

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO.342/2009.**

**(D.B.)**

**WITH**

**CIVIL APPLICATION NO.100/2017**

Madhukar Ganpatrao Thakre,  
Aged about 40 years,  
Occ-Govt. Service,  
R/o Qtr. No.D-23, Civil Lines,  
Near Panchayat Samiti, Wardha.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Revenue,  
Mantralaya, Mumbai-32.
2. The Collector,  
Wardha.
3. Shri R.M. Kamble,  
Aged Major,  
Occ- Awwal Karkun,  
R/o O/o Sub-Divisional Officer, Hinganghat,  
Distt. Wardha.
4. Shri D. B. Sorte,  
Aged Major,  
Occ- Junior Clerk,  
R/o Tehsil Office, Arvi,  
Distt. Wardha.
5. The Commissioner,  
Nagpur Division, Civil Lines,  
Nagpur.

**Respondents**

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Shri M.V. Mohokar, the Ld. Advocate for the applicant.  
Shri A.M. Ghogre, the Ld. P.O. for respondents 1,2 & 5.  
Shri P.R. Pudke. Ld. Counsel for respondent Nos. 3 and 4.

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**Coram:-Shri J.D. Kulkarni, Vice-Chairman (J)  
and  
Shri Shree Bhagwan, Member (A)**

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### **JUDGMENT**

(Delivered on this 27<sup>th</sup> day of April 2018.)

**Per:-Vice-Chairman (J)**

Heard Shri M.V. Mohokar, the learned counsel for the applicant and Shri A.M. Ghogre, the learned P.O. for the respondent Nos. 1, 2 and 5. Shri P.R. Pudke, the learned counsel for respondent Nos. 3 and 4.

2. In this O.A., the applicant has prayed that promotion order dated 1.4.2005 (Annexure A-10) issued by respondent No.3 be quashed and set aside and the respondent No.2 be directed to promote the applicant w.e.f. 1.4.2005 being seniormost in the category of Special Backward Class (SBC). The applicant has also claimed the seniority list for the year 2005-2006 published by respondent No.2 ((Annexure A-8 and A-11) be also quashed and set aside and the promotion granted to the respondent No.3 on the basis

of said seniority list to the post of Awwal Karkun be quashed and set aside. He is also claiming directions to respondent Nos. 1 and 2 to consider his case for promotion to the post of Awwal Karkun as per seniority list as on 1.1.2005, since he is seniormost candidate from SBC category.

3. During the pendency of the application, the O.A. has been amended and the applicant has prayed by way of amendment the following reliefs:-

**“7 (A-i):** Quash and set aside the promotion order dated 26.3.2015 of respondent No.3 and the respondent No.2 be directed to promote the applicant being seniormost candidate in S.B.C. category.

**7 (A-ii):** Quash and set aside the seniority list for the year 19.11.2014 published by respondent No.2 and also quash and set aside the promotion granted to respondent No.3 on the basis of seniority list.”

4. From the facts on record, it seems that the applicant was appointed as Junior Clerk under the S.B.C. category on 5.4.1999. Seniority list of Junior Clerks on the establishment of respondent No.2 was published on 1.1.2002, in which the applicant

was shown at Sr. No.174 under S.B.C. category, whereas the respondent No.3 was shown at Sr. No. 126 under Open category. As per the seniority list as on 1.1.2005, respondent No.3 was shown at Sr. No. 91 in SBC category and, therefore, the applicant filed objection on 21.3.2005. In the meantime, respondent No.2 granted promotion to respondent No.3 from the post of Junior Clerk to the post of Awwal Karkun on 1.4.2005.

5. The respondent No.4 was appointed under ST category on 28.9.2005. In the seniority list of Junior Clerks published on 1.1.2005, respondent No.4 was at Sr. No.99, but under SBC category. The applicant again filed objection to the said seniority of respondent No.4 vide representation dated 21.3.2005. According to the applicant, as per G.R. dated 16.5.2007, when the change in caste category is made, benefit of reservation will not be retrospective.

6. According to the applicant, caste of respondent No.4 is included under SBC category vide G.R. dated 7.12.1994, though earlier he opted for reservation showing himself as ST category candidate. The appointment of respondent No.4 was after 15.6.1995 and, therefore, as per G.R. dated 7.12.2006, he is not entitled for any protection. The respondent No.2 is, however,

showing favour to respondent Nos. 3 and 4 and trying to manipulate the seniority of Junior Clerks so as to grant promotion to respondent Nos. 3 and 4 and, therefore, the applicant was constrained to file this O.A.

