



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

WRIT PETITION NO. 5467 OF 2019

(Sunil Ganeshprasad Awasthi Vs. State of Maharashtra and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.M. Fating, Advocate for petitioner.

Mr. N.R. Patil, AGP for respondent Nos. 1 to 3/State.

CORAM : ANIL S. KILOR & RAJNISH R. VYAS, JJ.

DATED : 21-11-2025.

By way of present petition, a challenge is raised to the judgment and order dated 22.1.2019, passed by Maharashtra Administrative Tribunal, Nagpur, in Original Application No. 144/2016, thereby dismissing the Original Application preferred by the petitioner, raising challenge to the seniority lists dated 1.1.2014 and 1.1.2015, published on 30.9.2015, by Deputy Director of Health Services, as according to the petitioner, proper placement to the applicant in the Seniority List was not given.

2. It is the case of the petitioner that he is Project Affected Person and he was appointed in 2001 on temporary basis, on the post of Statistical Assistant and he was continued in the service. However, since he was not taken into services on permanent basis, he filed Original Application No. 583/2005 which came to be allowed in favour of the petitioner. While allowing the said Original Application, learned Tribunal observed as under:

“5.....This Tribunal vide order dt. 16.4.2007 allowed the application and directed the respondents to keep one post of statistical Investigator from Open Category vacant till the disposal of the O.A. As the applicant is not entitled to be appointed directly to the post of Statistical Assistant, he has expressed his willingness to be absorbed in the post of Statistical Investigator. As already pointed out, he is from the category of Project affected Person, He had lost his

source of livelihood. Whenever the name of the Project Affected Person for any post is recommended by the Collector, the nature of the services is always permanent and not temporary. As the name of the applicant is recommended from Project Affected Persons, his name was deleted from the list of Project Affected Persons as per Govt, Resolution dated 13.9.2000, By this time, the applicant has attained the age of more than 32 years and as such, there is Ino likelihood of getting any job if he is not absorbed in the Govt, Service. No doubt, the applicant has been appointed on contract basis that too on temporary basis but he cannot be blamed for it. The collector ought to have recommended his name for permanent post. He has worked for a long time since 2001 and still in services on the same post. Under such circumstances, it would be just and proper to direct the respondents to absorb the applicant on the post of Statistical Investigator from Open Category. Accordingly, we direct the respondents to appoint the applicant as Statistical Investigator from Open Category on the post which was directed be kept vacant for the candidate for open category”.

3. In view of the above refereed direction, the petitioner was accordingly absorbed on the post of Statistical Investigator. thereafter, the petitioner made an application for regularizing his services w.e.f. 17.10.2001 to 14.12.2007 i.e. the period during which he worked as temporary employee. Such request was accepted by Deputy Director of Health Services and vide order dated 30.6.2008 treated the entry date of the petitioner as 17.10.2001. The respondents have accordingly extended all the benefits to the petitioner because of such regularization w.e.f. 17.10.2001.

4. The petitioner was accordingly given placement in the seniority list considering his date of appointment as 17.10.2001.

5. However, in the seniority list published on 30.9.2015, by respondent No. 3, the employees who were juniors to the petitioner, in the earlier seniority list, were shown seniors to the petitioner. In the said list, name of the petitioner appear at serial 69. The reason for

such placement of the petitioner in the seniority list is given in the column of remarks. Such remark was recorded by the Deputy Director of Health Services who had regularized the services of the petitioner from 17.10.2001.

6. In the remark column it was noted that since the petitioner absorbed on the post of Statistical Investigator on 15.12.2007, the seniority on the post of Statistical Investigator shall be considered from the date of joining of the petitioner on 15.12.2007 on the said post. Therefore, the petitioner approached to the learned Tribunal by filing Original Application No. 144/2016 which came to be dismissed vide impugned judgment and order dated 22.1.2019. The Tribunal while dismissing the Original Application has recorded the following findings:

“10. The respondents have filed their reply at page no. 114 and resisted the application on the ground that though the applicant was appointed in service in the year 2001 but it was not a vacant post, the applicant was appointed till completion of the project. It is submitted that this position was examined in the previous O.A. No.583/205 and this Bench refused to absorb the applicant on the post of Statistical Assistant. The second contention of the respondents is that the post of Statistical Assistant was promotional post and it could not be filled by nomination. According to the respondents as 22 Statistical Investigators were promoted on the post of Statistical Assistants, therefore, 22 posts of Statistical Investigator were vacant. At that time, the applicant himself made request to appoint him on the post of Statistical Investigator and accordingly direction was given by the Bench in O. A. No.583/2005 It is submission of the State that as the applicant accepted the post of Statistical Investigator he cannot claim seniority over Statistical Investigators who had joined the services before him. It is submitted that the fixation of the seniority by the department is correct and legal. It is further submitted that as the applicant has not completed 12 years service after joining the service as

Statistical Investigator, therefore, he cannot claim time bound promotion”.

