

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.764 OF 2015

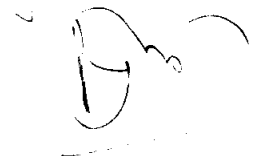
DISTRICT : THANE

1. Mrs. Suvarna U. Sant.)
Working as Junior Auditor in the office of)
Directorate, Local Fund Audit, Konkan)
Bhawan, C.B.D, Belapur, Navi Mumbai)
R/a. 4/42, Shree Gokul C.H.S,)
Vrindavan Society, Thane (W).)

2. Shri Dilipkumar S. Patil.)
Working as Junior Accountant in the office)
of Pay & Accounts Office, Lekha Kosha)
Bhawan, Bandra-Kurla Complex,)
Bandra (E), Mumbai - 51,)
R/a. Hawarej Tulsi C.H.S, C-1006,)
Plot No.52, Sector 09, Khande Colony,)
New Panvel (W).)

3. Kum. Kalyani V. Haldankar.)
Working as Junior Accountant in the office)
of Pay & Accounts Office, Lekha Kosha)
Bhawan, Bandra-Kurla Complex,)
Bandra (E), Mumbai - 51,)
R/a. Kalash Apartment, Room No.104,)
Airoli, Sector 20, Navi Mumbai - 708.)

4. Mrs. Anandi A. Kambli.)
Working as Senior Clerk in the office)
of Controller of Rationing Officer,)
R.O. No. 19-A, Shivaji Park, Dadar,)



- Mumbai 28 and R/a. A-001, Thirupati)
 Darshan C.H.S, Patherli Road,)
 Gograswadi, Dombivali (E) – 421 201.)
5. Mrs. Madhuri A. Shinde.)
 Working as Senior Clerk-Typist in the office)
 of Supply Commissioner, Barrack No.5)
 Free Press Journal Marg, Mumbai – 21,)
 R/a. B-161/2, Govt. Colony, Bandra,)
 Mumbai – 51.)
6. Mrs. Jaya Nitin Aling.)
 Working as Senior Clerk in the office)
 of Commandant General, Home Guard,)
 Old Secretariat Annex, 3rd Floor,)
 Mumbai – 32.)
 R/a. Sai Shakti Co-op. Society, Plot No.)
 728, Behind Naik Nagar, Shivshrushati)
 Road, Kurla (E), Mumbai – 24.)
7. Mrs. Smita Uday Ringanekar.)
 Working as Senior Clerk-Typist in the office)
 of Addl. Commissioner of Police,)
 Crime Branch, Commissioner Office)
 Compound, 4th Floor, Opp. Crawford)
 Market, Mumbai – 1.)
 R/a. D-303, Shantiniketan C.H.S,)
 Sector 8/8A, Kharghar, Navi Mumbai.)
8. Mrs. Rajni K. Devalekar.)
 Working as Senior Clerk in the office)
 of Deputy Controller, Legal Metrology,) ... (Deleted)
 Mumbai Metropolitan Region, Mumbai.)
 R/a. 6/14, Zawabawadi, Takurdwar,)
 Mumbai – 400 002.)
9. Mrs. Meera Deepak Sawant.)
 Working as Senior Clerk in the office)
 of State Reserve Police Force, Grade-VIII,) ... (Deleted)
 Goregaon, Mumbai – 65.)
 R/a. 5-1/15A, Purva Hsg.Soc., Room No.)

