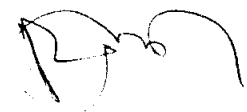


**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1062 OF 2016**

**DISTRICT : NASHIK**

- 1) Smt. Chaitalee Chandrakant Darade,)  
Working as Naib Tahasildar, )  
Tahasil Office Aurangabad (Rural), )  
Fazalpura, Aurangabad. )  
R/at.5, Pokar Sarovar, Dindori Road,) )  
Mhasrul, Nashik 4. )
- 2) Shri Vijaykumar Bhausahab Chobe,) )  
Working as Naib Tahasildar, )  
Tahasil Office, North Solapur. )  
Near Kumkumbai Netra Chikisthalay,) )  
Civil Chowk Solapur, )  
R/at. Hari Om Niwas, Gondil Plot, )  
Uplai Road, Solapur. )
- 3) Shri Shrishail Subhash Vhatte, ) )  
Working as Naib Tahasildar, )  
South Solapur Tahasil Office, Solapur) )  
R/at. Post Aloor, Taluka Omerga, )  
District Osmanabad. )
- 4) Shri Hemant Dayaram Tayade, ) )  
Working as Naib Tahasildar, )  
Patan Tahasil Office, Taluka Patan, )  
District Satara 415 206 )  
R/at. C/o. Manisha Jogdand, )  
Sai Plaza, 2<sup>nd</sup> floor, Near Library )  
Chowk, Patan, District Satara. )



- 5) Shri Pravin Angad Latke, )  
 Working as Naib Tahasildar, )  
 Washi Tahasil Office, Osmanabad. )  
 R/at. Anjangaon (K), Taluka Madha, )  
 District Solapur. )
- 6) Smt. Supriya Shrimantrao Wakte, )  
 Working as Naib Tahasildar, )  
 Food Distribution Office, 'A' Barrack, )  
 Near Sassoon Hospital, Pune 411 001 )  
 R/at. Panchshilnagar, Palwan Road, )  
 Beed. )
- 7) Shri Abhijit Uddhavrao Nikam, )  
 Working as Naib Tahasildar, )  
 Divisional Commissioner Office, )  
 Revenue Department, Konkan )  
 Division, CBD Belapur, )  
 R/at. 343, Karanje Peth, )  
 Satara 415 001. )
- 8) Shri Gaurishankar Mansing Chavan, )  
 Working as Naib Tahasildar, )  
 Tahasil Office Mohadi, District )  
 Bhandara R/at. C/o. Shri Ram )  
 Kishan Rathod, Shri Ram Colony, )  
 Selu, Taluka : Selu, )  
 District : Parbhani. )
- )...Applicants

**Versus**

1. State of Maharashtra. )  
 Through Chief Secretary, )  
 Mantralaya, Mumbai 400 032 )
2. The Additional Chief Secretary, )  
 Revenue and Forest Department, )  
 State of Maharashtra, )  
 Mantralaya, Mumbai 400 032 )



3. The Principal Secretary, )  
General Administration Department,) )  
State of Maharashtra, )  
Mantralaya, Mumbai 400 032. )...**Respondents**

**Mrs. Punam Mahajan, Advocate for Applicants.**

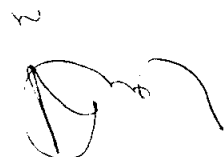
**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 08.08.2017**

### **JUDGMENT**

1. This Original Application (OA) is brought by eight Naib Tahasildars and they call into question an order dated 26<sup>th</sup> October, 2016 (Annexure 'A-22', Page 139 of the Paper Book (PB)) regarding the allotment of the Divisional Cadre in accordance with the Revenue division allotment for appointment by nomination and promotion to the post of Group 'A' and 'B' (Gazetted and Non-Gazetted) of the Maharashtra Rules, 2015 (2015 Rules hereinafter). According to the Applicants, they are governed by the Divisional Cadre Structure and Divisional Cadre Allotment for direct appointment by nomination and promotion to the post of Group 'A' and 'B' (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules, 2015 (2015 Rules




hereinafter). According to the Applicants, they are governed by the Divisional Cadre Structure and Divisional Cadre Allotment for direct appointment by nomination to the post of Group 'A' and Group 'B' (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules, 2010 (2010 Rules hereinafter). The controversy herein is now fully covered by a Judgment of the 2<sup>nd</sup> Division Bench of this Tribunal which spoke through me in **OA 763/2015 with MA 500 2015 (Shri Milind S. Garud and 10 others Vs. The Secretary, State Excise Department and one another, dated 4.5.2016)**. That in fact, is the state of affairs although according to the Applicants, that Judgment is inapplicable hereto.

2. I have perused the record and proceedings and heard Mrs. Punam Mahajan, the learned Advocate for the Applicants and Mrs. K.S. Gaikwad, the learned Presenting Officer (PO) for the Respondents. The 1<sup>st</sup> Respondent is the State through the Chief Secretary, the 2<sup>nd</sup> Respondent is the State of Maharashtra in Revenue and Forest Department and the 3<sup>rd</sup> Respondent is the State in General Administration Department (GAD).

3. The Applicants came to be appointed by nomination to the post of Naib Tahsildar Group 'B' through

MPSC for which the Advertisement No.331/2013 came to be issued on 21.1.2013. The Applicants first of all were sent up for training which was for two years and in the meanwhile, on 26.10.2016, the impugned order came to be issued. They were allotted the revenue divisions. All except two were allotted Nagpur Division while two were allotted Amaravati Division. The name-wise allotment is not necessary to be set out. The 2015 Rules came into force on 28.4.2015 and the impugned order mentions that the allotment was made in accordance therewith.