“17. Once it is accepted that there was no question of absorption of the applicant on the post of Statistical Assistant therefore, actually he had not case but considering his request in O A No. 583/2005 direction was issued to the Collector, Yavatmal to appoint the applicant on the post of Statistical Investigator. It is pertinent to note that in para-5 of the Judgment in O.A.No. 583/2005 it is observed that the Collector, Yavatmal has maintained the list of Project Affected Persons and the applicant's name was recommended for the said post. We have gone through the said list. The name of the applicant is at sr.no.2”. After reading the observations in para-5 it is crystal clear that when the matter was decided in 2007 the rank of the applicant was at sr no.2 in the waiting list of the Project Affected Persons. As per law it was duty to the Collector to appoint the Project Affected Persons as per their serial numbers in the waiting list. However in the year 2001 the applicant was appointed as Statistical Assistant till completion of the project. It must be remembered that the applicant was aware that his appointment as Statistical Assistant was only for limited period. Similarly the applicant himself made representation in O.A.No 583/2005 and requested to absorb him in service as Statistical Investigator and this Bench directed to appoint the applicant as Statistical Investigator. The relevant portion of the order is as under:-

“Accordingly we direct the respondents to appoint the applicant as Statistical Investigator from open category on the post which was directed to be vacant for the candidate for open category.”

“18. Thus it seems that it was a case of appointment on the post of Statistical Investigator, therefore, the seniority of the applicant was to be fixed since the date of joining and his past service which was in fact only till completion of the project could not be taken into account. It seems that without considering the legal rights of the Statistical Investigators who were senior to the applicant, the seniority lists were prepared and published in the years 2006, 2009 and 2010 but does

not give any right to the applicant to claim seniority over them. In view this discussion we do not see any merit in the case of the applicant that error is committed by the respondents while fixation of seniority of the applicant in the year 2012 and onwards. We hold that the respondents have rightly fixed the seniority of the applicant. So far as the claim for time bound promotion is concerned, as the applicant joined the service on 15/12/2007 he has not completed period of 12 years and therefore the applicant is not entitled for the benefit of time bound promotion”.

*“19. The learned counsel for the applicant placed reliance on the Judgment of **State of Maharashtra Vs. Uttam Vishno Pawar (2008) 1 SCC (L&S),522**. It is submitted that an employee on transfer to a new department though may not get seniority but his experience in the past service counts for other benefits like promotion and higher pay scale”.*

“20. In a matter before the Hon'ble Apex Court the respondent was working as Telephone Operator in the Irrigation Department of State of Maharashtra, he made request for his transfer from Mumbai Zone to Kolhapur Zone. The request of the respondent was accepted and he was transferred on his own request from Mumbai Zone to Kolhapur Zone, therefore, he lost his seniority in the Mumbai Zone and he was shown the junior most in Kolhapur Zone, and considering this fact, his past service in the Mumbai Zone was taken in account for giving benefit of time bound promotion. In our opinion the law laid down in case of the State of Maharashtra Vs. Uttam V Pawar is not applicable to the present set of circumstances as the earlier service of the applicant was only till completion of the project, the applicant was not appointed on the vacant post following rules of recruitment and therefore in our opinion the applicant cannot claim the time bound promotion. In result we hold that the application is devoid of merits and liable to be dismissed”.

7. Having gone through the record and considering the submissions made by the parties, we are of the opinion that the remark

recorded by the Deputy Director of Health Services in the impugned seniority list was without giving any opportunity of hearing to the petitioner and without considering whether such remark amounts to review of the earlier order of regularization passed by Deputy Director of Health Services on 30.6.2008.

8. By the remark put in the seniority list, the respondents tried to take away the rights crystallized in favour of the petitioner vide order dated 30.6.2008. Therefore, respondents ought to have granted hearing to the petitioner before taking any contrary view, and ought to have granted opportunity to the petitioner to make his submission. Further, a question whether such review is permissible ought to have considered first by the Deputy Director.

In absence of such opportunity, we find that the placement of the petitioner in seniority list at serial 69 is illegal. The said crucial aspect was ignored by the learned Tribunal. In the circumstances, we pass following order:

ORDER

- i) Writ petition is partly allowed.
- ii) The order impugned dated 22.1.2019, passed by learned Maharashtra Administrative Tribunal, Nagpur, in Original Application No. 144/2016 is hereby quashed and set aside. Similarly, the remarks made by Deputy Director of Health Services in seniority list published as on 1.1.2015 wherein name of the petitioner appears at Serial 69 is hereby quashed.
- iii) The respondent No. 2 is at liberty to grant hearing to the petitioner, if he is of the view that the continuity of service granted

to the petitioner w.e.f. 17.10.2001 was not for the purpose of seniority in the post of Statistical Investigator but it was for other purposes, by issuing show cause notice to the petitioner, within six weeks from today. If such show cause notice is issued, the decision on the said issue shall be taken in ten weeks. If no show cause notice is issued, the seniority of the petitioner shall be corrected after giving effect to clause (ii) of this order.

(RAJNISH R. VYAS, J)

(ANIL S. KILOR, J)