- 14, N.N.P. Colony, Dindoshi,)
Goregaon (E), Mumbai - 65.)
10. Mrs. Reena A. Ranawade.)
Working as Senior Clerk in the office)
of Regional Transport Office, Panvel,)
'Kendriya Suvidha Bhavan' Steel Market,)
Kalamboli, tal. Panvel, Dist.: Raigad.)
R/a. 'Sawalaram Sadan', Chendhare,)
Tal. Alibaug, District Raigad.)
11. Mrs. Kshma A. Apradh.)
Working as Noting Assistant in the office)
of Joint Director, Accounts & Treasury,)
Konkan Bhavan, Navi Mumbai.)
R/a. 605, Mahavir Gaurav, Bhandup)
Village, Bhandup (E), Mumbai - 42.)
12. Mrs. Shraddha S. Sawant.)
Working as Assistant Superintendent)
in the office of City Civil Court,) **... (Deleted)**
Mumbai - 32.)
R/a. 4/48, Bawla Building, D.N. Lad Path)
Chinchpokli (E), Mumbai - 12.)
13. Mrs. Shraddha V. Patil.)
Working as Senior Clerk in the office)
of Director of Vocational Education &)
Training, M.S., 3, Mahapalika Marg,)
Post Box No. 10036, Mumbai - 1.)
14. Mrs. Archana V. Bhavsar.)
Working as Senior Clerk in the office)
of Additional Commissioner of Police,)
East Region, Chembur, Mumbai 71.)
R/a. Room No.201, Church View Apt.,)
Behind Fatima Church, Vandrpadada,)
Ambarnath (W), Dist.: Thane.)
15. Mrs. Aparna R. Desai.)
Working as Senior Clerk in the office)



of Addl. Commissioner of Police, Armed)
 Police, Naigum, Mumbai.)
 R/a. Sneh Co-op. Housing Society,)
 Building No.C-4, Room No.1/1, Sector 19A))
 Nerul, Navi Mumbai.)

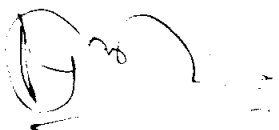
16. Mrs. Rupali S. Bhusa.)
 Working as Supervisor in the office)
 of Collector of Stamps, Borivali Office,)
 Bandra-Kurla Complex, Bandra (E),) ... (Deleted)
 Mumbai - 51.)
 R/a. D-303, Adinath C.H.S, Belpada,)
 Sector-3, Kharghar, Navi Mumbai.)

17. Mrs. Rutuja R. Davanpelli.)
 Working as Clerk-Typist in the office)
 of Court of Small Causes, L.T. Marg,)
 Kalbadevi, Mumbai.)
 R/a. A-405, Blue Skylines, Phool Pada)
 Road, Virar (E) 401 305.)

18. Mrs. Sangita R. Parab.)
 Working as Clerk-Typist in the office)
 of Registrar, Court of Small Causes,) ... (Deleted)
 L.T. Road, Dhobi Talao, Mumbai.)
 R/a. B-1, Anamica, Ramnagar, S.V. Road,)
 Borivali (W), Mumbai - 92.)

19. Shri Naresh S. Musale.)
 Working as Clerk-Typist in the office)
 of Govt. Polytechnic, Mumbai 49,)
 Kherwadi, Ali Yawar Jung Marg,)
 Bandra (E), Mumbai 51.)
 R/a. 14/272, ESIC Nagar, 3rd Floor,)
 New Link road, Andheri (W), Mumbai 53.)

20. Shri Sunil P. Rane.)
 Working as Clerk-Typist in the office)
 of Govt. Polytechnic, Mumbai 49,)
 Kherwadi, Ali Yawar Jung Marg,)
 Bandra (E), Mumbai 51.)



R/a. B-502, Thakkar Avenue,)
 Shiv Vallabh Cross Road, Raval Pada,)
 Dahisar (E), Mumbai 68.)

21. Shri Devdatt B. Amberkar.)
 Working as Clerk-Typist in the office)
 of Joint Director of Higher Education,)
 3, Mahapalika Marg, Elphinstone Tech.)
 High School Bldg. Compus, Dhobi Talao,)
 Mumbai 1.)
 R/a. 615/C-3, Kalpak C.H.S, Sector 6,)
 Charkop, Kandivali (W), Mumbai 67.)

22. Shri Dilip A. Waingankar.)
 Working as Senior Clerk in the office)
 of Deputy Commissioner of Police,)
 Zone-5 Office, Dr. A.B. Road, Worli)
 Police Station Buldg, 5th Floor, Worli,)
 Mumbai 30.)
 R/a. A-2/16, Worli Police Camp,)
 Sir Pochkhanwala Road, Worli,)
 Mumbai 30.)

