

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.614 OF 2014

WITH

ORIGINAL APPLICATION NO.938 OF 2016

DISTRICT : MUMBAI

ORIGINAL APPLICATION NO.614 OF 2014

Mr. Dnyaneshwar Eknath Hirde,)
Age 46 years, Government service,)
R/o A-2/701, Happy Valley CHS,)
Manpada, Tikunjwadi Road, Thane) **..Applicant**

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
Transport Department,)
Mantralaya, Mumbai 32)
Presenting office at World Trade)
Centre, Mumbai 400 005)
2. The Transport Commissioner,)
Maharashtra State,)
Administrative Building, 4th Floor,)
Bandra (E), Mumbai)
3. Mr. S.D. Bhor,)
Transport Commissioner Office,)
Govt. Colony,)
Administrative Building,)
Bandra (East), Mumbai 400051)
4. Mr. V.L. Kathole,)
Dy. Regional Transport Office,)
Malegaon, District Nashik)

5. Smt. A.S. Gaikwad,)
 Transport Commissioner Office,)
 Govt. Colony, Administrative Bldg,)
 Bandra (East), Mumbai 400051)
6. Mr. V.N. Shinde,)
 Regional Transport Office,)
 West Region, Andheri, Mumbai)
7. Mr. R.M. Belsare,)
 Dy. Regional Transport Office,)
 Nagpur City, East Nagpur)
- ..Respondents**

WITH

ORIGINAL APPLICATION NO.938 OF 2016

1. Mr. Vinod V. Chavan,)
 A-9, Government Quarter, 17,)
 Queens Garden, Pune-1)
2. Mr. Surendra P. Nikam,)
 Flat No.1004, Lily Building,)
 Regency Garden,)
 Kharghar-10)
3. Mr. Atul R. Adey,)
 Flat No.201, Shiv Kamini Apt.,)
 Gorakshan Road, Akola)
- ..Applicants**

Versus

1. The State of Maharashtra,)
 Through Principal Secretary,)
 Transport Department,)
 Mantralaya, Mumbai 32)
2. The State of Maharashtra,)
 Through Principal Secretary,)
 Home Department,)
 Mantralaya, Mumbai 32)

3. The State of Maharashtra,)
Through Principal Secretary,)
Finance Deptt.,)
Mantralaya, Mumbai 32)
4. Mr. Dnyaneshwar Eknath Hirde,)
R/o A-2/701, Happy Valley CHS,)
Manpada, Tikunjiniwadi Road,)
Thane)
5. The State of Maharashtra,)
Through Secretary,)
General Administration)
Department, Mantralaya,)
Mumbai 32) **..Respondents**

Appearance in O.A.No.614/2014

Mr. A.A. Desai, learned Advocate for the Applicant.

Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.

Mr. S.S. Dere, learned Advocate for the Respondents No.3 to 5.

Appearance in O.A.No.938/2016

Shri S.S. Dere, learned Advocate for the Applicants.

Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.

Shri C.T. Chandratre – Advocate for Respondents No.4.

**CORAM : Justice Mridula Bhatkar (Chairperson)
Ms. Medha Gadgil (Member) (A)**

RESERVED ON : 02.05.2022

PRONOUNCED ON : 06.06.2022

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The issue of seniority amongst Assistant Regional Transport Officer (ARTO) is involved in these two matters. The applicant Mr. Dnyaneshwar Eknath Hirde in O.A.No.614 of 2014 is made party respondent no.4 in O.A.No.938 of 2016. However, applicants in OA No.938 of 2016 are not made party respondents in OA No.614 of 2014. As both the matters are being decided by this common judgment, with a view to avoid confusion about identity of the Parties and for the purpose of convenience Applicant in O.A.No.614/2014 is addressed by name as 'Mr. Hirde, and the three Applicants in O.A.No.938/2016 are addressed as the applicants.

2. Mr Hirde, working as Assistant Regional Transport Officer (ARTO) has challenged the seniority list published as on 1.1.2013. He prays that respondents be directed to declare that he is entitled to get his seniority in the cadre of ARTO from 1.4.1991 in the light of provisions of the relevant rules and GRs.

