

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 720 OF 2023**

**DISTRICT:- NANDED**

Raju S/o Ramakantrao Patle,  
Age: 47 years, Occupation: Service as  
Dy. Education Officer, R/o: Siddhi  
Pride Apartment, Flat No. 305,  
Chhatrapati Chowk, Narhar Nagar,  
Nanded, Tq. & Dist. Nanded.

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**APPLICANT**

**V E R S U S**

- 1) The State of Maharashtra  
Through: Principal Secretary,  
Department of School Education  
& Sports, Mantralaya, Mumbai-32.
- 2) Additional Chief Secretary (Services)  
General Administration Department (12),  
Mantralaya, Mumbai-32.
- 3) The Commissioner (Education),  
Maharashtra State, Central Building,  
Dr. Anni Besant Marg,  
Pune-411 001.

.. **RESPONDENTS**

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APPEARANCE : Shri Sachin Deshmukh along with Shri  
Harish S. Bali, learned counsel for  
the applicant.

: Shri I.S. Thorat, learned Presenting  
Officer for the respondent authorities.

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**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN  
AND  
SHRI VINAY KARGAONKAR, MEMBER (A)**

**DATE : 02.11.2023**  
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**ORDER**

(Per : Justice Shri P.R. Bora, Vice Chairman)

Heard Shri Sachin Deshmukh along with Shri Harish S. Bali, learned counsel for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondent authorities.

2. The applicant has preferred the present Original Application seeking quashment of the seniority list dated 21.07.2023 and consequent communication dated 24.07.2023. The applicant has also sought declaration to the effect that he is eligible to be promoted as an Education Officer and equivalent posts in Maharashtra Education Services Group-A (Administrative Branch) and for that purpose issue necessary directions.

3. State of Maharashtra had issued an advertisement No. 019/2008 for the recruitment of 99 posts of Deputy Education Officer and equivalent posts in Maharashtra Education Services, Group-B (Administrative Branch) on 8.2.2008. In response to the said advertisement the applicant applied for the said post and participated in the said recruitment process. However, because of the litigation in respect of reservation for the candidates belonging to Special

Backward Class (SBC), selection of the applicant and other 6 similarly situated candidates was deferred. The Maharashtra Public Service Commission (for short 'the Commission') vide its Notification dated 1.1.2011 recommended the names of 92 candidates for their appointment. The result of 7 candidates was reserved as mentioned hereinabove including that of the applicant because of aforesaid litigation. The candidates who were recommended by the Commission vide aforesaid Notification dated 1.1.2011 were given appointments on 9.6.2011 onwards and were directed to join within one month from the date of the said order. Accordingly, the recommended candidates joined on their respective posts.

4. At the relevant time the issue whether candidate belonging to Special Backward Classes (SBC) can be given reservation was pending before the Maharashtra Administrative Tribunal, as well as, before the Hon'ble High Court. Said issue was resolved in the year 2013 and the Commission, therefore, vide its communication dated 14.11.2013 recommended 5 candidates for their appointment. The applicant's name was included in the said list of 5 candidates at Sr. No. 4. The applicant accordingly came to be appointed and started discharging his duties on the said post. The appointment order

in favour of the applicant was issued on 4.3.2014 vide Government Resolution of the said date and accordingly on 12.3.2014 the applicant resumed the duties. The consolidated merit list containing the names of 99 candidates was published on 20.6.2014.

5. It is the grievance of the applicant that in the seniority list published of the Deputy Education Officers, Maharashtra Education Services – Group B (Administrative Branch), on 23.11.2021 as on 1.1.2017 he was placed much below of his entitlement. In the seniority list so published the applicant was shown at Sr. No. 454. The applicant raised an objection to the said seniority list on 30.11.2021. The applicant claimed in his said representation that in the list of seniority his name deserves to be included according to his rank in the merit list which was published on 20.6.2014. Responding to the objection raised by the applicant, the Joint Director of Education (In-charge) vide communication dated 25.10.2022 determined the entitlement of the applicant in accordance with the Maharashtra Civil Services (Regulation of Seniority Rules), 1982 and identified the place of the applicant in the seniority list after the officer namely Shri Sachin G. Pardeshi, who was

placed at Sr. No. 319 in the said seniority list and who was in the order of merit placed above the applicant.

