

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.27 OF 2022

WITH

M.A.NO.560 OF 2022

DISTRICT : MUMBAI

Smt. Mangala S. Khadse)
Age 57 years, Matron, R/at A-203, Rajdeep CHS Ltd.)
Sector No.4, Airoli, Navi Mumbai Mob.9867053728)..Applicant

Versus

1. The State of Maharashtra,)
Through Secretary, Public Health Department,)
Mantralaya, Mumbai)
2. The Director of Health Services,)
Public Health Department, 7th floor,)
St. Georges Hospital Campus, Mumbai-1)
3. The Commissioner,)
Public Health Department, Aarogya Bhavan,)
4th floor, St. Georges Hospital Campus, Mumbai)
4. The Under Secretary, Public Health Department,))
10th Floor, B-Wing G.T. Hospital Compound)
Building, Mumbai 400001)
5. The Deputy Secretary,)
Health Services (Nursing), Arogya Bhavan,)
7th Floor, St. George Hospital Campus,)
Mumbai 400001)

6. The Civil Surgeon,)
Central Hospital at Ulhasnagar-3, District Thane)..Respondents

Shri Rajendra Sorankar i/b. Shri Ketan Dabke -Advocate for the Applicant
Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

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

RESERVED ON : 29th November, 2022

PRONOUNCED ON: 16th December, 2022

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. M.A. is filed seeking inter-alia fixing the date for hearing of O.A.No.27/2022 finally before 30.11.2022.

2. M.A. is allowed.

3. Matter of interim relief was decided by this Tribunal by order dated 16.02.2022 passed in O.A.No.27/2022, wherein following order was passed :

“We have considered these submissions of learned C.P.O. However, the Applicant is retiring in October, 2022. Hence, we are of the view that the applicant need not be shifted at different place away from her permanent residence where she is going to settle after her retirement. Thus, we direct the Department to accommodate the Applicant in Thane District or any nearby District of her choice, subject to availability of post of Sister-Tutor.”

The said order was challenged before the Hon’ble High Court vide Writ Petition No.2796/2022. The Hon’ble High Court further stated that

since O.A. is pending before the Tribunal the Hon'ble High Court passed the following order :-

“3. Since the original application is pending before the Tribunal and granting stay of the order dated December 24, 2021 would result in grant of the principal relief claimed in the original application, we see no reason to accede to the request of learned advocate for the petitioner to stay the impugned order. The original application is pending, and we have no doubt that the Tribunal would consider the question of granting appropriate relief.

4. No case for interference at this stage has been set up and, accordingly, the writ petition is dismissed. There shall be no order as to costs.”

4. In this matter the applicant, who has served on the post of Matron for 13 years i.e. from 2008 till December, 2021, is posted as Sister-Tutor and she is transferred from Ulhasnagar Central Hospital to Alibag Government Hospital by order dated 24.12.2021. The applicant has challenged the said order on the ground that this being reversion from the cadre of Matron to Sister-Tutor, she should have been given notice and she should also have been given hearing in view of order of reversion dated 12.11.2021.

5. The applicant was appointed as Staff Nurse at Rural Hospital, Mokhada, Thane on 4.4.1986. Subsequently, she was appointed on the post of Sister-Tutor at Shri Vasantrao Naik Government Medical College and Hospital, Yavatmal on 4.8.1994. She was posted to Civil Hospital, Thane on the same post of Sister-Tutor on 19.5.1999. On 10.11.2008 the Director of Health Services transferred her to the vacant post of Matron Grade-III (Non-Gazetted) at Central Hospital, Ulhasnagar-3. The service book specifically states that applicant was promoted to the post of Matron Grade-III (Non-Gazetted). Learned counsel for the applicant has submitted that order dated 24.12.2021 is reversion from the post of Matron Grade-III to the post of Sister-Tutor. Ld. Advocate for the applicant argued that impugned order was against the principles of natural justice,

