

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 775 OF 2015**

**DISTRICT : SANGLI**

Shri Sunilsing Keshavsing Rajput, )  
Working as Additional Auditor, )  
Co-operative Societies, Sangli, in the )  
Office of the District Special Auditor, )  
Class-I, Sangli. Having office at )  
Central Building, Sangli-Miraj Road, )  
Sangli, R/o: Spurthi C.H.S., )  
Opp. Chinmaya Park, Yashwant Nagar, )  
Sangli. )...**Applicant**

**Versus**

1. The Divisional Joint Registrar, )  
Co-operative Societies [Audit], )  
Kolhapur Division, Kolhapur, )  
Having office at Plot No. M-4, )  
Behind Shri Shahu Market, )  
Yard Post Office, Kolhapur-5. )

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2. The District Special Auditor, )  
Class-I, Cooperative Societies, )  
Sangli, having office at Central )  
Building, Sangli-Miraj Road, )  
Sangli. )
3. The Divisional Joint Registrar, )  
Co-operative Societies [Audit], )  
Pune Division, Pune, having office )  
At 22, Mazda Building, Ambekar Rd )  
Pune-1. )
4. The Commissioner for Cooperation )  
& Registrar, Co-operative )  
Societies, [M.S], Pune, having )  
Office at Central Building, )  
B.J Road, Pune-1. )
5. The State of Maharashtra, )  
Through the Principal Secretary, )  
Co-operation & Textiles, )  
Having office at Mantralaya, )  
Mumbai 400 032. )...**Respondents**

Shri B.A Bandiwadekar, learned advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

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**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**DATE : 03.08.2016**

**ORDER**

1. Heard Shri B.A Bandiwadekar, learned advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant seeking deemed date of promotion in the post of Auditor, Grade-II from 1.1.2008, when his juniors were promoted to that post from VJ-A category.

3. Learned Counsel for the Applicant argued that the Applicant joined Government service on 25.12.1985 as Junior Clerk. He was promoted as Sub-Auditor on 31.12.2002 and Auditor, Grade-II on 22.6.2015. The Applicant had joined Government service on the basis of certificate dated 7.11.1977 showing that he belongs to Rajput Bhamta Caste. The Applicant procured a new Caste Certificate in prescribed form on 7.11.2001. Based on this Caste Certificate, he was promoted as Sub-Auditor on 31.12.2002. The Applicant submitted attested copy of his Caste Certificate through the Respondent no. 2 for validation by the Caste Scrutiny Committee on 14.5.2004. However, the said Committee did not issue

Caste Verification Certificate to the Applicant and on 17.1.2008, the Respondent no. 3 promoted, inter alia Shri V.H Parmar, as Auditor, Grade-II, though Shri Parmar is junior to the Applicant. The Applicant made representation to the Respondent no. 3 on 3.10.2008 against his supersession, but he was asked on 15.11.2008 to produce Caste Validity Certificate before his case could be considered. The Applicant was again asked to furnish the proposal for Caste Validity Certificate by the District Social Welfare Officer, Kolhapur, which he did on 21.1.2009. As the Caste Validity Certificate was not issued to the Applicant, he filed Writ Petition no. 5700 of 2012 in Hon'ble Bombay High Court to expeditiously decide his caste validation matter. The Committee finally issued the validity Certificate on 8.3.2013. The Applicant then made representation to the Respondent no. 1 on 30.3.2013 to promote him as Auditor, Grade-II forthwith. The Applicant was finally promoted as Auditor, Grade-II on 22.6.2015. He has been given deemed date of promotion from the date he submitted his Caste Certificate to the Respondent no. 1. The Applicant made further representation, but the Respondent no. 4 informed him by impugned communication dated 27.8.2015 that he cannot be given deemed date of promotion when his junior from VJ-A category was promoted. Learned Counsel for the Applicant argued that the Applicant had applied for Caste Validation Certificate in 2004.

However, for various reasons, over which the Applicant had no control, the validity Certificate was not issued to him in time when his junior was promoted. It was issued on 8.3.2013. Before that, on 1.1.2008, his juniors were promoted as Auditor, Grade-II. The Applicant was promoted as Auditor, Grade-II on 22.6.2015. In fact, the juniors of the Applicant have since been promoted as Auditor, Grade-I in 2015, thus causing great injustice to the Applicant.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant joined Government service on 22.12.1985 on the basis of a Caste Certificate issued by Tahsildar, Miraj, dated 7.11.1977, showing that he belongs to 'Rajput Bhamta' Caste. He then produced a 'Caste Certificate' dated 7.11.2001 in the proper format, showing that he belongs to VJ-A category. He was asked to produce Caste Validity Certificate in 2004. The Applicant produced Caste Validity Certificate on 20.3.2013. Learned Presenting Officer argued that as per G.R dated 16.5.2007, the Applicant is not entitled to get benefit of reservation retrospectively.

5. It is seen that the Applicant has claimed in para 6.3 of the Original Application that he was promoted as Sub-Auditor by order dated 31.12.2002, based on his Caste Certificate. This is not denied by the Respondents.