4. It was contended by Mrs. Mahajan, the learned Advocate for the Applicants that the impugned allotment is contrary to the Recruitment Rules for the post of Naib Tahasildar and, is therefore, ineffective. It was her contention that, 2010 Rules would be applicable. The reason apparently as to why this case has been adopted is that, under 2010 Rules, there was a provision for options to be given in the matter of allotment to the concerned officers which has been done away with in 2015 Rules. 2015 Rules have superseded the 2010 Rules. The Applicants contended that the crucial date will not be of the issuance of the impugned order but the date of advertisement and selection. I must make it clear that, I reject the contention of the Applicants that 2015 Rules are



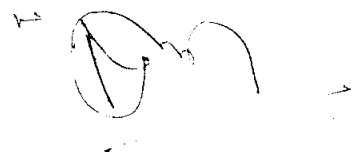
not applicable hereto. Mrs. Mahajan for the Applicants wanted to distinguish the application of the two set of Rules and the basis of whether they were appointed by nomination or by promotion. According to her, **Milind Garud** (supra) would be applicable to the promotees but not to the direct appointees. According to the Applicants, the cadre of Naib Tahasildar is a Divisional Cadre and the Divisional Allotment Rules would not be applicable. However, even if it was assumed that the Divisional Cadre Rules were applicable, still as already mentioned above, the same are at war with the Recruitment Rules for the post of Naib Tahasildar and hence, cannot prevail.

5. A copy of the Recruitment Rules for the post of Naib Tahasildars is at Annexure 'A-1' (Page 24 of the PB). They are called 'Naib Tahasildars Grade-B Recruitment Rules, 1998. It is mentioned therein that the cadre of Naib Tahasildar shall be Divisional Cadre but quite pertinently, they would be liable for being appointed by way of transfer, deputation to any place of the state of Maharashtra. The appointments would be made either by promotion from the cadre of Awal karkun or Circle Officers whose qualifications have been set out therein or by nomination, on the basis of the results of the competitive examination held by the MPSC from the candidates whose qualifications

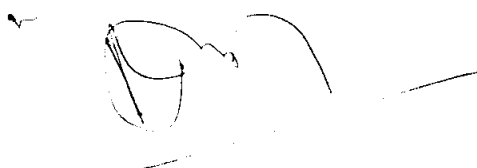


are laid down therein. There is a ratio of 67:33. Having read the said Recruitment Rules to the extent necessary, I am unable to agree with Mrs. Mahajan, the learned Advocate for the Applicants that there is any distinction or difference between the Officers appointed from the sources of promotion or nomination in the matter of application of 2015 Rules. This aspect of the matter is again further clarified and elaborated in **Gurav's** case (supra) which I shall have to presently discuss and elaborate on.

6. 2010 and 2015 Rules have been set out in great details in the OA. I shall again for that purpose, rely upon **Gurav's** Judgment. The various points that are raised in the OA came to be discussed in extenso in **Gurav's** case (supra), and therefore, if I disagree with Mrs. Mahajan on the inapplicability of the 2015 Rules hereto, then nothing remains to be said or done. In Para 6.26 (Page 17 of the OA), it is pleaded that the promotees have been posted in the same District which facility has not been extended to the direct appointees. It is quite clear to me that, that is not the issue. What the 2015 Rules do is to provide a mechanism whereby the Officers are allotted to the Revenue Divisions. In all probability, the reason why the Applicants are aggrieved is that the preference in the matter of allotment would be given to the Vidharbha



Region of this State while Konkan and Pune would not get that treatment. However, that is a matter of legitimate exercise of policy making by the Government and other factors remaining constant, I do not think, that aspect of the matter is justiciable. A copy of 2010 Rules is annexed as 'Annexure A-2' (Page 26 of the PB) and the next document is a certain Circular of 21.6.2010. For the reasons to be presently set out with the help of **Garud's** case, it will not be necessary for me to add anything of my own other than what the 2<sup>nd</sup> Division Bench speaking through me had already held in **Garud's** case. 2015 Rules are Annexure 'A-16' (Page 84 of the PB) dated 28<sup>th</sup> April, 2015. In **Garud's** case, both the set of Rules were analyzed and the distinction was pointed out. Mrs. Mahajan has placed reliance upon a Judgment of the 1<sup>st</sup> Division Bench of this Tribunal in **OA 959/2014 (Shri Amardeep T. Wakade and 14 others Vs. Additional Chief Secretary, Revenue and Forest Department and one another, dated 10<sup>th</sup> April, 2015)**. Now, that was a matter in which the 2010 Rules were indisputably applicable and in that context, the issue was with regard to the practical implementation thereof in the matter of those Applicants. Quite pertinently, this is not the state of affairs that obtain herein. Same was the state of affairs in **OA 555/2015 (Shri Sachin B. Ghagare and 5 others Vs. Principal**

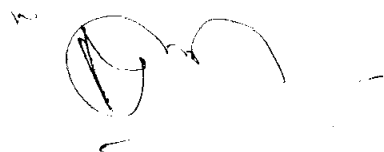




**Secretary, Revenue and one another, dated 19.11.2015)** rendered by me.

7. In an extremely lengthy Affidavit-in-reply running into 33 pages, the crux thereof is that the 2015 Rules are applicable hereto and there cannot be, recourse to 2010 Rules.

