

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**T.A.NO. 22 OF 2022 (W.P.NO. 12575 OF 2022)  
(Subject:-Promotion)**

**DISTRICT:-AURANGABAD**

**Shankar S/o Pandharinath Dange** )  
Age: 63 years, Occu. Service (Presently )  
working as a Dean), )  
R/o. Samruddhinagar Plot No. 231, )  
N-4, Cidco, Aurangabad. )  
District : Aurangabad. )  
Mo. 9975486714. )...**APPLICANT**

**V E R S U S**

- 1. The State of Maharashtra,** )  
Through its Secretary, )  
Medial Education Department, )  
Mantralaya Mumbai. )
  - 2. The Director of Medical Education** )  
**Research,** Saint George Hospital )  
Compound, Govt. Dental College )  
Building 3<sup>rd</sup> floor, CST Mumbai. )
  - 3. The President of Committee for** )  
Department Promotion Committee, )  
OR The Chief Secretary, )  
State of Maharashtra )  
General Administration Department, )  
Mantralaya, Mumbai. )
  - 4. Vivek Pakhmode,** )  
Age : Major, Occu: Service, )  
Joint Director, DMER, 4<sup>th</sup> Floor, )  
Dental College Building, P.D' Mello )  
Road, Near CSMT Station, )  
Mumbai- 400 001. )..**RESPONDENTS**
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**APPEARANCE** : Shri R.R. Kale, learned Advocate for the applicant.  
: Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent authorities.  
: Shri V.G. Pingle, learned Advocate for the respondent No.4.  
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**CORAM** : **Shri V.D. Dongre, Member (J)**  
**And**  
**Shri Bijay Kumar, Member (A)**  
**Reserved on** : **31.03.2023.**  
**Pronounced on** : **07.06.2023.**  
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**ORDER**

**(Per: Shri V.D. Dongre, Member (J))**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Transfer Application (W.P.) is filed challenging the impugned communication dated 19.10.2022 ( Exh. 'M') addressed by the respondent No. 1 to respondent No.2 rejecting the claim of the applicant for promotion to the post of Joint Director (Dental) in the office of the respondent No.2 and consequently seeking promotion as a Joint Director (Dental) from September 2018 with all benefits.

2. The facts in brief giving rise to this application can be stated as follows:-

(i) The applicant is presently working as a Dean, Government Dental College, Aurangabad along with the additional charge of Joint Director (Dental), Mumbai from 11.03.2020.

(ii) The applicant completed his Bachelor of Dental Surgery (BDS) in 1983 from Government Dental College, Nagpur. He completed his post graduate degree of Master of Dental Surgery (MDS) in the year 1988 from Government Dental College, Nagpur.

(iii) The applicant was appointed as Lecturer through MPSC on 01.02.1989 and was posted at Government Dental College, Aurangabad. In January 1999 he was promoted as Associate Professor at Government Dental College, Aurangabad. Thereafter, he was promoted as Professor in the year 2004 at Government Dental College, Aurangabad.

(iv) Thereafter, the applicant was entitled for promotion to the post of Dean. However, he was not appointed as a Dean. Therefore, he was constrained to file Writ Petition No. 507/2015 (part of Exh. 'A' collectively) seeking direction to

appoint him as a Dean. The Hon'ble High Court by order dated 19.03.2015 passed in the said Writ Petition No. 507/2017 (part of Exh. 'A' collectively) was pleased to direct the respondent authorities to decide the representation of the applicant for appointment as a Dean. In spite of that order, the applicant was not given appointment to the post of Dean. In view of that, the applicant was constrained to file Contempt Petition. Thereafter the applicant came to be appointed as a Dean vide order dated 07.09.2015 (part of Exh. 'A' collectively).

(v) Thereafter, the applicant was eligible for further promotion to the post of Joint Director (Dental). The applicant made representation dated 31.12.2018 and reminder dated 01.04.2019 (Exh. 'B' collectively) to the respondent No.1 seeking promotion to the post of Joint Director (Dental). At that time, the applicant was the only person, who was working as a regular Dean in Maharashtra. He was at Sr. No. 1 in seniority list. The post of Joint Director is vacant since around 12 years.