3. Mr D.E. Hirde, has challenged the order of his appointment dated 5.6.2007 to the extent of conditions no.1 & 2 which are illegal and bad in law and contrary to GRs. dated 10.11.1982, 9.3.1989, 1.11.1999 & 10.9.2001 and Rule 4(2)(c) of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 (hereinafter referred as 'MCS (Regulation of Seniority) Rules, 1982' for brevity). Mr Hirde, admittedly initially joined as Deputy Engineer in Rural

Broadcasting Department on technical post on 1.4.1991. He worked there till 20.8.2001. After closure of the office of Rural Broadcasting Department he was rendered surplus and was absorbed in the office of Maharashtra State Human Rights Commission on 8.10.2001 as a Desk Officer, which was non-technical post. His post of Deputy Engineer was upgraded as Class-I by order dated 25.1.2002 w.e.f. 1986. However, the post of Desk Officer was Class-II. The applicant therefore made representations for change of his post from non-technical to technical and on 5.6.2007 as he was appointed as ARTO in Respondent-Department. The seniority list of ARTO was published in 2014 and there he found that he was shown below his junior colleagues.

4. Mr. A.A. Desai, learned Advocate for the Applicant in O.A. No.614/2014 Mr. D.E. Hirde, has submitted that Government has issued a scheme of absorption on 1.11.1999 so also the said policy was reiterated with some modification on 10.9.2001. He relied on Rule 4(2)(c) of MCS (Regulation of Seniority) Rules, 1982. He further relied on clause 20 of Government Resolution (G.R) dated 10.9.2001 wherein it was specifically mentioned that services of Government servant, who has rendered surplus, is to be counted from the date of his first appointment from the post he is declared surplus under the scheme of absorption of surplus.

5. Learned Advocate Mr. Desai appearing for the Applicant in O.A.No.614/2014 has relied on the following judgments:-

- (i) **Ram Sarup Gupta Versus Bishun Narain Inter College and Others, reported in (1987) 2 SCC 555.**
- (ii) **Central Inland Water Transport Corporation Limited and Another Versus Brojo Nath Ganguly and Another, reported in (1986) 3 SCC 156.**

6. Learned Advocate Mr. Desai, on the point of equivalence of the post has relied on Clause no.4 of G.R dated 10.9.2001. He has submitted that the applicant satisfies the criterion of equivalence of the cadre, and therefore, he is to be given the benefits of Rule 4 of MCS (Regulation of Seniority) Rules, 1982. Learned Advocate for the Applicant heavily relied on the judgments of this Tribunal in **O.A.No.361/2009 at Mumbai (O.A.No.655/2005 at Aurangabad), Mr. Vijay P. Narwade & Ors. Versus State of Maharashtra & Ors dated 07.09.2009 and also O.A.No.351/2006, Mr. Uday Laxman Sawant Versus The State of Maharashtra & Anr. dated 23.03.2007** and sought parity and relief as given to them by the Hon'ble High Court in the case of **State of Maharashtra & Ors. Versus Mr. Vijay P. Narwade & Ors in Writ Petition No.1419/2011 & Ors. decided on 18.12.2017.** He further relied on Section 23 of the Indian Contract Act, 1972, especially on the point of conditions mentioned in his appointment letter. Learned Advocate Mr. Desai further submitted that the condition of the fresh appointment in his appointment letter dated 05.06.2007 was never accepted by the applicant. The applicant did not give anything in writing as mentioned therein. The caveat of condition was never accepted. This was a conditional proposal and the applicant seeks protection under Section 23 of the Indian

Contract Act. Learned Advocate Mr. Desai argued that the G.R. dated 26.3.2004 was struck down by judgment in **Mr. Vijay P. Narwade case's (supra)** by the Tribunal and the order of the Tribunal was upheld and confirmed by the Hon'ble High Court by order dated 18.12.2017. Learned Advocate Mr. Desai relied on the principles of continuous officiating service and stated that the same should be applied in fixing the seniority. Learned Advocate for the applicant referred to the affidavit-in-reply of Ms. Archana Gaikwad, Respondent no. 5, dated 19.8.2014, (page 242).