8. At this stage itself, I think, I had better turned to **Garud's** case (supra). Therein the 2<sup>nd</sup> Division Bench had also extensively relied upon OA 355/2015 and others which came to be decided by that very Bench on 30<sup>th</sup> March, 2016 and it was called **Vyavahare's** case. There were profuse references therefrom in **Garud's** case (supra). In my opinion, in order to have a clearer picture of the issue at stake, it will be proper if important Paragraphs from the said Judgments are reproduced so as to obviate the necessity of paraphrasing and may be the resultant confusion. In **Garud's** case, the Applicants were Excise Inspectors. After a detailed discussion, it was found that they fell in Group 'B' category so as to be governed by 2015 Rules. In Para 13 of **Garud** (supra), it was found that the affecting circumstance, if 2010 Rules were held not applicable would be the loss of an opportunity to give preference, option, etc. by the concerned Officer. In Para



16 and subsequent Paragraphs also, invoking **Vyavahare's** case (supra), the superseded and superseding Rules were examined in close details. Paragraphs 16 to 20 from **Garud's** case may now be reproduced which also contained the extracts from **Vyavahare's** case.

“16. Turning now to the Superseded and Superseding Rules, before we consider to the extent necessary the grounds raised herein, it would be proper to examine both the set of Rules including a Circular of 8<sup>th</sup> May, 2015. As a matter of fact, in all fairness to Mr. Patil, the learned Advocate, he told us that the Applicants had nothing to do with 2015 Rules. Now, that was in all probability because of the case of the Applicants that they were governed by 2010 Rules and their cases had been almost completely decided before 28<sup>th</sup> April, 2015. If the promotions were not split up into 69 and the rest, then all of them could have been safely governed by the 2010 Rules for which the initial ground work was also performed as claimed by the Applicants. It is the case of the Applicants, therefore, that by delaying the actual act, the Respondents have artificially created the circumstances to introduce in picture the 2015 Rules to the complete detriment of the Applicants.

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**17.** The above argument though need not necessarily be in the same form, but very substantially same was dealt with by this very Bench in the common judgment in **Vyavahare's** case (supra). It will be most appropriate in our view to read that particular common judgment to the extent it is relevant even here, so as to have a proper grasp and focus and avoid unnecessary paraphrasing which is prone to create confusion.

**18.** In **Vyavahare's** case also, the Applicants made representations to the Government. They were also insisting that their matters had been concluded just a short while before 28<sup>th</sup> April, 2015, and therefore, they would be governed by 2010 Rules. It was their case that the 2015 Rules were prospective in operation and the radical changes brought about thereby would not affect those whose cases were concluded by 2010 Rules. A certain Rule 14 of 2015 Rules was severely assailed therein. In Para 19 and subsequent Paragraphs, this Bench took up for consideration the 2010 Rules. Instead of making any paraphrasing, we think it proper to reproduce Paras 19 to 25 thereof.

“19. 2010 Rules came to be framed under the proviso to Article 309 of the Constitution of


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India. These Rules came into effect on 8.6.2010. A select list was to be prepared after one month from that date of the promotee Officers of Group A and Group B posts and to them, those Rules would be applicable for Divisional Cadre allotment. But it was subject to the condition that the said posts should have the Cadre strength of thirty or more which number would be ensured by the concerned Administrative Department. It was further provided that those posts should be transferable at State level as per the Recruitment Rules for which posts roaster was maintained at State level.

20. Rule 3 of 2010 Rules was the dictionary Clause Rule 3(b) read with the Schedule would show that Divisional Cadre would mean the Divisional Cadre of the six revenue divisions viz. Nagpur, Amravati, Aurangabad, Konkan, Nashik and Pune. Mumbai City and Mumbai Suburban were included in Konkan Division.

21. Rule 4 of 2010 Rules needs to be reproduced.

“4. Appointment to the post of Group ‘A’ and Group ‘B’ to be filled in by



promotion, shall be according to the six Divisional Cadres mentioned in the Schedule. The rules regarding allotment to those six Divisional Cadres are as follows, namely:-

- (a) the employee whose name is included in the select list for promotion shall indicate his first preference to any one of the Divisional Cadre for appointment by promotion;
- (b) the Appointing Authority shall decide the Divisional Cadre Allotment after taking into consideration the first preference given by the employee and his/her serial number in the concerned select list;
- (c) while making Divisional Cadre allotment, if posts in promotion quota are available in the Divisional Cadre for which the employee has given first preference, the Divisional Cadre allotment shall be made accordingly, if posts are not available in the Divisional Cadre for which preference has been given by the employee then in case of such employees Divisional Cadre allotment shall be made as per the serial number of the employee in the

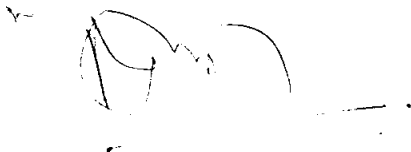
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select list in the following order, i.e. (1) Nagpur, (2) Amravati, (3) Aurangabad, (4) Konkan, (5) Nashik and (6) Pune, as mentioned in the Schedule :

Provided that, the Divisional Cadre allotment shall be made proportionately taking into account the vacancies in the Divisional Cadre at the time of preparation of select list and vacancies at the time of actual Divisional Cadre allotment;

- (d) As per the above mentioned Divisional Cadre allotment, the employees appointed by promotion in Group 'B' shall be required to complete a minimum period of six years; and the employee appointed by promotion in Group 'A' shall be required to complete a minimum period of three years in that Divisional Cadre :

Provided that, before completion of such period of six years in case of employee in Group 'B', if he gets second or third promotion, the minimum period of six years prescribed for Divisional Cadre allotment



after first promotion shall remain unchanged:

Provided further that, if post is not available at the time of next promotion in that Divisional Cadre then before completion of the period of six years, a posting shall be given in other Divisional Cadre on promotion:

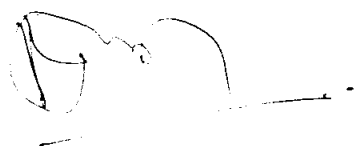
Provided also that, the period of six years or three years as the case may be is not completed due to non-availability of post in that Divisional Cadre, then in case of such employees, posting can be given again for the remaining period in the original Divisional Cadre either by promotion or transfer :

Provided also that, after Divisional Cadre allotment the period of six years or three years, as the case may be, is completed, then it shall be compulsory to give posting to such employee in other Divisional Cadre as per the availability of post' and it shall be compulsory on the part of that employee to accept it;



- (e) a separate post wise list of employees working in every Divisional Cadre shall be prepared by the Appointing Authority and it shall also be necessary to update it, from time to time.”

22. Although Rule 4 has been quoted fully and it is self-speaking but a few features need to be underlined in view of the fact that they would be relevant when 2015 Rules are placed under judicial scrutiny. **Firstly**, there was a provision there for allowing the Officer concerned to indicate his preference for the division which he wanted to be posted post promotion. The concerned authority would take into consideration the first preference given by the said Officer for Division allotment. There were other incidental provisions giving primacy to the preference given by the said Officer. **Secondly**, if the posts were not available in the preferred division, then for the purpose of allotment, the order of Divisions would be Nagpur, Amravati, etc. It is clear that the region which Nagpur and Amravati fell within got some kind of priority in the matter of allotment. **Thirdly**, the minimum period that Group B and Group A Officers would be posted at the allotted division would be 6 years and 3 years respectively. - Certain other contingencies in that





behalf were taken care of. For that, the provisos in the above extracts need to be perused.

23. By Rule 5, special provisions were made for Naxalite areas.

24. Rule 6 provided that before finalizing the Divisional Cadre allotment after promotion as per the provisions of Rule 4, the concurrence of the General Administration Department of the Government shall be mandatory.

25. Rule 7 provided that after the Divisional Cadre allotment as per 2010 Rules, the transfers thereafter would be made as per the provisions of "The Maharashtra Government Servants (Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005" (Transfer Act) and the Rules made there under. Rule 8 laid down that the 2010 Rules would apply only to such employees who were actually working on the date of issue of the said Rules."

**19.** We, therefore, took up for consideration the 2015 Rules and just as we did in case of 2010 Rules, we may reproduce Paras 26 to 36.



“26. Let us now turn to the Rules which became effective from 28.04.2015. They were made under the proviso to Article 309 of the Constitution of India. They were made in supersession of 2010 Rule above discussed and also in supersession of all the existing Government Resolutions, Orders or Instruments made in that behalf. The 2015 Rules may be called Revenue Division Allotment for appointment by nomination and promotion to the post of Group A and Group B (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules 2015 (2015 Rules hereinafter).

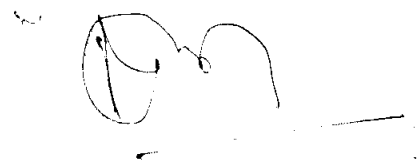
27. Be it noted, therefore, that 2010 Rules were expressly superseded by 2015 Rules and 2010 Rules, therefore, ceased to be effective from 28.04.2015. Some submissions were made on behalf of the Applicants in this regard. To the extent relevant, they would be dealt with presently.

28. Now, as far as applicability is concerned, 2010 Rules were applicable for Divisional Cadre allotment to those posts in the Groups B and A which were to be filled up by promotion. The 2015 Rules would be applicable to both Gazetted and Non-Gazetted Group B and A posts to be filled up by nomination and promotion. The first proviso to Rule 2 about the



Rules being applicable only to such posts which were transferable at the State level in 2010 Rules was retained in 2015 Rules. The second proviso to Rule 2 of 2010 Rules about cadre strength, 30%, etc. was omitted by 2015 Rules. But by another proviso to Rule 2, the 2015 Rules shall not be applicable to the posts of Professor, Associate and Assistant Professor in the Government Medical Colleges and Hospitals which are under Medical Education and Drugs Department. Therefore, that was the only departmental which was expressly made immune from 2015 Rules through the implementation thereof to the Police and Sales Tax Department was deferred by a period specified therein (one year).

29. In 2015 Rules, there is substantial difference in the dictionary clause when compared with 2010 Rules. 2015 Rules has introduced a new definition of "Administrative Department" to mean a department of Government of Maharashtra of Mantralaya level as specified in Rules of business. The definition of "appointing authority" is the same in both, the superseding and superseded Rules. So also is the case with the expressions Government, Group A and Group B posts, Schedule and State. The expression "Divisional Cadre" which was to be read with the Schedule in 2010 Rules has been



omitted in 2015 Rules. But a new phrase “Revenue Division” is included in the dictionary clause of 2015 Rules. It should be read along with the Schedule which Schedule in 2015 Rules is the same as it was in 2010 Rules. The phrase Revenue Division “means one of the six Revenue Divisions of the State mentioned in the Schedule”. The phrase “Divisional Cadre” in 2010 Rules” means the Divisional Cadre of the six Revenue Divisions of the State mentioned in the Schedule”. The question of its relevance to this OA apart, but it appears by an ex-facie reading that the “Divisional Cadre” in 2010 Rule were composite cadres of six Scheduled Revenue Divisions of the State. On the other hand, in 2015 Rules “Revenue Division would be “one Division out of the Scheduled Six. There are other Rules which may not be read in detail. But it does appear by a combined reading of Rules 10 and 11 of 2015 Rules that lists of Officers working in every revenue division under promotion and nomination quotas of Group A and Group B Cadres will be maintained and updated by the competent authority. Rule 11 of 2015 Rules does away with the mandate to have GAD concurrence for allotment of Divisional Cadres to both Group A. The power of allotment of Officers selected either by promotion or nomination has been delegated to the concerned Administrative Department (in




Mantralaya). In case of Group B Officers, the power is delegated to the State level heads of the departments under the control of the concerned Administrative Department in Mantralaya. It, therefore, clearly appears that by elucidating and elaboration, 2015 Rules have further streamlined and simplified the procedure. But they produce the same results or ever better results than 2010 Rules. 2015 Rules have retained 6 years, 3 years tenure for Groups B and A respectively which was provided for in 2010 Rules.