7. By way of amendment, the applicant has claimed that the respondent No.3 is appointed under Open category, but has been shown under SBC category and is shown at Sr. No.66 in the seniority list, whereas the applicant is at Sr. No.174, though he was appointed from SBC category itself. In spite of the fact that the applicant is the senior most candidate in SBC category, the respondent No.2 granted promotion to respondent No.3 to the post of Naib Tehsildar and, therefore, said promotion is illegal.

8. The respondent No.2 i.e. the Collector, Wardha has filed affidavit in reply. It is stated that the respondent No.3, although belongs to SBC category, at the time of his appointment, the SBC category was not in existence and, therefore, he was appointed from Open category. Subsequently, the Government orders were issued treating the caste 'Sali' as a caste from SBC category. The respondent No.3, therefore, has submitted an application along with caste certificate showing his caste as 'Sali' which was included in SBC category and, therefore, by necessary amendment, respondent

No.3 was treated as a candidate from SBC category and his name was shown at Sr. No.91 in the seniority list as on 1.1.2005 being eligible for promotion from SBC category and hence he was promoted as Awwal Karkun.

9. As regards respondent No.4, it is stated that he was appointed on 28.9.1995 under ST category. Subsequently, he produced the certificate showing his caste as SBC and as such he was considered in SBC category and he being senior to the applicant, was kept at a proper place. Though, the applicant raised objection to his seniority, he was intimated that respondent No.4 belongs to SBC category and, therefore, his seniority was properly fixed. The respondent No.4 has also passed the departmental examination well before the applicant i.e. in the year 1999. As against this, the applicant passed the said examination in 2001. The respondent No.4, therefore, became senior to the applicant. It is denied that the respondent authorities have made manipulation while preparing the seniority list.

10. The respondent Nos. 3 and 4 have also filed their affidavit in reply alongwith documents. From their affidavit in reply, it seems that the applicant has admitted in para Nos. 4.1 and 4.2 of the O.A. that he belongs to Govari caste which comes under SBC

category. He was appointed as a Junior Clerk vide order dated 5.4.1999. Even Govari caste was listed under Open category prior to declaration that it comes under SBC category.

11. It is stated that respondent No.3 Shri R.M. Kamble has been appointed as a Junior Clerk vide order dated 28.12.2014 on compassionate ground in the vacant post, though he belongs to Sali by caste which was earlier Open category. But subsequently vide G.R. dated 13.6.1995, the said caste was included in SBC category and, therefore, the respondent No.3 was taken under SBC category. As regards respondent No.4, it is stated that Shri D. B. Sorte, i.e. the respondent No.4 was appointed under ST category, but he could not get caste validity certificate from Caste Scrutiny Committee, as he belongs to Koshti caste, which was categorized as SBC category under the Government Resolution dated 13.6.1995.

12. The respondents have given in detail the position as regards the applicant and other respondents in para Nos. 9 and 10 of the affidavit in the reply of respondent No.3. Said para Nos. 9 and 10 of the affidavit in reply of respondent No.3 is reproduced for the purpose of clarity as under:-

<b>Particulars</b>	<b>Thakare M.G.</b>	<b>Kambale R.M.</b>	<b>Sorte D.B.</b>
Joining Dates	13.4.1999	28.12.1994	28.9.1995
SSD Exam. Passed	1.8.2001	30.7.1999	26.9.1998
RQT Exam. Passed	26.4.2003	27.10.1999	27.10.1999
Seniority List No. in 2002	174	126	134
Seniority List No. in 2003	165	118	126
Seniority List No. in 2004	157	113	121
Seniority List No. in 2005	135	91	99
Seniority List No. in 2006	110	AK	37
Seniority List No. in 2007	76	AK	37
Caste	Gowari	Sali	Koshti
Category as per G.R. dt.6.11.1974	Open	OBC	OBC
Category as per G.R. dt.7.12.1994, 13.6.1995 & 15.6.1995.	SBC	SBC	SBC
Date of promotion as A.K.	---	1.4.2005	2.7.2009
Joined as A.K.	---	11.4.2005	9.7.2009.

