

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.344 OF 2016

DISTRICT : NASHIK

Shri Vitthal Maruti Honde,)
Working as Agriculture Assistant in the)
Office of Taluka Agriculture Officer, Peint,)
Tal. Peint, Dist. Nashik, R/o. Flat No.7,)
Dhiren Apt., Mahatma Nagar, Nashik) **....Applicant**

Versus

1. The Divisional Joint Director)
of Agriculture, Nashik Division,)
Nahsik)

2. Mr. Tulshiram Bhiwaji Khemnar,)
Occ. Agriculture Assistant in the)
Office of Taluka Agriculture Officer,)
Sinnar, Dist. Nashik) **....Respondents**

Mr. Bhushan A. Bandiwadekar, learned Advocate for the Applicant
Ms. K.S. Gaikwad, learned Presenting Officer for the Respondent.
Mr. S.S. Dere, learned Advocate for the Respondent No.2.

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

RESERVED ON : **24.08.2023.**

PRONOUNCED ON : **05.09.2023.**

J U D G M E N T

1. Applicant prays that the Tribunal be pleased to set aside the Final Seniority list dated 22.02.2016 as on 01.01.2015 of the employees in the cadre of Agriculture Assistant published by the Respondent No.1 to the extent to which the same has shown the name

of the Applicant and that of the Respondent No.2 at Sr. No.608 and Sr. No.542 respectively and direct the Respondent No.1 to restore the placement of the Applicant at Sr. No.473 as was shown in the Final Seniority List.

2. Brief facts of the case are as below :-

By order dated 20.01.2001 the Applicant was appointed to the post of Agriculture Assistant issued by the Respondent No.1. Applicant was directed to join within 30 days. Though, the Applicant was supposed to join within 30 days from the date of issuance of the order he was late by seven days in joining service i.e., 27.02.2001. The Final Seniority list was published on 08.10.2023 as on 01.01.2011. O.A.No.1033/2013 was filed on 01.01.2011 by some aggrieved employees. The seniority list of the employees in the cadre of Agriculture Assistant as on 01.01.2011 which was published first time after strictly observing the Rules of passing of P.R.T. examination within a requisite period and chances and therefore in the said seniority list of the year 2013 the juniors went up and the seniors who could not pass P.R.T. examination within the requisite period and chances were pushed down. In the final seniority list dated 31.12.2015, the name of the Applicant and Respondent No.2 appeared at Sr. No.473 and Serial No.542 respectively. The Applicant has no grievance about the said seniority list. However, Respondent No.1 issued corrigendum on 11.01.2016, cancelling the placement of the Applicant at Sr. No.473 and placed his name at Sr. No.408A on the proposed Final Seniority list as on 01.01.2015. Hence, this O.A. is filed.

3. Learned Advocate for the Applicant Mr. Bandiwadekar has submitted that admittedly the Applicant is senior to the Respondent No.2 in the merit. However, he did not join within 30 days i.e., on or before 20.02.2001 and he joined on 27.02.2001. But the Respondent No.2, gave him appointment, though was empowered to cancel his appointment as mentioned in the appointment order dated 20.01.2001. He did not cancel it but allowed him to join and work till 2016. Applicant's seniority was maintained above Respondent No.2. However, by way of corrigendum dated 11.01.2016, issued by the Respondent No.1 the name of the Applicant was incorporated at Serial No.608A as against Serial No.473 and the name of Respondent No.2 appeared at Serial No.541 and in the Final Seniority list which was punished on 22.02.2016 the name of the applicant was incorporated at Sr. No.608A. Learned Advocate has submitted that the Applicant was not given any notice regarding his change of seniority. He pointed out that as per Clause 14 of his order of appointment that if he failed to join duty within a period of 30 days from the date of issuance of order of appointment then his order of appointment should stand quashed automatically. However, the order is silent about the loss of seniority on account of failure to join the duty. Learned Advocate has further submitted that the 30 days cannot be counted from the date of issuance of the order, but 30 days should have been counted from the date of receipt of the order. Learned Advocate has submitted that the Applicant has put in a long 14 years of his service as Agriculture Assistant. Similarly, the Respondent No.2, who has raised objection to the seniority of the Applicant kept mum for 14 years and hence, he is

estopped from raising objection. Thus, pushing down the Applicant in the seniority list is unjust and illegal.

