

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 189 OF 2017

DISTRICT: - BEED.

Sambhaji S/o Kisanrao Mande,

Age : 40 years, Occ. Service,
R/o Chanakyapuri, Plot No. 55,
Beed, Tal. & District Beed.

.. APPLICANT.

V E R S U S

1. The State of Maharashtra,

Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai.

2. The Divisional Commissioner,

Aurangabad Division, Aurangabad.

3. The District Collector, Beed.

District Beed.

.. RESPONDENT.

APPEARANCE : Shri. R.D. Khadap, learned Advocate
holding for Shri S.S. Thombre, learned
Advocate for the applicant.

: Smt. Sanjivani Deshmukh-Ghate,
learned Presenting Officer for the
respondent.

CORAM : **SHRI B.P. PATIL, MEMBER (J)**

RESERVED ON : **08.04.2019**

PRONOUNCED ON : **12.04.2019**

O R D E R

The applicant has challenged the communications dated
23.6.2016 and 20.9.2016 issued by the respondent Nos.1 & 2

respectively thereby rejecting his claim for deemed date of promotion on the post of Naib Tahsildar and prayed to quash and set aside the said communications and direct the respondents to consider his case for the deemed date of promotion on the post of Naib Tahsildar from the year 2006-07.

2. The applicant is presently working as Naib Tahsildar. He is promoted on the post of Naib Tahsildar w.e.f. 21.10.2011. It is his contention that he has passed revenue departmental examination in the month of April, 2001. He was eligible for the promotion on the post of Naib Tahsildar in the year 2006-07. It is his contention that he belongs to S.T. Category i.e. 'KOLI MAHADEO'. He was granted validity certificate by the Caste Scrutiny Committee, Pune.

3. It is his contention that in view of the Corrigendum dated 28.05.2001, the candidate / employee is required to place on record, the copy of the Caste Validity Certificate while getting the promotion. It is his contention that in the year 2006 the meeting of the DPC was held and in that meeting the promotion was given to the employee from ST Category, who did not have Caste Validity Certificate in

violation of the Government Resolution. It is his contention that the employee, who were not possessing Caste Validity Certificate were not eligible for the promotion, but they got promotion in violation of the provisions of the Government Resolution. It is his contention that he was the only person / employee, who was possessing the Caste Validity Certificate, but his case was not considered by the Departmental Promotion Committee and the promotion to the ineligible persons / employees had been given. It is his contention that promotion to the employees junior to him had been given and, therefore, injustice has been caused to him and, therefore, he filed an application with the respondents, but the respondent No. 2 viz. the Divisional Commissioner, Aurangabad Division, Aurangabad forwarded the matter to the respondent No. 1 vide letter dated 14.03.2014 stating that the applicant is not entitled to get the deemed date from the year 2006-07. In pursuance to the proposal submitted by the respondent No. 2, Divisional Commissioner, the respondent No. 1 informed the Divisional Commissioner by letter dated 23.06.2016 that the applicant is not entitled to get promotion. The respondent No. 2, the Divisional Commissioner, by its communication dated 20.9.2016 informed the applicant regarding rejection of

his claim. The applicant has challenged the said communication by filing the present Original Application.

4. It is the contention of the applicant that the respondents have not considered the fact that he was eligible for the promotion to the post of Naib Tahsildar in the year 2006-07. It is his contention that the promotions were given to the employees of S.T. categories, who did not possess the Caste Validity Certificate, in contravention of the Government policy, GRs and Government Circulars. However, though the applicant was possessing the Caste Validity Certificate was not considered for the promotion. It is his contention that his case ought to have been considered for the promotion in the year 2006-07, but without considering his case the respondents have given promotions to the employees, who were junior to him. Therefore, he prayed to quash and set aside the impugned communications dated 23.06.2016 and 20.09.2016 issued by the respondent Nos. 1 & 2 respectively by filing the present Original Application.

5. The respondent Nos. 1 & 2 have resisted the contentions of the applicant by filing their affidavit in reply. They have denied the contentions raised by the applicant.

