

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 342 OF 2021

DISTRICT: - AURANGABAD.

1. **Kalpna Tejrao Shelke,**)
Age-35 years, Occu. : Service,)
R/o N-11, B-135/2, T.V. Centre,)
Hudco, Aurangabad.)

2. **Bharti Kundalikrao Mandankar,**)
Age-37 years, Occu. : Service,)
R/o Plot No. 47, Sainath Nagar,)
Near Aiyappa Mandir,)
Beed By-pass Road, Aurangabad.)

.. **APPLICANTS.**

V E R S U S

1. **The State of Maharashtra,**)
Through its Addl. Chief Secretary,)
Revenue & Forest Department,)
M.S., Mantralaya, Mumbai-32.)

2. **The Principal Secretary,**)
General Admn. Department,)
M.S., Mantralaya, Mumbai - 32.)

3. **The Collector,**)
Aurangabad, Opp. Labour Colony,)
Aurangabad.)

4. **Pradeep Gurunath Kurud,**)
Circle Officer,)
Rehabilitation Branch,)
Collector Office, Aurangabad.)

5. **S.M. Shinde,**)
Circle Officer, Ladgaon,)
Tal. Vaijapur, Dist. Aurangabad.)

.. **RESPONDENTS.**

APPEARANCE :- Shri Avinash S. Deshmukh, learned
Counsel for the applicants.

: Shri M.S. Mahajan, learned Chief
Presenting Officer for the respondents.

3. **Background Facts of the matter** :- Main background facts in this matter are as listed below:-

(i) The two applicants, both from Scheduled Tribes ('S.T.' for short) initially joined Government service in Revenue Department as 'Talathi' i.e. Village Revenue Officer.

(ii) A select list of Talathis for promotion to the post of Circle Inspector in Aurangabad District was finalized by a Committee headed by the District Collector, Aurangabad in its meeting held on 19.11.2016 in which following Talathis from S.C. and S.T. categories were selected for promotion under caste-based reservation but they could not submit caste validity certificate.

Table 1
Particulars of Talathis Selected for Promotion Under Caste-based Reservation

Sr. No.	Name of Talathi	Caste Category	S. No.
1.	Shri Sakat Y.P.	Scheduled Caste	184
2.	Shri Hiwale B.N.	Scheduled Tribe	93
3.	Shri Ingale R.B.	Scheduled Tribe	167
4.	Chandel Thakur H.K.	Scheduled Tribe	181

(iii) General Administration Department had issued Government Resolution No. बीसीसी-१२०७/प्र.क.५३/०८/१६-ब, dated 16.6.2008, instructing that the post remaining vacant due to non-submission of caste validation certificate at the time of caste-based promotion were to be filled on temporary basis

for a period of 11 months by employees next to such employees in seniority. Accordingly, names of following four Talathis were identified for granting them temporary promotion for 11 months period or till the originally identified Talathis based on their seniority submitted their caste validity certificate whichever occurred earlier.

Table 2

Particulars of Immediately junior Talathis Identified for Temporary Promotions as Circle Inspector

Sr. No.	Caste Category	Seniority Level	Name of Talathi
1.	Scheduled Caste	424	Shri Ambhore S.V.
2.	Scheduled Tribe	Sl No. 63 (seniority no. not mentioned)	Smt. Kalpana Shelke
3.	Scheduled Tribe	398	Shri Sasane Rajaram Motiram
4.	Scheduled Tribe	426	Smt. Madankar Bharti P.

(iv) Above mentioned four Talathis were given promotions to the post of Circle Officer vide order of Collector, Aurangabad vide outward No. २०१६/मशाका-१/आस्था-१/प्र.क. ७६/कावि-४५६, dated 15.4.2017 under following terms and conditions, mentioned in the promotion order:-

“वर नमुद तलाठी संवर्गातील कर्मचारी यांना खालील अटीच्या अधिन राहून मंडळ अधिकारी संवर्गात पदोन्नती देण्यात येत आहे.