4. Learned P.O. for the Respondent No.1, Ms. Gaikwad, opposed the O.A. She relies on the affidavit-in-reply dated 03.08.2016 and additional affidavit-in-reply dated 19.07.2017 filed by Respondent No.1, through Mr. Kishor C. Tayade, Administrative Officer in the office of Divisional Joint Director of Agriculture, Nashik and affidavit-in-reply dated 08.11.2016 filed by Private Respondent No.2. Learned P.O. has submitted that it was the duty of the Applicant to join the post within 30 days and it is specifically mentioned in the Clause 14 of the appointment order of the Applicant. It is further mentioned in the said appointment order that failing to join the post within 30 days, the appointment order shall stand quashed automatically. Learned P.O. has further submitted that the Applicant loses his rights in the seniority list as per Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 (hereinafter referred as 'MCS Seniority Rules 1982' for brevity).

5. Learned Advocate for Private Respondent no.2, Mr. Dere has adopted the arguments of learned P.O. He further submitted that the seniority list was prepared as per Rule 4 of the MCS Seniority Rules 1982 which reads as follows :

“4. General principles of seniority:- (1) Subject to the other provisions of these rules, the seniority of a Government servant in any post, cadre or service shall ordinarily be determined on the length of his continuous service therein”

Learned Advocate Mr. Dere has submitted that many matters on the point of seniority were filed before Tribunal for the post of

Agriculture Assistant. The Department implemented all the orders regarding fixation of seniority harmoniously after considering the objections. He relied on the judgment dated 27.08.2019 passed in O.A.No.422/2016, Sunder M. Jadhav Versus The State of Maharashtra & Ors.

6. Learned P.O. Ms. Gaikwad and learned Advocate Mr. Dere has further relied on Rules 4(2) and 5(1)(2) of the MCS Seniority Rules 1982. Learned Advocate Mr. Dere has submitted that as the seniority is based on continuous service, then the Respondent No.2 who has joined earlier and within 30 days of the date of issuance of the order i.e., on or before 20.01.2001; is definitely senior to the Applicant who has joined on 27.02.2001. It was the duty of the Applicant to get the deemed date of his seniority fixed and after fixation of the deemed date as contemplated under Rule 5(2) of the MCS Seniority Rules 1982 the Applicant can claim the seniority over the Respondent no.2. Learned Advocate Mr. Dere has further argued that the Applicant did not join the service within 30 days, therefore, it was his duty to seek extension from the authority. The Respondent No.2 who joined the post within 30 days from the date of issuance of the appointment order has submitted the objection to the Respondent No.1 and which was considered while preparing the seniority list as on 01.01.2015 and corrigendum was published on 11.01.2016. Learned P.O. has pointed out paragraph 26 of the affidavit-in-reply dated 03.08.2016 wherein the Applicant's and Respondent No.2's position in the merit is 300 and 77 respectively.

7. It is admitted fact the Applicant was late by seven days in joining duties and Respondent no.2 has joined duty before the applicant. They are from the same batch and appointed by the same order. Let us consider the legal position contemplated under MCS Seniority Rules 1982. As per Rule 4 of the MCS Seniority Rules 1982 the seniority is ordinarily determined on the length of continuous service of the Government servant and *inter se* seniority of the direct recruits selected in one batch, as per Rule 4 (2)(a) reads as below :

“4. General principles of seniority:-

(2) Notwithstanding anything contained in sub-rule(1),-

(a) the *inter se* seniority of direct recruits selected on 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.”

(emphasis placed)

Thus, as per the Rule a candidate has to join within 30 days from the date of issuance of the order of appointment. Thus, if the candidate who stands at Sr. No.2 joins after two months from the date of the order of appointment i.e., late by 30 days then it is the discretion of the competent authority to extend the said period. Thus, though in the recommendation letter dated 27.10.1999 it is mentioned that Applicant should join within 30 days failing which he will lose the seniority, however in the actual appointment order at clause 14 it is mentioned as follows :

“14) त्यांना नियुक्त केलेल्या ठिकाणी आदेश निर्गमित केल्याचे दिनांकापासून ३० दिवसाचे आंत हजर होणे आवश्यक आहे. तसे न केल्यास त्याचि कृषि सदासक पदावरील नियुक्तीचे आदेश आपोआप रद्द होतील.”