30. 2015 Rules introduce a new expression "Selection Committee" to mean "the Selection Committee constituted for appointment to Group 'A' and Group 'B' posts which are exempted from purview of the Maharashtra Public Service Commission as per Maharashtra Public Service Commission (exemption from consultation) Regulations 1965". The meaning and import are quite clear.

31. Another new expression in 2015 Rules is "State level Head of Department". We have already dealt herewith above.

32. It is, therefore, clear that in the matter of Division Allotment as per 2015 Rules Group 'A'

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Officers are under the control of the Government i.e. Administrative Department in Mantralaya while Group 'B' Officers are under the immediate control of State level Head of the Department, but who in turn is under the control of the concerned Administrative Department.

33. Rule 4 of 2015 Rules reads as follows :

“4. The appointments shall be made to the posts of Group “A” and Group “B” by nomination and promotion in six Revenue Divisions mentioned in the Schedule appended hereto as per these rules.”

34. Subject to the discussion to follow on the issue of the applicability of 2010 Rules to the vacancies that existed when 2015 Rules came into force which was a point strongly urged by Mr. Bandiwadekar, it is clear that 2015 Rules provide that “the appointments shall be made to the posts of Group “A” and Group “B” by nomination and promotion in six Revenue Divisions mentioned in the Schedule appended hereto as per these rules.” Therefore, other factors remaining constant 2015 Rules will govern the appointments after 28th April, 2015.

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35. Rule 4 of the 2010 Rules has been fully quoted above. It was an elaborate and detailed Rule. Its salient features have also been set out. There in that Rule which has now been superseded by 2015 Rules primacy was given to the preference given by the Officers. Rule 4 of 2015 is a much shorter Rule than its superseded counterpart and it completely does away with the preference aspect of the matter and everything ancillary to it and that quite clearly affects and hurts the Applicants.

36. Rule 5 of the 2015 Rules requires every administrative department of the Government to determine the revenue division-wise posts of the quotas from promotion and nomination in Groups A & B before allotting the Revenue Divisions. It seems to be the case of the Applicants that this exercise has not been undertaken by the Government before the impugned allotment of the Revenue Divisions.”

**20.** We then adverted to the principles of interpretation in Para 37 which we may for facility reproduce.


“37. Now, before proceeding further and right here itself, we need to mention that though dated and traditional but still a salutary

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principle of interpretation is that while each word of the Act or Rules under judicial scrutiny must be construed on the basis that there is life in each word and not even one of it is a listless dead letter but then this Rule of interpretation must be read in harmony with another one which has it that the entire enactment or Rule must be read as a whole bearing in mind apart from other factors, the purposive aspect thereof. The process of interpretation that reads each word and/or sentence of the provision in isolation and either accepts or rejects it, is not a good one because there is every likelihood that it might then leave a disfigured and asymmetrical structure of little practical utility. Therefore, Rule 5 also will have to be read alongside other Rules.”

9. Para 22 of **Garud's** case wherein Paras 39 to 45 from **Vyavahare's** case came to be reproduced may also be quoted.

“22. In Para 39 of our judgment, we read in continuation of our discussion Rule 6 of 2015 Rules. We may reproduce now Paras 39 to 45 from **Vyavahare's** judgment.





“39. The Applicants have not challenged the 2015 Rules on the ground of lack of State’s Rule making power. The said Rules are challenged on other grounds which aspect is under consideration. Further, the case law will be noticed presently. The application thereof to the present facts will in our view fortify the conclusion that we are drawing generally as well as particularly in respect of Rule 5 of 2015 Rules. On its plain language, we see nothing obnoxious about it. But now, let us read the other Rules. Rule 6 to the extent, it is relevant hereto reads as follows :

“6. While making appointments to such determined posts of nomination quota and promotion quota allotment of Revenue Divisions shall be made as follows :

For appointment to the posts in Group “A” and Group “B” by promotion to the officers whose names are included in the select list for promotion Revenue Divisions as mentioned in the schedule shall be allotted to the officers by rotation as per their serial numbers in the select list by taking into consideration total vacancies in the promotion quota existing at that time in the sequential order of Nagpur,



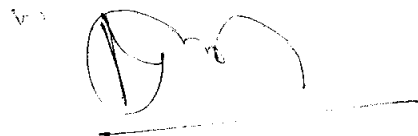
Amravati, Aurangabad and Nashik Revenue Division. After all the vacant posts in promotion quota in the above four Revenue Divisions are filled up, the Konkan Division and Pune Division shall be allotted alternately to the remaining candidates in the select list.

For appointments to posts by promotion, the Revenue Divisions shall be allotted to all officers in the select list at the same time except in cases which are kept open due to non-availability of confidential reports, non-availability of caste validity certificates and in which departmental enquiries are in progress or where the subject matter is sub-judice. In case of latter such allotment of Revenue Division shall be made separately after final decisions on them.”