7. Mr. S.S. Dere, learned Advocate for the Applicants in O.A. No.938/2016, Mr. V.V. Chavan & Ors. has submitted that after absorption once the benefit of surplus is given to a candidate, then he ceases to be a surplus. Learned Advocate has submitted that the procedure mentioned in Annexure 'A', 'B', & 'C' is laid down in the G.R dated 10.9.2001. However, the said procedure is not followed when the applicant was appointed in the office of the Regional Transport Department. Learned counsel has submitted that the clause of fresh appointment mentioned in the appointment order of Mr Hirde, dated 5.6.2007 was not challenged then. He submitted that it is the acquiescence by the applicant and so he is now estopped from claiming his seniority from the date of his initial appointment, i.e. in the year 1991.

8. The learned Advocate Mr. Dere appeared further submitted that the claim of the Applicant, Mr. Hirde is erroneous. These 3 Applicants had joined the service in the span of March, 2007 to

April, 2007 in the Transport Department as Assistant Regional Transport Officer (A.R.T.O.) and the Respondent No.4 in O.A.No.938/2016, i.e. Mr. Hirde was appointed against the nomination quota by the Respondent No.1 under the scheme of surplus on 04.07.2007. When the adhoc gradation list was published by Respondent No.1 on 01.01.2013 the seniority is maintained as per the date of entry of the candidates in service as follows:-

Applicant No.1, Mr. Chavan, appointed on 08.03.2007 is shown at serial No.93,

Applicant No.2, Mr. Nikam, appointed on 29.03.2007 is shown at serial No.96,

Applicant No.3, Mr. Adey, appointed on 06.04.2007 is shown at serial No.98 and

Respondent No.4, Mr. Hirde, appointed on 04.07.2007 is shown at Serial No.100

Thus it was argued that Mr. Hirde who was junior to them by 3 to 4 months, was rightly shown below them. The three Applicants have challenged the order of Respondent-State dated 26.05.2016 as bad in law qua seniority of Hirde and i.e. to be quashed and the directions be given to Respondent No.1 to maintain the seniority of 3 Applicants and Mr. Hirde as per the gradation list dated 12.07.2013 published by the Additional Transport Commissioner.

9. The gradation of the Applicants and Mr Hirde, is maintained as per sub-rule (1) to Rule 4 of the MCS (Regulation of Seniority) Rules, 1982. The seniority is considered from the date of

entry in the service. The list was finalized on 08.01.2014. After the closure of the Rural Broadcasting Department w.e.f. 31.08.2001 (page 356) all the 3 Applicants including Respondent No.4 Mr. Hirde initially working under the Rural Broadcasting Department were declared surplus. All the employees were absorbed in the Government service in various Departments. The provision of surplus employees was governed by clause-2 of the Government Resolution dated 01.11.1999. The purpose of absorption is to protect the employment and secure pay scale of the employee who is declared as surplus. Respondent No.4 Mr. Hirde in O.A.No.938/2016 was absorbed as Desk Officer in Maharashtra State Human Rights Commission under the scheme of surplus on 08.10.2001. Thereafter as per the request of Respondent No.4, Mr. Hirde, he was appointed on the post of ARTO in the nomination quota as the fresh appointment by order dated 05.06.2007 and therefore the seniority of the Applicant prior to this fresh appointment cannot be maintained. The learned Advocate Mr. Dere has argued that earlier Respondent No.4 was appointed under the scheme of surplus therefore his 2nd appointment as ARTO cannot be considered as surplus. After his 1st appointment in the office of Maharashtra State Human Rights Commission he was ceased to be surplus. Moreover, Respondent No.4 has accepted the conditions at the time of his appointment on the post of ARTO that it is fresh appointment. His seniority thus was considered from the date of his entry in the cadre of ARTO in the Transport Department.

10. The learned Advocate Mr. Dere has referred to the affidavit-in-reply filed by Respondent No.1 (State) and has submitted that the Respondents cannot change the stand in view of G.R. dated 20.08.2001 to decide the equivalence of the post for the purpose of scheme of surplus. The change in the seniority is illegal and bad in law. Once Respondent No.4, Mr. Hirde is absorbed under the scheme of surplus then for the new post which is fresh appointment, no benefit of seniority under the scheme of surplus can be given to him. When the Applicant joined his service on 05.06.2007 in Transport Department as ARTO, he is bound by the Condition mentioned in the said appointment letter which the Applicant has accepted. Once he has accepted this Condition of fresh appointment, then he cannot challenge the same as he is covered under the doctrine of approbate and reprobate, and estopped from seeking seniority from the date of his initially appointment.