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In para 9 of the affidavit in reply dated 5.1.2016, it is stated that:-

“9. With reference to para 6.3, I say that the Applicant joined the department initially on the basis of Caste Certificate of ‘Rajput Bhamta caste’ issued by Tahsildar and Executive Magistrate, Miraj on 7.11.1977.

It is, thus, clear that the Applicant joined service on 25.12.1985 as Junior Clerk on the basis of his Caste Certificate of ‘Rajput Bhamta’ which is recognized in VJ-A category. He was promoted as Sub-Auditor on 31.12.2002 on the basis of his Caste Certificate. The Applicant had placed on record a copy of letter dated 14.5.2004, addressed by the Respondent no. 2 to the Member Secretary of the Caste Scrutiny Committee, at Pune. This is at Exhibit ‘D’ (page 24 of the Paper Book). This fact is mentioned in para 6.5 of the Original Application. In para 10 of the affidavit in reply, this is admitted by the Respondents. The Applicant has also annexed other correspondence regarding efforts he made to procure the Caste Validity Certificate. It is also seen that the Applicant has filed Writ Petition no. 5700 of 2012 before the Hon’ble Bombay High Court and the Caste Scrutiny Committee no. 2, Kolhapur, was directed by Hon’ble High Court to decide the Caste claim of the Applicant within six months by order dated 28.6.2012.

Ultimately, the Applicant got Caste Validity Certificate on 8.3.2013. From these documents, admitted by the Respondents, it is clear that the Applicant had made all possible efforts to get the Caste Validity Certificate since 2004. The Applicant has submitted a representation on 30.3.2013 (Exhibit 'K') seeking deemed date of promotion from the date on which his junior Shri V.H Parmar from VJ-A category was promoted as Auditor, Grade-II. The Applicant had clearly mentioned that he was not responsible for delay in submitting the Caste Validity Certificate. This representation was rejected by the Respondent no. 1 by letter dated 29.6.2013 (page 43 of the Paper Book). It was mentioned that he had submitted Caste Validity Certificate on 20.3.2013, and his request for deemed date of promotion cannot be accepted as G.R dated 16.5.2007 does not provide for grant of Caste related benefits retrospectively. After the Applicant made complaints to the Commissioner of Cooperation, the Respondent no. 3 has submitted his report dated 27.8.2015 to that office, which is impugned in this Original Application. Again, G.R dated 16.5.2007 is mentioned as the reason to deny deemed date of promotion to the Applicant. This G.R is at Exhibit.R-1 (page 68 of the Paper Book). On plain reading of this G.R, it is quite clear that it applies to those who joined Government service as open candidate and later claimed benefit of Backward Class. Clause 1 of the G.R reads:-



“१ खुल्या प्रवर्गातून शासकीय सेवेत नियुक्त झालेल्या मागासवर्गीय उमेदवाराने त्यांच्या नियुक्तीनंतर कालांतराने मागासवर्गीय आरक्षणाचे फायदे मिळविण्यासाठी जर जाती प्रमाणपत्रासह अर्ज केला असेल तर त्या उमेदवाराने ज्या तारखेला जातीचे प्रमाणपत्र कार्यालयाकडे सादर केले आहे त्या तारखेपासून पुढे आरक्षणाचे फायदे जातीच्या दाव्याची वैधता तपासून झाल्यावर देय ठरतील. (भूतलक्षी प्रभावाने लाभ देय ठरणार नाही).”

The Respondent no. 1 is harping on the phrase in the bracket that benefits are not available retrospectively. However, this G.R is not applicable in the present case, as the Applicant joined service from VJ-A category and not from Open category and he was promoted in 2002 from VJ-A category. He could not produce Caste Validity Certificate in 2008, when his junior from VJ-A category was promoted as Auditor Grade-II, though he had made efforts to get that since 2004. He had to approach Hon'ble Bombay High Court in 2012 and he succeeded in getting the validity Certificate on 8.3.2013. It cannot be said that the Applicant in any way was responsible for delay in getting Caste Validity Certificate. He had a valid Caste Certificate of VJ-A category. It is also not denied by the Respondents that his junior from VJ-A category Shri V.H. Parmar was promoted by order dated 17.1.2008 as Auditor, Grade-II. The Applicant is clearly eligible to be considered for deemed date of promotion from the date Shri Parmar was so promoted. There is another fact which has to be considered. All the persons in order dated 17.1.2008 by which Shri Parmar and others were promoted as Auditor Grade-II though belonging to



backward class, were promoted against 'open' posts. On that basis, the Applicant would have been eligible for promotion, even if his Caste was not considered.

6. The Respondent no. 1 is directed to consider the case of the Applicant for deemed date of promotion to the post of Auditor, Grade-II from the date when his junior Shri V.H Parmar was so promoted by order dated 17.1.2008, in the light of observation in the preceding paragraph. This should be done within a period of three months from the date of this order. This O.A is allowed accordingly with no order as to costs.

Sd/-

(Rajiv Agarwal)  
Vice-Chairman

**Place : Mumbai**

**Date : 03.08.2016**

**Dictation taken by : A.K. Nair.**