

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMABI
BENCH AT AURANGABAD.**

DIST. JALNA.

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMABI
BENCH AT AURANGABAD.**

ORIGINAL APPLICATION NO.309/2012.

(Subject :- Seniority)

1) Vinayak S/o Uttamrao Banchod,

Age: 40 Years, Occu: Service,

R/o. Gopikishan Nagar, Jalna,

Tq. And District Jalna.

2) Manoj S/o Subhashrao Malwade,

Age: 38 Years, Occu: Service,

R/o. Near Nath Mandir, Paithan,

Tq. Paithan, Dist. Aurangabad.

3) Santosh S/o Gulabsing Wagh,

Age: 36 Years, Occu: Service,

R/o. Dishanagari, Beed Bye-Pass

Road, Aurangabad, Tq. and

Dist. Aurangabad.

...APPLICANTS...

VERSUS

1) The State of Maharashtra,
Through Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai.

2) The Director (Training),
Directorate of Vocational Education
And Training, 3, Mahapalika Marg,
Post Box No. 10036, Mumbai- 400001.

3) The Joint Director,
Vocational Education and Training,
Regional Office, Bhadkal Gate,
Aurangabad, Tq. And Dist. Aurangabad.

4) The Joint Director,
Vocational Education and Training,
Regional Office, 49 Kherwadi,
Ali Awar Jung Marg, Bandra, Mumbai-51.

5) The Joint Director,
Vocational Education and Training,
Regional Office, Ghole Road,
Opposite Regional Office, Shivajinagar,
Pune-05.

6) The Joint Director,
Vocational Education and Training,
Regional Office, Gadkari Chowk,
Old Agra Road, Nashik,
Tq. And Dist. Nashik.

7) The Joint Director,
Vocational Education and Training,
Regional Office, Morhsi Road,
Earvin Chowk, Amaravati,
Tq. And Dist. Amravati.

8) The Joint Director,
Vocational Education and Training,
Regional Office, Sadar, Nagpur,

Tq. And Dist. Nagpur.

9) Shri P.M. Birar,

Age: 48 Years, Occu. Service,

R/o. C/o. Industrial Training Institute,

Karjat, Dist. Raigad.

10) Shri P.T. Palaskar,

Age: 47 Years, Occu: Service,

R/o. C/o. Industrial Training Institute,

Mandvi, Dist. Mumbai.

11) Shri. D.B. Pathak,

Junior Apprenticeship Advisor (Technical)

Gov. Industrial Training Institute,

Sangali, Tq. And Dist. Sangali.

12) Shri. R.K. Chinchole,

Junior Apprenticeship Advisor-Cum-

Junior Surveyor (Technical), Govt.

Industrial Training Institute,

Pimpri-Chinchwad, Pune

Tq. And Dist. Pune.

13) Shri. N.N. Kajale,
Training Officer,
Govt. Industrial Training Institute,
Pune, Tq. And Dist. Pune.

14) Shri. S.V. Wani,
Age 51 Years, Occu: Service,
R/o. C/o. Basic Training and Related
Instruction Centre, Govt. Industrial Training
Institute, Thane, Dist. Thane.

15) Shri L.W. Waghulde,
Age: 50 Years, Occu: Service,
R/o. C/o. Basic Training and Related
Instruction Centre, Govt. Technical
High School Centre, Thane, Dist. Thane.

16) Shri S.L. Kulkarni,
Age: 48 Years, Occu.: Service,
R/o. C/o. Govt. Industrial Training Institute,
Mulund, Mumbai.

17) Shri. A.R. Ingle, Junior Apprenticeship
Advisor-Cum-Junior Surveyor (Technical)
C/o. Basic Training and Related
Instruction Centre,
Govt. Industrial Training, Institute,
Mulund, Dist. Mumbai.

18) Shri. S.T. Thobade,
Age: 52 Years, Occu: Service,
R/o. C/o. Basic Training and Related
Instruction Centre, Govt. Industrial Training
Institute, Ambarnath, Dist. Thane.

19) Shri M.N. Mathurkar,
Age: 49 Years, Occu: Service,
R/o. C/o. Directorate of Vocational
Education and Training, 3, Mahapalika
Marg, Post Box No. 10036,
Mumbai-400001.

20) Shri B.S. Patil,
Age: 51 Years, Occu: Service,
R/o. C/o. Govt. Industrial Training Institute,

Vengurla, Dist. Shidhudurg.

21) Shri P.M. Kamatkar,

Age: 50 Years, Occu: Service,

R/o. C/o. Govt. Industrial Training Institute,

Karad, Dist. Satara.

22) Shri B.R. Selwatkar,

Age: 51 Years, Occu: Service,

R/o. C/o. Govt. Technical High School

Center, Rajura, Dist. Chandrapur.