11. Learned Advocate Mr. Dere, has relied on the following judgments :-

- (i) **Union of India & Ors. Versus N Murugesan & Ors. reported in 2021 SCC OnLine SC 895.**
- (ii) **The State of Haryana and other Versus Nathu Singh, LPA No.1105/2017 (O&M) in CWP No.26716 of 2014, decided on 29.05.2018.**

12. The judgment of **Ram Sarup Gupta (supra)** which is relied by learned Advocate Mr. Desai is on the point that in the absence of pleadings, the Court cannot read and deal with the points raised

in addition subsequently. The Hon'ble Supreme Court held in paragraph 6 that,

The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings, instead; the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal.

In view of the findings given by the Hon'ble Supreme Court especially in paragraph 6 and considering the pleadings of the 3 Applicants it cannot be said that these 3 Applicants are barred from raising the point of estoppel.

13. In the judgment of Hon'ble Supreme Court in the case of **Brojo Nath Ganguly (supra)** both the Respondents were working on the post of Manager (Finance) and General Manager (River Services) respectively. In their appointment letters there was a condition that the Corporation can without any previous notice terminate the services, if Corporation is satisfied that the employee is unfit medically or guilty of mis-conduct, intemperance or has breached the Rules or for non-performance. The issue before Hon'ble Supreme Court is whether the unconscionable term in Contract of employment mentioned in the Corporation was void

under Section 23 of the Contract Act and violative of Articles 14, 131 and 19 of the Constitution of India. Section 23 is against the Contracts which are unconscionable, unfair and unreasonable and against the public policy and this contract is void. The Hon'ble Supreme Court held that the employees have no powerful Union to support them. The Corporation in those matters could afford to dispense with the services of the officers and when finding many others. On the other hand the officers could not afford to lose the job. Thus it is unconscionable bargaining. The parties should not stand on unequal bargaining power. In the said matter, the Hon'ble Supreme Court dismissed the appeals filed by the Corporation and held that the Rule 9 of the "Service, Discipline & Appeal Rules - 1979 of the Central Inland Water Transport Corporation Limited was void under Section 23 of the Indian Contract Act, 1972 it is against the public policy. However, in the present case the appointment order was issued with the condition that it is fresh appointment order and the acceptance to that condition was required to be given by the Government servant who is going to be appointed. This term or condition cannot be said *per se* illegal. The condition is against the Maharashtra Civil Services (Regulations of Seniority) Rules, 1982 which are in-force. The said judgment of Central Inland Water Transport Corporation has also observed that the Court may judge each case on its own facts and consideration and cannot be treated as Contract.

14. The Hon'ble Supreme Court in case of **N Murugesan & Ors. (supra)** has held that the Respondent Mr. Murugesan was

appointed as the Director General in Central Power Research Institute (CPRI) for a period of initial tenure of 5 years or until further orders with the further directions of re-appointment from the office of the Hon'ble the Prime Minister. Though the Ministry of Power has recommended the tenure of the Respondent to the said post from the date he assumes charge upto the date of his retirement on superannuation or until further orders. The Respondent accepted the offer of 5 years and took charge on 26.03.2010. After 4 years and 9 months from the date of his joining he wrote letter to the Ministry of Power on 30.12.2014 taking stand that since his appointment was made by way of direct recruitment he is a regular employee and therefore his tenure will continue till the date of his superannuation i.e. 31.05.2019 and not 5 years. His representation was considered by the Hon'ble Minister after deliberation and rejected the representation holding that it would not be in the interest of the Institution to extend the tenure-based appointment for further period and the Department will go for fresh recruitment. So the Respondent challenged the said decision before the Hon'ble High Court and the Single Judge of Karnataka High Court dismissed the Petition on the ground of delay and laches holding that discretionary powers under Article 226 of the Constitution of India need not to be involved. The Respondents filed the Appeal which was allowed against which the Appeals were filed by the State. In the judgment the Hon'ble Supreme Court has discussed the principles of delay, laches, and acquiescence, so also the meaning of phrases approbate and reprobate. In view of the facts mentioned above, the Hon'ble

