

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 987/2019(S.B.)

Rajesh S/o Dnyaneshwar Belkhude.
Age 39 years, C/o Deputy Conservator of Forest,
Division Brahmपुरi, Dist.Chandrapur.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Principal Secretary (Forest),
Revenue & Forest Department,
Mantralaya, Mumbai-32.

- 2) The Chief Conservator of Forest,
Chandrapur Circle, Chandrapur.

Respondents

Shri Bharat Kulkarni, Ld. counsel for the applicant.
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 04th August 2022.

JUDGMENT

Judgment is reserved on 27nd July, 2022.

Judgment is pronounced on 04th August, 2022.

Heard Shri Bharat Kulkarni, learned counsel for the applicant
and Shri A.M.Khadatkar, learned P.O. for the Respondents.

2. Case of the applicant is as follows.

In seniority list of Clerks as on 01.01.2009, in the category of VJ(A) name of the applicant stood at Sr.No.1. In the select list prepared in 2007/2008 for the purpose of giving promotions to the post of Accountant from the post of Clerk name of Smt. Shobha Varhade / Dhatrak was included in the category of VJ(A). Had she been promoted to the post of Accountant in the year 2007, one post of Accountant would have fallen vacant in 2009 and name of the applicant for this promotional post could have been considered at that point of time itself because for promotion to the post of Accountant name of the applicant was included in the select list. However, Smt. Varhade was not promoted in 2007 for want of Caste validity Certificate. She was promoted to the post of Accountant on 01.01.2009. In the year 2013 her Caste Certificate was held to be invalid. She faced prospect of dismissal. However, the Hon'ble Bombay High Court protected her services but directed withdrawal of benefits of promotion given to her. In the year 2013 itself, immediately after her Caste Certificate was held to be invalid, Smt. Varhade ought to have been reverted. However, order of her reversion to the post of Clerk was passed on 16.1.2017 and thereafter promotional post of Accountant fell vacant. The applicant was promoted to this vacant post by order dated 13.10.2017 (Annexure

A-3) in compliance of order dated 18.07.2017 (Annexure A-6) passed by this Tribunal in O.A.No.720/2016. Had name of Smt. Varhade not been included wrongly in Seniority List dated 01.01.2009 (Annexure A-5) in the category of VJ(A), the applicant would have been certainly considered for promotion in her place since he, too, belongs to the said category. The applicant made representations dated 12.07.2018 and 03.08.2019 (Annexure A-2 collectively) to respondent no.2 praying therein as follows-

तरी वरील परिस्थिती लक्षात घेता मला सौ.शोभा हरीभाऊ व-हाडे लेखापाल हे ज्या तारखेस विमुक्त जाती अ (VJ-A) या प्रवर्गामधुन मुख्य लेखापाल पदाकरीता दावेदार होते ऑक्टोबर २००७ मध्ये या तारखेपासुन लेखापाल पदाची मानीव तारीख देण्याची कृपा करावी ही विनंती.

3. His representation dated 12.07.2018 was considered by respondent no.2 and the applicant was informed vide Annexure A-1 as follows-

प्रकरणात, उपरोक्त विनंती अर्जान्वये श्री.आर.डी.बेलखुडे, लेखापाल यांनी लेखापाल पदावर सन २००९ पासून मानीव तारीख मिळणेबाबत अर्ज या कार्यालयास सादर केलेले आहे. त्याअनुषंगाने श्री.आर.डी.बेलखुडे लेखापाल यांना कळविण्यात येते की, मा.उच्च न्यायालय, मुंबई यांनी याचिका क्र.२७९७/२०१५ या प्रकरणी दिनांक ०४.०८.२०१७ रोजी दिलेल्या निर्णयान्वये दिनांक २५.०५.२००४ चा शासन निर्णय अवैध ठरविले आहे. तसेच मागासवर्गीयांना पदोन्नतीमध्ये आरक्षणाबाबत मा.

सर्वोच्च न्यायालयात दाखल केलेल्या विशेष अनुज्ञा याचिका क्रमांक २८३०६/२०१७ अद्याप प्रलंबित आहे.

श्री.आर.डी.बेलखुडे, लेखापाल यांचे मानिव तारीखेसंबंधी प्रकरण हे मागासवर्गीयांच्या पदोन्नतीसंदर्भातील असल्यामुळे सद्यस्थितीत त्यांचे विनंती अर्जाचा विचार करता येणार नाही. भविष्यात मागासवर्गीयांना पदोन्नतीमध्ये आरक्षण संदर्भात शासन आदेश प्राप्त झालेनंतर त्यांचे अर्जावर प्राधान्याने विचार करण्यात येईल. तरी याबाबत संबंधिताने नोंद घ्यावी.

Hence, this application for following reliefs-

[I.] Issue appropriate order or direction to R. No.2 to consider the claim of applicant for grant of deemed date as Accountant as per roster point of V.J.(a) category from 1/1/2009, on which Smt. Dhattrak wrongly promoted in V.J.(a) category without validity of caste.

[II.] Direct the R. No.2 to consider representation dated 3/08/2019 in the interest of justice.

[III.] Direct the R. No.2 to grant the deemed date with consequential benefits of pay and allowances.

[IV.] Any other relief deemed proper for retrospective effect in the facts and circumstances of the case, in the interest of justice.

4. Reply of respondents 1 and 2 contains following averments-

(1) The applicant is challenging the rejection of his representation for considering his claim for grant of

deemed date as Accountant from 01/01/2009. The said relief sought by the applicant is baseless and absolutely barred by limitation.