०१. ही पदोन्नती निव्वळ तात्पुरत्या स्वरूपाची असून संबंधित ज्येष्ठ कर्मचा-यांने जात वैधता प्रमाणपत्र सादर केल्यानंतर आपोआप संपुष्टात येईल.

०२. सदर पदोन्नती ११ महिन्याकरिता वा कर्मचारी जात वैधता प्रमाणपत्र सादर करेल यापैकी जे अगोदर घडेल तो पर्यंत सुरु राहिल तथापि या कालावधीत ज्येष्ठ कर्मचारी यांने जात वैधता प्रमाणपत्र सादर न केल्यास ही पदोन्नती ०१ दिवसाचा (सुटीचा कालावधी वगळून) खंड देवुन पुढे चालु ठेवण्यात येईल.
०३. या तात्पुरत्या पदोन्नतीच्या परिणामी कनिष्ठ कर्मचारी यांना सेवा ज्येष्ठतेचा हक्क मिळणार नाही.
०४. संबंधितांना पदोन्नतीने पदस्थापनेचे आदेश झाल्यापासुन १५ दिवसांचे आत संबंधितांनी रुजू होणे आवश्यक आहे, अन्यथा सदर आदेश आपोआप रद्द होतील याची नोंद घेण्यात यावी.”

(v) Shortly after passing of orders of temporary promotions, as elaborated in preceding paras, the Principal Bench of this Tribunal passed an order dated 28.11.2014 in Transfer Applications T.A. No. 1 & 2 of 2014 in W.P. No. 8452 of 2004 and W.P. No. 470 of 2005, and thereby, struck down *The Maharashtra State Public Services, Reservation for Scheduled Caste, Scheduled Tribe, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes Act, 2001* (in short, “**the Act, 2001**”) and the impugned G.R. No. BCC-2001/1887/Pr.kr.640/01/16-B, dated 25th May, 2004 on the ground that the two were ultra vires the constitution and ultra vires the law laid down by the Hon’ble Supreme Court inter alia in **M. Nagaraj and Others Vs. Union of India and Ors. (2006) 8 SCC 212.**

The order passed by the Tribunal has been upheld by

Hon'ble High Court of Judicature at Bombay in W.P. No. 2797/2015 vide judgment dated 4.8.2017. The said judgment is not under any stay order passed by Hon'ble Apex Court in S.L.P. (C) No. 28306/2017 dated 30.10.2017.

(vi) Accordingly, respondent No. 1 i.e. Government of Maharashtra had first, stayed all promotions vide its letter dated 02.11.2017. It was followed by the Respondent No. 1 and 2, issuing instructions in consultation with Law & Judiciary Department vide letter No. बीसीसी-२०१७/प्र.क. ३१२३/१६-ब,प dated 29.12.2017 allowing filling up posts of promotion quota falling under 'Open' category. While doing so, it was required to be ensured that any employee proposed to be promoted to next rank has not come in feeder cadre by availing benefit of promotions under provisions of G.R. dated 25.5.2004 (supra).

(vii) In compliance with instruction issued by respondent No. 2 vide letter dated 29.12.2017 (supra), the respondent No. 3 had meeting of Departmental Promotion Committee on 17.3.2018 and based on its recommendation he issued order No. २०१८/मशाका-१/आस्था-१/प्र.क.१९/का.वि.-२६७, dated 27.3.2018 cancelling the order of temporary promotion granted to the

applicants and placed their services at disposal of concerned Sub-Divisional Officer as Talathis.

