

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.992 OF 2023

DISTRICT : SOLAPUR

Sub.:- Promotion

1. Shri Sanjay D. Javir.)
Age : 51 Yrs, Occu.: Service as Dy.)
Education Officer, Residing at Near Market)
Yard, Mangalwedha, Tal.: Mangalwedha,)
District : Solapur.)

2. Shri Dhananjay L. Chopade.)
Age : 45 Yrs, Occu.: Service as Block)
Education Officer, Residing at Green Vally)
Housing Society, Flat No.9, 461/10,)
Sadar Bazar, District : Satara.)

3. Smt. Ashwini A. Lathkar.)
Age : 46 Yrs., Occu.: Service as Dy.)
Education Inspector, Greater Mumbai)
West, Jogeshwari (E), Mumbai and)
Residing at Sapphire, Lake Side, 2 H 904,)
New Mhada Colony, Powai, Mumbai.) **...Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
School Education & Sports Dept.,)
Mantralaya, Mumbai - 400 032.)

2. The Additional Chief Secretary)
(Services), General Administration)
Department (12), Mantralaya,)
Mumbai - 400 032.)

3. The Commissioner (Education),)
Maharashtra State, Central Building,)
Dr. Anni Besant Marg, Pune - 1.) **...Respondents**

Shri S.S. Dere with Shri H.S. Bali, Advocates for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

**CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Debashish Chakrabarty, Member-A**

DATE : 22.12.2023

J U D G M E N T

1. The Applicants are claiming promotion to post of Education Officer and equivalent posts in Maharashtra Education Services, Group-A (Administrative Branch) and pray that impugned Seniority List dated 21.04.2023 and subsequent communication dated 24.07.2023 of School Education & Sports Department and promotion proposal dated 01.08.2023 of Education Commissioner, Pune be quashed and set aside.

2. The learned Advocate for Applicants stated that 99 posts of Deputy Education Officer in Maharashtra Education Services, Group-B (Administrative Branch) were advertised by MPSC on 08.02.2008. By Notification dated 01.01.2011, names of 92 Candidates were recommended by MPSC for appointment to posts of Deputy Education Officer. The result of 7 Candidates was reserved by MPSC. The present 3 Applicants and 4 others which includes Shri Raju Patle, the Applicant in OA 720/2023 before MAT Bench at Aurangabad were the 7 Candidates whose recommendations had been reserved by MPSC on account of litigation regarding 2% Reservation for 'Special Backward Class' (SBC). The issue was subsequently resolved by judgments of MAT and Hon'ble Bombay High Court. Thereafter, out of these 7 Candidates; the names of 5 Candidates including present 3 Applicants and Shri Raju Patle were recommended by MPSC through Notification dated 14.11.2013 for appointment to the post of Deputy Education Officer in Maharashtra Education Services, Group-B (Administrative Branch). The

combined 'Merit List' which contains names of 99 Candidates was subsequently published by MPSC on 20.06.2014.

3. The learned Advocate for Applicants further relied on 'Annexure' to School Education & Sports Department GR dated 04.03.2014 by which few more Candidates were appointed to posts of Deputy Education Officer in Maharashtra Education Services, Group-B (Administrative Branch). The name of Shri Raju Patle is at Serial No.4 while names of present 3 Applicants viz. Shri S.D. Javir, Shri D.L. Chopade and Smt. A.A. Lathkar are respectively at Serial Nos.1, 2 & 3 of this 'Annexure'.

4. The learned Advocate for Applicants then produced letter of School Education and Sports Department dated 30.08.2023 wherein it has been stated that DPC was convened on 31.08.2023 to grant Temporary Promotion for Vacant Posts of (i) Education Officers in the Maharashtra Education Services (Education Empowerment Branch) Group-A and (ii) Senior Lecturers in Maharashtra Education Service (Education Empowerment Branch) Group-A.

5. The present 3 Applicants prayed for modification to the Seniority List dated 21.04.2023 and after they are placed at their entitled positions, they be promoted to the post of Education Officer or equivalent posts in the Maharashtra Education Services, Group -A (Administrative Branch).

6. The learned Advocate for Applicants submitted that the case of present 3 Applicants is covered under Judgment dated 02.11.2023 passed in **O.A.720/2023 (Raju R. Patle Vs. The State of Maharashtra & 2 Ors.)** by MAT Bench at Aurangabad. By order dated 02.11.2023, the MAT Bench at Aurangabad has directed as follows :-

"Respondents are directed to revise the seniority list published on 21.4.2023 pertaining to the Deputy Education Officers, Maharashtra Education Services, Group-B (Administrative Branch) and place the applicant in the seniority list at the appropriate place in light of the

observations made by us in the body of the present order within 8 weeks from the date of this order.”

7. The learned Advocate for the present 3 Applicants therefore submitted that in this OA No.992/2023, similar order may be passed as was done by MAT Bench at Aurangabad in OA No.720/2023 on 02.11.2023.

