

**ORIGINAL APPLICATION NO. 461 OF 2022
(Sunil P. Vispute Vs. State of Maharashtra & Ors.)**

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

DATE : 20.05.2022

ORAL ORDER :

Heard Shri K.B. Jadhav, learned Advocate for the applicants and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondents.

2. The present Original Application is filed seeking promotion to the post of Joint District Registrar, Class-II from the feeder cadre of Sub-Registrar Grade-I alleging that he was denied promotion and the employees junior to the applicant are promoted to the said post. The applicant is not promoted because he has undergone the minor punishment imposed upon him in the Departmental Enquiry held against him, whereby, by the order dated 23.04.2021 (Annexure A-3) his one annual increment for two years is withheld. In the final seniority list of the Sub-Registrar Grade-I dated 04.03.2022 the name of the applicant is at Sr. No. 122. Learned Advocate for the applicant produced on record the said seniority list during the course of hearing. It is taken on record at page Nos. 91 to 104 of the paper book.

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3. First promotional list was approved by the General Administration Department. The said list is of 171 candidates. The total number of vacancies of promotional posts were 175 as reflected in the document at Annexure A-7. However, 21 employees did not accept the promotion and one person was retired from the service. In view of the same, additional selection list dated 13.05.2022 (Annexure A-8) of 22 persons was declared.

4. Learned Advocate for the applicant submitted that the applicant is denied the promotion on the ground that he has undergone the minor punishment. He submitted that on that ground the promotion cannot be denied. To substantiate the same, he placed reliance on a copy of the order dated 30.04.2019 passed in O.A. No. 886/2017 in the matter of Shri Suresh Hariram Sakharwade Vs. The State of Maharashtra decided by the Principal Seat of this Tribunal at Mumbai, wherein after referring the various judgments of the Hon'ble Supreme Court, it is observed that the findings of DPC and the decision to withhold his promotion as he is undergoing punishment are two separate things. The Hon'ble

Supreme Court further pointed out that if the DPC has found him fit for promotion, he cannot be deprived of the same only because of the punishment being undergone by the applicant.

5. Learned Advocate for the applicant further submitted that the applicant is handicapped person and 4% promotional posts are reserved for handicapped persons in terms of G.R. dated 05.07.2021 (Annexure A-10). He submitted that in view of the same, 7 posts out of 175 vacancies are reserved for handicapped persons. At this stage, only 6 posts of handicapped persons were filled in.

6. Learned Advocate for the applicant further submitted that as per the oral information received from the office, sealed cover procedure was followed by the DPC in the case of the applicant. However, except the bare words there is no evidence produced on record to substantiate the same.

7. Learned Presenting Officer opposed the submissions raised on behalf of the applicant and submitted that there is nothing on record to show that prima-facie though the applicant is denied the

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promotion only on the ground that he has undergone the punishment. In view of the same, according to her this is not a fit case to grant any interim relief.

8. After having considered the submissions made by both the parties, prima-facie, from the averments made in the O.A., it is stated that the applicant is denied the promotion because he has undergone the minor punishment. The applicant has submitted that otherwise his ACRS are good. From the facts and circumstances, it cannot be prima-facie held that the sealed cover procedure is followed by the DPC. In the totality of circumstances, in my considered opinion, this is a fit case to grant interim relief in terms of prayer clause IX(E) by keeping one post of Joint District Registrar, Class-II vacant till filing of reply by the respondents. Order accordingly.

9. Issue notice to the respondents, returnable on 20.06.2022.

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

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11. 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.

12. 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.

13. 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.

14. S.O. to 20.6.2022.

15. Steno copy and Hamdast is allowed to both parties

MEMBER (J)

ORIGINAL APPLICATION NO. 454 OF 2022
(Rajendra B. Kawale Vs. State of Maharashtra & Ors.)

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

DATE : 20.05.2022

ORAL ORDER :

Heard Shri V.V. Gujar, learned Advocate for the applicants and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondents.

2. Learned Presenting Officer placed on record a copy of communication dated 20.05.2022 received for the respondent No. 2 i.e. the MPSC more particularly mentioning that the O.A. No. 217/2022 filed before the Principal Seat of this Tribunal at Mumbai on similar ground is dismissed by the order dated 15.03.2022. Copy of the said communication and the order dated 15.03.2022 passed in O.A. No. 217/2022 are taken on record and marked as document 'X' collectively for the purpose of identification. In view of the same, she seeks time for filing affidavit in reply on behalf of respondents. Time granted.

