

**M.A. 216/2022 in M.A. St. 889/2022 in M.A. St. 890/2022 in M.A. St. 891/2022 in O.A. St. 881/2022
(Anukush K. Hiwale & Ors. Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Shri V.D. Dongre, Member (J)
(VACATION COURT)**

DATE : 18.05.2022

ORAL ORDER :

Heard Shri J.M. Murkute, learned Advocate for the applicants and Shri I.S. Thorat, learned Presenting Officer for the respondents.

2. Learned Advocate for the applicants seeks permission to withdraw the O.A. St. No. 881/2022 with liberty to file a fresh O.A. challenging the order of reversion dated 13.05.2022 to the extent of the applicants and consequential promotion order dated 13.05.2022.

3. Considering the facts and circumstances of the case, permission to withdraw the present O.A. is granted with liberty to file a fresh O.A. In view of the same, the O.A. St. No. 881/2022 stands disposed of as withdrawn with liberty as prayed for. Consequently, all the M.As. would not survive and those also stand disposed of with no order as to costs.

MEMBER (J)

**M.A. No. 217/2022 in O.A. St. No. 895/2022
(Suresh C. Kapate & Anr. Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Shri V.D. Dongre, Member (J)
(VACATION COURT)**

DATE : 18.05.2022

ORAL ORDER :

Heard Smt. Suchita A. Dhongde, learned Advocate for the applicants and Shri I.S. Thorat, learned Presenting Officer for the respondents.

2. This is an application preferred by the applicants seeking leave to sue jointly.

3. For the reasons stated in the application, and since the cause and the prayers are identical and since the applicants have prayed for same relief, and to avoid the multiplicity, leave to sue jointly granted, subject to payment of court fee stamps, if not paid.

4. Accompanying O.A. be registered and numbered, after removal of office objections, if any. The present M.A. stands disposed of accordingly without any order as to costs.

MEMBER (J)

ORIGINAL APPLICATION ST. NO. 895 OF 2022
(Suresh C. Kapate & Anr. Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
(VACATION COURT)

DATE : 18.05.2022

ORAL ORDER :

Heard Smt. Suchita A. Dhongde, learned Advocate for the applicants and Shri I.S. Thorat, learned Presenting Officer for the respondents.

2. Issue notice to the respondents, returnable on 17.06.2022.
3. Tribunal may take the case for final disposal at once and separate notice for final disposal shall not be issued.
4. Applicant is authorized and directed to serve on respondent/s intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of the case. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.
5. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.
6. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.
7. The point of interim relief is kept open.
8. S.O. to 17.06.2022.
9. Steno copy and Hamdast is allowed to both parties.

MEMBER (J)

ORIGINAL APPLICATION NO. 457 OF 2022
(Vanita K. Panchal & Ors. Vs. State of Maha. & Ors.)

CORAM : Shri V.D. Dongre, Member (J)

[VACATION COURT]

DATE : 18.5.2022

ORAL ORDER :

Heard Shri Sandeep D. Munde, learned counsel for the applicants and Shri I.S. Thorat, learned Presenting Officer for the respondents.

2. The present Original Application is filed challenging the reversion order dated 13.5.2022 (Annexure 'A-6') issued by respondent No. 3 to the extent of applicants and also challenging the impugned order dated 13.5.2022 (Annexure 'A-7') issued by respondent No. 3 to the extent of promoting respondent Nos. 4 to 6 and posting them on the post of Awwal Karkoon presently held by the applicant Nos. 1 to 3 respectively.

3. Applicant No. 1 was initially appointed as a Peon as per appointment order dated 9.11.2004. He was promoted as a Clerk on 31.12.2008.

4. Applicant No. 2 came to be appointed as a Clerk on 31.12.2008. The applicant No. 3 came to be appointed as a Peon in handicap category and was promoted as a Clerk on 16.1.2010.

5. Applicant No. 4 came to be appointed as a Clerk by appointment order dated 7.7.2007.

6. Applicant Nos. 1 to 3 passed SSD Examination (दुय्यम सेवा परीक्षा); whereas the applicant No. 4 got exemption from passing the said SSD Examination as he crossed the age of 45 years.

7. Applicant Nos. 1 to 3 passed Revenue Qualifying Examination on 3.6.2016, 8.11.2016 and August, 2014 respectively. The applicant No. 4 however, got exemption from passing the said Revenue Qualifying Examination as he was crossed the age of 45 years.