8. The learned Advocate for Applicants presented ‘Comparative Chart’ showing entitlement of the appropriate positions of Applicants in the Seniority List dated 21.04.2023 which is reproduced below :-

Sr. No.	MPSC Recommendation	Impugned Seniority List dated 21.04.2023	Appropriate place of gradation
1	66. Walzade Ramdas Shivnath	94	94
2 Applicant No.1	67. Javir Sanjay Dnyaneshwar	161	95
3 Applicant No.2	68. Chopde Dharappa Laxman	162	96
4	69. Sontakke Ravindra Sitaram	95	97
5	70. Chothe Makesh Jagannath	--	--
6 Applicant No.3	71. Latkar Ashwini Anilrao	163	98
7	89. Patle Raju Ramakantrao (Applicant at Aurangabad)	164	110 The seniority of the said Applicant is granted on the basis of final judgment

9. The learned Advocate for the Applicants stated that in pursuant to the order passed on 08.12.2023, he has amended the ‘Prayers’. Upon amending the ‘Prayer’, he submitted that (a) Name of Applicant No.1 Shri S.D. Javir be included at Serial No.95 i.e. after the Name of Shri Ramdas S. Walzade, (b) Name of Applicant No.2 Shri D.L. Chopde be included at Serial No.96 after Name of Shri S.D. Javir who gets included at Serial

No.95 and (c) Name of Applicant No.3 Smt. A.A. Latkar be included at Serial No.98 below Name of Shri R.S. Sontakke who gets included at Serial No.97 after Name of Shri D.L. Chopde is included at Serial No.96 in Seniority List dated 21.04.2023. Learned Advocate accordingly stated that after these corrections are made in the 'Seniority List' dated 21.07.2023, the present 3 Applicants must be considered for promotion to the post of 'Education Officer' in Maharashtra Education Services, Group-A (Administrative Branch).

10. The learned Advocate for Applicants having relied on judgment dated 02.11.2023 in OA No.720/2023 passed by MAT Bench at Aurangabad added that it was pertinent to note Applicant in OA No.720/2023 Shri Raju Patle is from same 'Select List' of Deputy Education Officers as are the 3 Applicants.

11. The learned CPO per contra submits that the Judgment of MAT Bench at Aurangabad in OA No.720/2023 is not applicable to the set of facts in present OA No.992/2023.

12. The learned CPO submits that the judgment of **Balwant Singh Narwal and Ors. Vs. State of Haryana & Ors. (2008) 7 SCC 728** was not correctly interpreted by MAT Bench at Aurangabad in view of the set of facts. She further submits that MAT Bench at Aurangabad has accepted the principle laid down in the case of **Balwant Singh Narwal** (cited supra), but has passed different judgment in OA No.720/2023 dated 02.11.2023.

13. We have gone through the judgment of MAT Bench at Aurangabad in OA No.720/2023 dated 02.11.2023 and also judgment of **Balwant Singh Narwal** (supra).

14. The learned Advocate for the Applicants has rightly submitted that the candidates in **Balwant Singh Narwal** (supra) were placed

below the other Selected Candidates who were higher in the common 'Merit List'. The petitioners in **Balwant Singh Narwal** (supra) were thus given 'Notional Seniority' and were naturally placed immediately below other meritorious Selected Candidates in the common 'Merit List'.

15. We would like to emphasize that in judgment passed in OA No.720/2023 on 02.11.2023 by MAT Bench at Aurangabad, it has been rightly observed about Rule 4(2)(a) of M.C.S. (Regulation of Seniority) Rules, 1982 on the point of 'Inter-se Seniority' of 'Direct Recruits' who are selected in same recruitment batch. Thus, by applying Rule 4(2)(a) of MCS (Regulation of Seniority) Rules, 1982, the present 3 Applicants are senior to Shri Raju Patle Applicant in OA No.720/2023 both as per combined 'Merit List' published by MPSC on 20.06.2014 and their Inter se Positions shown in 'Annexure' to School Education and Sports Department GR dated 04.03.2014. The present 3 Applicants could not be appointed earlier on account of litigation relating to 2% Reservation of Special Backward Class (SBC). Thus, it was correctly held by MAT Bench Aurangabad by judgment in O.A.No.720/2023 dated 02.11.2023 that the pendency of litigation could not have been considered as a fault of the candidates in fixing their positions in Seniority List. The discretion and power to grant extended period of joining to 'Direct Recruits' is available to State Government so as to be able to consider such eventualities under Sub-rule (1)(a) of the MCS (Regulation of Seniority) Rules 1982 which reads as follows :-

“if the appointment is taken up by the person recruited within thirty days from the date of issue of the order of appointment or within such extended period as the competent authority may in its discretion allow.”

16. We are thus of the considered view based on specific facts relating to present 3 Applicants and case of Shri Raju Patle which has been decided by judgment passed by MAT Bench Aurangabad in

OA No.720/2023 on 02.11.2023, the Respondent should have been placed on (a) Name of Applicant No.1 Shri S.D. Javir should have been included at Serial No.95, (b) Name of Applicant No.2 Shri D.L. Chopde should have been included at Serial No.96 and (c) Name of Applicant No.3 Smt. A.A. Latkar should have been included at Serial No.98 in the Seniority List dated 21.04.2023. Hence, the following order.

ORDER

- (i) The Original Application stands Allowed.
- (ii) The Respondents are directed to carry out these changes in positions in Seniority List dated 21.04.2023 in respect of present 3 Applicants within Four Weeks and if thereafter present 3 Applicants are found to be eligible and fit for promotion; then they be promoted to posts of Education Officer or equivalent posts in Maharashtra Education Services Group-A (Administrative Branch).
- (iii) No order as to Costs.

Sd/-
(DEBASHISH CHAKRABARTY)
Member-A

Sd/-
(MRIDULA BHATKAR, J.)
Chairperson

Mumbai
Date : 22.12.2023
Dictation taken by :
S.K. Wamanse.

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