40. The above quote is self-speaking and self-explanatory requiring no elucidation or elaboration except that by exercise of the Rule making power the Government has given primacy to Nagpur, Amravati, Aurangabad and Nashik Revenue Divisions with Konkan and Pune coming thereafter. If the action of the Government is within the bounds prescribed by the Constitution and by law, then normally such a



move shall be immune from judicial interference. That of course is, if other factors remain constant. We have the discussion of case law in store. But then again, other factors remaining constant and absent breach of constitutional strictures, there is nothing per-se objectionable about the provision being made for some regions for which reasons might have been disclosed if asked for either expressly or impliedly by someone in the shoes of the Applicants. No doubt with the intervention and even interference of law, the freedom that was available to the employers under the traditional law of contract of service will have to be read down as per law. In this connection, reference can usefully be made to University of Pune Vs. Mahadeo (2006) 5 Mh.LJ 2170 which came to be cited by Mr. Gangal, the learned Special Counsel. Relying on some judgments of the Hon'ble Supreme Court, it was explained as to how a public service is not merely a service, but is status. Further, the concept of "Vested Right" was also elucidated. But even otherwise if no violence to this principle is caused, the tenet howsoever old, it may be that in case of a transferable job transfer is an incidence of service will be applicable.

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41. Rule 7 of 2015 Rules is what can be called exemption Clause. Rule 7(a) read along with a recent G.R. of 15.07.2015 has it that an Officer who is due for retirement in less than three years at the time of Revenue Division Allotment will be exempted from the 2015 Rules. Further, a handicapped Officer or the one whose spouse or child was mentally retarded or a widow or abandoned lady too would also be exempted from its provisions.

42. A detailed reading of Rules 8, 9 and 10 may not be necessary except to note all about the retention of the provision of the tenure of six years and three years for Group 'B' and Group 'A' Officers respectively which was there in 2010 Rules as well. Some other aspects of these Rules are not quite germane hereto.

43. Rule 11 is a new one. It delegates powers of allotment of Revenue Divisions and does away with the concurrence of G.A.D. which aspect has been alluded to already. But let it be reproduced verbatim for, then it will be self-speaking. It reads as follows :

“11. (1) Powers to allot Revenue Divisions to officers appointed by nomination and by promotion to the posts of Group 'A' cadres as per provisions of these rules, are hereby



delegated to the concerned Administrative Departments. It shall not be necessary for them to obtain the concurrence of the General Administration Department for this purpose.

(2) Power to allot the Revenue Divisions to officers appointed by nomination and by promotion to the post of Group 'B' cadres as per the provisions of these rules, are hereby delegated to concerned State level heads of departments under control of the concerned Administrative Departments. It shall not be necessary for them obtain the concurrence of the General Administration Department for this purpose."

44. Similarly, we may advantageously reproduce Rules 12 and 13. They read as follows :

"12. After completion of service of one year in the allotted Revenue Divisions, an officer may apply for change of the Revenue Division on the following grounds, namely :-

these illness of the officer himself or of his or her spouse or children or father or mother, who are dependent on him or her :-



Cases of Heart Surgery.

Kidney Transplantation or Kidney Dialysis.

Cancer.

Brain Tumor or Brain Surgery.

Coma.

Mental Disorder.

Postings of spouses together at the same place or location :

If husband or wife is in service in an office of Central or State Government, Semi-Government Organization, Municipal Corporation, Municipal Council, Zilla Parishad, Panchayat Samiti or Government Educational Institution (excluding Government aided private educational institutions),-

a change of the Revenue Division may be allowed only from Konkan and Pune Revenue Divisions to Nagpur, Amravati, Aurangabad and Nashik Revenue Divisions; and

Nagpur, Amravati, Aurangabad and Nashik Revenue Divisions may be interchanged amongst themselves.

Mutual change in allotted Revenue Divisions :-



If request for change in the Revenue Division on mutual basis is received from an officer appointed by nomination, the Revenue Division may be changed....

If request for change in the Revenue Division on mutual basis is received from an officer appointed by promotion, the Revenue Division may be changed only with another officer appointed by promotion :

Provided that, while allowing such change in the Revenue Division on mutual basis, the officer whose Revenue Division is changed from Konkan or Pune Revenue Division to either Nagpur or Amravati or Aurangabad or Nashik Revenue Division, will be required to join first in the newly allotted Revenue Division.

13. The concerned administrative Departments may allow change in the Revenue Divisions as per the provisions of rule 12, and it shall not be necessary to obtain the concurrence of the General Administration Department for this purpose.”

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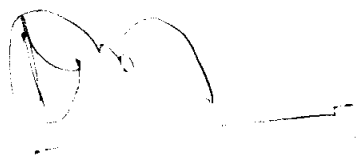
45. Rule 14 is very crucial one. It was heavily relied upon by the Applicants. It reads as follows :

“14. All the cases pending for the allotment of Revenue Divisions and the applications pending for the change of Revenue Divisions on the date of publication of these Rules in the Maharashtra Government Gazette shall be disposed of as per the provisions of these Rules.”

(emphasis supplied)”

10. Thereafter, in **Garud's** case, by invoking **Vyavahare's** matter, we dealt with an argument that was advanced on behalf of the Applicants therein and that related to the applicability of 2010 Rules despite the supersession thereof by 2015 Rules in case of the vacancies that existed before 28<sup>th</sup> April, 2015. That argument was also rejected. Paragraph 59 onwards from **Vyavahare's** Judgment were reproduced in **Garud's** Judgment, and therefore, from **Garud's** Judgment, Para 25 which contains the quotes from **Vyavahare** (supra) need to be reproduced.