They have denied that they have promoted the employees, who did not possess the Caste Validity Certificate at the time of promotion. They have denied that they have promoted employees who were juniors to the applicant. It is their contention that the applicant has not given details of any of the candidate, who has been promoted on the post of Naib Tahsildar though he did not possess the Caste Validity Certificate. It is their contention that the applicant has made baseless contentions without providing the details in that regard. It is their contention that as per the Circular dated 6.6.2002 the deemed date can be given to the employee/s in the circumstances as mentioned in the Scheduled. The applicant's case is not covered under any of the circumstances mentioned therein. It is their contention that the applicant has not produced document on record to show that the candidates / employees junior to him have been promoted by defeating his claim. It is their contention that they have rightly promoted the applicant in the year 2011 and there is no illegality. Therefore, they prayed to reject the present O.A.

6. Respondent No. 3 resisted the contentions of the applicant by filing the affidavit in reply and denied the claim

of the applicant in toto. It is his contention that the applicant by filing an applications dated 11.9.2012 & 25.10.2013 requested the respondent No. 2 to grant deemed date from 2006-07. The said request of the applicant was rejected by the respondent No. 1, Secretary, Forest and Revenue Department, Mantralaya, Mumbai, and respondent No. 2, the Divisional Commissioner, Aurangabad Division, Aurangabad has been informed about the same by the communication dated 23.6.2016. Accordingly, Respondent No. 2, the Divisional Commissioner, Aurangabad Division, Aurangabad, informed the said decision of the Government to the applicant by letter dated 20.9.2016. It is his contention that the General Administration Department of State Government has issued Circular dated 6.6.2002 regarding the issuance of the deemed date of promotion to the Government employees. According to the Circular if an employee / officer being most senior and eligible for promotion and deprived from being promoted can be given promotion. It is his contention that the applicant is not deprived of being promoted. Therefore, he is not entitled to get the benefit of the said Circular. It is his contention that in view of the Corrigendum dated 28.5.2001 the employees from ST category should get verified

their Caste Certificates before their promotion. It is his contention that the applicant has not given details regarding the junior employees to him, who were promoted by the respondents by depriving the applicant. It is his contention that the applicant was serving as a Circle Inspector, however, the Divisional Commissioner disqualified him for promotion as divisional / departmental enquiry was proposed against him. However, in view of the Government letter dated 12.10.2010 and directions issued by the Hon'ble State Minister dated 20.10.2010, the applicant was qualified for promotion subject to the decision in the divisional / departmental enquiry. It is his contention that in view of the Government Circular dated 25.2.1965 issued by the General Administration Department, deemed date can be given to the employee / officer, if any junior employee / officer has been promoted by depriving the right of the senior employee / officer. It is his contention that the applicant was not deprived of and, therefore, his application was rightly rejected by the respondent No. 1 by the communication dated 23.6.2016 and accordingly, the respondent No. 2, the Divisional Commissioner, Aurangabad Division, Aurangabad, communicated the decision to the applicant by letter dated

20.9.2016. It is his contention that there is no illegality in the said communication. Therefore, he prayed to reject the present Original Application.

7. I have heard the arguments advanced by Shri R.D. Khadap, learned Advocate holding for Shri S.S. Thombre, learned Advocate for the applicant and Smt. Sanjivani Deshmukh - Ghate, learned Presenting Officer for the respondents. I have perused the application, affidavit filed by the applicant, affidavit in reply filed by the respondents. I have also perused the documents filed on record by both the parties.

8. Admittedly, the applicant is belonging to the 'KOLI MAHADEO', which is Scheduled Tribe. Admittedly, the applicant has passed the Revenue Departmental Examination in the month of April, 2001 and he was promoted on the post of Naib Tahsildar on 21.10.2011.

