

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.665 OF 2021

DISTRICT : MUMBAI.

Mr. Girish D. Kurane,)
Age : 57 years, Deputy Registrar (Deemed Assistant)
Registrar, Registrar of Firm, (Group-A),)
Mumbai. Residing at F-1401, Mahalaxmi Tower,)
New D.N. Nagar, Andheri (W), Mumbai 400 051.)....**APPLICANT**

VERSUS

- 1) The State of Maharashtra,)
Through Sitaram Kunte, the Chief Secretary,)
Mantralaya, Mumbai 400 032.)
- 2) Sujata Saunik,)
Additional Chief Secretary,)
General Administration Department,)
Madam Cama Road, Hutatma Rajguru Chowk,)
Mantralaya, Mumbai 400 032.)
- 3) Geeta R. Kulkarni,)
Deputy Secretary,)
General Administration Department,)
Madam Cama Road, Hutatma Rajguru Chowk,)
Mantralaya, Mumbai 400 032)

- 4) Dipak B. More,)
 Under Secretary,)
 General Administration Department,)
 Madam Cama Road, Hutatma Rajguru Chowk,)
 Mantralaya, Mumbai 400 032)
- 5) Principal Secretary & RLA,)
 Law and Judiciary Department,)
 Madam Cama Road, Hutatma Rajguru Chowk,)
 Mantralaya, Mumbai 400 032.)....**RESPONDENTS**

Mr. S.K. Nair with Ms. Reshma Kurle, the learned Counsel for the Applicant.

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

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

RESERVED ON : 08.09.2021.

PRONOUNCED ON : 16.09.2021.

PER : Justice Ms. Mridula Bhatkar, Chairperson

J U D G M E N T

1. The Applicant, Deputy Registrar of Firms in the office of Registrar of Firms, Respondent aspiring to become Registrar has filed this Original application for directions to be given by the Tribunal to the Respondents to promote him to the post of Registrar and no order

of his reversion to the post of Assistant Registrar of Firms be issued to promote him to the post of Registrar.

2. It is the case of the Applicant that he was promoted to the post of Deputy Registrar on 31.07.2018 and is entitled to be promoted to the post of Registrar. However, the Respondents are not considering his case for promotion for want of notified Rules for the post of Deputy Registrar of Firms. The Applicant is retiring on 30.09.2021 and has moved this O.A. on 31.08.2021. The learned Counsel for the Applicant pressed the urgency. Hence without affidavit-in-reply the matter is heard finally as the issue is very short and instructions found sufficient to address the issue.

3 The learned Counsel for the Applicant has submitted that the notified Rules for the post of Assistant Registrar and the Registrar are in existence. However, the Rules for the post of Deputy Registrar are not notified. These Rules are not made since the creation of the post of Deputy Registrar i.e. 1993 approx. He pointed out to the Rules dated 30.12.1989 of the Registrar of Firms Maharashtra State and Assistant Registrar of Firms (Recruitment) Rules 1989 (hereinafter referred as 'Rules 1989' for brevity), especially, Rule 3. He has submitted that though the notified Rules for the post of Deputy Registrar is not available the applicant is to be promoted to the post of Registrar, as the feeder cadre to the post of Registrar is Assistant Registrar which is the feeder cadre of the Deputy Registrar. He relied

on the judgment of the Hon'ble Supreme Court in case of ***D. Raghu Versus R. Basaveswarudu reported in 2020 SCC Online SC 124.***

The Applicant has spent more than required period of 3 years working as Assistant Registrar, hence he is eligible to be promoted to the post of Registrar. He has submitted that the Government has obtained such opinion from the Department of Law and Judiciary and is likely to act accordingly. Perused the opinion which was given on 21.05.2021 vide Law and Judiciary Department/A.Br.360/Civil/2020. He submitted that the Respondents are likely to pass the order of the reversion of the applicant from the post of Deputy Registrar to the post of Assistant Registrar in order to promote him to the post of Registrar. The learned Advocate has further argued that such order of reversion is illegal and it cannot be passed when the applicant is already working as Deputy Registrar. In fact at present he is holding the additional charge of Acting Registrar of Firms. Under such circumstances, he cannot be reverted. Thus, he prays that the prohibitory orders be passed restraining the Respondents from issuing the reversion order of the Applicant from the post of Deputy Registrar to the post of Assistant Registrar of Firms and specific directions be given to the Respondents to promote him to the post of Registrar of Firms with immediate effect because the applicant is retiring on 30.09.2021

4. The learned C.P.O. while opposing the case of the Applicant has submitted that the Government has not notified the Rules of

Deputy Registrar but in the existing rules there is no post of Deputy Registrar. The officer who has worked for minimum 3 years on the post of Assistant Registrar is eligible for consideration to the post of Registrar of Firms. She submitted that the Government has prepared the draft rules and are sent to the office of His Excellency The Hon'ble the Governor and since last one year the Respondents are waiting for the consent of the Hon'ble His Excellency. As soon as the Rules of Deputy Registrar will be notified the case of the Applicant can be considered for the post of Registrar of Firms without reversion. However, the applicant is retiring on 30.09.2021. She relied on the opinion of the Deputy Secretary, Law and Judiciary Department, wherein it is stated that the Applicant's case can be considered for the post of Registrar but for that he is required to be reverted to the post of Assistant Registrar to fit-in the Rules.