Supreme Court has held that there is no element of an unequal bargaining power and nobody has forced the Respondent to enter into the contract because he was the employee of the Society for 23 years. Moreover, he made representation after 4 ½ years. In the case in hand Mr. Hirde was declared surplus and earlier he was given non-technical post. After his number of representations which were made immediately after his absorption he was given technical job in Transport Department. Thus undoubtedly, Applicant Mr. Hirde was not having any bargaining power, but was very much in submissive position and had no choice but to accept the conditions.

15. In the case of **Nathu Singh (supra)** the Respondent sought benefit of service rendered by him earlier which is from December, 1974 till June 2002 when he was working in Haryana State Mineral Irrigation Tubewell Corporation. Before retrenchment of his services being surplus many employees including Respondents were retrenched and they were paid all benefits in addition somewhere given a golden hand-shake. The State framed the scheme under Article 309 of the Constitution of India for retrenched employee and one of the conditions was that it shall be considered as a fresh appointment and no benefit of past service should be claimed. The affidavit to that extend was sought from the Respondents. He accepted the appointment on 01.09.2006. He retired from the said service in the year 2013. He did not raise grievance in respect of his fresh appointment. However, two years thereafter by filing Writ Petition he sought direction that the earlier

service rendered by him with the Corporation is to be counted for retiral benefit. The Division Bench of High Court of Punjab and Haryana at Chandigarh has dismissed the Writ Petitions of the Respondents holding that he is not entitled to service rendered earlier. The case in hand is totally different. Hence this judgment is not applicable.

16. In the present case the issue arose when the seniority list was published on 12.07.2013 as on 01.01.2013. Mr. Hirde claims his seniority from 01.04.1991 to the post of ARTO and not from 08.10.2001 when he was absorbed in the office of Maharashtra State Human Rights Commission not from 04.07.2007, i.e. his appointment in Transport Department. The Applicant claims his seniority when he joined as Deputy Engineer in Rural Broadcasting Department of Government of Maharashtra.

17. The facts of appointment of Applicant, Mr. Hirde on 01.04.1991 in Rural Broadcasting Department as Deputy Engineer, closure of the said Department and his absorption in the office of Maharashtra State Human Rights Commission on 08.10.2001 on the post of Desk Officer are not disputed. Similarly the fact that thereafter on his request and time to time representations made to the Respondent-Government for giving him proper and equal posting in the office of Maharashtra State Human Rights Commission and thereafter his appointment in Transport Department on 04.07.2007 and further appointment to the post of ARTO by order dated 05.06.2007 are also the admitted facts.

18. The short issue involved in the matter is only in respect of principle of estoppel and Rule 4(2)(c) of MCS (Regulation of Seniority) Rules, 1982. We reproduce the said Rule:

“(c) the seniority of a transferred Government servant vis-à-vis the Government servants in the posts, cadre or service to which he is transferred shall be determined by the competent authority with due regards to the class and pay scale of the post, cadre or service from which he is transferred, the length of his service therein and the circumstances leading to his transfer.”

Thus the seniority is counted from the date of initial appointment of a Government employee as per the above rules. Mr. Hirde initially was appointed in 1991 as Deputy Engineer. Due to his absorption in the office of Maharashtra State Human Rights Commission on the post of Desk Officer after closure of the said Rural Broadcasting Department, he was appointed as Desk Officer. It is a common sense that person holding the degree of BE (Mechanical) undoubtedly is a Technical person so we accept the submissions of Mr. Desai that he should have been given the Technical post which is a matter of equivalence. However, it appears from the records that at the relevant time no such technical posts were available and many other persons who were working on technical posts earlier like in the case of **Mr. Vijay P. Narwade** and **Mr. Uday Laxman Sawant** were also appointed on non-technical posts. They approached this Tribunal and by order dated 07.09.2009 and 23.03.2007 respectively they got appropriate relief.

