preceded by the validity certificate in that regard, as such was deferred. Resultantly, it was noted that the appointments of respondent Nos.4 to 12 were at a deferred juncture on account of stipulation No.13 mandating that the candidates/employees belonging to the reserved category to submit validity certificate before issuance of actual appointment, therefore, the deemed date of appointment cannot be conferred upon respondent Nos.4 to 12, who were admittedly appointed after the present petitioners herein. In ignorance of the impact of deferred appointment and eventual officiation of the

respondent Nos.4 to 12 the seniority list was prepared in accordance with the Rules framed by MHADA, more particularly Rule 3, which deals in detail with the preparation of seniority list. Having prepared the seniority list depending upon the actual date of appointment of the petitioners and their continuous officiation, the respondent - MHADA acting in ignorance of their own Rules in relation to seniority, same was put to revision in the year 2015, eventually on the strength of same, promotion order was passed on 02/01/2023. The said promotion order is subject matter of challenge in the present petition.

6. Mr. Bhandarkar, learned Counsel for the petitioners contended that the preparation of the seniority list finalized in December, 2013 was in accordance with the actual officiation by the petitioners herein and the same is based on the rule which is framed by the MHADA itself. As such, there was no occasion for the respondent – MHADA to alter it substantially impacting the seniority of the petitioners since the respondent Nos.4 to 12 were admittedly appointed at a deferred juncture and further the same was operated for issuing promotion orders in favour of respondent Nos.4 to 12. Learned Counsel for the petitioners has placed reliance on the judgment of the Honb'le Apex Court in the case of *Pawan Pratap Singh and others Vs. Beevan Singh and others (2011) 3 SCC 267* to support the contention that it is

always the date of substantive appointment which will reckon for computing the seniority and not the date of occurrence of vacancy.

7. Per contra, Mr. Samarth, learned Senior Counsel for the respondent Nos.2 and 3 - MHADA justifies the action of altering/modifying the seniority list by contending that the respondent Nos.4 to 12 were selected in response to the advertisement along with petitioners herein. Depending upon their merit as has been recorded in the proceedings their *inter se* seniority is to be determined on the strength of merits in the examination and no other criteria can be applied. In the process, the learned Senior Counsel for the respondent Nos.2 and 3 places reliance on the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 (for short hereinafter “Rules of 1982”), more particularly Rule 5 thereof and the order passed by the Coordinate Bench of this Court in *Writ Petition No.11873/2021 (Sagar Sontakke and others Vs. Union of India (Through its Secretary) Department of Posts, Ministry of Communication and Information Technology, Dak Bhavan, Sansad Marg, New Delhi and others)* decided on 17/02/2025.

8. Though the respondent Nos.4 to 12 have been duly served, however, chosen not to contest the present petition, which is pending

since last two years. It will not lead to any infraction of Order 1 Rule 8 of the Code of Civil Procedure, since the MHADA has had interest in protecting the seniority list, so prepared.

9. Considering the rival submissions put forth by the litigating sides and perusal of the record placed before this Court more particularly in the shape of advertisement issued by the MHADA for various posts including the post of Senior Clerk, against which petitioners are appointed, it appears that stipulation No.13 mandates the candidate belonging to reserved category necessarily has to possess the validity certificate and shall submit the same which was made a condition precedent for issuance of the appointment order.

10. So far as the date of appointment of the petitioners are concerned, the same are admittedly, prior in time. As against the same, the respondent Nos.4 to 12 were not issued appointment orders and those were eventually issued at a deferred juncture since these respondents were not armed with the validity, as these respondents are belonging to reserved category. This position is not even disputed by the learned Senior Counsel appearing for the MHADA.

11. The issue in relation to reckoning of the seniority is no more *res integra* as it is always from the date of actual appointment and

its continuous officiation in the wake of the Rules framed by the MHADA under the Maharashtra Housing and Area Development Authority Employees (Determination of Seniority) Regulations, 1987 (for short hereinafter “Regulations of 1987”). So far as reliance placed on the order in case of ***Sagar Sontakke*** (supra) is concerned, it is totally misplaced, since the service conditions of the petitioners in that case were regulated by the independent recruitment Rules framed by the employer for promotion through departmental competitive examination, whereas in the case in hand MHADA has, admittedly, its own Rules regulating the seniority.