(vi) In view of above, the respondent No.2 i.e. the Director of Medical Education and Research sent proposal dated 22.04.2019 (Exh. 'C') to the respondent No.1 recommending

the name of the applicant to the post of Joint Director (Dental), whereby reference of earlier proposal dated 09.01.2019 was made. In spite of that, the State Government did not consider the claim of the applicant for appointment as a Joint Director (Dental).

(vii) Thereafter, the Joint Director, Dental by its letter dated 13.08.2018 (part of Exh. 'D' collectively) sought information from the applicant regarding confidential reports, property and assets certificate, NOC/ No Divisional inquiry certificate pending, caste certificate and caste validity certificate, fitness certificate after 55 years. In the said letter, it was also mentioned that the post of Joint Director (Dental) Class-I was vacant and was sanctioned post and it is to be filled in by way of promotion. Accordingly, the applicant forwarded requisite information by his letter dated 04.11.2019 (part of Exh. 'D' collectively).

(viii) As per seniority list of the cadre of Dean as of 01.01.2018 published by Government circular dated 16.02.2018 (Exh. 'E'), the applicant is the only person who is eligible for the post of Joint Director (Dental) as he is at Sr. No. 2 and Sr. No.1 Dr. M.G. Pawar was superannuated on 30.09.2018.

(ix) It is further submitted that since Dr. Tupkari is superannuated on 31.12.2018, the respondent No.4 i.e. Dr. Vivek Pakhmode, In-charge Dean (Professor) at B.G.M.C. Pune has been given additional charge of Joint Director (Dental) by order dated 31.12.2018 (Exh. 'F'). The said respondent No.4 though junior to the applicant and ineligible for the post of Joint Director (Dean), he has been given charge of the post of Joint Director (Dean) defeating the legitimate claim of the applicant to the post of Joint Director (Dental). From time to time, the applicant's right has been defeated and it was restored only after the applicant approached the Court or the Tribunal. The respondents have caused injustice to public at large and applicant by not filling up the post of Joint Director (Dental) since last 12 years.

(x) Initially the applicant filed Writ Petition No. 427/2020 seeking redressal and more particularly seeking direction to decide the representation of the applicant dated 31.12.2018 (part of Exh. 'B' collectively). The said Writ Petition No.427/2020 was, however, disposed of by order dated 08.01.2020 (Exh. 'G') granting liberty to the applicant to avail alternate remedy. Therefore, the applicant filed Original Application No. 40/2020 (part of Exh. 'H' collectively) seeking

direction to decide representation dated 31.12.2018. Notices were issued in the said Original Application to the respondents therein.

(xi) During pendency of the said Original Application, by order dated 07.08.2020 (part of Exh. 'H' collectively), the respondent No.4 was promoted temporarily to the post of Dean on the recommendation of Departmental Promotion Committee (DPC), who belongs to other backward class. The said respondent No.4 is junior to the applicant in the cadre of Dean. Further the respondent No.3 committee by its order dated 23.12.2020 has recommended the name of the respondent No.4 i.e. Dr. Vivek Pakhmode for the post of Joint Director (Dental) denying the claim of the applicant for that post.

(xii) Medical Education and Drug Department, Mantralaya, Mumbai by notification dated 06.12.1988 (Exh. 'I') published Recruitment Rules called as Joint Director of Medical Education and Research (Dental) Dean and Professor in Government Dental College and Hospital and Professor in Dentistry in a Government Medical College and Hospital (Recruitment) Rules, 1988 (in short "Recruitment Rules"). In view of the same, the applicant is entitled for promotion to the

post of Joint Director (Dental). He has been given additional charge of the said post as per order dated 11.03.2020 (Exh. 'J') issued by the respondent No.2.