19. The requirement of the educational qualification for the post of Desk Officer though is Graduation and it is Class-III post, the degree of Engineering cannot be said equivalent degree of Arts and Commerce. The Engineer cannot be asked to work on a superior clerical post when he has a special technical knowledge. Though the salary and grade of the Desk Officer may be equal to the post of Deputy Engineer the knowledge, ability and competency required to secure the degree in Engineering is far more different than obtaining the degree in Arts and Commerce. Thus, the post of Desk Officer cannot be said equivalent to the post of Deputy Engineer in true spirit. The technical person should get the technical post to work. Even the Under Secretary in Mantralaya may be having higher grade, he cannot function as a Deputy Engineer or ad hoc Doctor. Thus, as per G.R. dated 01.11.1999, the Government is required to follow certain Rules and procedure at the time of absorption.

Clause 14 of the G.R. dated 01.11.1999 is very relevant paragraph on the point of seniority and the said paragraph is to be read coupled with MCS (Regulation of Seniority) Rules, 1982. Clause 14 and 15 reads as below, (page 54 of O.A.614/14)

“14. Seniority : The employees who have been adjusted or included on equivalent posts, after their appointment on this post, his seniority will be counted from the regular appointment date (otherwise eligible for that). However, in respect of such non adjusting employees the final decision will be taken in respect of their seniority as per advice received from the General Administration Deptt.

15. The Govt. Secretary, General Administration Deptt. (Service) will have all authority or power in respect of authority for including in such surplus employees, on any other department on the existing post or new posts by effecting their transfer on that posts.

20. We also refer to the G.R. dated 10.09.2001 where the subject of 'surplus' is also considered. Clause 5 of the G.R. dated 10.09.2001 is about the absorption of the surplus employees on equivalent post. In Annexure-3 of the said G.R. it states that after considering the survey of the posts surplus employees are to be appointed on an equivalent post, but if at all the employees want to remain on the same Department and ready for demotion then he can be given that choice. The surplus employees can be absorbed in any office of the State.

As per Clause 14 of the G.R. dated 10.09.2001 while appointing the surplus employees whether employee holding technical post are also to be taken into account. The Clause 14 reads as below :

१४. उच्चस्तरीय सचिव समितीने पद भरतीस मान्यता दिल्यानंतर प्रथम अतिरिक्त संवर्ग कक्षाकडे समकक्ष उमेदवार उपलब्ध आहेत किंवा नाही याची खात्री करावी आणि जर अतिरिक्त संवर्ग कक्षाकडे समकक्ष अतिरिक्त कर्मचारी उपलब्ध नसतील तर त्याप्रमाणे त्या कक्षाकडून "ना हरकत प्रमाणपत्र" प्राप्त करून पदोन्नती / सरळसेवेने उमेदवार भरण्यासाठी पुन्हा उच्चस्तरीय सचिव समितीची मान्यता घेण्यात यावी.

Clause 20 and 21 of the G.R. dated 10.08.2001 reads as below,

"20. Seniority in Service The additional employees when absorbed against the similar/equal post, the service seniority of such employees, will be regulated from the date of regular appointment in the post declared additional.

"21. Rights to transfer The Government reserves right to give appointment/ absorption to the persons in additional cadre cell to any other department against the existing post.

21. Our attention was drawn to G.R. dated 26.03.2004 which was issued after taking review of the recruitment of surplus employees as per G.R. dated 10.09.2001 as number of difficulties cropped up in implementation of G.R. In G.R. dated 26.03.2004 in Clause 4, wherein Clause 20 of G.R. dated 10.09.2001 was revised. Clause 4 of G.R. dated 26.03.2004 (page 120 of O.A.No.614/2014) reads as below :

“4. In the Appendix – 3, appended to original Government Resolution dated 10-09-2001, the revised paragraph 20 should be replaced with retrospective effect i.e. 10.09.2001.

Revised Para 20,

“20. Seniority : In this way the officers / employees who are declared additional are given appointment in other departments or Government offices against equivalent/similar posts, in cases of such absorbed employees or officers their seniority will be counted as per the provisions of para 4(1) of notification of General Administrative Department No.SRV-1076/12 dated 21st June 1982. The seniority of such additional cadre Government Employees or Officer who are absorbed against the posts, will be fixed either from the date of absorption in the post, or the date of regular appointment in that cadre.”