23. Shri Pramod G. Shinde.)
 Working as Clerk-Typist in the office)
 of Assistant Commissioner of Police,)
 Vikhroli Division, Kannamwar Nagar,)
 Above Vikhroli Police Station, Vikhroli)
 (E), Mumbai 80.)
 R/a. B/27, "Sobat" Co-op. Hsg. Soc,)
 Sector-7, 1st Floor, Shree Nagar,)
 Wagle Estate, Thane (W) - 604.)

24. Shri Sandeep V. Sawant.)
 Working as Clerk-Typist in the office)
 of Court of Small Causes, L.T. Marg,)
 Dhobi Talao, Mumbai 2.) ... (Deleted)
 R/a. B-149/2, Govt. Colony,)
 Bandra, Mumbai 51.)

25. Shri Prashant K. More.)



Working as Clerk-Typist in the office)
of Court of Small Causes, L.T. Road,)
Dhobi Talao, Mumbai 2.)
R/a. Room No.134, Sangh No.1,) ... (Deleted)
Marwadi Wadi, Near Vithal Temple,)
G.D. Ambekar Marg, Parel, Mumbai 12.)

26. Shri Ramesh B. Pandere.)
Working as Junior Accountant in the office)
of Pay & Accounts Office, Treasury Section)
Lekha Kosh Bhavan, Bandra-Kurla)
Complex, Bandra (E), Mumbai 51.)
R/a. B-145/4, Govt. Colony, Bandra,)
Mumbai 51.)

27. Shri Pravin Y. Dhavde.)
Working as Junior Accountant in the office)
of Pay & Accounts Office, Bandra-Kurla)
Complex, Bandra (E), Mumbai 51.)
R/a. B-138/2, Govt. Colony,)
Bandra (E), Mumbai 51.) ...Applicants

Versus

1. The Director of Accounts and)
Treasuries, M.S, New Govt. Barrack)
Nos. 15 and 16, Free Press Journal)
Marg, Mumbai 400 021.)
2. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Finance Department, Mantralaya,)
Mumbai - 400 032.)
3. The State of Maharashtra.)
Through Addl. Chief Secretary,)
General Admn. Department,)
Mantralaya, Mumbai 400 032.) ...Respondents

Mr. A.V. Bandiwadekar, Advocate for Applicants.

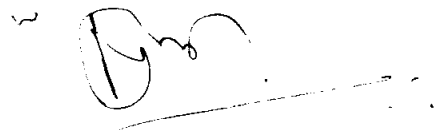
Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

P.C. : R.B. MALIK (VICE-CHAIRMAN)

DATE : 14.09.2017

JUDGMENT

1. 27 Applicants brought this Original Application (OA), but 7 of them withdrew leaving 20 to contest. The reference to the Applicants would be to the remaining 20 Applicants. The issue in this OA is as to whether the provisions of "Revenue Division Allotment for appointment by nomination and promotion to the posts of Group 'A' and Group 'B' (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules, 2015" (to be hereinafter called, "2015 Rules") are applicable or in other words, whether the Applicants are Group 'C' employees or Group 'B'. In case they are found to be Group 'B' employees, then the said Rules would be applicable and after selection to the various posts, they would be liable to be treated in accordance with the 2015 Rules for the purposes of the allotment of divisions. As it will be presently elaborated, this particular issue will have to be resolved by reference to a Judgment of the Division Bench of the Hon'ble Bombay High Court at Aurangabad Bench in **Writ Petition**



No.5440/2009 (Dinesh S. Sonawane Vs. State of Maharashtra and 3 others, dated 5th February, 2010) which came to be confirmed in Special Leave to Appeal CC 16998 of 2011, 3.11.2011 (State of Maharashtra and others Vs. Dinesh S. Sonawane) by the Hon'ble Supreme Court of India.