6. In the additional provisional seniority list (अतिरिक्त तात्पुरती जेष्ठता सूची) of 1.1.2023 published on 21.4.2023 (Page-90 of p.b.) the name of the applicant is, however shown at Sr. No. 164. According to the applicant, it is contrary to the provisions, as well as, the recommendation which was made by the Joint Director vide communication dated 25.10.2022. On 2.5.2023 (page-88) the applicant, therefore, raised objection bringing out to the notice of the competent authority the events in their sequence and requested for placing him at the appropriate place in the list of seniority. The request so made was, however, not considered and in the list which was prepared of the officers for the purpose of promotion to the post of Education Officer on 24.7.2023, the name of the applicant was not included.

7. Thereafter on 1.8.2023 from 80 officers the information was sought for the purpose of making promotion to the post of Education Officer in Group-A. It is the grievance of the applicant that since he has not been properly placed in the seniority list, his chances for getting further promotion as Education Officer are adversely affected. The applicant has,

therefore, approached this Tribunal with the prayers as aforementioned.

8. Shri Sachin Deshmukh, learned counsel appearing for the applicant elaborately explained the provisions under the M.C.S. (Regulation of Seniority) Rules, 1982. Learned counsel referring to rules 4 & 5 of the aforesaid rules submitted that the *inter se* seniority of direct recruits in one batch shall be determined according to their ranks in the order of preference arranged at the time it was published. Learned counsel pointed out that in the select list prepared and published on 20.6.2014 the name of the applicant was at Sr. No. 89. Learned counsel submitted that had there been no litigation the name of the applicant would have been recommended for his appointment along with 92 candidates, who were recommended for their appointment on 1.1.2011. Learned counsel submitted that ultimately the dispute was resolved and the names of candidates who were not earlier recommended though their names were there in the select list were recommended by the Commission in the year 2013.

9. Learned counsel relied on the judgment in the case of **Balwant Singh Narwal and Ors. Vs. State of Haryana & Ors., (2008) 7 SCC 728**. Learned counsel also relied upon another

judgment of the Hon'ble Supreme Court in the case of **C. Jayachandran Vs. State of Kerala & Ors., (2020) 5 SCC 230.** Learned counsel submitted that in view of the law laid down in the aforesaid judgments and having regard to the specific provision under the Regulation of Seniority Rules, 1982 the present O.A. be allowed.

10. Respondent No. 2 has filed affidavit in reply in the matter. The said respondent has opposed the contentions raised in the O.A., as well as, prayers made therein. According to this respondent, the person who hasn't entered into the Government service cannot be awarded the deemed date of appointment prior to his joining into the Government service. It is further contended that the person who hasn't served on the post cannot be granted with the benefits of service of the said period. It is further contended that initially recommended candidates were appointed on 9.6.2011 and according to the clause (a) of sub-rule (2) of Rule 4 of the M.C.S. (Regulation of Seniority) Rules, 1982, the *inter se* seniority of direct recruits selected in one batch is determined according to the rank of the recruit in the merit list forwarded by the MPSC, provided the candidates join duty within the prescribed period. It is further contended that the MPSC in one batch recommended 92

candidates and the name of the applicant was not there in the said list. It is further contended that name of the applicant was recommended by the MPSC on 14.11.2013. Respondent no. 2 also referred to the definition of 'batch' for the said purpose. According to respondent no. 2 therefore there were two separate batches of direct recruits and the applicant was recommended in second batch. In the circumstances, according to respondent no. 2, the applicant cannot claim parity with the candidates recommended in the first batch and cannot be given the deemed date as has been prayed for by the applicant.

11. Shri I.S. Thorat, learned Presenting Officer appearing for the respondent authorities reiterated the contentions as are raised in the affidavit in reply and submitted that no error has been committed in placing the applicant in the seniority list. Learned P.O. submitted that since the applicant's name was referred in the second batch, he cannot claim for inclusion of his name and parity with the candidates recommended in the first batch. He, therefore, prayed for dismissal of the O.A.