(2) The representation of the applicant is rejected by respondent no.2 vide letter dt.23/07/2018 on the ground that the reservation in promotion case is under challenge before Hon'ble Apex Court.

(3) Smt Dhatrak is reverted as Clerk on 16/01/2017 in compliance of O.A.No.720/2016 which is decided on 18/07/2017 as shifted from V.J.(A) category to N.T.(D) category by respondent no.2.

(4) Since the respondent no.2 had already rejected the representation for deemed date promotion of the applicant on 23/07/2018, therefore, it was not felt necessary by the respondent no.2 to give reply to the representation again made by the applicant on 03/08/2019.

(5) At the relevant time when Smt.Dhatrak was promoted as Accountant vide order no.546 dated 02/05/2000, at that time she was having caste certificate of "*Banjara*" community. Since Smt. Dhatrak was

promoted under reserved category, therefore the respondent no.2 forwarded the caste certificate of Smt. Dhatrik for verification to the Caste Scrutiny Committee at Nagpur vide letter dated 26/04/2007. The Caste Scrutiny Committee vide letter dt.17/04/2013 has invalidated the caste claim of V.J. (A) of Smt. Dhatrik. Therefore she challenged the said order of Caste Scrutiny Committee before the Hon'ble High Court Bench at Nagpur by way of filing Writ Petition No.2861/2013. The Hon'ble High Court vide its order dated 23/01/2015 was pleased to observe that she or her progeny shall not claim any benefits of or status as belonging to "Banjara" community. The Hon'ble High Court was further pleased to declare that she is entitled for protection of service. In the said order the Hon'ble High Court also observed that there is no finding of the Caste Scrutiny Committee about falsehood or fraud committed by Smt. Dhatrik.

(6) The Government letter no. CBC 1291/222/ 4-11(1c0-5 dt.18/08/1992 and Government Resolution dt.23/05/1984 are self explanatory. During that relevant time, there was confusion prevailing about whether the

castes Vanjari and Banjara have got any affinity or bearing with each other. Therefore the Hon'ble High Court had also stayed the reversion order of Smt. Dhatrik in Writ Petition No.2831/2013 and the final order was passed on 23/01/2015, therefore, the present applicant cannot claim deemed date of promotion as he was entitled for the promotion as Accountant from the date when Smt. Dhatrik was reverted to the post of Clerk i.e. with effect from 19/10/2013 as the said post of Accountant had fallen vacant due to her reversion. Similarly the Hon'ble Bombay High Court vide its order dt. 04/08/2017 in Writ Petition No.2797/2015 had declared all the promotions given on reservation basis as illegal and therefore the promotions in the reserved category were not given by the respondents in their department. Similarly the State Government has challenged the aforesaid order before the Hon'ble Apex Court vide SLP No.28306/2017, however it is still pending and the matter is subjudice before the Hon'ble Apex Court. However there is no bar in giving promotion to the persons in the open category.

5. At Annexure A-6 there is copy of order dated 18.07.2017 passed by this Tribunal in O.A.No.720 of 2016. In the said O.A. the applicant had claimed following reliefs-

[I.] Issue appropriate order or direction to R. No.2 to consider the claim of applicant for promotion as Accountant as per Seniority on vacant roster point of V.J.(a) category. Roster point vacant from 2013.

[II.] Direct the R. No.2 to call for the DPC for selection and to fill up the vacant quota of V.J.(A) category.

[III.] Any other relief deemed proper for retrospective effect in the facts and circumstances of the case, in the interest of justice.

Thereafter this Tribunal passed the order dated 18.07.2017 as follows –

Heard Shri Bharat Kulkarni the Ld. counsel for the applicant and Shri H.K. Pande, the learned P.O. for the respondents.

2. The Ld. P.O. has filed reply affidavit on behalf of R.2. The same is taken on record and a copy thereof is supplied to the Ld. counsel for the applicant.

3. The applicant has claimed directions to respondent No.2 to consider his name for promotion to the post of Accountant as per seniority of vacant roster point of V.J.(A)

category. In para 8 of the reply affidavit, respondent No.2 has stated as under :-

“During the pendency of instant O.A., some subsequent developments have taken place. It is most respectfully submitted here that, the present answering respondent has now issued an order dated 16.01.2017 and thereby reverting Smt.Dhatrak from the post of Accountant to her substantive post of Clerk and as a result of which a post of Accountant in the VJ (A) category came to be fallen vacant. In the said circumstances, the present answering respondent submits that on the said vacant post of roster point VJ (A) category, the claim of the applicant for promotion will be considered in the next D.P.C. meeting likely to be held in the month of September, 2017. A copy of order dated 16.01.2017 issued by the Chief Conservator of Forests, Chandrapur is annexed herewith as Annexure R-2.”

4. Since the applicants claim is being considered in the next DPC meeting, the very reason for filing this O.A. no more survives. In view thereof, the O.A. stands disposed of with direction to respondent No.2 to act upon the undertaking as mentioned in para 8 above.

5. No order as to costs.

6. Having regard to the reliefs claimed in the O.A.No.720/2016, and grounds on which instant O.A. is resisted by respondents 1 and 2 and which are quoted above, I find no infirmity in the impugned order (Annexure A-1). In view of contents of order dated 23.07.2018, no useful purpose would be served by directing respondent no.2 to consider representation of the applicant dated 3.8.2019. The

applicant is not entitled to any relief. The O.A. is accordingly dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated - 04/08/2022

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J) .
Judgment signed on : 04/08/2022.
and pronounced on
Uploaded on : 04/08/2022.