2. The Applicants came to be appointed as Clerk-Typists in Group 'C' category on various dates. Some of them came to be promoted as Junior Auditors and some others as Senior Clerks. By way of the order dated 6th August, 2015, a copy of which is at Exh. 'A' (Page 44 of the Paper Book (PB)), they have been appointed by way of selection to the posts under Maharashtra Finance and Accounts Services Group 'B' (Non-Gazetted) after they had cleared the requisite examinations, etc. They have clearly stated in Para 6.3 of the OA that the posts mentioned in Rule 2(a) of Maharashtra Finance and Accounts Services Group 'C' Posts (Recruitment) Rules, 1996 was that of Assistant Accounts and Audit Officer. This is the post which the Applicants have been appointed to by the impugned order just referred to. The Applicants are not aggrieved by the said appointment but they are aggrieved by the places of postings which for all one knows is in accordance with the 2015 Rules above referred to. 2015



Rules substituted the Divisional Cadre Structure and Divisional Cadre Allotment for appointment by promotion to the post of Group 'A' and Group 'B' (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules, 2010 (to be hereinafter called, "2010 Rules"). 2010 Rules before being superseded came into force on 8.6.2010 while 2015 Rules became effective from 28th April, 2015.

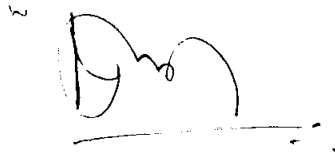
3. The issue as already indicated above is as to whether the posts that the Applicants have been appointed to are Group 'C' posts or Group 'B' Non-Gazetted. If they fall within Group 'C', then they would be outside the purview of the superseding Rules of 2015 and in fact also, the superseded Rules of 2010. However, one aspect of the case of the Applicants is that, for years together, they were not given the posts of their choice and here it needs to be mentioned that, under 2010 Rules, there was a provision for seeking choice or preference of the division of the said employees, which provision was done away with in 2015 Rules.

4. I have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicants and Mrs. K.S. Gaikwad, the learned Presenting Officer (PO) for the Respondents. The Respondent No.1 is



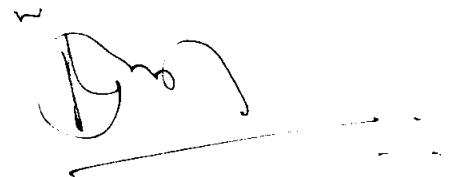
the Director of Accounts and Treasuries of the State of Maharashtra, the Respondent No.2 is the State of Maharashtra in Finance Department and the Respondent No.3 is the State of Maharashtra in General Administration Department (GAD).

5. I have already referred to Maharashtra Finance and Accounts Services Group 'C' Posts (Recruitment) Rules, 1996. A copy thereof is at Exh. 'C' (Page 60 of the PB). It is quite clear that the very title thereof suggests that it was for Group 'C' posts. At Exh. 'K' (Page 110 of the PB), there is an extract from the Finance Department of the posts along with their pay scales. The pay scale of the Assistant Accounts Officer is 5500-9000 with the grade pay of Rs.4300. Same is the pay scale and grade pay for Assistant Audit Officer. At what has been described as Exh. 'A' in the 2nd compilation of the PB at Page 270, there is a GAD G.R. of 27th May, 2016 (in Marathi). It pertains to the classification in accordance with the 5th Pay Commission. It was mentioned there that there was some confusion with regard to which Group, the pay scale of Rs.5500-9000 fell, and therefore, it was clarified that those that fell within Rs.4400/- and Rs.9000/- would befall Group 'C'. At Exh. 'B' in the same compilation at Page 272, this aspect of the matter has been reiterated. The



position, therefore, is quite clear that the pay scale of the Applicants was 4400-9000 or in any case, 5500-9000. It was not more than Rs.9000/-.