(viii) The respondent No. 3 received representations dated 28.3.2018 from 2 of the 4 Talathis (other than the applicants), whose temporary promotions were so cancelled, urging for continuation of their temporary promotion by giving one working day's break. In response, the respondent No. 3 made a reference to respondent No. 1 vide letter no. २०१८/म.शा.का.-१/आस्था-१/प्र.क.१५/का.वी.-३६७, dated 16.4.2018 seeking confirmation of order issued by him on 27.3.2018 and also stayed his own order dated 27.3.2018 (supra) vide letter addressed to concerned Sub-Divisional Officer bearing outward No. २०१८/म.शा.का.-१/आस्था-१/प्र.क.१५/का.वि-३६८, dated 16.4.2018. However, no reply to the reference made by respondent No. 3 was received; instead, respondent No. 1 issued G.Rs. dated 20.04.2021 and 07.05.2021 prescribing protocols for dealing with the problem.

(ix) Respondent No. 3 again held meeting of the Departmental Promotion Committee on 01.06.2021 in which it was decided that the two applicants were not eligible for substantive / regular promotion to the post of Circle Officer. Out of 4 Talathis promoted on temporary basis for maximum

period of 11 months in one go vide order dated 15.04.2017, only 1 Talathi could be promoted as per his seniority on the post of Talathi and other 3 being junior, could not be considered for regular promotion. The DPC then proceeded to finalize name of Talathis who were eligible for promotion on 26 vacant posts of 'Open' category. While calculating number of vacant posts of "Open" category, the respondent No. 3 took into account 4 posts vacated by the applicant and other 2 Circle Officers who were temporarily promoted vide order dated 15.4.2016 and cancelled by order dated 27.9.2018 (the order which was stayed by respondent No.3 himself on 16.4.2018).

(x) In view of recommendations made by the Departmental Promotion Committee in its meeting dated 9.6.2021, the Respondent No. 3 again issued order of cancellation of the order of temporary promotion of applicant for a maximum period of 11 months (without break) vide its order bearing outward No. २०२१/म.शा.का./आस्था-१/पदोन्नती/तलाठी/प्र.क., dated 29-06-2021 and placed them at disposal of respective Sub-Divisional Officers and respondent Nos. 4 and 5 were posted on promotion as Circle Officer in the place vide order No. २०२१/म.शा.का./आस्था-१/पदोन्नती/तलाठी-मंडळ अधिकारी/प्र.क., dated 29.6.2021.

(xi) The applicants being aggrieved by the impugned order of respondent No. 3, passed on 29.6.2021, had filed a representation to respondent No. 3 on 1.7.2021 and immediately thereafter filed this Original Application dated 9.7.2021.

4. The Government orders referred to by the applicants to substantiate their claims against cancellation of their temporary promotions are as under:

- (a) महाराष्ट्र शासन, सामान्य प्रशासन विभाग, शासन निर्णय क्र. बी सी सी २०१८/प्र.क्र. ३६६/१६-ब/मंत्रालय, मुंबई, दि. २०.४.२०२१.
- (b) महाराष्ट्र शासन, सामान्य प्रशासन विभाग, शासन निर्णय क्र. बी सी सी २०१८/प्र.क्र. ३६६/१६-ब/मंत्रालय, मुंबई, दि. ७.५.२०२१.

5. Relief prayed for by the applicants :-

The applicants have prayed for relief in terms of paragraph 13(A) to (E) of the Original Application which is reproduced below for ready reference:

“13.(A) This Original Application may kindly be allowed thereby quashing & setting aside the impugned order dated 29.6.2021 (Annex. A-9) issued by Resp. No. 3 cancelling promotions of the applicants to the cadre of Circle Officers and reverting them to the cadre of Talathis, if necessary, by cancelling the promotions given to Resps.

No. 4 and 5 under the order dated 29.6.2021 (Annex. A-10).

(B) This Original Application may kindly be allowed thereby directing the Resp. No. 3 to re-repost the applicants on the post of Circle Officers and permit them to discharge duties attached to the said post.

(C) Costs of this Original Application may kindly be awarded to the applicants.

(D) Any other appropriate relief as may be deemed fit by this Hon'ble Tribunal may kindly be granted.