(xiii) The respondent No.3 committee in its meeting dated 23.12.2020 considered the names of the applicant and the respondent No.4 Dr. Vivek Pakhmode for promotion to the post of Joint Director and wrongly recommended the name of the respondent No.4 Dr. Vivek Pakhmode to the said post of Joint Director (Dental) as per its recommendation which is received by the applicant under RTI as per forwarding letter dated 08.01.2021 (Exh. 'K'). Being aggrieved and dissatisfied, the applicant challenged the said recommendations dated 23.12.2020 (Exh. 'K') by filing Original Application No. 25/2022 (Exh. 'L'). The said Original Application was disposed of by order dated 06.05.2022, thereby the said recommendations made by the Departmental Promotion Committee held on 23.12.2020 were quashed and set aside and it was directed that process of promotion to the post of Joint Director (Dental) in the Directorate should be drawn afresh according to Recruitment Rules, 1988 within a period of six weeks. Thereby also directed that the respondent authorities shall allow the respondent No.4 i.e. Dr. Vivek



Pakhmode to continue to hold the post of Joint Director (Dental) till process of promotion as directed to be completed afresh vide present order is completed. Thereby it was held that the respondent No.4 i.e. Dr. Vivek Pakhmode was not eligible.

(xiv) The post of Joint Director (Dental) was of Open category as a reservation was not applicable to the said post. The applicant was seniormost in the cadre of Dean and the respondent No.4 was appointed as a Dean on temporary basis. In view of the same, in the fresh process, the name of the applicant ought to have been considered and recommended. However, the respondent No.3 committee on the same line as that of earlier recommendation dated 23.12.2020 (Exh. 'K') again recommended wrongly the name of the respondent No.4 i.e. Dr. Vivek Pakhmode and consequently the respondent No.1 issued impugned communication dated 19.10.2022 (Exh. 'M') to the respondent No.2 selecting the respondent No.4 Dr. Vivek Pakhmode to the post of Joint Director (Dental) by assigning the same reason, which is contrary to the order dated 06.05.2022 passed by this Tribunal (Exh. 'L') in O.A.No. 25/2022.

(xv) In view of the same, the said impugned communication dated 19.10.2011 is not sustainable in the eyes of law and is liable to be quashed and set aside. The applicant is entitled to be promoted to the post of Joint Director (Dental). Hence, this application.

3. Affidavit in reply is filed on behalf of the respondent No.1 by one Vaishali Sule working as Deputy Secretary, Medical Education and Drugs Department, Mantralaya, Mumbai (page No. 91 to 106). Thereby she denied the adverse contentions raised in the application.

(i) It is submitted that initially the applicant challenged the recommendation of Departmental Promotion Committee dated 14.10.2022 before the Hon'ble High Court of Bombay Bench at Aurangabad by filing Writ Petition No. 12575/2022. The said Writ Petition was disposed of allowing the transfer of the said Writ Petition to this Tribunal which is registered as T.A. 22/2022.

(ii) It is further specifically submitted that for promotion to the post of Joint Director (Dental) minimum requirement is of seven years on the post of Dean or seven years as Professor and Head of the Department. Considering the said criteria, the applicant is not eligible for promotion to the said post.

The Departmental Promotion Committee considered these Rules and recommended the suitable candidate for promotion i.e. the respondent No.4. The applicant more particularly is not eligible for further promotion in view of General Administrative Department (GAD) letter dated 29.12.2017 (Exh. 'R-1') as the applicant was earlier promoted giving benefit of reservation in promotion to the post of Dean superseding other senior candidates. In the cadre of Professor, the respondent No.4 i.e. Dr. Vivek Pakhmode is seniormost and the applicant was junior to him. In view of that, the applicant's claim for promotion is rightly denied. There is no merit in the applicant and it is liable to be dismissed.

4. The respondent No.4 has filed his affidavit in reply together with annexures (page No. 107 to 129), thereby he denied all the adverse contentions raised in the application.