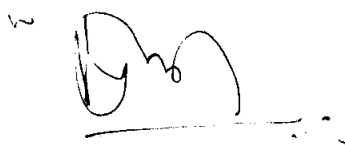
6. I have already mentioned above that the controversy herein has got to be resolved with the guidance in the matter of **Dinesh Sonawane** (of the Hon'ble Bombay High Court, confirmed by the Hon'ble Supreme Court). That was a matter where the issue was as to whether a deceased employee fell within Group 'C' or Group 'B'. If she fell within Group 'C', then the claimant of the appointment on the compassionate ground who was her son could have succeeded, but had she been a Group 'B' employee, then in accordance with the G.Rs. in that particular field, the dependent of Group 'A' and Group 'B' employees were disqualified from claiming compassionate appointments. In those set of facts, however, the central issue was the same which is here. This particular Judgment was referred by this Tribunal presided over by me in **OA 1008/2016 (Shri Abhijeet V. Mulik Vs. District Collector, Kolhapur, dated 18th July, 2017)**. That was in the manner of speaking a second round of litigation. The first one was between the same parties in OA 1093/2012 decided by the 2nd Division Bench of this Tribunal speaking through me on 18.2.2015 which came to



be confirmed by the Hon'ble High Court in the **State of Maharashtra Vs. Shri Abhijeet V. Mulik : Writ Petition No.12445/2015, dated 27.6.2016.** In Para 6 of OA 1008/2016, Para 8 of OA 1093/2012 was reproduced which referred for guidance to **Dinesh Sonawane's** matter. Para 6 thereof, therefore, can usefully be reproduced for guidance.

"6. The relevant issue was then discussed from pay scale point of view and guidance was taken from a judgment of a division bench of the Hon'ble Bombay High Court which was affirmed by the Hon'ble Supreme Court. Facility demands the reproduction of para 8 from the judgment in the 1st OA.

"8. Now, let us examine the matter from the angle of pay scale in order to determine if on that anvil, the post of Naib Tahasildar would befall Group 'C' or Group 'B'. The fact as such is not disputed that the pay scales shown in Exh. 'E' (Page 19 of the paper book) for the post of Naib Tahasildar is 5500-9000. That is of Group 'C' post. In that regard, we may usefully rely on an unreported judgment of a Division Bench of the Aurangabad Bench of our High Court in **Writ Petition No.5440 of 2009 (Dinesh Vs. The State of Maharashtra, dated**



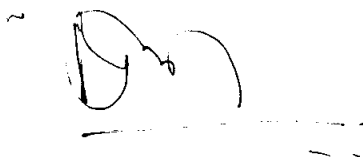
5.2.2010. It was confirmed in **Spl. Leave to appeal CC 16998/2011, dated 3.11.2011 (State of Maharashtra and others Vs. Dinesh) by the Hon'ble Supreme Court.** The copies of the two judgments are there on record. The issue involved therein was the same as in this O.A. though the posts held by the deceased employees were different. Their Lordship of our High Court in Para 5 referred to the G.R. dated 02.07.2002. A passage from that Paragraph needs to be reproduced.

“In so far as Group-C category is concerned, it stipulates that in cases where the Pay Scale is not less than Rs.4400/- and not more than Rs.9000/-, the same will be covered by Group-C category. As aforesaid, it is not in dispute that the Pay Scale of late Smt. T.D. Sonawane was Rs.5500-9000/-. The natural meaning to be assigned to the above Clauses, in our opinion, is that if the Pay Scale is between Rs.4400/- up to Rs.9000/-, such cases would be covered by Group-C category, whereas if the Pay Scale is between Rs.9001/- up to Rs.11500/-, the same will be covered by Group-B category. If any other



interpretation is given to the said clauses, it would create anomalous situation. In much as, a person with the Pay Scale of Rs.9000/- will be covered in Group-B category as well as Group-C category since Pay Scale of Rs.9000/- is mentioned in both categories. Such interpretation cannot be countenanced. Thus understood, the stand taken by the respondents that the petitioner is ineligible as his case is covered in Group-B category, cannot be sustained. That stand will have to be stated to be rejected since admittedly the Pay Scale of the petitioner's predecessor was Rs.5500-9000."