8. After fulfilling all the eligible criteria the applicants were held eligible for the promotion in view of seniority list published by the respondent authorities. The applicant Nos. 1, 2 & 4 got promotion as Awwal Karkoon on 11.7.2017; whereas the applicant No. 3 got promotion as Awwal Karkoon on 4.11.2015. At that point of time there was no grievance against the applicants from any quarter. Accordingly the applicants are rendering their services on the post of Awwal Karkoon without any disturbance on their present posting in Nanded district as reflected in the impugned order of reversion dated 13.5.2022 (Annexure 'A-6').

9. It is the contention of the applicants that subsequently respondent No. 3 published provisional seniority list on 14.2.2020 and final seniority list of the cadre of clerks on 26.5.2020. The said final seniority list dated 26.5.2020 was challenged before this Tribunal by filing O.A. No. 390/2020 by one Ashatai P. Metkar. The said O.A. came to be allowed by the judgment and order dated 30.3.2022 (Annexure 'A-5'), thereby the said final seniority list is quashed and set aside.

10. It is further contention of the applicants that the respondent No. 3 by referring Divisional Promotion Committee meeting dated 21.3.2022 and also referring to order dated 2.2.2017 passed in O.A. No. 354/2015, letter dated 8.3.2019 issued by the Divisional Commissioner, Aurangabad, provisional seniority list dated 14.2.2020 and final seniority list dated 26.5.2020 and Government Resolutions dated 8.1.1988 and 7.7.1999 has issued both the impugned orders dated 13.5.2022 without issuing any prior notice and without seeking objections from the applicants. In view of the same, both the impugned orders are illegal and are required to be stayed during the pendency of the present Original Application.

11. Learned Presenting Officer resisted the adverse contentions raised on behalf of the applicants and submitted that the impugned orders are issued to

implement the decision of the District Promotional Committee held on 21.3.2022, which is prior to decision dated 30.3.2022 delivered by this Tribunal in OA. No. 390/2020 quashed and set aside seniority list dated 26.5.2020. He also invited my attention to the observations of the learned Division Bench of this Tribunal in paragraph No. 4 of the said judgment and order dated 30.3.2022, which is as follows: -

“4. The Tribunal passed following order in terms of para 4 of the order date 17.12.2020 in view of prayer for interim relief made by the applicant: -

“4. In this background, the respondents are directed to decide the objection of the applicant and to decide the same on the basis of law laid down in the O.A. 354/2015 decided by the Principal Seat of this Tribunal at Mumbai on 03.02.2017 and Rules framed by the Government of Maharashtra applicable to the applicants and without hearing the applicants they shall not pass any order.”

12. By the said impugned order dated 17.12.2020 rendered therein the respondent No. 3 was directed to decide the objections of the applicants. In view of the same, according to the learned Presenting Officer, the impugned decisions are taken in the District Promotional Committee meeting held on 21.3.2022 and, therefore, *prima facie* there is no contravention of the order of this Tribunal dated 30.3.2022 passed in O.A. No. 390/2020. Learned

Presenting Officer also submitted that the impugned orders are already executed. He, therefore, objected for grant of interim relief.

13. In rejoinder arguments, learned counsel for the applicants invited my attention to clause 'D' in decision dated 30.3.2022, which is as follows: -

“(D) The order dated 26.5.2020, passed by the respondent No. 3, the District Collector, Nanded, rejecting / not accepting the objection filed by the applicant to the above mentioned seniority list dated 26.5.2020 is, hereby, quashed and set aside.”

14. After having considered the contents of the O.A. and supporting documents and rival submissions, *prima facie* I find that the respondent No. 3 i.e. the Collector, Nanded said to have acted on the decision taken by the District Promotional Committee in its meeting held on 21.3.2022. In view of that decision of District Promotional Committee, which is dated 21.3.2022 is prior to decision of this Tribunal dated 30.3.2022 delivered in O.A. No. 390/2020. No doubt it is true that when the respondent No. 3 issued the impugned orders the final seniority list dated 26.5.2020 in question was quashed and set aside. What will be its legal effect can be considered at the time of final hearing of the O.A. after granting opportunity to the respondents to file affidavit in reply. In the circumstances, *prima facie*, it

cannot be said that the impugned orders are issued directly in contravention of any provisions of law or orders. The impugned orders said to have been also implemented and executed. In the facts and circumstances, it is ordered that the impugned orders will be subject to the outcome of the O.A.

15. Issue notices to the respondents, returnable on 17.6.2022.

16. Tribunal may take the case for final disposal at once and separate notice for final disposal shall not be issued.

17. Applicant is authorized and directed to serve on respondent/s intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of the case. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

18. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

19. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry

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O.A. NO. 457/2022

before due date. Applicant is directed to file affidavit of compliance and notice.

20. S.O. to 17.6.2022.

21. Steno copy and Hamdast is allowed to both parties.

MEMBER (J)

ORAL ORDERS 18.5.2022-HDD