(i) It is specifically contended that in the earlier Departmental Promotion Committee meeting dated 23.12.2020, the claim of the applicant for promotion to the post of Joint Director (Dental) was not considered in view of guidelines mentioned in letter dated 29.12.2017 (part of Annex. 'A-1') by observing that as the applicant superseded

seniormost officers by getting benefit of reservation in promotion for the post of Dean in 2015 in view of G.R. dated 25.05.2004, the applicant is not entitled for further promotion. At that time the applicant had superseded three seniormost officers including the respondent No.4. In view of that the claim of the respondent No.4 was considered to the promotional post of Joint Director (Dental) and the respondent No.4 was promoted to the post of Joint Director (Dental) by order issued in March-2021 (part of Annex. 'R-1' collectively). In view of that, the respondent No.4 is holding the post of Joint Director (Dental) till date.

(ii) Thereafter, in view of order dated 06.05.2021 passed by this Tribunal in O.A.No. 25/2021 fresh Departmental Promotion Committee was conducted on 14.10.2022 and in view of that, communication dated 19.10.2022 was issued by which claim of the respondent No.4 for promotion as Joint Director was considered as per Recruitment Rules,1988. It is not disputed that the applicant was promoted as a Dean on 03.08.2015, whereas the respondent No.4 was promoted as Dean on 07.08.2020. However, it is a fact that the respondent No.4 is senior to the applicant in the cadre of Professor. The respondent No.4 fulfills the selection criteria for the

promotional post of Joint Director (Dental). Considering letter dated 29.12.2017 and further G.R. dated 07.05.2021 (part of Annexure 'A-2' collectively) along with relevant documents annexed thereto, the claim of the applicant is liable to be rejected.

5. We have heard the arguments advanced by Shri R.R. Kale, learned Advocate for the applicant on one hand and Shri M.S. Mahajan, learned Chief Presenting Officer representing the respondent Nos. 1 to 3 and Shri V.G. Pingle, learned Advocate for the respondent No.4 on other hand.

6. After having considered the rival pleadings, documents and submissions on record, the relevant provisions which falls for our consideration is Rule 3 (a) together with horizontal column possessing qualification and experience mentioned in column Nos. 3 & 4 respectively, against the entry 1 of the schedule as follows.

*“3. Appointment to the post of Joint Director (Dental) in the Service, shall be made either :-*

*(a) By promotion of a suitable person on the basis of selection from amongst the persons holding the post of Dean in the Government Medical College and Hospital, in the service, possessing qualifications and experience mentioned in columns (3) and (4) respectively against entry 1 of the Schedule;*

**Schedule**

<b>Sr. No.</b>	<b>Post</b>	<b>Qualification</b>	<b>Experience</b>
1.	Joint Director (Dental) Directorate	i) Bachelor of Dental Surgery or an equivalent degree or an equivalent qualification of University or Institution recognized by Dental Council of India; and ii) A Master's or higher degree in Dentistry in any subject of a statutory University or an equivalent post graduate qualification in Dentistry in any subject recognized by Dental Council of India.	Experience as a Deputy Director of Medical Education and Research (Dental) or as a Dean of Dental College or Professor and Head of an academic department of a Dental College or as Head of the Dental Research Institute, for not less than seven years, acquired after obtaining the qualification mentioned in column

7. In view of above, in order to have promotion to the post of Joint Director (Dental), the person must be holding the post of Dean in Government Dental College and Hospital in the service and also possessing qualification as mentioned in column No.3 in entry 1 of schedule and experience as mentioned in column No.4 which can be simplified as follows:-

“Experience as a Deputy Director of Medical Education and Research (Dental) for 7 years; **OR**

Dean of Dental College **OR** Professor **and** Head of an academic department of a Dental College for not less than 7 years; **OR** Head of the Dental Research Institute for not less than seven years.

Above experience ought to have been acquired after obtaining the qualification mentioned in column 3 of entry 1.