12. We have duly considered the submissions made on behalf of the applicant and the respondents. We have perused the documents filed on record. It is not in dispute that the



applicant had applied for the post of Deputy Education Officer in response to the advertisement published on 8.2.2008. It is further not in dispute that the applicant successfully underwent the recruitment process but his result was withheld along with other six candidates. While recommending the names of 92 candidates vide its communication dated 1.1.2011 the commission has specifically noted in clause 04 thereof that since the result of 07 candidates has been withheld, the merit numbers of the candidates, whose recommendation are made, are not mentioned in the said list. It was further stated that the consolidated merit list will be published after declaration of the result of said 7 candidates. Such consolidated list was for the first time published by the Commission on 20.6.2014 containing the names of all 99 candidates in order of merit. In the said consolidated merit list the candidate namely Sachin G. Pardeshi is placed at Sr. No. 88; whereas name of the applicant is at Sr. No. 89 and one Pawar Ratansing Ramsing is placed below the applicant at Sr. No. 90.

13. In the seniority list published of the Deputy Education Officers on 23.11.2021 as on 1.1.2017, the applicant was placed at Sr. No. 454. Perusal of the said seniority list reveals that the applicant has been placed in the said seniority

list at Sr. No. 454 on the basis of the date of his order of appointment i.e. 12.3.2014. It is the matter of record that the applicant raised objection in respect of the said seniority list on 30.11.2021. The objection so raised was duly considered by the Joint Director of Education, In-charge, and accordingly he had recommended to place the applicant in the list of seniority below Sachin Pardeshi and above Ratansing Pawar. Despite such recommendation by the Joint Director of Education, in the seniority list published on 21.4.2023 the name of the applicant is shown at Sr. No. 164; whereas it ought to have been at Sr. No. 110 i.e. immediately below the name of Sachin Pardeshi, who is shown at Sr. No. 109. Obviously, therefore, name of the applicant is not included in the list of candidates from whom the Joint Director, Education vide his communication dated 1.8.2023 has called for information necessary for their promotion.

14. As is revealing from the affidavit in reply filed on behalf of the respondents, the seniority of the applicant is determined on the basis of the date of his joining i.e. 12.3.2014. As has been argued by the learned counsel for the applicant in view of the provisions under the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 and more particularly

Rules 4 & 5 thereof, the *inter se* seniority of the Deputy Education Officers recruited in pursuance of the advertisement No. 019/2008 must have been determined according to their ranks in the order of preference arranged by the Commission in the consolidated merit list published on 20.6.2014. Learned counsel has relied upon the judgment of the Hon'ble Apex Court in the case of **Balwant Singh Narwal and Ors. Vs. State of Haryana & Ors.**, (cited supra) in support of his contentions.

15. The facts involved in the case of **Balwant Singh Narwal and Ors. Vs. State of Haryana & Ors.**(cited supra) were thus :

(i) The Haryana Public Service Commission had issued an advertisement in January, 1992 inviting applications for 18 posts of temporary Principals in Higher Secondary Schools. The advertisement made it clear that the number of posts advertised was subject to variations to any extent. On 1.6.1993, the State Education Department made a fresh requisition to the Commission in regard to additional vacancies, thereby increasing the posts to be filled to 37. Respondents 4 to 16 were applicants against the said advertisement and underwent the process of selection. The Commission declared the merit list of 30 selected candidates on 30.9.1993 (published on 1.10.1993), which included Respondents 4 to 16. However, before the State Government could make appointment in terms of the said

list, a non-selected candidate filed WP No.12700/1993 contending that only 18 posts were notified and the Commission could not make recommendations for selection of 30 candidates. The said writ petition was allowed by a learned Single Judge of the Punjab & Haryana High Court on 4.4.1994 and the recommendations in excess of the 18 vacancies were quashed on the ground that the Commission could not make recommendations beyond the number of posts advertised.

(ii) A Division Bench of Punjab & Haryana High Court dismissed the appeal against the judgment of the learned Single Judge on 18.1.1999. In the meanwhile, in view of the order of the learned Single Judge, the State Government appointed only 16 candidates from the list of 30 by order dated 2.6.1994. The State Government appointed only 16 as against 18 permitted by the High Court, not for want of vacancies but on account of some technical difficulty in appointing other two candidates.