(E) Pending the admission, hearing and final disposal of this Original Application the effect of the impugned order dated 29.6.2021 (Annex. A-9, page No. 53 of the paper book) issued by Resp. No. 3 may kindly be stayed with further directions to the Resp. No. 3 to repost the applicants as Circle Officers.”

6. **Interim relief as granted by this Tribunal :-**

Applicants had prayed for interim relief and the same was granted vide oral order dated 13-07-2021 in following terms :

“5. Upon hearing the submissions of both the parties, it appears that the present matter relates to clause No. 4 of the G.R. dated 07.05.2021, which is as follows:-

“४. उक्त पदोन्नत्या निव्वळ तात्पुरत्या स्वरूपात मा. सर्वोच्च न्यायालयाच्या विशेष अनुमती याचिका क्र. २८३०६/२०१७ वरील अंतिम निर्णयाच्या अधिन असतील अशी कार्यवाही करतांना पदोन्नती मधील आरक्षणाचा लाभ घेऊन सध्याच्या सेवाज्येष्ठता

यादीत वरच्या स्थानावर आलेल्या कोणत्याही मागासवर्गीय अधिकारी / कर्मचा-यांना पदावनत करण्यात येऊ नये.”

6. In the background, if the impugned order dated 29.6.2021 is considered, it appears that though the said G.R. is referred at Sr. No. 7, it is not specifically observed in the impugned order that whether para No. 4 of the G.R. dated 07.05.2021 is applicable or not. In view of the same, in my opinion, in view of para No. 4 of the said G.R. dated 07.05.2021 this is a fit case to grant interim stay to the impugned order dated 29.06.2021 till filing of the affidavit in reply by the respondents. Hence, ordered accordingly.”

7. Implementation of order of Interim Relief :-

(a) Interim relief granted was continued vide order on 25.08.2021, 30.08.2021 and continued till 07.10.2021. Thereafter, there is no order as to continuation of the same but from the order dated 13-10-2021 it was decided that interim relief granted earlier to continue till filing of Additional Affidavit in reply by respondent No. 3 and therefore, continued from time to time.

(b) From the text of Additional Affidavit filed by respondent No. 3, it is revealed that the applicant No. 1 had been relieved from the post of Circle Officer on 30-06-2021 and applicant No. 2 had been relieved on 08-07-2021 but the two have not joined on the post of Talathi. The learned

Senior Counsel for the applicants too had made submissions before the Tribunal on 25-08-2021 that “the applicants have not been allowed to join on the present post of Circle Officer and they have not been paid salary since 01-07-2021”. Learned C.P.O had responded by saying that the applicants had been relieved from the post of Circle Officers before passing of orders granting interim relief.

8. **Pleadings** :- All the respondents were duly noticed during period from 15-07-2021 to 20-07-2021. Learned CPO had dispensed with separate affidavit in reply on behalf of respondent Nos. 1 and 2. Respondent No. 3 filed affidavit in reply on 25-08-2021 and Additional Affidavit in reply on 13-10-2021. Rejoinder to affidavit in reply was filed on behalf of applicants on 26-10-2021. Respondent Nos. 4 and 5, though duly served notice, did not respond to the notice. After the pleadings were complete, the matter was fixed for final hearing which took place on 28-01-2022 and 01-02-2022 and thereafter the matter was reserved for orders.

8. **Issues which emerge for adjudication :-**

On considering the facts on record and oral submission made by the contesting sides, following issues emerge for adjudication :-

Issue No. 1- The applicants were granted temporary promotion on 15.04.2017 which was cancelled by respondent No.3 vide his order dated 27.03.2018. Whether as per the terms and conditions of the said promotion order, the temporary promotions can be deemed to have come to an end as soon as 11 months' period was over i.e. on 14.03.2018?

Analysis and Findings -As the promotion orders issued were for a maximum period of 11 months and extendable only after at least one working day's break, the same had automatically come to an end on completion of 11 months' period as stipulated.