8. Admittedly, the applicant was appointed in the cadre of professor on 28.08.2008 whereas the respondent No. 4 Dr. Vivek Pakhmode was appointed on 24.07.2001 as reflected in seniority list of the cadre of Professor, Government Dental College as of 01.01.2014 (Page No. 127 of P.B. part of Annex. 'A-2' collectively) with affidavit in reply of the respondent No.4. In the said seniority list, the respondent No.4 is at Sr. No. 2, whereas the applicant is at Sr. No.5. However, admittedly, the applicant was promoted to the post of Dean, Government Medical College. His appointment in the said cadre dated 07.09.2015 was on ad-hoc basis (part of Exh. 'A' collectively, page No. 31 & 32 of P.B.).

9. Admittedly, the applicant was given this promotion on the basis of then prevailing policy of reservation in promotion and admittedly superseding the professors shown in seniority list as of 01.01.2014 (page No. 127 of P.B.). At that time the post of Dean was vacant for the category of Scheduled Tribe. The applicant belongs to Scheduled Tribe category. The applicant was at Sr. No. 2 in the seniority list of the cadre of Dean, Government Dental College, Group-A as of 01.01.2018 (part of Exh. 'E' collectively at page No. 39 of P.B.). In that list, Dr. M.G. Pawar was at Sr. No.1 who superannuated on 30.09.2018. However, admittedly, the respondent No.4 Dr. Vivek Pakhmode was promoted to the post of Dean (Dental) on temporary basis on 07.08.2020. Hence, in the cadre of Dean (Dental), the respondent No.4 Dr.Vivek Pakhmode is junior to the applicant.

10. However, admittedly the 1<sup>st</sup> Departmental Promotion Committee meeting took place on 23.12.2020 (Exh. 'K'). In the said meeting, the names of the applicant as well as the respondent No.4 i.e. Dr. Vivek Pakhmode were considered for further promotion to the post of Joint Director (Dental) and the name of the respondent No.4 was recommended. The said recommendations dated 23.12.2020 were challenged by



the applicant by filing Original Application No. 25/2021. The said Original Application No. 25/2021 was disposed of by order dated 06.05.2022 (Exh. 'L') in following terms and conditions.

**“ORDER**

The Original Application No. 25 of 2021 is allowed in following terms :-

- (A) The Recommendation made by the Departmental Promotion Committee held on 23.12.2020 is hereby quashed and set aside.
- (B) Process of promotion to the post of Joint Director (Dental) in the Directorate should be drawn afresh according to Recruitment Rules, 1988 within a period of six weeks.
- (C) No orders as to costs.

The respondent authorities shall allow the respondent No.4 to continue to hold the post of Joint Director (Dental) till process of promotion as directed to be completed afresh vide present order is completed.”

11. In view of the said order, the Departmental Promotion Committee meeting took place on 14.10.2022. In the said meeting the names of the applicant and the respondent No.4 were only under the zone of consideration for the promotional post of Joint Director (Dental). As per the said recommendation letter dated 14.10.2022 again the name of the respondent No.4 was recommended. On that basis, the respondent No.1 issued impugned communication dated

19.10.2022 (Exh. 'M') making recommendation of the name of the respondent No.4 to the post of Joint Director.

12. Admittedly, the applicant challenged the said recommendations by filing Writ Petition No. 12575/2022. The Hon'ble High Court of Bombay Bench at Aurangabad by order dated 14.12.2022 together with speaking to the minutes order dated 19.12.2022 disposed of the said Writ Petition and transferred the same to this Tribunal which is registered as T.A.No. 22/2022.

13. From the abovesaid facts on record, the issue involved in this present application is regarding recommendations by Departmental Promotion Committee as per it's meeting dated 14.10.2022 and consequently impugned communication dated 19.10.2011 (Exh. 'M') being issued by the respondent No.1 to respondent No.2 recommending the name of the respondent No.4 to the promotional post of Joint Director (Dental) as on 14.10.2022.