23) Shri K.N.S. Shaikh,

Age: 41 Years, Occu: Service,

R/o. C/o. Govt. Technical High

School, Manmad, Dist. Nashik.

24) Shri. R.T. Kokani,

Age: 42 Years, Occu: Service,

R/o. C/o. Govt. Technical High

School Centre, Nandurbar,

Tq. And Dist. Nandurbar.

25) Shri M.D. Sidam,
Age: 40 Years, Occu: Service,
R/o. C/o. Govt. Industrial Training Institute,
Dhamangaon, Dist. Amravati.

26) Shri S.O. Bange,
Age: 40 Years, Occu: Service,
R/o. C/o. Govt. Industrial Training Institute,
Phulambri, Tq. &Dist. Aurangabad.

27) Shri M. S. Biradar,
Age 38 years, Occu. Service,
R/o C/o Govt. Industrial Training Institute,
Himayatnagar, Dist. Nanded.

28) Shri P.B. Bhandare,
Age: 47 Years, Occu: Service,
R/o. C/o. Govt. Industrial Training Institute,
Pusad, Tq. Pusad, Dist. Yeotmal.

29) Shri D.K. Deshmukh (Deleted)

30) Shri B.M. Girase,

Age: 56 Years, Occu: Service,
R/o. C/o. Govt. Industrial Training Institute,
Yawal, Tq. Yawal, Dist. Jalgaon.

31) Shri P.S. Dhok,
Full Time Teacher,
Govt. Technical High School,
Ahmednagar, Tq. And Dist.
Ahmednagar.

32) Shri R.P. Patil,
Age: 38 Years, Occu: Service,
R/o. C/o. Govt. Technical High School,
Satana, Tq. Satana, Dist. Nashik.

33) Shri S.N. Khairnar,
Age: 49 Years, Occu: Service,
R/o. C/o. Govt. Technical High School,
Igatpuri, Tq. Igatpuri, Dist. Nashik. -----**RESPONDENTS.**

APPEARANCE : Shri Vivek Dhage, learned Advocate for the Applicants.

: Shri M.P. Gude, learned Presenting Officer for the Respondents No. 1 to 8.

: None present for other Respondents.

CORAM : **Hon'ble Shri Rajiv Agarwal, Vice Chnairman &**
: **Hon'ble Shri JD Kulkarni, Member (J).**

DATE : 15.12.2016.

ORDER.

(Per : Hon'ble Shri Rajiv Agarwal, Vice Chnairman)

1. Heard Learned Advocate Shri Vivek Dhage for the Applicants and Shri M.P. Gude, learned Presenting Officer for the Respondents 1 to 8. None present for other Respondents.

2. This O.A. has been filed by the applicants challenging the order dated 2.7.2011, by which earlier seniority list was cancelled. The applicants are challenging order dated 15.2.2012 giving promotion to the Respondent no.5 to 33. The applicants pray that a provisional State level seniority list for full time teachers may be prepared under Rule 7 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982.

3. Learned Counsel for the applicants argued that the applicants are working as full time Teachers in various Govt. Technical High Schools in the Pay Band of Rs.9300 -34800 + grade pay of Rs.4600. The Respondent no.2 published a provisional seniority list of employees working in pay scales of Rs.6500 – 10,500, Rs.7225 –

11500 and Rs.7450 – 11500 as on 31.12.2008 on 6.4.2009. Though the Respondent no.2 claims that the final seniority list as on 31.12.2008 was published on 6.5.2009, no such list was actually published. Outward no. of both provisional seniority list and final seniority list is same i.e. 588, which is not possible. By Circular dated 6.5.2011, the Respondent no.2 cancelled the final seniority list dated 6.5.2009 and fresh final seniority list was published on 6.5.2011. This list published on 6.5.2011 was without inviting any objections & suggestions. Though the name of the applicant no.2 is at Sr.No.282 in the list dated 6.5.2011, the names of the other applicants do not figure in the said list and they were promoted as full time Teachers in 2010 & 2011 respectively.

4. Learned Counsel for the Applicants stated that the final seniority list published on 6.5.2011 was cancelled and another list was published on 2.7.2011. In this list, the name of the Applicant no.2 is at Sr.No.284. This list was as on 31.12.2008. The respondent no.2 published seniority list as on 31.12.2009 on 21.7.2011. It has employees getting pay in the Pay Band of Rs.9300 34800 plus grade pay of Rs.4400, Rs.4600 and Rs.5000. This seniority list dated 21.7.2011 was published directly without inviting objections & suggestions. The Respondent nos. 9 to 33 were

promoted to Maharashtra Education Service Class II by order dated 15.2.2012. They are from the final seniority list published on 6.5.2009, which was no longer valid and the final seniority list as on 31.12.2008 was published on 2.7.2011. Learned Counsel for the Applicants stated that the names of Respondents no.27, 28, 29, 30, 31, 32 & 33 do not figure in the seniority list dated 6.5.2009, but they have been promoted. The order dated 15.2.2012 is issued arbitrarily and it may be cancelled. The Respondent no.2 may be directed to prepare seniority list as per Rule 7 of the M.C.S. (Regulation of Seniority) Rules and then promote suitable candidates.