Thus, nothing is mentioned about losing the seniority in the appointment order dated 20.01.2001. There is mention of automatic cancellation of appointment order. It is the fact that though the Applicant joined on the seventh day after the stipulated date his appointment was not cancelled. Applicant was allowed till today to continue to work.

8. We made a pertinent query to the Respondent-State about the preparation of seniority list during the period from 2002 till 2013. We found that the objection was raised for the first time by the Respondent No.2 about the seniority of the Applicant in the year 2011, which was considered in the year 2015. Learned P.O. on instructions from the Department informed that the seniority lists were prepared and the details of which are given below :

In the year 2006, the Applicant and Respondent No.2 were shown at Sr. No.742 and 743 respectively.

In the year 2008, the Applicant and Respondent No.2 were shown at Sr. No.740 and 741 respectively.

In the year 2009, the Applicant and Respondent No.2 were shown at Sr. No.717 and 718 respectively.

In the years 2010, the Applicant and Respondent No.2 were shown at Sr. No.717 and 718 respectively.

Thus, the Respondent No.2, in all the four final seniority lists was shown as junior to the Applicant. Thus, the Applicant has settled the seniority. However Respondent No.2 nearly after 12 years of the said has challenged the seniority list of the year 2011. The submissions made by learned Advocate Mr. Dere that it was the responsibility of the

Applicant to get the extension from the Respondent No.1, cannot be accepted after 12 years, when he was already shown senior.

Firstly, the entire service record of the Applicant including the date of joining of the service is available to Respondent No.1 and secondly, while preparing the seniority list the date of joining is always mentioned in the column of the seniority list. Thus, the decision of relaxation of period of seven days might have been taken by the concerned authority and therefore in all the seniority lists from 2006 which was made available to us the date of joining of the Applicant and Respondent No.2 are shown and yet Respondent No.2 was always shown junior to the Applicant.

9. Under such circumstances, after long 12 years, no question can be raised whether the competent authority has extended the period as contemplated under Rule 4(2) of the MCS Seniority Rules 1982 in its discretion. It is to be presumed that all the seniority lists prepared earlier till 2010, prior to 2011 was conscious decision of the authority and which was accepted by all the concerned Government servants. Moreover, the seniority of the Applicant was changed in the final seniority by way of corrigendum without giving him notice or giving him opportunity of an audience which is completely in violation of the principles of natural justice. The judgment Learned Advocate Mr. Dere has submitted that Rule 5(2) of the MCS Seniority Rules is attracted to the case of the Applicant and therefore first the Applicant should have asked for assignment of deemed date of appointment to the competent authority. These submissions of learned Advocate Mr. Dere are not fully correct. The direct recruits selected in the same batch however

where inter se seniority is disturbed on account of the different dates of actual joining; the senior one in rank if joins later is required to apply for the deemed date to the authority. However, later part of Rule 5(2) states proviso, which reads that,

“provided the recruit higher in rank has reported for duty within the period of thirty days from the date of his appointment or within such further period as may be extended by the competent authority.”

(emphasis placed)

The judgment passed in O.A.No.422/2016 which relied by learned Advocate Mr. Dere is regarding the issue of promotion and deemed date and is not applicable to the present set of facts. Learned Advocate Mr. Bandiwadekar has submitted that the Applicant was allowed to join duties within the extended period of seven days and now the Respondents cannot raise this issue on account of acquiescence.

10. Under such circumstances, we pass the following order :

O R D E R

- (A) O.A. is allowed.
- (B) Corrigendum dated 11.01.2016 issued by Respondent No.1 is hereby quashed and set aside.
- (C) The final seniority list dated 22.02.2016 as on 01.01.2015 is to be modified qua the Applicant by restoring his seniority.

Sd/-

(Medha Gadgil)
Member (A)

Sd/-

(Mridula Bhatkar, J.)
Chairperson

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