That, the caste of the applicant and respondent Nos. 3 and 4 was for the first time categorized as SBC vide above mentioned G.R. dated 7.12.1994. Again, as seen from the G.R. dated 13.6.1995, implementation of the G.R. dated 7.12.1994 was immediately stayed by the G.R. dated 2.1.1995. However, this stay was again vacated by the G.R. dated 13.6.1995 and also the

directions were issued for the first time to issue caste certificates to these people as SBC>

Before these directions were issued by the Government, respondent No.3 had already joined as Jr. Clerk on compassionate ground on 28.12.1994 and therefore, he has rightly requested to the Collector, Wardha to correct his caste and category as per the revised G.R. dated 13.6.1995. As soon as he has submitted the caste validity certificate as SBC to the Collector, Wardha, the Collector, Wardha made necessary correction in the seniority list, in 2004. A copy of caste validity certificate of respondent No.3 is at Annexure R-3-3.

Similarly, when respondent No.4 Shri D.B. Sorte was selected on 20.12.1994 and joined as a Jr. Clerk on 28.9.1995, his caste was categorized as ST and accordingly he was issued a caste certificate by the then Executive Magistrate, Arvi. Therefore, he was selected against the post reserved for ST. But, he could not submit the old record as demanded by the Caste Scrutiny Committee and, therefore, the said Committee has issued him a caste validity certificate as SBC instead of ST. On submitting the said certificate to the Collector, Wardha, necessary correction in the seniority list is

made by the Collector, Wardha in 2005. A copy of caste validity certificate of respondent No.4 is at Annexure R-3-4.

Thus, the respondent Nos. 3 and 4 are SBC and they have joined the service as Jr. Clerk before the applicant had joined and they have passed the departmental examinations before the applicant had passed and the corrections and amendment made by the Collector, Wardha, is within the powers under Rule 7 of the M.C.S. (Regulation of Seniority) Rules, 1982. The seniority / gradation lists prepared by the Collector, Wardha are according to the provisions of law and are legal and proper and are not liable to be quashed / cancelled.

The copies of the seniority lists published by the Collector, Wardha in the year 2002, 2003, 2005 and 2006 are submitted by the applicant as Annexure A-6, A-7, A-8 and A-11 respectively. Therefore, the same are not again annexed herewith. However, the copies of the seniority lists published by the Collector, Wardha in the years 2004 and 2007 are placed at Annexure R-3-5 and Annexure R-3-6 respectively.

These lists show that in the seniority / gradation list of 2004 and onwards, respondent No.3 is shown as SBC, whereas in

the seniority / gradation list of 2005 and onwards, respondent No.4 is shown as SBC.

It is also a settled law that, the Government has every right to correct or amend the seniority list of employees into that cadre. It is denied that there is any manipulation done in preparing the seniority list of 2005, i.e., as on 1.1.2005 or in changing the caste-category of the respondent Nos. 3 and 4. It is also denied that there is any undue favour done to them in promoting these respondents. The allegations made by the applicant in this regard is unfounded, baseless, misconceived and devoid of merit and has no substance and so it is liable to be rejected and the O.A. is likely to be dismissed *ab initio*.”

13. Thus, from the pleadings as referred to above, we are satisfied that the applicant was appointed to the post of Junior Clerk on 13.4.1999, whereas the respondent No.3 Shri Kamble was appointed on the same post on 28.12.1994, whereas the respondent No.4 Shri Sorte was appointed on 28.9.1995. The Sub-Service Departmental Examination (SSD Examination) was passed by the applicant on 1.8.2001, the said examination was passed by respondent No.3 Shri Kamble on 30.7.1999 and it was passed by respondent No.4 Shri Sorte on 26.9.1998. Similarly, the RQT

examination was passed by the applicant on 26.4.2003, whereas it was passed by respondent No.3 Shri Kamble on 27.10.1999 and by respondent No.4 Shri Sorte on 27.10.1999. In the seniority list from 2002 upto 2007, the applicant is shown junior to respondent Nos. 3 and 4. Thus, right from the beginning, respondent Nos. 3 and 4 were senior in all respects to the applicant in the gradation list and seniority list and they have also passed the requisite qualifying examination well prior to the applicant and, therefore, naturally, their claim for promotion was considered earlier. By virtue of change of category of the respondent Nos. 3 and 4, seniority number of the applicant has not changed in any manner.

14. The learned counsel for the applicant has placed reliance on the G.R. dated 16.5.2007 and a decision taken vide this G.R. is as under:-

“१) खुल्या प्रवर्गातून शासकीय सेवेत नियुक्त झालेल्या मागासवर्गीय उमेदवाराने त्यांच्या नियुक्तीनंतर कालांतराने मागासवर्गीय आरक्षणाचे फायदे मिळविण्यासाठी जर जाती प्रमाणपत्रासह अर्ज केला असेल तर त्या उमेदवाराने ज्या तारखेला जातीचे प्रमाणपत्र कार्यालयाकडे सादर केले आहे. त्या तारखेपासून पुढे आरक्षणाचे फायदे जातीच्या दाव्याची वैधता तपासून झाल्यावर देय ठरतील. (भूतलक्षी प्रभावाने लाभ देय ठरणार नाही.)”