14. Admittedly, the applicant had completed his tenure as Dean (Dental) from 07.09.2015 till that date for about seven years. Moreover, the applicant had worked as a Professor from 28.08.2008 to 07.09.2015 for about seven years. As

against that as on 14.10.2022, the respondent No.4 Dr. Vivek Pakhmode worked as Dean (Dental) from 07.08.2020 till 14.10.2022 for about two years and two months and as a Professor from 24.07.2001 to 06.08.2020 for about 19 years. Neither the applicant nor the respondent No.4 held the post of Head of the Department during their entire service period.

15. As per Rule 3 (a) of Recruitment Rules, 1988 minimum requirement for the promotion to the post of Joint Director (Dental) is holding the post of Dean. In that Rule tenure of Dean is not specified but tenure of Dean or Professor together with Head of the Department minimum of seven years is prescribed in column No.4 against entry No.1 in schedule of the said Rule, 1988 as an experience.

16. So far as entry of the applicant and the respondent No.4 in the cadre of Dean (Dental) is concerned, both of them were initially appointed on ad-hoc basis only. But they have been appointed against vacancy is not disputed. In view of the same, in our considered opinion, initial appointment to the post of Dean (Dental) may not come in the way of deciding the minimum criteria for the promotional post of Joint Director

(Dental). They both fulfilled the initial criteria of holding the post of Dean (Dental) as prescribed first part of Rule 3 (1) (a).

17. So far as requirement of experience as mentioned in column No.4 against entry No. 1 of Rule 1988 is concerned, the applicant has fulfilled this criteria as working as Dean for seven years. Incidentally the applicant has also worked as Professor for seven years. He, however, did not become Head of the Department before his promotion to the post of Dean (Dental) on 07.09.2015, which was then reserved for S.T. category. At that time the applicant was at Sr. No. 5 and the respondent No.4 was at Sr. No. 2 in the final seniority list of Professor as of 01.01.2014.

18. So far as the said experience is concerned, the respondent No.4 has worked as a Professor from 2001 to 2020 for about 19 years. However, admittedly during the said tenure, he did not become Head of the Department. It is pertinent to note that in experience column, tenure as Professor and Head of the Department is specified as not less than seven years. Specific period of working as Head of Department is not carved out in the said column. It is nobody's case that designation that Head of Department is

promotional post. Normally, the seniormost person amongst that cadre is made Head of the Department. In view of this, in our considered opinion, not becoming Head of the Department cannot become disqualification for further promotion to the post of Joint Director (Dental). From the wording of the experience of Professor and Head of the Department, it does not appear that Head of the Department is essential and mandatory criteria. If the concerned person incidentally becomes Head of Department, he remains as Professor only. In view of that, the respondent No.4 in our considered opinion fulfills the criteria of experience on that count.

19. Considering the facts on record, it is true that the applicant has completed or fulfilled the criteria of Dean for not less than seven years and Professor and Head of the Department for not less than seven years. However, the respondent No.3 committee and respondent No.1 have necessarily considered the subsequent developments as regards the Professors who were promoted by way of reservation which is reflected in letter dated 29.12.2017 addressed by Government of Maharashtra to Additional Chief Secretary, Principal Secretary and Secretaries of all

Administrative Department, Mantralaya, Mumbai mentioned  
as follows:-

“ महाराष्ट्र शासन

क्रमांक : बीसीसी-२०१७/प्र.क्र. ३१२A/१६-ब,  
सामान्य प्रशासन विभाग,  
मादाम कामा मार्ग, हुतात्मा राजगुरू चौक,  
मंत्रालय, मुंबई- ४०० ०३२.  
दिनांक - २९ डिसेंबर, २०१७

प्रति,

अपर मुख्य सचिव/प्रधान सचिव/सचिव  
सर्व प्रशासकीय विभाग,  
मंत्रालय, मुंबई.

विषय:- पदोन्नतीचे आरक्षण रद्द करण्यासंदर्भात मा. उच्च न्यायालयाने  
याचिका क्र. २७९७/२०१५ वर दिनांक ४.८.२०१७ रोजी  
दिलेल्या निर्णयाच्या अनुषंगाने पदोन्नती देण्यासंदर्भात  
मार्गदर्शनपर सूचना.

