

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1047 OF 2018

Mr. Vijay Vilasrao Desai)
Age : 40 years, Working as)
Assistant Commissioner,)
Sales Tax, Residing at Flat No.103, A/3,)
Swarganga Soc. Villabhnagar, Pimpri,)
Pune 411 018)...**APPLICANT**

VERSUS

The State of Maharashtra,)
Through the Principal Secretary)
Finance Department, Mantralaya,)
Mumbai)...**RESPONDENT**

Ms. Punam Mahajan, learned Advocate for the Applicant.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondent.

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

DATE : **07.06.2023.**

J U D G M E N T

1. Applicant working as Assistant Commissioner Sales Tax prays for the seniority and challenges the order dated 17.04.2018 and prays that he is to be given seniority w.e.f 10.02.2009, though the seniority is given from 15.01.2011.

2. Learned Advocate for the Applicant has submitted that the order dated 17.04.2018 is contrary to the provisions of Rule 4(2)(a) of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. She has further submitted that by order dated 09.09.2010 passed in O.A.No.321/2010 M.P.S.C. was directed to recommend the name of the applicant and thereafter he was appointed on 03.01.2011. Applicant was appointed later, though all his batchmates of the year 2004 were all appointed on 10.02.2009. Learned Advocate for the Applicant read over the entire judgment in O.A.No.321/2010 to explain the real reason for the delay in appointment of the applicant by the office of M.P.S.C. Learned Advocate has submitted that the Applicant is from the batch of the year 2004 and hence, he is to be given appointment from 10.02.2009 and also he is to be placed as per his merit in the inter-se seniority of the appointees of batch of the year 2004. She vehemently argued that the Applicant is from the Open Category and meritorious than some batchmates and he cannot be put at the end because he was waitlisted. Learned Advocate relied on Rule 4(2)(a) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 (hereinafter referred as 'MCS Rules 1982' for brevity) on the point of seniority as per merit. Learned Advocate also relied on the judgment dated 04.12.2014 passed in O.A.No.255/2013, Smt. Varsha N. Zalte Versus The State of Maharashtra & Ors. and the Bombay High Court confirming the said judgment by order dated 07.03.2019 passed in Writ Petition No.11501/2015, M.P.S.C. Versus Smt. Varsha Nivrutti Zalte & Ors.

3. Learned Chief Presenting Officer for the Respondents while opposing the reliefs has submitted that as per Rule 4(1) of the MCS Rules 1982 the applicant is given the seniority i.e., from the date of his appointment. It is to be treated as continuous service. She has submitted that the Applicant cannot be placed along with his batchmates which will cause injustice to other appointees and other batchmates of the year 2005-2006 who were appointed prior to 15.01.2011. She further submitted that the applicant even if given deemed date as on 10.02.2009 like his batchmates of the year 2004 he cannot be given seniority to the candidates of select list and who are appointed already. The appointees of the year 2004 batch who are going to suffer if the applicant is put higher in the seniority are not made Party-Respondent. On the other hand learned C.P.O. has relied on the judgment of Hon'ble Supreme Court in the case of **Harish Maganlal Baijal Versus State of Maharashtra & Ors reported in (2010) 6 SCC 585.**

4. After going through the judgment and order of the Division Bench of this Tribunal dated 10.11.2010 in O.A.No.321/2010 which is filed by the Applicant against the present Respondents, we realized that on account of inaction and fault of M.P.S.C., the Applicant was not given appointment well within the time. Further the order of the Tribunal was confirmed by the Hon'ble High Court. The Applicant was given appointment order dated 03.01.2011, during the pendency of Writ Petition No.175/2010 and though he was given appointment, the Government should

have given him the date of appointment of his batchmates of the year 2004. Subsequently, the Government appointed the Applicant on 15.01.2011. Today he is before us for the deemed date and the seniority with his batchmates. It is admitted fact that the Applicant's name was at waitlist No.1 so he entails the same batch. A waitlisted candidate stands last in the select list and therefore we have on doubt that he is to be given the deemed date as on 10.02.2009 like other batchmates and he cannot be separated from the said batch.