5. Learned Presenting Officer (P.O.) argued that provisional seniority list of Full Time Teachers was published on 6.4.2009 (as on 31.12.2008). Final seniority list was published on 6.5.2009. This final seniority list was changed twice on 6.5.2011 it is the final seniority list as on 31.12.2008. The final seniority list as on 31.12.2009 was published on 21.7.2011. Learned P.O. argued that the applicant nos. 1 & 3 are not eligible for promotion as they were appointed as Full Time Teacher only on 7.4.2010 and 12.5.2011 while the promotion orders dated 15.2.2012 were issued on the basis of seniority lists finalized on 31.12.2008 / 31.12.2009. Only

the Respondent no.2 was promoted as full time Teacher on 30.8.2003. However, he has not been able to establish that any person junior to him has ben promoted. Learned P.O. contended that the promotions were given as per recruitment rules for Maharashtra Education Service, Class II notified on 2.5.1989. Rule 3 A, provides for promotion of suitable persons working in Class III based on seniority cum fitness to Class II. There is no requirement that only a person in highest pay bracket in Class III is eligible for promotion to Class II.

6. We find that provisional seniority list for Class III cadre as on 31.12.2008 was published by the Respondent no.2 on 6.4.2009. Objections were duly invited and final seniority list as on 31.12.2012 was published on 6.5.2009, which is appended as Exhibit R-3 to the affidavit in reply of the Respondent nos. 1 to 3 dated 14.2.2013. This list was cancelled and revised final seniority list as on 31.12.2012 was published on 6.5.2011. That list was again revised on 2.7.2011. Though, there appears to be three occasions when final seniority list as on 31.12.2012 was published it is not necessarily imply any wrong doing on the part of the Respondent no.2. When a consolidated seniority list, covering all the institutions in the State is prepared, there may be genuine

mistakes which may require correction. We are unable to find any extraneous reasons for revising final seniority list as on 31.12.2008, which was finalized on 2.7.2011. The Respondent no.2 published final seniority list as on 31.12.2009 on 21.7.2011. However, it is not clear whether this list was based on provisional seniority list. In para 16 of O.A. the applicants have stated that final seniority list as on 31.12.2009 was published on 21.7.2011 without first publishing a provisional seniority list. In the affidavit in reply dated 14.2.2013 in para 11 this fact has not been denied. It appears that the final seniority list published on 21.7.2011 has been issued in violation of the principles of natural justice. Every year final seniority list has to be prepared after the concerned employees have opportunity to give objections to provisional seniority list.

7. As regards, promotions in various grades in Class III, we are not convinced that an employee cannot be promoted to Class II, unless he is promoted to the highest grade in Class III. The recruitment rules do permit consideration of many grades of Class III employees for promotion to Class II.

8. The applicants have stated in para 21 that Respondent nos.27 to 33 were promoted to Class III though their names did not appear in the seniority list dated 6.5.2009. In the affidavit in reply in para

14, the Respondent nos. 1 to 3 have given the dates of these Respondents except Shri Biradar Respondent no.27. All these respondents were promoted / appointed as Full Time Teachers in 1990 or 1991, except Shri Biradar, who was appointed as Group Instructor on 1.4.2003. All of them are senior to the applicant no.2, who was appointed Full Time Teacher on 30.8.2003. These facts are not denied in the affidavit in rejoinder dated 30.4.2013 by the Applicants. The Applicants have been unable to show that any of the persons promoted by order dated 15.2.2012 was junior to them. We are not inclined to interfere with the promotion order.

9. The Applicants have relied on the judgment of this Tribunal (Principal Bench) dated 25.4.2011 in a group of O.A. No. 467 of 2010 and others, where this Tribunal has held that if a final seniority list is sought to be changed, a provisional seniority list should again be published. In the present case, we have held that the final seniority list as on 31.12.2009 published on 21.7.2011 was not published after inviting objections & suggestions on a provisional seniority list. This seniority is quashed and set aside. We are not inclined to quash the final seniority list as on 31.12.2008 as the facts are different.

10. The Respondent no.2 is directed to publish a provisional seniority list as on 31.12.2009 and give opportunity to concerned employee to give objections & suggestions and then publish the final seniority list. This should be done within a period of 3 months from the date of this order. The applicants have no other cause of action and no other relief can be granted to them.

11. This O.A. is partly allowed in above terms with no order as to costs.

MEMBER (J)
atpoa58112

VICE CHAIRMAN (A)