संदर्भ:- १) मा. उच्च न्यायालयाने याचिका क्र. २७९७/२०१५ संदर्भात  
दिनांक ४.८.२०१७ रोजी दिलेला निर्णय  
२) शासनाची समक्रमांकाची दिनांक १८.१०.२०१७ व २.११.  
२०१७ ची पत्रे.

विषयांकित प्रकरणी मा. उच्च न्यायालय, मुंबई यांनी याचिका क्र. २७९७/२०१५  
या प्रकरणी दिनांक ४.८.२०१७ रोजी दिलेल्या निर्णयान्वये, दिनांक २५.५.२०१४ चा  
शासन निर्णय रद्द करून पदोन्नतीमधील आरक्षण अवैध ठरविले आहे. तथापि, मा. उच्च  
न्यायालयाने आपल्या दिनांक ४.८.२०१७ च्या निर्णयास १२ आठवड्याची स्थगिती दिली  
असल्यामुळे संदर्भाधिन क्र. २ येथील दिनांक १८.१०.२०१७ च्या पत्रान्वये सदर स्थगिती  
कालावधीत पदोन्नतीमध्ये आरक्षण देऊन पदोन्नती देण्याबाबत आदेश निर्गमित करण्यात  
आले होते. हा स्थगिती कालावधी दिनांक २७.१०.२०१७ रोजी संपुष्टात आला आहे.

२. या प्रकरणी मा. उच्च न्यायालयाच्या उक्त निर्णयास स्थगिती देण्याच्या अनुषंगाने,  
मा. सर्वोच्च न्यायालयात दाखल केलेल्या विशेष अनुज्ञा याचिका क्रमांक २८३०६/२०१७  
संदर्भात दिनांक ३०.१०.२०१७ रोजी झालेल्या सुनावणीच्या वेळी मा. सर्वोच्च न्यायालयाने  
मा. उच्च न्यायालयाच्या दिनांक ४.८.२०१७ च्या निर्णयास कोणतीही स्थगिती दिलेली नाही  
अथवा परिस्थिती “जैसे थे ” ठेवण्याबाबत देखिल आदेश दिलेले नाहीत. त्यामुळे शासन  
निर्णय दि. २५.५.२००४ मधील तरतुदीनुसार मागासवर्गीयांना पदोन्नतीमध्ये आरक्षण देता  
येणार नाही. यास्तव, मा. सर्वोच्च न्यायालयाचे आदेश होईपर्यंत सर्व स्तरावरील पदोन्नती  
प्रक्रिया स्थगित ठेवण्याबाबतच्या सूचना संदर्भाधिन दि.२.११.२०१७ च्या पत्रान्वये देण्यात  
आल्या होत्या.

३. सदर प्रकरणी दिनांक १५.११.२०१७ रोजी झालेल्या सुनावणीच्यावेळी मा. सर्वोच्च  
न्यायालयाने मा. उच्च न्यायालयाच्या दि. ४.८.२०१७ च्या आदेशास स्थगिती देण्याबाबत  
अथवा परिस्थिती जैसे थे ठेवण्याबाबत कोणतेही आदेश पारित केले नाहीत. त्यामुळे दि.  
२७.१०.२०१७ पासून राज्यातील सर्व स्तरावरील पदोन्नतीची प्रक्रीया पुर्णपणे ठप्प झाली  
आहे. मा. उच्च न्यायालयाने पदोन्नतीतील आरक्षण अवैध ठरविले असल्याने सर्वच  
स्तरावरील पदोन्नतीची प्रक्रीया स्थगित न ठेवता, खुल्या प्रवर्गातील रिक्त पदे तातडीने