Respondents 4 to 16 who were denied appointments, though their names were in the select merit list of 30 candidates, challenged the order dated 18.1.1999 of the Division Bench before the Apex Court. The Apex Court by interim order dated 10.5.1999 directed that 12 vacancies may not be filled until final disposal by the said Court. Ultimately, the Apex Court disposed of the appeals filed by respondents 4 to 16 by order dated 6.12.1999, reversing the decision of the High Court and dismissing the writ petition before the High Court. The Apex Court held :-

*“In this view of the matter, on the admitted position that on the date of the recommendation made by the Public Service Commission on 1.10.1993 the Government’s requisition was for the posts more than 18 (in fact 37), we see no bar on the power of the Commission in recommending 30 names which was the subject-matter of challenge before the High Court. In fact the very judgment itself on which the learned Single Judge has relied upon in para 10 indicates the said position. Accordingly, we set aside the impugned order passed by the learned Single Judge and affirmed by the Division Bench in appeal and hold that the recommendations made by the Commission are in accordance with law and therefore, all the 30 names recommended are entitled to be appointed.”*

(iii) In pursuance of the aforesaid judgment of the Hon’ble Apex Court High Court, the State Government by order dated 26.5.2000 appointed respondents 4 to 16 as Principals. The said respondents gave several representations for fixing their seniority with reference to the merit list published by the Commission on 1.10.1993. The State Government considered and accepted the request of the said respondents and fixed their position immediate after 16 candidates, who were appointed from the same merit list on 2.6.1994. As a result, the said respondents were shown above the candidates, who were appointed against the subsequent vacancies. Feeling aggrieved by the decision of the State Government, the said candidates appointed against the subsequent vacancies filed C.W.P. No. 18727/2023 before the Punjab & Haryana High Court. It was their contention that seniority of respondents 4 to 16 should be reckoned only from the date of their actual appointment, namely,

26.5.2000. The High Court rejected the W.P. by holding that appointments of respondents 4 to 16 were delayed not for want of any vacancies, but on account of litigation, which was beyond their control; that but for the decision rendered by the learned Single Judge on 4.4.1994 declaring selections beyond 18 to be illegal, they would have been appointed on 2.6.1994 when the other candidates from the said merit list were appointed; and that therefore the State Government was justified in giving respondents 4 to 16 benefit of notional seniority w.e.f. 2.6.1994 and placing them above the appellants, who were appointed against the subsequent vacancies/advertisement. The High Court decision was challenged before the Hon'ble Apex Court. The Apex Court dismissed the appeals with the following observations :-

*“8. There is no dispute about these general principles. But the question here is in regard to seniority of the respondents 4 to 16 selected on 1.10.1993 against certain vacancies of 1992-93 who were not appointed due to litigation, and those who were selected against subsequent vacancies. All others from the same merit list declared on 1.10.1993 were appointed on 2.6.1994. Considering a similar situation, this Court, in [Sunder Narayan vs. State of Bihar](#) - 1998 (5) SCC 246, held that candidates who were selected against earlier vacancies but who could not be appointed along with others of the same batch due to certain technical difficulties, when appointed subsequently, will have to be placed above those who were appointed against subsequent vacancies.*

*9. This Court while allowing the appeals by respondents 4 to 16 by order dated 6.12.1999 made it clear that all the 30 persons recommended by the Commission as per merit list dated 1.10.1993, including respondents 4 to 16 are entitled to be appointed. The State Government submitted that but*

*for the order dated 4.4.1994 of the High Court, Respondents 4 to 6 would have been appointed on 2.6.1994 itself. The order dated 4.4.1994 was ultimately set aside by this Court and respondents 4 to 16 who were consequently appointed should not be denied the benefit of seniority. Therefore the State Government was justified in giving them only notional seniority and placing them immediately below the other 16 candidates selected in the common merit list (published on 1.10.1993) and appointed on 2.6.1994. Respondents 4 to 16 have been given retrospective seniority not from the date of their selection as wrongly assumed by appellants, but from 2.6.1994 when other selected candidates in their merit list were appointed.”*

16. The facts in the present matter are quite identical to the facts, which existed in the aforesaid matter before the Hon'ble Apex Court. In the present matter the applicant has secured the place in the merit list at sr. no. 89, but his actual appointment was delayed not for want of any vacancies, but on account of litigation, which was beyond his control. Had there been no issue about the entitlement of the Special Backward Class to which the applicant belongs, he would have been recommended by MPSC on 1.1.2011 in the same batch along with 92 candidates, who were recommended by the MPSC on the said date. However, as stated above because of certain litigation the name of the applicant was recommended on 12.3.2014.