२) इतर मागास प्रवर्गाला पदोन्नतीमध्ये आरक्षण नसल्याने इतर मागासवर्ग प्रवर्गातून यापूर्वीच शासन सेवेत प्रविष्ट झालेल्या व अध्यापहि वैधता तपासणी न झालेले महाराष्ट्र राज्यातील मूळ निवासी

असलेल्या उमेदवाराची पदोन्नतीसाठी वैधता तपासणीची आवश्यकता नाही. तसेच सेवांतर्गत आश्वासित प्रगती योजनेच्या अंमलबजावणीसाठी संबंधित अधिकारी / कर्मचाऱ्यांकरिता जात वैधता प्रमाणपत्र सादर करणे बंधनकारक आलेले नाही. तथापि, सरळसेवेने नियुक्तीनंतर जाती वैधता तपासणी करणे सर्व मागास वर्गातील उमेदवारांकरिता बंधनकारक आहे.

३) एखाद्या जातिचा प्रवर्ग शासनाच्या धोरणात्मक निर्णयानुसार बदलण्यात आला असेल व त्या जातीचे प्रमाणपत्र/ वैधता तपासणी त्या जातीच्या उमेदवाराकडे असेल तर सदर उमेदवारास पुन्हा सर्व कागदपत्र देऊन नव्याने जातीचे प्रमाणपत्र काढण्याची आवश्यकता नसून जुने जातीच्या प्रमाणपत्र, उप-जिल्हाधिकारी कार्यालयात जमा करून शासनाच्या, शासन निर्णयानुसार त्यांना नवीन प्रवर्गाच्या जातीचे प्रमाणपत्र त्वरित देण्यात यावे व जुन्या जातीच्या प्रमाणपत्राची वैधता तपासणी झाली असल्यास पुन्हा नवीन जातीच्या प्रमाणपत्राची वैधता तपासणी करणे आवश्यक नाही.

४) जर एखादा मागासवर्गीय उमेदवार खुल्या प्रवर्गातून सेवेत आला असेल व त्याने कधीही, कुठल्याही स्तरावर, कुठल्याही प्रकारचे मागासवर्गीय आरक्षणाचे फायदे घेतले नसतील, असा उमेदवार आरक्षणाच्या लाभाकरिता मागणी करत नसेल तर अशा उमेदवाराच्या जाती प्रमाणपत्राची वैधता तपासणी करण्याची आवश्यकता नाही. मात्र आरक्षणाच्या लाभाची मागणी करणाऱ्या उमेदवाराचा जाती दावा तपासणे आवश्यक राहिल."

15. Plain reading of the aforesaid G.R. clearly shows that if a candidate appointed from Open category, claims benefit of the caste, such benefits shall be given from the date of validity of caste certificate and not retrospectively. However, it is clearly mentioned that if a candidate of a particular caste is considered as eligible for the benefit of facilities for a particular caste, subsequently vide order of the Government, then he need not produce the caste

validity certificate. In the present case; admittedly, the respondent No.3 belongs to 'Sali' caste. However when he was appointed, the said caste was not included under the SBC category. By virtue of Government decision, said caste subsequently was considered under 'Sali', whereas respondent No.4, though belongs to ST category (Koshti), the said caste was subsequently added in the category of SBC. In such circumstances, only because their caste validity was verified subsequently or they were included in the list of a particular caste subsequently, it cannot be said that they will lose their seniority under a particular caste. The seniority list is common, in which candidates are shown from various castes / categories. Admittedly, the applicant was junior to both the respondent Nos. 3 and 4 and the respondent Nos. 3 and 4 became eligible for being promoted prior to the applicant, since they acquired requisite qualification by passing requisite qualifying examination prior to the applicant. Therefore, they were rightly included in the seniority list under a particular caste and were given promotion being senior to the applicant. We, therefore, do not find any illegality in the said process and, therefore, we are satisfied that the claim of the applicant has no merit. Hence, we proceed to pass the following order:-

**ORDER**

- (i) The O.A. stands dismissed with no order as to costs.
- (ii) C.A. No.100/2017 also stands disposed of.

(Shree Bhagwan)  
Member (A)

(J.D.Kulkarni)  
Vice-Chairman (J)

Dt. 27.4.2018.