12. Drawing support from Regulation 3 of the Regulations of 1987, according to us, learned Counsel for the petitioners is justified in claiming that the seniority of the petitioners would always reckon from their respective date of actual appointment. Mere notifying the selection as against the said post would not *ipso facto* entail the respondent Nos.4 to 12 to claim the seniority nor is MHADA justified in altering the seniority list, which was finalised in accordance with the regulations framed by MHADA itself. As such, there was no occasion to alter/modify the seniority list which has attained finality. The further attempt to justify such modification/alteration in the seniority list by taking recourse to the provisions of the Maharashtra Civil Services (Regulation

of Seniority) Rules, 1982 is totally unjustified, for the reasons that the petitioner Nos.1 and 2 herein were actually appointed on 11/11/2010 and petitioner No.3 on 20/04/2011, whereas admittedly the appointments of the respondent Nos.4 to 8 and 11 were at a deferred juncture. Upon careful perusal of seniority list (Pg.51 to 58) vis-a-vis page 90 surprisingly, name of respondent No.12 does not find place in seniority list as on December, 2013 (Pg.51 to 58) vis-a-vis revised seniority list on 21/04/2015, still the promotion order includes the name of respondent No.12, which is in gross violation of principle of seniority operated for effecting promotion.

13. Apart from the aforesaid aspect the attempt to justify modification/alteration in the seniority list by taking recourse to the provisions of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 is also unjustified since Rule 2 of the said Rules makes it abundantly clear that if the employer has its own Rules, the Rules of 1982 would not be applicable. As such, it would be always the Rules framed and adopted by the employer i.e. MHADA under the Maharashtra Housing and Area Development Authority Employees (Determination of Seniority) Regulations, 1987, more particularly Rule 3 which deals with the preparation of seniority, same unequivocally recognizes the date of actual appointment. The right to be considered

for promotion, when it arises in accordance with the Rules of MHADA is regarded as a fundamental right in the service jurisprudence cannot be tinkered with. The respondent - MHADA has impaired the same by taking recourse to the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, ignoring its own Rules for regulating seniority of petitioners herein. Nevertheless the expression “recruitment” and “appointment” are two different and independent concepts in the service jurisprudence, therefore, seniority will always be reckoned from the actual date of appointment. As such in the wake of existing Maharashtra Housing and Area Development Authority Employees (Determination of Seniority) Regulations, 1987, it is not open for MHADA to embark upon Rules of 1982.

14. Thus, the respondent – MHADA is not justified in altering the seniority list which was finalized in accordance with its own Rules framed under the Maharashtra Housing and Area Development Authority Employees (Determination of Seniority) Regulations, 1987 thereby upsetting the seniority of the petitioners herein by taking recourse to the Rules of 1982 when their own Rules in the shape of the Maharashtra Housing and Area Development Authority Employees (Determination of Seniority) Regulations, 1987 are in vogue. Thus, the claim of the petitioners herein to seek restoration of seniority list which

was prepared and published by the end of December, 2013 deserves to be considered and it is restored accordingly. Needless to clarify that seniority list finalised in the year 2013, shall be implemented and operated for the purpose of conferring promotional benefit to the petitioners. Resultantly, the promotion order in favour of the respondent Nos.4 to 8, 11 and 12, pursuant to office order dated 02/01/2023 is hereby quashed and set aside.

15. The writ petition is partly allowed. Rule is made absolute in the above terms. No order as to costs.

(SACHIN S. DESHMUKH, J.)

(NITIN W. SAMBRE, J.)

At this juncture, a request is made to stay the judgment. The prayer for staying effect and operation of this judgment moved by the learned Senior Counsel appearing for the respondent No.2 and 3, in our opinion, does not warrant consideration, as the issue pertains to the seniority and this Court has only restored the seniority of the petitioners which, in fact, was conferred by the said respondents on earlier occasion.

(SACHIN S. DESHMUKH, J.)

(NITIN W. SAMBRE, J.)