भरण्याबाबत विविध प्रशासकीय विभाग तसेच खुल्या प्रवर्गातील अधिकारी/कर्मचाऱ्यांकडून शासनास निवेदने प्राप्त झाली आहेत. तसेच मा. सर्वोच्च न्यायालयात राज्य शासनाने दाखल केलेली विशेष अनुज्ञा याचिका क्र. २८३०६/२०१७ अद्याप प्रलंबित आहे, ही बाब विचारात घेता, याबाबत विधि व न्याय विभागाचे अधिप्राय घेण्यात आले. त्या विभागाने दि. २८.१२.२०१७ रोजी दिलेल्या अधिप्रायानुसार खुल्या प्रवर्गातील कर्मचाऱ्यांना पदोन्नती देण्यास कोणतीही वैधानिक अडचण नसल्याने अधिप्राय दिले आहेत. त्यानुसार तुर्तास पदोन्नतीच्या कोटयातील खुल्या प्रवर्गातील रिक्त पदे निव्वळ तात्पुरत्या स्वरूपात सेवाज्येष्ठतेनुसार मा. सर्वोच्च न्यायालयाच्या निर्णयाच्या अधिन राहून भरण्यात यावीत. अशी कार्यवाही करतांना सेवाज्येष्ठता यादीमधील मागासवर्गीय अधिकारी/कर्मचारी यांना पदोन्नती देण्यापुर्वी ते दि. २५.५.२००४ च्या शासन निर्णयातील तरतूदीनुसार आरक्षणाचा लाभ मिळून सेवाज्येष्ठता यादीत वरच्या स्थानावर आले नाहीत, याची खात्री प्रत्येक प्रशासकीय विभागाने करावी.

४. सर्व प्रशासकीय विभागांनी उपरोक्त आदेश त्यांच्या अधिनस्त असलेल्या सर्व क्षेत्रीय कार्यालयानां तातडीने निदर्शनास आणून सदर आदेशाचे काटेकोरपणे पालन करावे.

५. सदर शासन पत्र महाराष्ट्र शासनाचा [www.maharashtra.gov.in](http://www.maharashtra.gov.in) या संकेतस्थळावर उपलब्ध करण्यात आले असून, त्याचा संगणक संकेतांक क्रमांक २०१७१२२९१४२१५२५८०७ असा आहे. हे पत्र डिजीटल स्वारीक्षने साक्षांकित करून काढ्यात येत आहे.

(र.अं. खडसे)  
अवर सचिव, महाराष्ट्र शासन ”

20. There is further G.R. dated 07.05.2021 (part of Annexure 'A-2' collectively at page No. 119 of P.B.) These documents hold field and definitely disentitles the applicant to claim further promotion on the post of promotion of Joint Director (Dental). In this regard, the respondent Nos. 1 to 3 also said to have taken into consideration clarification of respondent No.1 reflected in communication dated 15.10.2020 (page No. 121 of P.B.) addressed to Deputy Secretary, GAD, Mantralaya Mumbai.

21. In these circumstances as above, in our considered opinion, the respondent Nos. 1 to 3 have considered the

names of the applicant and the respondent No.4, who were in the zone of consideration for further promotion to the post of Joint Director (Dental) in accordance of Recruitment Rules, 1988 in proper perspective as directed by this Tribunal as per order dated 06.05.2022 (Exh. 'L'). They have rightly considered the name of the respondent No.4 for further promotion on the basis of seniority of the applicant and the respondent No.4 in the original cadre of Professor as of 01.01.2014 and not on the basis of seniority of the applicant in the cadre of Dean as of 01.01.2018. In view of that, we do not find any illegality in the impugned recommendations. Hence, the Transfer Application (W.P.) fails. We therefore, proceed to pass the following order.

**ORDER**

- (A) The Transfer Application No. 22 of 2022 (W.P.No. 12575/2022) is dismissed being devoid of merit.
- (B) No order as to costs.

**MEMBER (A)**

**MEMBER (J)**

**Place:-Aurangabad**

**Date : 07.06.2023.**

SAS T.A. 22/2022 (W.P.12575/2022)