“25. There was a certain Circular of 8<sup>th</sup> May, 2015 which was made a bone of contention in **Vyavahare's** case *inter-alia* on the basis of whether






it supplemented or supplanted the main Rule. This aspect of the matter was considered and in effect, it was held that the Applicants were not really entitled to make much capital out of it. From Para 59 onwards, we dealt with the question of pre-existing vacancies in the context of amendment of the Rules. Here also, a submission could be made as hinted already that the 2015 Rules would not be applicable at all because the cases of the Applicants had been concluded under the 2010 Rules. We need not get much detained by the fact as to the language employed in Prayer Clause 1 and the alternate prayer Clause thereto. We may take the issue head on. The argument apparently is that in the event of an amendment to the Rules, if the vacancies existed prior to the new Rules coming into effect, the old Rules shall nevertheless be the governing ones. This aspect of the matter was dealt with in **Vyavahare's** case. We may reproduce a few Paragraphs from Para 59 onwards from that judgment.

“59. We may now turn to another aspect of Mr. Bandiwadekar’s argument. According to him, regardless of the language of 2010 Rules and 2015 Rules in so far as the vacancies that were existing when 2015 Rules came into force, they would be governed in any case by a 2010 Rules.



Now, in our view while dealing with this submission of the learned Advocate, we must bear in mind and that again is the factual peculiarity hereof. That peculiarity is that one must clearly understand the context in which the term 'vacancy' and its plural arise. Here, the promotions apparently have been cleared and now the issue is of transferring the new promotees to the new divisions. In our opinion, in the present set of facts, there is nothing to even remotely suggest that there was any mala fide or oblique intention or motive to assign the revenue divisions to the new promotees, and therefore, the principles laid down in the matters where the initial appointments are made or even the appointments by promotion are made, but in different factual scenario cannot be bodily lifted and made applicable hereto. The case law has been cited which we shall presently seek guidance from. However, it needs to be restated that for example, if the Rules provide for appointment in the context of the qualifications or experience at the time of the issuance of an advertisement and the Rules are changed in the interregnum, then the different set of principles would apply which we



must repeat cannot just be bodily lifted and applied to the present set of facts.

60. Mr. Bandiwadekar relied upon **Kulwant Singh and others Vs. Daya Ram and others, (2015) 3 SCC 177.** Mr. Bandiwadekar laid particular emphasis on placitum 'C' which lays down the principle that normally the amended Rules would operate prospectively and the vacancies which had occurred after the amendment would only be governed thereby. The facts of **Kulwant Singh's** case (supra) may not be exactly similar to the present one, but the principles will have to be carefully read for guidance. It must be clearly understood that when one considers the issue of applicability of the amended Rules in the context of retroactivity or prospective operation, the core issue is as to whether according to the old Rules, certain rights had accrued which rights are threatened to be divested from the concerned litigant. If we were to peruse Para 39 of **Kulwant Singh's case** (supra) wherein another earlier judgment of the Hon'ble Supreme Court was discussed, it should become clear in our view that while considering such aspects, the Rules concerned will have to be carefully perused, understood and



interpreted. The Hon'ble Supreme Court was pleased to hold that the vacancies that had arisen after the amendment would be governed by the amended Rule and the vacancies that arose prior to the amendment would be governed by the unamended Rules.

61. Another judgment cited by Mr. Bandiadekar was in the matter of **M. Surender Reddy, (2015) 8 SCC 410**. That was in the context of the Rules retroactivity of the Rules regarding reservations. The facts were different and the principles have already been grasped and applied herein by us.

62. We have already referred to the judgment in the matter of **Jagdish Chandra Singh Bora** (supra) hereinabove. Here, we may only mention that Hon'ble Supreme Court in that matter has again emphasized the factor of vesting of right and its accrual. Mr. Bandiwadekar then relied upon a judgment of Division Bench of the Hon'ble Bombay High Court at Aurangabad Bench in the matter of **Trimbak Sangramappa Kadge Vs. State of Maharashtra, 2003 (2) Bombay Cases Reporter 231**. It laid down the principle that administrative instructions cannot override the



Rules that seek their validity from higher sources. We have already discussed that aspect of the matter in the context of the present facts.

63. Mr. Gangal, the learned Special Counsel in support of his contention relied upon **University of Pune** (supra). He emphasized the fact that in this matter, the virus of 2015 Rules by itself has not been questioned. In so far as the principles are concerned, in Para 12, the Hon'ble High Court was pleased to refer to a number of judgments of the Hon'ble Supreme Court and it was held as follows in the context of the concept of vested right which is in our view highly significant for the present matter.

“12. .... It was held that the expression “vested right” has been used in the context of a right flowing under a relevant rule which was sought to be altered with effect from an anterior date, and thereby to take away the benefits which were available under the rule in force at that time, and in that context, it was ruled that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the

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employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Article 14 and 16 of the Constitution. Further with reference to the case of Rangadhamaiah, it was observed that the court therein was concerned with the case relating to the pension payable to the employees after their retirement. In that regard, it was also observed that the concerned persons were no longer in service on the date of issuance of the Notification which was sought to be impugned. Considering the fact that the amendments to the Rules were not restricted in their application in future, and the amendments were sought to be applied to the employees who had already retired and who were no longer in service on the date of the impugned notification, it was held to be bad in law. However, at the same time, it was also held that, "it can, therefore, be said that a rule which operates in future so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of articles 14 and 16 of the Constitution, but



a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion of pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.”

