

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 942 OF 2015

DISTRICT : PUNE

1. Shri Deepak Vitthalrao Banait,)
Superintendent, Group-B, Children Home,)
[Sr/Jr], Shantibhavan, Ulhasnagar,)
Dist-Thane.)
2. Shri Ramesh Gangadhar Bangar,)
Superintendent, Group-B,)
Govt. Beggars Home, Malshiras, Dist-Solapur.)
3. Shri Sharad Tulshiram Kurhade,)
Superintendent, Group-B,)
Govt. Pandit Jawaharlal Nehru Udyog Kendra,)
Yerwada, Pune 411 006.)
4. Smt Varsha Shivajirao Patil,)
Superintendent, Group-B,)
Govt. Observation Home for Girls,)
Mundhwa, Pune.)
5. Shri Sanjuraje T. Dudhalkar)
Superintendent, Group-B,)
Govt. after Care Home for Boys,)
Yerwada, Pune 411 008.)
6. Smt Jyoti S. Patil,)
Superintendent, Group-B,)
Govt. Tejswini Mahila Vastigruh)
Kolhapur.)
7. Smt Jyotsna V. Kapoade,)
Superintendent, Group-B,)
Aashakiran Mahila Vasatiriha,)
Karad, Dist-Satgara.)

8. Shri Ganesh D. Wagh,)
 Child Development Project Officer,)
 Group-B, [originally appointed as District)
 Women and Child Development Officer,)
 Group-B], Hingoli, Dist-Hingoli.)
9. Shri Kailash V. Tidake,)
 Superintendent, Group-B,)
 Govt. Children Home, Parbhani,)
 Dist-Parbhani.)
10. Shri Babu H. Nagargoje,)
 District Women & Child Development Officer,)
 Group-B, Dist-Dhule.)
11. Shri Umesh A. Tekale,)
 Superintendent, Group-B,)
 Govt. Boys Home at Wak, Tal-Bhadgaon,)
 Dist-Jalgaon.)
12. Smt Meenakshi D. Bhasme,)
 Superintendent, Group-B,)
 Govt. Aftercare Home, Amravati,)
 Dist-Amravati.)
13. Smt Bharati B. Mankar,)
 Superintendent, Group-B,)
 Govt. Protection / State Home for Women,)
 Nagpur, Dist-Nagpur.)
14. Smt Vijay Sitaram Borate,)
 Superintendent, Group-B,)
 State Home for Women, Nanded,)
 Dist-Nanded.)
15. Shri Mahendra B. Wasnik,)
 Statistical Officer, Group-B,)
 Commissionerate of Women & Child)
 Development, Pune.)
16. Shri Sudhir H. Salvi,)
 District Women & Child Development Officer,)
 Group-B, Amravati, Dist-Amravati.)...**Applicants**

Versus

- | | | |
|----|--|-------------------------|
| 1. | The State of Maharashtra |) |
| | Through Chief Secretary, |) |
| | Mantralaya, Mumbai 400 032. |) |
| 2. | The Principal Secretary, |) |
| | Women & Child Development Department, |) |
| | Mantralaya, Mumbai 400 032. |) |
| 3. | The Principal Secretary, |) |
| | Rural Development Department, |) |
| | Mantralaya, Mumbai 400 032. |) |
| 4. | Chairman, |) |
| | Maharashtra Public Service Commission, |) |
| | Fort, Mumbai. |) |
| 5. | The Principal Secretary, |) |
| | General Administration Department, |) |
| | Mantralaya, Mumbai 400 032. |)... Respondents |

Smt Punam Mahajan, learned advocate for the Applicants.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : **Shri Justice A.H Joshi (Chairman)**
Shri P.N Dixit (Member) (A)

RESERVED ON : **05.02.2019**

PRONOUNCED ON : **13.02.2019**

PER : **Shri Justice A.H Joshi (Chairman)**

J U D G M E N T

1. Heard Smt Punam Mahajan, learned advocate for the Applicants and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. Applicants herein are serving as Superintendent, Group-B under the control of Respondent no. 2.

3. They have approached this Tribunal with following prayer:-

“9(a) That this Hon’ble be pleased to quash and set aside the seniority list dated 19.1.2015 of Group-B post in Women and Child Development Department.

(b) That this Hon’ble Tribunal be pleased to direct the Respondent no. 2 to amend the Recruitment Rules of 2006 and fix separate quota for the feeder cadre Group-B posts, viz. Child Development Project Officers and the Group-B Officers who have been originally appointed in the Women and Child Development Department and only after that the seniority list of Group-B posts in Women and Child Development Department should be prepared and published.”

(Quoted from page 14 of O.A)

4. The present Original Application is opposed by filing detailed affidavit in reply. Rejoinder is also on record.

5. It would be convenient to deal with prayer (b) first. Prayer (b) contains two parts. First part relates to a prayer for mandamus for laying down Recruitment Rules in the manner desired/expected by the applicants. Second part pertains to deferment of promotion, until reframing of seniority list.

6. Second part of prayer (b) is contingent upon prayer (a). Hence, it will be dealt with at a later stage in this judgment.

7. In so far as prayer for amendment of Rules of 2006 is concerned, it is a prayer for mandamus for exercise of legislative function. The State has already come up with a plea that amending the rules is under consideration of the Government. Moreover, by quashing of existing rules of law either enacted or otherwise in vogue is known to the judicial procedure.

8. However, mandamus for legislation does not fall within the ambit prerogative writs to be issued under Article 226 of the Constitution of India. Hence, the prayer for amendment of rules cannot be entertained.

9. In so far as prayer (a) is concerned, applicants' version or grievance in that regard is evident from para 6.8 of the O.A, which reads as follows:-

“6.8 The Petitioners submit that the absorbed Child Development Project Officers from the Rural Development Department are given seniority from their original date of appointment and were shown above the Petitioners, in the provisional seniority list dated 28.8.2014. Some of the Petitioners raised object to the provisional seniority list dated 28.8.2014, showing the seniority as on 1.1.2014, by making representations dated 11.9.2014, 12.9.2014 and 29.9.2014. Copy of the provisional seniority list dated 28.8.2014 and objections dated 11.9.2014, 12.9.2014 and 29.9.2014 are collectively annexed and marked as Annexure-A4.”

(Quoted from page 8 of the O.A)

10. Though applicants have approached this Tribunal openly with a challenge to placement of identified persons, they have elected to refrain from arraying them as Respondents.

11. Any challenge to seniority list without affected party being arrayed as Respondents cannot be entertained for non-joinder of necessary parties.

12. Hence, present O.A does not merit any indulgence on account of want of necessary parties.

13. In view that this Original Application is being rejected on the ground of want of necessary parties, the dismissal of Original Application shall not operate as a bar from reagitating the issue.

14. Hence, Original Application is dismissed with no order as to costs.

(P.N Dixit)
Member (A)

(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 13.02.2019
Dictation taken by : A.K. Nair.