5. The issue in this Original Application is short. All the facts are admitted by both the parties. The only dispute is how to find out the way in absence of notified Rules to the post of Deputy Registrar. For promotion to the post of Registrar of Firms, feeder cadre post is of Assistant Registrar and not Deputy Registrar as mentioned in the notified Rules of Rules 1989. Let us advert to the notified Rules itself.

Rule 3 is reproduced :

*“3. Appointment to the post of Registrar shall be made either-
(a) by promotion of a suitable person on the basis of seniority subject to fitness from amongst the persons holding the posts of Assistant Registrar for not less than three years : or*

(b) ;”

Let us advert to the observations made by the Hon’ble Apex Court in the case of **D. Raghu (supra)**. In the said case the controversy revolved around the entitlement for promotion to the post of Inspector of Central Excise. The rules were not framed when the promotions to the vacancy was effected to the post of Inspector and thus the issue of giving promotions in the absence of Rules was discussed by the Hon’ble Supreme Court. The reference was made of the case of **Union of India through Govt. of Pondicherry Versus V. Ramakrishnana, reported in (2005) 8 SCC 394**. In the case of **D. Raghu (supra)**, the Hon’ble Supreme Court has relied and has reproduced the discussion of **Union of India through Govt. of Pondicherry Versus V. Ramakrishnana, reported in (2005) 8 SCC 394**. He relied on **D. Raghu (supra)** on the point of draft rules.

The status of the draft Recruitment Rules is no longer res integra. While, promotion can be based on draft Recruitment Rules, it cannot be done, if the draft Rules are in the teeth of existing Statutory Rules. In this regard, we may notice the following discussion in Union of India through Govt. of Pondicherry and another v. V. Ramakrishnan and others 10:

“28. Valid rules made under proviso appended to Article 309 of the Constitution operate so long the said rules are not repealed and replaced. The draft rules, therefore, could not form the basis for grant of promotion, when Rules to the contrary are holding the field. It can safely be assumed that the principle in Abraham Jacob; (1998) 4 SCC 65 : 1998 SCC (L&S) 995, Vimal Kumari; (1998)4 SCC 114: 1998 SCC(L&S) 1018 and Gujarat Kishan Mazdoor Panchayat; (2003)4 SCC 712 : 2003 SCC (L&S) 565 that draft rules can be acted upon, will apply where there are no rules governing the matter and where recruitment is

governed by departmental instructions or executive orders under Article 162 of the Constitution."

Thus it is held that on the basis of draft rules promotions cannot be granted when the rules to the contrary are holding the field. However the draft rules can be acted upon when there are no rules governing the matter.

6. In the present matter, in the Rules 1989 there is no post of Deputy Registrar, however, on our enquiry made to learned C.P.O. we were informed that in the draft rules the post of Deputy Registrar is created as feeder cadre to the post of Registrar. Thus if the draft Rules are prepared and available and there is no inconsistency between the existing Rules and the draft rules then on the basis of draft Rules the decision can be taken and it is to be implemented accordingly. The Deputy Secretary of Law and Judiciary Department has read the Rules by applying very crude interpretation. Admittedly, the post of Deputy Registrar is not created since 1984 when the Rules were notified. However, the applicant is officiating on the post of Deputy Registrar by way of promotion from the post of Assistant Registrar. He has worked as Assistant Registrar for more than 3 years. He is eligible as per the existing Rules to the post of Registrar of Firms. Thus, the applicant fulfills all the criteria to become Registrar of Firms. There is no deviation from the existing Rules. The Applicant in between was given promotion to the post of Deputy Registrar, after the retirement of the earlier officer. The Applicant was

promoted as Deputy Registrar succeeding the said officer. Thus the error is committed by the Government initially by creating the post of Deputy Registrar in absence of Notified Rules. It was carried forward from 1992 when the post of Deputy Registrar was created. The Applicant has officiated the said post for more than 3 years and has rendered service as Deputy Registrar and has earned salary accordingly. He is also at present working as acting Registrar of Firms since 01.10.2019. Thus his eligibility and competency cannot be questioned by the Respondents. Thus, there is no need to revert the applicant to the post of Assistant Registrar once he has already jumped from that post to the higher post of Deputy Registrar for fault of the Government which continued for years together. The Government servant should not suffer and should be at a loss. There is no fault on the part of the Applicant who is hopeful for the next promotion. It is the right of the applicant to be considered for the promotion. However to get promoted is not his right. Moreover, time does not stop for anybody and the mandate of the time is the basic fact of the life which everybody has to accept. Some opportunities are lost influx of time.

7. The Applicant thus is eligible to be considered for promotion to the post of Registrar of Firms in the absence of notified Rules to the post of Deputy Registrar. No reversion order to the post of Assistant Registrar is required to promote him to the post of Registrar of Firms. Thus we hold that the opinion given by the Law and Judiciary is

erroneous and against the basic Rules of interpretation of statute. Thus we hold that the opinion given by the Law and Judiciary Department is illegal, erroneous and hence not sustainable in law.

ORDER

- (A) The Respondents should not pass any order of reversion of the Applicant to the post of Assistant Registrar to consider his case for promotion to the post of Registrar of Firms.
- (B) The Respondents may consider Applicant's case for promotion to the post of Registrar of Firms before his retirement i.e. 30.09.2021.

Sd/-
(Medha Gadgil)
Member(A)

prk

SD/-
(Mridula Bhatkar, J.)
Chairperson