64. The distinction between the applicability of amended provision in case of the personnel appointed prior to the crucial date would depend upon the issue as to whether it would amount to giving retrospective effect to the amended provision or it would merely amount to giving effect “in futuro”. The observations in Para 21 of the said judgment are also very apposite and they need to be reproduced.

“21. CONSIDERING the law on the point in question and the provision comprised under Section 20(1)(c) of the said Act, it cannot be said that merely because the person was appointed prior to 12-5-2000, the provision incorporated under the said amended clause will not apply to such person. The law laid down in Bishun Narain Misras case (supra) clearly states that the rule regarding the service tenure is a matter of policy to be decided by the



Government. Accordingly, the post of finance and Accounts Officer being made a tenure post, it will apply to all the incumbents in the said post from the day the law in that regard has come into force. Those who have completed five years before coming into force of the said Act will also be covered by the said provision and their service tenure cannot be considered different from the tenure of those who are appointed on or after 12-5-2000. The same principle will have to be applied in all such cases irrespective of their date of appointment. No vested right is accrued in favour of the person occupying such post and it is a status acquired by such officer and his service conditions including the tenure of service are subject to the rules and regulations framed by the Government from time to time. The Government having declared the said post to be a tenure post for five years, on completion of the said period the incumbent thereof has to leave the post, unless his tenure is renewed for the second term of five years by the University. The observation in the impugned Judgment that the employee has acquired vested right, and that therefore the Legislature cannot take away the same by giving retrospective effect to

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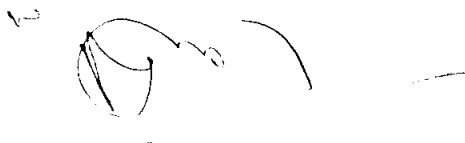

the provision comprised under Section 20 (1)(c) of the said act is not sustainable. There is no vested right in favour of the Government servant in relation to their services and they merely hold a status and not like an ordinary contract of service between a master and servant. Same principle will apply to the relationship between the employer and employee of local bodies and public institution like the University. Therefore, no fault could have been found with the order passed by the appellant terminating the services of the respondent in terms of Section 20(1)(c) of the said Act and, therefore, there was no justification for interference in the order passed by the University Tribunal. Considering the same, the impugned Judgment cannot be sustained.”

65. Pertinently, relying upon the judgment of the Hon'ble Supreme Court in **Bishun Narain Misra Vs. State of Uttar Pradesh and others, A.I.R 1965 SC 1567**, it was observed that the cases of public servants are not like ordinary contract of service because though at the base of it, it may be a contract, but then once that contract takes shape, the provisions of constitution and law accord to it an element of status and that will have to be borne in



mind in dealing with the matters pertaining to the public servants.

66. Mr. Gangal, the learned Special Counsel relied upon **Shivaji S. Gaikwad & others Vs. State of Maharashtra & others, Writ Petition No.2092/2011 along with 4236 of 2011, dated 30.9.2011.** The citation appears as **CDJ 2012 BHC 485.** It may not be necessary for us to closely examine the facts therein, but the issue of the prospective operation or retroactivity of the amended Rules were at issue in that matter as well. Relying on the judgment in the matter of **K. Nagra Vs. State of Andhra Pradesh, A.I.R 1985 SC 551,** it was held that the power to amend the Rules retrospectively was very much there and until and unless an authoritative Rule emanating from higher sources like legislature intervened, such Rules would continue to hold the ground. Relying upon **T.R. Kapoor Vs. State of Haryana, A.I.R 1987 SC 415,** it was held in effect that an authority competent to lay down qualifications for promotions could as well change the qualifications and that can be done even retrospectively, subject to the condition that the rights acquired under the existing Rules were not taken away. Now, in these OAs, as already discussed above, no such right has accrued to the Applicants much less have they been taken away.



The learned Special Counsel then relied upon **K.K. Bhaskaran and another Vs. Administrator of Daman and others**. The citation of which is **CDJ 2010 BHC 2394 (DB)**. In Para 20 of that judgment, their Lordships were pleased to observe that by amendment, even if chances of promotion were affected that by itself can be no ground for striking down the said Rules. Now, if that be so, the present facts are much better placed for the Respondents.

67. In **Mani Subrat Jain Vs. State of Haryana, A.I.R 1977 (SC) 276 = 1977 (1) SCC 486**, it was held in effect that unless a legal right was established, no relief could be claimed in service jurisprudence. We do not think any further elaboration is necessary on this point. Mr. Gangal, the learned Special Counsel then relied upon **A.S. Sangwan Vs. Union of India, A.I.R 1981 SC 1545**. Two senior Army Officers were vying for one of the highest posts. A certain policy statement arose for judicial consideration. In Para 4, it was held by the Hon'ble Supreme Court in effect that the employer being the Union of India in that matter (the State of Maharashtra in this matter) had the power to change and re-change the policy and unless it was demonstrated that the impugned action fell fowl of the constitutional mandate, the action cannot be successfully challenged."



11. It is, therefore, very clear from the profuse quotations from the two Judgments cited above that the Applicants cannot succeed and their OA has to go the same way as did **Garud's** OA. I am not impressed by the argument made on behalf of the Applicants with regard to the point that 2015 Rules are not applicable hereto. I hold that, they are very much applicable and rejecting the submissions to the contrary and accepting the argument of Mrs. Gaikwad, the learned PO, this Original Application stands hereby dismissed with no order as to costs.

Sd/-  
**(R.B. Malik)**  
**Member-J**  
**08.08.2017**

8/8/17

Mumbai  
Date : 08.08.2017  
Dictation taken by :  
S.K. Wamanse.