Issue No. 2 - Hon'ble High Court of Judicature had vide its judgment in W.P. No. 2797/2015, dated 04.08.2017 upheld the order passed by the Tribunal declaring "**Act 2001**" as *ultra vires* to Constitution and G.R. dated 25.05.2004 providing of reservation in promotion *ultra vires* to law and respondent No. 1 had stayed all promotions vide G.R. dated 02.11.2017 and later on allowed promotion only against vacant "Open"

category post of promotion quota vide G.R. dated 29.12.2017. In the aforesaid background, the respondent No. 3 passed stay order dated 16.04.2018 for staying operation of his own order dated 27.03.2018 of cancelling promotions to the applicants. However, by 14.03.2018 the temporary promotion is deemed to have come to an end. In this background, whether the said stay order has any legally binding force of granting extension to the caste based promotion order?

Analysis and Finding- The temporary promotion order which was cancelled on 27-03-2018 and which was otherwise too, valid only for 11 months' period ending on 14-03-2018, did not exist and therefore, any stay granted by respondent No. 3 to his own order dated 27-03-2018 amounted to staying order which had ceased to exist after 14-03-2018.

Issue No. 3 - Whether the continuation of applicant on the post of Circle Officer after end of first tenure of 11 months amounted to renewal of the caste-

based promotion with a break of one working day as per terms & conditions of temporary promotion order dated 15.04.2017 ?

Analysis and Findings -The G.R. dated 25.04.2004 providing for caste-based promotion was held to be *ultra vires* the rules and therefore, renewal of caste-based promotion could not be treated as a legally valid process/order. At the most, the same can be termed as ad hoc promotion, on vacant position which is not to be termed as 'promotion from zone of consideration' based on seniority cum merit.

Issue No. 4- Whether impugned order No. २०२१/मशाका/आस्था-१/पदेन्नती/तलाठी-मंडळ अधिकारी/प्र.क., dated 29.6.2021 is bad in law in view of clause 4 of G.R. No. बी.सी.सी. २०१८/प्र.क.३६६/१६-ब, dated 7.5.2021?

Analysis - It is argued by learned senior Counsel for the applicant that the respondent No. 3 had reverted the applicant from senior post of Circle Officer to junior post of Talathi by impugned order dated 29.6.2021, which is not permitted by G.R. dated

7.5.2021. To quote the submissions made by the applicant in para 7(xv) of the original application (page 11 and 12 of paper book) as follows:

“7(xv) Applicants say that before going further it is most pertinent & relevant to point out on the basis of the latest G.R. dated 07.05.2021 issued by Resp. No. 2 that though directions were given thereunder to fill-in all vacant posts in the promotional quota strictly on the basis of seniority positions as on 25.05.2004, however, in paragraph No. 4 the Resp. No. 2 had given specific directions as under –

“४. उक्त पदोन्नत्या निव्वळ तात्पुरत्या स्वरूपात मा. सर्वोच्च न्यायालयाच्या विशेष अनुमति याकिचा क्रं. २८३०६/२०१७ वरील अंतिम निर्णयाच्या अधीन असतील. अशी कार्यवाही करतांना पदोन्नतीमधील आरक्षणाचा लाभ घेऊन सध्याच्या सेवाजेष्ठता यादीत वरच्या स्थानावर आलेल्या कोणत्याही मागासवर्गीय अधिकारी / कर्मचा-यांना पदावनत करण्यात येऊ नये.”

As such, it is explicitly & abundantly clear from the aforesaid specific prescription in G.R. dated 07.05.2021 that the employees like the applicants who had got benefit of reservation in promotions were not to be reverted. Applicants therefore in view of said specific directive issued by the Resp. No. 2 in G.R. dated 07.05.2021 emphatically & categorically say that it was simply not open & permissible for the Resp. No. 3 to take action of reverting them from the post of Circle Officers to the post of Talathis.”