Constitutional protection given to a public servant and no order of reversion can be issued without giving proper notice and the transfer is contrary to the principles of natural justice and fairness as per Article 311 of the Constitution of India. The applicant has right to the post of Matron Grade-III where she worked for more than 13 years. Reverting her to Sister-Tutor post without giving notice is punishment. He further argued that respondents have failed to consider the word, "transfer" used in Recruitment Rules dated 17.4.1973 for the post of Matron Grade-III (Non-Gazetted) where the applicant is working since 10.11.2008. Ld. Advocate for the applicant had referred to the Recruitment Rules for the posts of Matrons (Non-Gazetted) dated 17.4.1973,

6. He also contended that her transfer on reversion from Ulhasnagar to Alibaug Government Hospital by order dated 24.12.2021 was violative of Section 5(1)(a) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (herein after referred to as "The Transfer Act" for brevity). Section 5(1)(a) reads as under:

"5.(1) The tenure of posting of a Government servant or employee laid down in Section 3 may be extended in exceptional cases as specified below, namely:-

(a) the employee due for transfer after completion of tenure at a station of posting or post has less than one year for retirement."

7. The Ld. Advocate for the applicant has relied on the following judgments:

- (i) **Siraj Ahmad Versus State of Uttar Pradesh & Anr, Civil Appeal No.9412/2019 dated 13.12.2019 decided by Hon'ble Supreme Court.**
- (ii) **Union of India & Anr. Versus Narendra Singh, Appeal (Civil) No.5865/2007 dated 13.12.2007 decided by Hon'ble Supreme Court.**
- (iii) **Bhagwati Prasad Versus Delhi State Mineral Development Corporation & Ors. reported in AIR 1990 SC 371.**
- (iv) **Hussain Sasansaheb Kaladgi Versus State of Maharashtra reported in AIR 1987 SC 1627.**
- (v) **The Regional Manager and Another Versus Pawan Kumar Dubey reported in AIR 1976 SC 1766.**
- (vi) **P.C. Wadhwa Versus Union of India reported in AIR 1964 SC 423.**
- (vii) **Parshotam Lal Dhingra Versus Union of India reported in AIR 1958 SC 36.**
- (viii) **Kusum Bapurao Dhoure Versus State of Maharashtra & Ors. reported in 1989 Mh.L.J. 901.**

8. Per contra Ld. CPO has submitted that applicant was never promoted and her posting to Ulhasnagar on 10.11.2008 on the vacant post of Matron Grade-III was not promotion but she was transferred on her request. She referred to the letter dated 10.11.2008 wherein it is clearly stated that the applicant was transferred on the vacant post (Exhibit D page 43 of OA). Thus, it is seen that it was a transfer on her request. She also pointed out that no DPC was held for her promotion. Hence, her posting at Ulhasnagar was not a promotion.

9. As far as principles of natural justice are concerned learned C.P.O. referred to following three judgments :-

- (a) **Aligarh Muslim University & Ors. Versus Mansoor Ali Khan reported in (2000) 7 SCC 529.**
- (b) **Ashok Kumar Sonkar Versus Union of India & Ors. reported in (2007) 4 SCC 54.**
- (c) **Dharampal Satyapal Limited Versus Deputy Commissioner of Central Excise, Gauhati and Ors. reported in (2015) 8 SCC 519.**

10. In the case of **Aligarh Muslim University (supra)**, the Hon'ble Supreme Court has held that,

“20. This is the crucial point in this case. As already stated under point 4, in the case of Mr. Mansoor Ali Khan, notice calling for an explanation had not been issued under Rule 5(8)(i) of the 1969 Rules. Question is whether interference is not called for in the special circumstances of the case.

21. As pointed recently in M.C. Mehta Vs. Union of India, there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Gadde Venkateswara Rao vs. Govt. of A.P. it is not necessary to quash the order merely because of violation of principles of natural justice.

29. On the above facts, the absence of a notice to show cause does not make any difference for the employee has already been told that if his further overstay is for continuing in the job in Libya, it is bound to be refused.

In the case of **Ashok Kumar Sonkar (supra)**, the Hon'ble Supreme Court has held that,

20. Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the

eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application.

27. It is also, however, well-settled that it cannot be put any straight jacket formula. It may not be in a given case applied unless a prejudice is shown. It is not necessary where it would be a futile exercise.