9. The learned Advocate for the applicant has submitted that for getting promotion, the employee belonging to S.T. category has to produce Caste Validity Certificate at the time of promotion. He has submitted that the applicant got Caste Validity Certificate from the Scrutiny Committee on

19.11.2001. He was eligible for the promotion on the post of Naib Tahsildar in the year 2006-07, but his case was not considered by the Departmental Promotion Committee in the year 2006. He has submitted that the respondents have given promotions to the employees junior to the applicant, and the employees, who were belonging from S.T. Category though they did not possess the Caste Validity Certificate in the year 2006. He has submitted that there is violation of the provisions of the Circulars and GRs issued by the Government from time to time and, therefore, the applicant approached to the respondents with a request to give him deemed date from the year 2006-07, but the respondent No. 1 rejected his claim by the communication dated 23.6.2016, which has been communicated to him by the respondent No. 2 by letter dated 20.9.2016. He has submitted that it was mandatory on the part of the concerned employee to produce Caste Validity Certificate at the time of promotion. He has submitted that those employees, who were not in a possession of Caste Validity Certificate, were promoted on the post of Naib Tahsildar illegally and, therefore, right of the applicant to get promotion on the post of Naib Tahsildar in the year 2006 has been defeated. Therefore, he prayed to

quash and set aside the impugned communications dated 23.6.2016 and 20.9.2016 by allowing the present Original Application.

10. Learned Presenting Officer has submitted that the applicant has made vague allegations against the respondents regarding non-production of the Caste Validity Certificate by the employees belonging to the S.T. category while promoting them on the post of Naib Tahsildar in the year 2006. He has submitted that the applicant has not quoted a single instance or the name of the concerned employee showing that the concerned employee has been wrongly promoted in violation of the Circular and GRs issued by the Government from time to time. He has submitted that as no documentary evidence is produced on record by the applicant, his contention is not acceptable. He has submitted that the applicant has not produced any document to substantiate his claim and, therefore, in the absence of the document, his claim cannot be considered and, therefore, he prayed to reject the present Original Application.

11. Learned Presenting Officer has further submitted that the Government has issued the directions to give deemed date

to the employee/s by issuing Circular dated 6.6.2002 in the circumstances as mentioned in the Scheduled. The case of the applicant is not covered under any of the circumstances mentioned therein and, therefore, the applicant is not entitled to get relief as prayed for. He has submitted that the respondents have rightly rejected the claim of the applicant by the impugned communications dated 23.6.2016 and 20.9.2016 and there is no illegality and, therefore, he prayed to reject the present Original Application.

12. On perusal of the documents placed on record by both the sides, it reveals that the Corrigendum dated 28.5.2001 (Annexure 'A-3', page-19) provides regarding verification of the Caste Validity Certificate, which provides as under: -

“शुद्धिपत्र :- प्रस्तावनेतील दिनांक १३.४.२००० च्या परिपत्रकातील परिच्छेद - १ मध्ये “शासकीय / निमशासकीय कार्यालये, जिल्हा परिषदा, नगर पालिका, महानगरपालिका, बँका, शासकीय उपक्रम (उदा. एस.टी.महामंडळ, महाराष्ट्र राज्य विद्युत महामंडळ) व राज्य शासन अंगीकृत संस्थामध्ये अनुसुचित जमातीच्या राखीव पदावर नियुक्ती झालेले सर्व अधिकारी व कर्मचारी यांचे जातीचे दावे पडताळणी समितीकडून तपासून घेण्यात यावेत” अशी तरतूद करण्यात आलेली आहे. सदर तरतूद खाली सुधारित केल्याप्रमाणे वाचावी.

“शासकीय / निमशासकीय कार्यालये, शासकीय उपक्रमे (Undertaking), सांविधानिक संस्था (Statutory Bodies), जिल्हा परिषदा, नगरपरिषदा, नगर पालिका, महानगरपालिका, ग्रामपंचायती, मंडळे/महामंडळे, शासनाचे अंगीकृत व्यवसाय, अकृषी व कृषी विद्यापीठे, शासकीय शैक्षणिक संस्था (आश्रमशाळांसह), अनुदानित शैक्षणिक संस्था (अनुदानित आश्रमशाळांसह), सहकारी संस्था/ सहकारी साखर कारखाने/ सहकारी सूत गिरण्या/ बँका/सहकारी बँका, सहाय्यक अनुदान मिळणाऱ्या शासनमान्य स्वेच्छा संस्था (Voluntary Agencies),यांच्यासह अन्य ज्या ज्या प्रकारच्या संस्था व कार्यालये (This list is illustrative and not exhaustive) यांना