7. It is, therefore, quite clear that whatever the learned PO Mrs. Gaikwad might urge with all the emphasis at her command, **Dinesh Sonawane** (supra) is a complete answer to all the questions that she would like to throw up at and against the Applicants. She relied upon **Centre for Public Interest Litigation Vs. Union of India and others : (2016) 6 SCC 408** for the proposition that in matters relating to the policy decision, the circumspection should inform the minds of the judicial authorities. She further



relied upon **Transport and Dock Workers Union and others Vs. Mumbai Port Trust and another : (2011) 2 SCC 575 (C)** for the proposition that, even under Article 14 of the Constitution of India when it speaks about equality, the absolute equality should not be insisted upon and the existing realities of modern world, business, etc. has got to be borne in mind. The learned PO then relied upon **Shri Sitaram Sugar Company Vs. Union of India & others : AIR 1990 SC 1277 = 1990 SCR (1) 909**. Mrs. Gaikwad, the learned PO relied upon this Judgment for the proposition that the Applicants cleared the examinations and gave preference also, and therefore, now they cannot turn around and question the application or applicability of 2015 Rules. She finally relied upon **State of Tamil Nadu Vs. P. Krishnamurthy : Civil Appeal No.5572 and 5644 of 2015, dated 24.3.2006**. This was for the proposition that there is a presumption in favour of constitutionality and validity of a subordinate legislation and the burden to prove otherwise rests on the party that calls into question the said instruments.

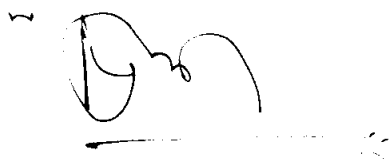
8. Now, as to the above submissions and the authorities cited by the learned PO Smt. Gaikwad, I find that the issue here is quite distinct and clear. The Applicants are not challenging just in thin air the 2015



Rules or even any other Rule. Their case is that, take the Rule as it is and the same is not applicable to their case. Therefore, the principles laid down by the Hon'ble Supreme Court in the above referred Judgments cited by the learned PO will not be applicable to the present facts.

9. In this particular matter, more than 40 page OA raises several issues for the same point, but as must have become clear that the controversy herein can safely be resolved on one particular formidable aspect of the matter for which there is an authority of the Hon'ble Bombay High Court in **Dinesh Sonawane** (supra) confirmed by the Hon'ble Supreme Court. It is held that the Applicants are Group 'C' employees. Mr. Bandiwadekar also sought to draw a distinction between appointment by nomination and promotion on one hand and selection on other and according to him, the present is an instance of selection, and therefore also, the 2015 Rules will not apply. There is substance in what he contends, but I do not think, a very detailed discussion is really necessary when as I mentioned above on a very strong point, the OA can be decided.

10. Mr. Bandiwadekar also contended that the Applicants gave their preference (choice) under 2010 Rules



and it was the Respondents that were lethargic resulting in prejudice to the Applicants. Had the Respondents acted with due dispatch, then under the 2010 Rules they would have been required to take into consideration the preference given by the Applicants. Now, in my opinion, it is again not necessary for me to closely examine this aspect of the matter because apart from what I have held above post 28th April, 2015, there can be no recourse to 2010 Rules because they were substituted. Beyond that, I do not think it necessary to further discuss this aspect of the matter.

11. The Applicants have made as many as four prayers, but regard being had to the controversy involved, I think, a properly moulded relief capable to address the real controversy will suffice.

12. It is hereby held and declared that the Applicants are Group 'C' employees and immune from the "Revenue Division Allotment for appointment by nomination and promotion to the posts of Group 'A' and Group 'B' (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules, 2015". The Respondents are hereby directed to act in accordance herewith within a period of

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eight weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

~~(R.B. Malik)~~
VICE-CHAIRMAN
14.09.2017

14.9.17

Mumbai

Date : 14.09.2017

Dictation taken by :

S.K. Wamanse.