28. A court of law does not insist on compliance of useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard.

In the case of **Dharampal Satyapal Limited (supra)**, the Hon'ble Supreme Court has held that,

20. Natural justice is an expression of English Common Law. Natural justice is not a single theory – it is a family of views. In one sense administering justice itself is treated as natural virtue and, therefore, a part of natural justice. It is also called 'naturalist' approach to the phrase 'natural justice' and is related to 'moral naturalism'. Moral naturalism captures the essence of commonsense morality – that good and evil, right and wrong, are the real features of the natural world that human reason can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.

37. Therefore, we are inclined to hold that there was a requirement of issuance of show-cause notice by the Deputy Commissioner before passing the order of recovery, irrespective of the fact whether Section 11A of the Act is attracted in the instant case or not.

38. But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the Courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straight-jacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under

certain circumstances. For example, the Courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the Courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

11. Learned Advocate Mr. Sorankar while refuting stated that in the judgment of **Ashok Kumar Sonkar (supra)** the Hon'ble Supreme Court clearly points out safeguard for not issuing notices and following the principles of natural justice. He further submits that in the case of **Aligarh Muslim University (supra)** he refers to paragraph 34 of the said judgment which states that,

“34. We may add a word of caution. Care must be taken, wherever the court is justifying a denial of natural justice, that its decision is not described as a “preconceived view” or one in substitution of the view of the authority who would have considered the explanation. That is why we have taken pains to examine in depth whether the case fits into the exception.”

While in case of **Dharampal Satyapal Limited (supra)**, he referred to paragraph 34 and 38 which reads as below :

34. Likewise, in C.B. Gautam v. Union of India & Ors., this Court once again held that principle of natural justice was applicable even though it was not statutorily required. The Court took the view that even in the absence of statutory provision to this effect, the authority was liable to give notice to the affected parties while purchasing their properties under Section 269-UD of the Income Tax Act, 1961. It was further observed that : (SCC p.104, para 30)

“30 The very fact that an imputation of tax evasion arises where an order for compulsory purchase is made and such an imputation casts a slur on the parties to the agreement to sell leads to the conclusion that before such an imputation can be made against the parties concerned they must be given an opportunity to show-cause that the under valuation in the agreement for sale was not with a view to evade tax.”

It is, therefore, all the more necessary that an opportunity of hearing is provided.

12. In order to examine this point and to assess the submissions made by learned counsel for the applicant, we need to reproduce the relevant portions of the Recruitment Rules for the post of Matron (Non Gazetted) dated 17.4.1973 as follows:-

“Appointment to the post shall be made by the Director of Health Services Bombay and the Director of Medical Education and Research, Bombay, with the concurrence of each other, either-

(A) by promotion from amongst the non-gazetted Assistant Matrons and/or transfer of sister-tutors possessing the qualifications prescribed for appointment by nomination;

or

(B) by nomination from amongst candidates, who-

- (a) unless already in service of the Government of Maharashtra, are not more than 45 years of age;*
- (b) have adequate knowledge of English;*
- (c) are qualified nurses and midwives who are registered with the Maharashtra Nursing Council or are eligible for such registration;*
- (d) possess experience in nursing administration or teaching for not less than 8 years after qualifying.”*

13. The main issue for consideration here is whether applicant's transfer order to the vacant post of Matron Grade-III at Central Hospital, Ulhasnagar-3 by order dated 10.11.2008 passed by the Director of Health Services amounts to promotion.

Matron (Non Gazetted) can be appointed by three modes as under:-

- (i) by promotion from amongst Non-Gazetted Assistant Matrons,
- (ii) by transfer of Sister Tutor possessing the qualification prescribed for appointment by nomination,
- (iii) by nomination by direct recruitment.