राज्याच्या तिजोरीतून निधी/अनुदान/सहाय्यक अनुदान मिळते अशा सर्वप्रकारच्या सेवांमधील अनुसूचित जमातीसाठी राखीव असलेल्या पदांवर अगोदरच नियुक्त झालेल्या आणि नियुक्तीसाठी शिफारस झालेल्या सर्व कर्मचारी/अधिकारी यांचे जमातीचे प्रमाणपत्र संबंधित तपासणी समितीकडून तपासून घेण्यात यावेत. वरील सेवांमध्ये कार्यरत असलेल्या ज्या अनुसूचित जमातीच्या कर्मचारी/अधिकारी यांच्या जमातीच्या प्रमाणपत्रांची तपासणी त्यांच्या पदोन्नतीच्या टप्प्यापर्यंत झालेली नाही अशा सर्व कर्मचारी/ अधिकारी यांच्या प्रमाणपत्रांची तपासणी करण्यात यावी. तसेच पदोन्नती देण्यात येणा-या सर्व अनुसूचित जमातीच्या कर्मचारी/अधिकारी यांना पदोन्नती देण्यापूर्वी त्यांच्या जमातीच्या प्रमाणपत्रांची तपासणी करण्यात यावी. त्याशिवाय त्यांना पदोन्नती देण्यात येऊ नये.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.”

13. The said Corrigendum provides that the Caste Certificate should be produced by the concerned employee at the time of promotion and the said document shall be verified by the authority concerned. The Government has issued Circular dated 25.2.1965 and 6.6.2002 regarding the grant of deemed date of promotion. The circumstances in which deemed date has to be given has been mentioned therein. The copy of the Government Circular dated 6.6.2002 is placed on record at page Nos. 142 to 146. If the junior employee has been promoted depriving the right of the senior employee in that case, the deemed date has to be given to the deprived employee.

14. In order to substantiate his claim, the applicant has to establish the fact that the junior employee / officer to him has been promoted depriving his right. The applicant has

raised the contentions in that regard, but he has not produced a single document to show that any junior employee to him has been promoted depriving him. Not only this, but he has not produced any document on record to show that the employees, who did not possess the Caste Validity Certificate have been promoted in violation of the provisions of the Corrigendum dated 28.5.2001 (Annexure 'A-3', page-19). The applicant has made bald allegations in the present O.A. without substantiating the same. In the absence of sufficient documentary evidence, the contention of the applicant is not accepted. The applicant has not established the fact that the promotions to the ineligible employees have been given by the respondents depriving him from his right of promotion. The respondent No. 1, therefore, in the absence of sufficient documentary evidence on record, has rightly rejected the claim of the applicant by the impugned communication dated 23.6.2016 and respondent No. 2 has communicated the said decision to the applicant by letter dated 20.9.2016. There is no illegality in the said communication and, therefore, no interference is called for in the impugned order by this Tribunal.

15. The applicant has not established his claim to promote him in the year 2006-07. He has not established the fact that the junior employee to him has been promoted by the respondents without considering his claim and thereby deprived him from getting promotion on the post of Naib Tahsildar in the year 2006-07. The applicant has not established the fact that the employees, who failed to produce on record the Caste Validity Certificate have been promoted in contravention of the provisions of the Corrigendum dated 28.5.2001 by producing the document on record. Therefore, I find no substance in the contentions of the applicant in that regard. There is no merit in the present Original Application. Consequently, it deserves to be dismissed.

16. In view of the discussions in foregoing paragraphs, the present Original Application stands dismissed without any order as to costs.

MEMBER (J)

PLACE : AURANGABAD.

DATE : 12.04.2019

O.A.NO.189-2017(SB-deemed date of promotion)-HDD-2019