3. Learned Advocate for the applicant submits that the amended prayer clause 23(B-1) is the main relief. He further submits that he wishes to treat the prayer clause 23(B) as interim relief deleting the interim relief

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prayer clause 23(C). He therefore, seeks permission to amend the O.A.

4. Permission as prayed for by the applicant is granted. The applicant shall amend the O.A. on or before the next date of hearing.

5. S.O. to 20.06.2022.

MEMBER (J)

KPB ORAL ORDERS 20.05.2022

ORIGINAL APPLICATION NO. 802 OF 2021
(Ranjana Babasaheb Solat Vs. State of Maharashtra & Ors.)

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

DATE : 20.05.2022

ORAL ORDER :

Heard Smt. Ranjana Babasaheb Solat, applicant in person and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondents.

2. The applicant in person filed application dated 13.05.2022 along with a copy of her Aadhaar card seeking permission to withdraw the present Original Application. Same are taken on record and marked as document 'X' collectively for the purpose of identification.

3. I have no reason to refuse the permission. Hence, permission to withdraw the present Original Application is granted. The Original Application stands disposed of as withdrawn with no order as to costs.

MEMBER (J)

**ORIGINAL APPLICATION ST. NO. 776/2021
(Rajnikant Ramrao Durge @ Rajnikant Eknathrao Mortate Vs.
State of Maharashtra & Ors.)**

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

DATE : 20.05.2022

ORAL ORDER :

Heard Shri S.D. Munde, learned counsel holding for Shri J.M. Murkute, learned Advocate for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondents.

2. Shri Munde, learned counsel holding for Shri Murkute, learned Advocate for the applicant seeks permission to withdraw the present O.A. I have no reason to refuse the permission to withdraw the O.A.

3. In view of above, permission to withdraw the present O.A. is granted.

4. Accordingly, the present O.A. stands disposed of as withdrawn with no order as to costs.

MEMBER (J)

**ORIGINAL APPLICATION ST. NO. 905 OF 2022
(Shankar V. Vaidya & Ors. Vs. State of Maha. & Ors.)**

**CORAM : Shri V.D. Dongre, Member (J)
[VACATION COURT]**

DATE : 20.5.2022

ORAL ORDER :

Heard Shri Sandeep D. Munde, learned counsel for the applicants and Smt. Deepali S. Deshpande, 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 & 5 and posting them on the post of Awwal Karkoon presently held by the applicant Nos. 1 to 3 respectively.

3. Applicant Nos. 1, 2 & 3 were initially appointed as a Clerk in the years 2009, 1999 and 2008 respectively.

4. Applicant Nos. 1 & 3 have passed SSD Examination (Duyyam Seva Pariksha) in the year 2014, whereas the applicant no. 2 has also passed the said examination. The applicant nos. 1 & 3 have also passed the Revenue Qualifying Examination in the year 2016, whereas the applicant no. 2 has also passed the said examination in the year 2014.

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5. After fulfilling all the eligible criteria the applicant nos. 1 & 3 got promotion as Awwal Karkoon on 11.7.2017; whereas the applicant No. 3 got promotion as Awwal Karkoon in the month of June, 2014. 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').

6. 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.

7. 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.

8. 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

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and Rules framed by the Government of Maharashtra applicable to the applicants and without hearing the applicants they shall not pass any order.”

9. 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.

10. 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.”

11. 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.

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

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

14. 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

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would be taken up for final disposal at the stage of admission hearing.

15. 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.

16. 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.

17. S.O. to 17.6.2022.

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

MEMBER (J)

ARJ ORAL ORDERS 20.5.2022

**M.A. 221/2022 IN O.A. ST. NO. 905 OF 2022
(Shankar V. Vaidya & Ors. Vs. State of Maha. & Ors.)**

**CORAM : Shri V.D. Dongre, Member (J)
[VACATION COURT]**

DATE : 20.5.2022

ORAL ORDER :

Heard Shri Sandeep D. Munde, learned counsel for the applicants and Smt. Deepali S. Deshpande, 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)