The qualification for appointment by nomination is mentioned above in sub clauses (a), (b), (c) and (d) of clause (B). Thus the applicant was not more than 45 years of age in the year 2008. She had adequate knowledge of English. She was registered Qualified Nurse and also had experience in Nursing Administration, not less than 8 years. Thus, the applicant was undisputedly eligible to work on the post of Matron (Non Gazetted). The submissions of learned counsel for the applicant could have been accepted, if there had been regular appointment to the post of Matron on transfer from the post of Sister Tutor. The pay scale of Sister Tutor and Matrons, though was same, the post of Matron undoubtedly stand on a higher footing than the Sister Tutor, though the pay scales are equal. As per the submissions made by learned C.P.O in the administration of Public Health Department, no Sister Tutor except the applicant is given the post of Matron (Non Gazetted) by transfer without holding D.P.C and without examining the eligibility before the said Committee. Learned C.P.O further submitted that the Senior Sister Tutors who are senior to the applicant were also not appointed as Matron (Non Gazetted) before her appointment in 2008 to the post of Matron (Non Gazetted) by transfer. The case of the applicant was made an exception on her request considering her convenience. We also considered the submissions of the learned C.P.O as per the instructions given Smt Archana Walzade, Under Secretary, Public Health Department, that in the year 2018, Government of Maharashtra has changed the Recruitment Rules of the Sister Tutors and Matron (Non Gazetted), and the post of Matron (Non Gazetted) is

shown as post of promotion of Sister Tutor. A very important factual submission made by learned C.P.O that the pay scale of Matron (Non Gazetted) was revised and increased to Rs.4600 (Grade pay) from Rs.4400 (Grade pay) w.e.f. 1st January, 2006 by Notification dated 16th October, 2018 and the pay band of Sister Tutor remained Rs.4400/-. On query the Mrs Archana Walzade, Under Secretary, Public Health Department informed us that though the pay scale of Matron was increased in the year 2018, the applicant was never given the said pay scale and has never received the salary as per the pay band of Matron (Non-Gazetted), but she was getting the salary in the pay band of Sister Tutor and till today she is getting the same salary i.e. Rs.4400/- (Grade pay). The applicant had also not claimed till today the said pay band of Matron (Non Gazetted) as the other Matron (Non Gazetted) were drawing. This fact discloses that the applicant was aware that she was not promoted, but it was an arrangement and understanding for the sake of her convenience and not a regular appointment as such in the post of Matron (Non Gazetted). Till date no junior or senior to the Applicant was promoted from the post of Sister-Tutor to Matron on transfer under the Recruitment Rules.

14. It is basic tenet of administrative law that promotion is given after due consideration by formation of Departmental Promotion Committee (DPC) wherein the Confidential Reports (CRs.) of the employees are considered and promotions are given as per the seniority-cum-merit. It is an admitted fact that no such DPC was held before transferring her to this post of Matron Grade-III in 2008. In fact the order of her transfer dated 10.11.2008 clearly states that this is a request transfer. Prima facie, it is not a promotion, hence no notice is required under Article 311(2) of the Constitution.

15. So far as entries in service book are concerned, department has clarified that this entry was wrongly taken and Departmental Enquiry (DE) has been initiated against person who has taken this fraudulent entry. Letter of transfer dated 10.11.2008 clearly stated that this was a request transfer on post carrying same pay scale.

16. On perusal of the record we do not find that any DPC was held prior to her posting at Ulhasnagar as Matron Grade-III. Prima facie we are of the view that the applicant was not appointed to the post of Matron Grade III (Non-Gazetted) by order dated 10.11.2008 though she was transferred.

17. We cannot accept the contention of Ld. Advocate for the applicant that mere transfer of Sister-Tutor to the post of Matron Grade-III on her request amounts to promotion. It is evident that the applicant was transferred on 31.5.2008 in general transfers of Sister-Tutor. She applied for request transfer at Government Central Hospital, Ulhasnagar-3 on the vacant post as Tutor but as there was no post of Tutor available at Government Central Hospital, Ulhasnagar-3 she was transferred on the vacant post of Matron just because at that time the pay scale of Matron and Sister-Tutor was same.