Findings - The applicant had been temporarily promoted to the post of Circle Officer which ordinarily means that the applicants did not acquire higher level of seniority under the process. In the present matter, terms & condition No. 3 of the promotion order dated 15.04.2017 is also very explicit on this point and reads as follows :

“या तात्पुरत्या पदोन्नतीच्या परिणामी कनिष्ठ कर्मचारी यांना सेवा जेष्ठतेचा हक्क मिळणार नाही.”

Moreover, it is noted that the Clause 4 of the G.R. dated 07.05.2021 protects seniority of those who have acquired position of higher seniority by process of promotions based on caste-based reservation in promotion. Therefore, it is inferred that the case of applicants does not attract benefit of clause 4 of the said G.R. dated 07.05.2021.

Issue no. 5 - Whether the order No. २०२१/मशाका/आस्था-१/पदोन्नती /तलाठी-मंडळ अधिकारी/प्र.क्र., dated 29.6.2021 issued by respondent No. 3 promoting respondent Nos. 4 & 5 is fit to be quashed and set aside?

Analysis and Findings-The respondent No. 3 had held meeting of Departmental Promotion Committee on 9.6.2021 to fill the post of promotion under 'Open' category quota and accordingly promoted respondent Nos. 4 & 5 against 'Open' category quota, which has been permitted under G.R. dated 29.12.2017. The applicant has not challenged legality of the G.R. dated 29.12.2017. Therefore, it is concluded by us that the promotions granted to respondent nos. 4 & 5 are in order.

Issue No. 6 - So long as respondent Nos. 4 and 5 have joined on the posts earlier occupied by the applicants before grant of interim relief and the respondent No. 3 had reiterated the position through Additional affidavit filed on 13.10.2021 which had not been rebutted by the applicants. The issue is, whether the applicants can be deemed to continue on the post of Circle Officer?

Finding - The respondent No. 3 has submitted additional affidavit enclosing copies of relieving orders for applicant No. 1 namely, i.e. Smt. Kalpana Tejrao Shelke dated 30.06.2021 and for applicant No. 2

i.e. namely Smt. Bharati Kundlikrao Mandankar dated 08.07.2021, whereas order of interim relief has been passed by this Tribunal on 13.07.2021 and this O.A. had been filed on 09.07.2021. In counter affidavit filed on behalf of applicants, it has been stated that the applicant No. 1 was on T.B. Leave up to 18.07.2021 and she was communicated relieving order by WhatsApp message date 07.07.2021. However, the applicant No. 2 has contested that she had not received copy of relieving order dated 08.07.2021. However, the applicants have not challenged the submissions made by the respondent No. 3 on oath as per the legal provisions. Therefore, submission made by the respondent No. 3 on oath is being taken as admissible. Moreover, any adverse finding on this point based on evidence adduced in future may be material in respect to right of applicant in respect of pay and allowances for the period of absence from duty and may not affect decision on any of the reliefs prayed for through this O.A. in view of findings mentioned earlier.

9. **Conclusion** : After considering all the facts as recorded and oral submissions made by the contesting sides, we are of the considered opinion that there is no merit in the Original Application and the same is misconceived. Hence, following order being passed :-

ORDER

- (A) The Original Application No. 342/2021 is hereby dismissed for reasons being based on misplaced facts, misconceived and devoid of merit.
- (B) No order as to costs.

(BIJAY KUMAR)
MEMBER (A)

(JUSTICE P.R. BORA)
MEMBER (J)

At this juncture, learned counsel appearing for the applicants has prayed for stay the effect and operation of the present order for next three weeks. Learned counsel, on instructions, submitted that the applicants desire to approach the Hon'ble High Court. It is further brought to our notice that the interim stay is operating in the present matter. In view of the submissions so made, the effect and operation of the present order shall stand stayed for next three weeks.

(BIJAY KUMAR)
MEMBER (A)

(JUSTICE P.R. BORA)
MEMBER (J)