17. As provided under Rule 4(2)(a) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, the *inter se*

seniority of direct recruits selected in one batch for appointment to any post, cadre or service shall be determined according to their ranks in the order of preference arranged by the Commission, if the appointment is taken up by the person recruited within 30 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. It is the matter of record that in the consolidated seniority list published on 20.6.2014, name of the applicant is appearing at Sr. No. 89. The candidate at Sr. No. 88 is Sachin G. Pardeshi and at Sr. No. 90 is the candidate by name Pawar Ratansing Ramsing.

18. In the seniority list published on 21.4.2023 the name of the applicant is however, shown at Sr. No. 164, whereas Sachin G. Pardeshi is placed at Sr. No. 109 and Pawar Ratansing Ramsing is placed at Sr. No. 110. Both these candidates were recommended by the MPSC on 1.1.2011. Sachin Pardeshi was given order of appointment on 28.7.2011 and he resumed the duties on the same day, whereas Pawar Ratansing was given appointment on 8.7.2011 and he also resumed the duties on the same day. In the consolidated seniority list published by the MPSC on 12.3.2014, Sachin



Pardeshi was at Sr. No. 88, whereas Ratansing Pawar was at Sr. No. 90 and applicant was at Sr. No. 89.

19. As noted by us hereinabove the appointment of the applicant was delayed not because of any fault on his part or for want of vacancies but because of pending litigation on the issue of reservation for Special Backward Class. After the said issue was resolved the applicant was given appointment on 12.3.2014 and he resumed the duties on the same day. Significance is to the fact that consolidated list of selected candidates published by the MPSC contains the names of all these candidates namely Sachin Pardeshi, Ratansing Pawar and the present applicant. In the circumstances, as provided under Rule 4(2) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 the *inter se* seniority of these three candidates selected in one batch for appointment to the post of Deputy Education Officer has to be determined according to their ranks in the order of preference arranged by the MPSC. In the case of **Balwant Singh Narwal and Ors. Vs. State of Haryana & Ors.** (cited supra) this principle has been upheld by the Hon'ble Apex Court.

20. Having regard to the facts as aforesaid, in the seniority list published on 21.4.2023 the name of the applicant deserves to be included immediately below the name of Sachin

Pardeshi, who is placed at Sr. No. 109 and the name of Ratansing Pawar has to be pushed down the name of the present applicant. To the aforesaid extent the Original Application deserves to be allowed.

21. Insofar as prayer clause 'B' is concerned, the applicant has prayed for declaring him eligible to be promoted as an Education Officer and equivalent posts in Maharashtra Education Services Group-A (Administrative Branch); and for that purpose has sought further necessary directions. However, in the entire O.A. the applicant has nowhere taken any such contention that the respondents have held him ineligible for the said post. There is further nothing on record to show on what considerations the eligibility is determined for promotion to the post of Education Officer or in other words what is the criteria, which is applied for holding a candidate eligible for the said post. As such, we find no merit in the prayer so made. The emphasis of the applicant in the O.A. is on the issue of his placement in the seniority list published of the officers in the cadre of Deputy Education Officers. As noted by us hereinabove, the prayer in that regard deserves to be allowed and the O.A. thus deserves to be partly allowed in the aforesaid terms. Hence, the following order: -

**ORDER**

(i) 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 said 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.

(ii) The Original Application is allowed in the aforesaid terms without any order as to costs.

**MEMBER (A)****VICE CHAIRMAN****PLACE : AURANGABAD****DATE : 02.11.2023**

O.A.NO.720-2023 (DB)-2023-HDD-promotion