18. In **Kusum Bapurao Dhoure (supra)** the Division Bench of Hon'ble Bombay High Court while dealing with the question of equivalence between the posts of Sister-Tutor and Matron Grade IV (Non-Gazetted) has held that there cannot be a transfer as the matter of course from the post of Sister-Tutor to the post of Matron Grade IV (Non-Gazetted). Though the pay scale of these two posts was same, it cannot be a decisive factor to treat these two posts equally. At the time of further promotion i.e. from Matron Grade IV to Matron Grade III the Petitioner challenged the seniority of Respondent No.3 on the ground that she was promoted to the

post of Matron 3 months prior to the date of promotion of Respondent No.3. The seniority of Petitioner and Respondent No.3 is to be counted from the date when they entered in the cadre of Matron, Group-IV and the services as Sister-Tutor is not to be taken into account as Matron is a different cadre itself. The Division Bench of the Hon'ble Bombay High Court allowed the Petition. The learned Counsel has heavily relied on this ruling to substantiate his arguments that Matron cannot be appointed by just transfer when the appointment by transfer as these two posts are not equal. Admittedly, there are two different sets of Recruitment Rules for these posts and it is indicative that they are not the same or common posts. The Division Bench has observed that it is the matter of common pay-scale for the post of Sister-Tutor and the post of Matron, Grade-IV or III is same. But we highlight and reproduce the findings given by the Hon'ble High Court as follows :-

*“7A. It is thus clear from the above qualifications for the above two posts that there cannot be any transfer **as a matter of course** from the post of Sister-Tutor to the post of Matron Grade IV (Non-Gazetted). It cannot thus be treated as a transfer **in normal course** in an equivalent or the same post.*

7B. It may be seen that there is well-known distinction between appointment by transfer and the normal transfer from one post to another in the same cadre. What is contemplated under the Recruitment Rules for the post of Matron Grade IV (Non-Gazetted) is not an usual transfer from one post to another in the same cadre but an appointment by transfer of a Sister-Tutor in the post of Matron (NG) if the Sister-Tutor concerned possess the requisite qualifications prescribed for appointment by nomination in the said post.”

In the present case, admittedly, the applicant was appointed by transfer as she was having requisite equivalent experience and educational qualifications. However, yet it cannot be said that it was a

promotion. In her order of appointment the Respondent-State has not used the word that she is promoted to the post of Matron Grade III. The word used in her order is that she is appointed by transfer on her request. Thus, she was not appointed by way of transfer in normal course, but on the other hand she was appointed as a special course and not as a matter of course. Though it was not promotion, due to her request the State has considered that she was holding other qualifications and fulfilling the eligibility criterion. She was appointed by way of transfer on her request. Thus findings of the Hon'ble Bombay High Court in the case of **Kusum (supra)** do not take away the power of the State to appoint the Sister-Tutor on the post of Matron Grade-III as a special case without giving her promotion. It can be a matter of exigency or it can be a matter of convenience of the employee. Such type of arrangements is not a promotion in any manner. It is also to be noted that she was not given further promotion, though she was shown in the seniority list of Matron Grade-III. If she would have given promotion by mistake then we accept the same right would have been created in her favour and order under challenge would have been amounted to reduction in rank. Though she was given that post as per her request and her convenience and continued for few years, the Respondent-State has taken stand consistently that she was never promoted to that post. Thus Respondent-State has admitted one fact that the entry in the service book was erroneous and the Government has taken a note of it and has started the procedure of correcting the same. Thus, the judgment of **Kusum (supra)** is not useful to the Applicant.

19. In **Siraj Ahmad (supra)**, the Appellant was appointed on adhoc as Junior Engineer. Then he applied for promotion to the post of Assistant Engineer after obtaining the degree in B.Sc.- Engineer when he was in service and claimed promotion to the post of Assistant Engineer (Civil).

His claim was rejected on the basis of Educational qualification so he challenged the said decision. In the said matter the issue of irregular and illegal appointment was discussed as,

“Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”

The Hon’ble Supreme Court in the case of **Siraj (supra)** has relied on the findings in the case of **Rajendra Prasad Dwivedi Vs. State of U.P.** of the Allahabad High Court in Writ Petition No.3421 of 1996, which reads as follows :-

“Upon perusal of the Government Orders dated 26th of August, 1992 as well as 11th of March, 1994, I find force in the submission of the petitioner, therefore, I am of the view that as soon as the petitioner obtained the qualification of AMIE in 1993, he became eligible for promotion to the post of Assistant Engineer. Though only gaining the qualification does not create right of promotion, but I am of the view that if thereafter any promotion has been given to others particularly junior to the petitioner, the petitioner is liable to be considered for promotion from the said date alongwith consequential benefits.