Thus by this modification either from the date of absorption of the post or date of regular appointment in that cadre the Government changed the policy.

22. Let us address to the conditions mentioned in the appointment letter dated 05.06.2007 of Mr. Hirde, Applicant in

O.A.No.614/2014 to the post of ARTO. The two conditions are as follows :

- (i) Appointment in Transport Department is a fresh appointment.
- (ii) The seniority of such officer will be counted from the date of taking charge on the post in Transport Department as per the undertaking given by him.

The entire edifices of the argument of learned Advocate Mr. Dere on the principle of approbate and reprobate is based on these two conditions. The learned Advocate Mr. Desai, on instructions has submitted that Mr. Hirde, Applicant did not give undertaking about giving up his earlier seniority and has not accepted that his seniority to be counted from the date of his fresh appointment in Transport Department. We called upon the Government to produce such undertaking, if any. However, the Respondents also did not produce such undertaking and thus the Condition No.1 though it is found in the appointment letter dated 05.06.2007 was not acted upon, remained on paper. Secondly, Condition No.1 that the Transport Department is to be considered as a fresh appointment cannot be said as accepted by the Applicant unless he has given such undertaking to the Department. Conditions No.1 and 2 are to be read together and cannot be interpreted in isolation. The Department cannot put such condition in the appointment letter which is contrary to Rule 4(2)(c) of the MCS (Regulation of Seniority) Rules, 1982. Though the appointment letter is issued in the name of His Excellency the Governor, however it should not be contrary to the MCS Rules. These principles of approbate and reprobate are offshoots of equity and estoppel. Thus a person

cannot have a cake and eat it at the same time. Thus when a person takes charge of the post on the basis of appointment letter is presumed to have accepted all the conditions mentioned therein and on that basis it was argued that once you take the benefit of getting appointed in Transport Department as ARTO then whatever conditions mentioned in the appointment letter should also follow and are binding on the Government servants. The principle of estoppel is to be strictly followed if other person is made to act or take decision on the basis of one's action so that other person should not be put in disadvantageous situation. In the present matter the condition imposed by the State who is in dominant position. The Government servant who is already declared surplus, who was given earlier posting in State Human Rights Department which is not suitable to his educational qualification and competency now is transferred to Transfer Department on equivalent and technical post is not in a position to oppose the condition mentioned in the order. Moreover by joining the Department as per appointment letter Mr. Hirde, Applicant in O.A.No.614/2014 has not put the Government in any disadvantageous position. So far as Mr. Chavan & 2 Ors. Applicants in O.A.No.938 /2016 who are represented by the learned Advocate Mr. Dere are concerned they will go one step down in seniority. However it is not solely by the act of the Applicant himself but due to the MCS (Regulation of Seniority) Rules, 1982 prevail. There is delay in approaching the Tribunal is explained by Mr Hirde, that the Applicant was continuously making various representations to the concerned authority for

giving him appropriate appointment i.e. of technical post after his absorption. Letters are annexed herewith along with the Original Application. Thus he was given the post in Transport Department by way of transfer.

23. The seniority list was published on 12.07.2013 as on 01.01.2013 and the O.A.NO.614/2014 was filed on 09.07.2014. Therefore there is no delay in pointing grievance of seniority by filing the O.A. The submissions of learned Advocate Mr. Dere on the point that the Applicant in O.A.614/2014 Mr. Hirde was ceased to be surplus when he was absorbed first time in State Human Rights Commission, though prima facie were appealing, after proper deliberation we realized that the principle of equivalence, as per the competency suitability and educational qualification is not observed. Subsequently, the Civil Servant is given appropriate posting as per his educational qualification, then earlier posting is to be treated as a stop-gap arrangement when he has put up the grievance and objected to such posting. If the Applicant would have accepted the said posting and would not have said anything about it then the situation would have been different. In the present case, the record shows that the Applicant continuously pursued his representations for equivalence and technical post with the authority.

24. Under such circumstances, we are inclined to allow the O.A.No.614/2014 and hold that the seniority of the Applicant, Mr. Dnyaneshwar Eknath Hirde is to be considered from the date of

his initial appointment i.e. 01.04.1991 on the post of ARTO. O.A 938/2016 stands dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Akn/prk

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