5. On the point of inter-se seniority of the year 2004 batch, the learned Advocate for the Applicant has relied on Rule 4(2)(a) of the MCS Rules 1982 which reads as under :

“4(2)(a) 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, Selection Board or in the case of recruitment by nomination directly made by the competent authority, the said authority, as the case may be, if the appointment is taken up by the person recruited within thirty 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;”

Learned Advocate also relied on the judgment dated 04.12.2014 passed in O.A.No.255/2013 which was further confirmed by the Bombay High Court by order dated 07.03.2019 passed in Writ Petition No.11501/2015.

6. In the judgment of Hon'ble Supreme Court relied by learned C.P.O. in the case of **Harish Maganlal Baijal (supra)** wherein the Petitioner had applied for the post of Deputy Superintendent of

Police (DSP/Assistant Commissioner of Police, Class-I and however he is given second preference for the post of Sales Tax Officer, Class-I. He was not qualified. There were 22 vacancies for the post of DSP. However, he could not be qualified on merit. But he was placed immediately after the list of successful candidates. Out of 22 vacancies, 14 candidates were from the Open Category and 8 candidates were from the Scheduled Caste and Other Backward Class. The Applicant was from Open Category. The Applicant was appointed as per his second preference as Sales Tax Officer and he joined on 22.04.1992. However, out of 14 candidates, 2 candidates were found physically unfit for the said posts. After learning this, Petitioners made representation to the Minister of Home Affairs in June 1992 and thereafter the Petitioner and other two candidates were recommended by M.P.S.C. from the Open Category for the post of DSP and the applicant was appointed in December 1992 and he was placed below all 22 selected candidates. The persons who have secured less marks than the Petitioner were placed below him and one candidate who has joined the service in the year 1993 along with the Petitioner was subsequently given the seniority with the effect of the earlier batchmates and he was shown higher in the seniority, so the Applicant wanted to be placed as per merit amongst his batchmates. His representation was rejected so he approached the Tribunal. In the said case the Petitioner has taken the stand that he is not waitlisted candidate and he was selected candidate and could not be appointed on account of number of vacancies

and he had joined as Sales Tax Officer and subsequently he prayed for merging.

7. Admittedly, the applicant was from the wait list no. 1 and he substituted in the place of a candidate who did not join. In the year 2005 & 2006 the further process of appointment and selection for the same post was conducted. The Tribunal by order dated 9.9.2010 in O.A 321/2010 has held M.P.S.C responsible for the delay and not recommending the name of the applicant well within time. Thus, we are of the view that though the applicant was appointed on 15.1.2011, the date of the appointment of his batchmate of the year 2004, i.e. 10.2.2009 is to be given to him.

8. So far as his prayer of his placement in the seniority is considered, it is difficult to accept the submissions of the learned counsel for the applicant on that point. It is true that in the case of Harish Bajjal (supra), no wait list was maintained at the relevant time and it is maintained in the present case by the M.P.S.C. However, the fact remains that the applicant has secured less marks and therefore, his name could not appear in the original select list and therefore he also joined the Government service on his second choice as Block Development Officer like the case of Harish Bajjal. Thus, by plain reading of Rule 4(2), this case cannot be covered by the same. It is true that he has secured more marks than the other reserved category candidates. But it is also correct fact that his source of appointment is not from the original list but from the wait list. The original select list has

always a preference to the wait list candidates. Wait list always entails the original list and therefore, the candidates from the wait list though he is more meritorious than the other reserved candidates, cannot be put in between. This procedure is required to be followed. Moreover, if the applicant is placed above the other reserved category candidate of the batch of the year 2004, they are going to be affected on account of the seniority given to the present applicant and they are required to be heard. The applicant has not made them Party-Respondent. This is an additional ground to refuse the relief to the applicant.

9. In view of the above, following order is passed:-
- (a) The date of appointment of the applicant, i.e., 15.1.2011 is hereby quashed and set aside and he is to be given the deemed date from 10.2.2009. This deemed date is given for the purpose of seniority and to count the period for pensionary benefits.
 - (b) The applicant is not entitled to any salary and back wages for the period from 2009 on the principle of "No Work-No Pay".
 - (c) The applicant is to be placed at the bottom of the candidates who were appointed of the batch of 2004 but above the batch of 2005.

Sd/-
**(Medha Gadgil
Member (A))**

Sd/-
**(Mridula Bhatkar, J.)
Chairperson**

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