(emphasis supplied)

The ratio laid in the case of **Siraj (supra)** is not applicable to the facts of the present case as the manner of appointment to the post of Matron is questioned on the basis of Recruitment Rules. We are of the view that this is distinguishable from the facts of the present case.

20. In **Union of India & Anr. Versus Narendra Singh (supra)**, the Respondent was mistakenly promoted and he worked on the said post for 4 years and thereafter the State wanted to correct the mistake and notice was given to him. The Hon'ble Supreme Court held that,

"It is true that the mistake was of the Department and the respondent was promoted though he was not eligible and qualified. But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law."

The Hon'ble Supreme Court relied on the ratio laid down in *Indian Council of Agricultural Research & Anr. Vs. T.K. Suryanarayan & Ors., (1997) 6 SCC 766*, wherein it was held that, *"if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore Statutory Rules."*

In the said case the Respondent, Narendra Singh has not passed the Departmental Examination. Therefore, the Hon'ble Supreme Court held that the authorities were right in not relaxing the said condition and the action of the authorities of correcting the mistake cannot be faulted. It further held that it will amount to reversion and therefore the principle of natural justice and fair play is to be followed.

In the present case the Applicant was given the post on her request and it was not a promotion. The stand taken by the Respondent-State is also required to be considered that the entry in the service book was a deliberate attempt to show on paper that she was given promotion, though she was not given promotion substantively. Therefore the Department has initiated action against the person who made these entries and also started the enquiry in this matter.

21. So far as **Bhagwati Prasad (supra)** is concerned, this particular judgment is not on the point where the appointment of the Petitioners were made as daily rated workers and they were allowed to work considering the length of time. It was held that it is hard to deny them the confirmation on the respective posts on the ground that they lack the prescribed educational qualifications. This case is not applicable to the present applicant.

22. The ruling in **Hussain Sasansaheb Kaladgi (supra)** is not relevant as it is about reversion of the Direct Recruit.

23. In **The Regional Manager and Another Versus Pawan Kumar Dubey (supra)**, the Respondent, Pawan Kumar Dubey was reverted from the post of Senior Station Incharge to the post of Junior Station Incharge. But the order was passed as a measure of punishment against the misconduct. We are of the view that the said case is also not applicable to the present case even on the ground that if the chances of promotion are going to suffer then it amounts to reduction in rank.

24. The case of **P.C. Wadhwa (supra)** is not applicable to the present Applicant. The facts of the said case are distinguishable because in P.C. Wadhwa's case the applicant who was working as Superintendent of Police was reverted to the lower post on the ground of mistake so it was argued that it was reduction in rank within the meaning of Article 311(2) of the Constitution. Therefore, notice was required. In the present case it is neither promotion nor a punishment and it is not a reduction.

25. In **Parshotam Lal Dhingra (supra)**, the Applicant was appointed as Assistant Superintendent Railway Telegraphs, Class-II, wherein the Hon'ble Supreme Court held that,

“The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or, the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The use of the expression "terminate" or "discharge" is not conclusive.”

The present case is distinguishable as, prima facie, we hold the appointment itself was not a promotion.

26. We have carefully considered the submission of both the parties. It is clear that in this case the applicant was given the post of Matron Grade-III Ulhasnagar on her request and it was not on promotion. The stand taken by the Respondent-State that the entry in the service book was deliberate attempt to show on paper that she was given promotion though she was not give promotion substantively. In view of the ratio laid down in the above three judgments we accept that the issuance of show cause notice was dispensed with because it was seen as a transfer and not a reversion.

27. In view of the above, O.A. stands dismissed.

SD/-

(Medha Gadgil)
Member (A)

SD/-

(Mridula Bhatkar, J.)
Chairperson