

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.459/2017. (D.B.)

Vijaysingh Jaipalsingh Gautam,
Aged about 50 years,
Occ- Service,
R/o Rani Laxmibai Ward,
Khamb Talao, Bhandara.

Applicant.

-Versus-

1) The State of Maharashtra,
Through its Secretary,
Department of Revenue & Forests,
Mantralaya, Mumbai-400 032.

2) The Divisional Commissioner,
Nagpur Division, Civil Lines, Nagpur.

3) The Collector,
Bhandara.

Respondents

ORIGINAL APPLICATION NO.503/2017.

Dinesh Harichandra Nandanwar,
Aged about 49 years,
Occ- Service,
R/o New Friends Colony,
Khat Road, Bhandara.

Applicant.

-Versus-

1) The State of Maharashtra,
Through its Secretary,
Department of Revenue & Forests,
Mantralaya, Mumbai-400 032.

2) The Divisional Commissioner,
Nagpur Division, Civil Lines, Nagpur.

3) The Collector,
Bhandara.

Respondents

Shri R.V. Shiralkar, the learned counsel for the applicants.
Shri P.N. Warjekar, the learned P.O. for the respondents.

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

ORAL JUDGMENT

Per: Member (J)

(Delivered on this 4th day of July 2019.)

Heard Shri R.V. Shiralkar, the learned counsel for the applicants and Shri P.N. Warjekar, the learned P.O. for the respondents.

2. As the issues involved in both the applications are similar, therefore, both the O.As are decided by this common judgment. Facts are as under:-

3. Both the applicants were appointed in service as Steno-Typist vide order dated 27.12.1993. Both the applicants passed Sub-service Examination and Revenue Qualifying Examination, consequently, they were promoted as Senior Clerks vide order dated 31st May 2006. So far as seniority of Senior Clerks was concerned, so many Senior Clerks were disappointed, therefore, O.A. Nos. 93/2015, 149/2015, 153/2015, 154/2015 and

150/2015 were filed. This Tribunal at Nagpur Bench decided all these O.As vide order dated 14.6.2016 and issued directions to prepare seniority list w.e.f. 1999 to 1.1.2016. As per the directions issued by this Tribunal, the department prepared provisional seniority list of Senior Clerks and the name of the applicant Shri Vijaysingh Gautam was at Sr. No.301 and the applicant Dinesh Nandanwar was at Sr.No.310.

4. The respondents thereafter prepared final seniority list. The applicants were surprised as they were placed at Sr. Nos. 384 and 385.

5. It is contention of the applicants that, both the applicants became Senior Clerks in the year 2006 and considering their entry in the cadre of Senior Clerks, their seniority should have been fixed. It is submitted that in violation of the Service Rules, the respondents have fixed the seniority of applicants. Therefore, the seniority list be corrected by issuing necessary directions.

6. The respondents have resisted both the O.As by submitting their reply which is at page No.143 (in O.A. No.459/2017) and at page No. 143 (in O.A. No.503/2017). Both the applications are attacked mainly on the ground that, both the applicants were appointed in service on the post reserved for ST and caste validity

certificates were not produced by both the applicants. It is further submitted by the respondents that, though the applicants did not produce their caste certificates, they were considered fit for promotion, they were promoted. It is contended that when the seniority was fixed, the caste validity certificates were not produced by both the applicants, consequently, they were placed below the Senior Clerk who had complied legal requirement.

7. It is submitted that as per the circular issued by the Government of Maharashtra dated 18.5.2013, it was necessary for the applicants to produce caste validity certificates, but it was not done.

8. The respondent No.3 has filed affidavit which is at page No.186. In this affidavit, it is contention of the respondents that initial appointments of the applicants are illegal. It is submitted that the applicant Shri Vijaysingh Gautam produced his caste validity certificate on 1.12.2015 and as per this caste validity certificate, the applicant was not belonging to ST, but the applicant was belonging to NT (B) (Bairagi). Similarly, in the case of the applicant Shri Dinesh Nandanwar, affidavit is filed by respondent No.3 and it is specifically contented by the respondent No.3 that the applicant Shri Dinesh Nandanwar submitted his caste validity certificate in the year 2018

and as per this certificate, Shri Dinesh Nandanwar is SBC. On the basis of this material, it is contention of the respondents that, both the applicants have secured entry in the service, claiming to be STs, but in fact, they are not ST, therefore, services of both the applicants are required to be terminated in view of Section 10 of the Maharashtra SC, ST, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, OBCs and SBC category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

9. After hearing the submissions of both the sides, we came to the conclusion that the applicants joined in service in 1993. They were promoted in 2006. Therefore, as per Service Rules applicable to State Govt. employees, their seniority in the cadre of Senior Clerk should have been fixed as per their dates of appointment in the cadre of Senior Clerk. But in this case, material aspect is that the respondents have raised contention that the entry of applicants in service is itself illegal. These legal issues are considered by the Hon'ble Supreme Court in case of **Chairman and Managing Director, Food Corporation of India V/s Jagdish, 2017 (4) Mh.L.J. 898**. Same issue was considered by the Division Bench of Bombay High Court in case of **Organization of Rights of Tribals and others V/s State of Maharashtra, W.P.No. 6247/2015 decided**

on 1.2.2018. In case of **Chairman and Managing Director, Food Corporation of India V/s Jagdish, 2017 (4) Mh.L.J. 898** (supra), the Hon'ble larger Bench of the Apex Court has held that, if a candidate is not belonging to the category of SC, ST etc. and has secured appointment, then as per Section 10 of the Act, his service cannot be protected and if any protection is given, then it will be a fraud on the Constitution. In view of this situation, we think it suitable to direct the respondents to decide whether entry of the applicants in service is legal or illegal in view of Section 10 of the Act No. 23 of 2001 and if entry of the applicants is legal, then fix their seniority as per the provisions under Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 as per the date of promotion order.

10. In view of above directions, both the O.As stand disposed of. No order as to costs.

(A.D. Karanjkar)
Member (J)

(Shree Bhagwan)
Vice-Chairman

I affirm that the contents of the PDF file Order are word to word same as per original judgment.

Name of Steno/PA : P.D. Girhale, Personal Assistant

Court Name : Court of Hon'ble VC and Member (J)

Judgment signed on : Pronounced on 4th July 2019
and pronounced on and Signed on 4th July 2019.
Date

Uploaded on date : 5th July 2019.
