

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 1103 OF 2017 WITH M.A
511/2021 IN M.A 43/2018 WITH M.A 113/2022 in O.A
1103/2017**

DISTRICT : SANGLI

Shri Sachin Sadashiv Chavan,)
Working as Deputy Engineer in the office)
of Superintending Engineer [Mechanical],)
Pune, having office at Central Building,)
Pune -1. R/o: Shiv Krupa, Brahaman Puri,)
Hiremath Road, MIraj, Dist-Sangli.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Principal Secretary,)
Water Resources Department,)
Having office at Mantralaya,)
Mumbai 400 032.)
2. The State of Maharashtra,)
Through Principal Secretary,)
General Administration Department)
Mnatralaya, Mumbai 400 032.)...**Respondents**

WITH

**MISC APPLICATION NO. 113 OF 2022
IN
ORIGINAL APPLICATION NO. 1103 OF 2017**

Dr Shashikant N Joshi,)
Assistant Superintending Engineer,)

Mechanical Circle, Pune-1,)
 R/o: 133/1404, Mahindra Antheia,)
 Pimpri, Pune-18.)...**Applicant.**

AND

Shri Sachin Sadashiv Chavan,)
 Working as Deputy Engineer in the office)
 of Superintending Engineer [Mechanical],)
 Pune, having office at Central Building,)
 Pune -1. R/o: Shiv Krupa, Brahaman Puri,))...**Ori Applicant**
 Hiremath Road, Miraj, Dist-Sangli.)

Versus

1. The State of Maharashtra)
 Through Principal Secretary,)
 Water Resources Department,)
 Having office at Mantralaya,)
 Mumbai 400 032.)
2. The State of Maharashtra,)
 Through Principal Secretary,)
 General Administration Department)
 Mnatralaya, Mumbai 400 032.)...**Respondents**

Shri B.A Bandiwadekar, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

Shri M.D Lonkar, learned counsel for the applicant in M.A 113/2022.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Mrs Medha Gadgil (Member) (A)

DATE : **26.07.2022**

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicant, Deputy Engineer [Mechanical] prays that he is to be promoted to the post of Executive Engineer [Mechanical] by giving him deemed date of 12.7.2016, as per the rules including the reservation as applicable at the relevant time and accordingly the Respondents be directed to complete the process and to issue in favour of the applicant the order of promotion within two weeks from the date of the order of the Tribunal with consequential service benefits. It is further prayed that as the Respondent no. 1 has effected the ad-hoc / temporary promotions to the applicant in the post of Executive Engineer [Mechanical] on the lines on which such promotions have been effected in favour of same cadre or higher cadre senior colleagues of the applicant, namely from the post of Deputy Engineer [Mechanical], Executive Engineer, Superintending Engineer to the post of Chief Engineer vide order dated 9.8.2017, 6.10.2017 and 9.10.2017 in favour of P.P Sontake [S.C], S.S Mohite N.T [B], V.T Tandle [NT-D] and P.M Abnave [SC] subject to final decision rendered in Writ Petition No. 2797/2015 by the Hon'ble Bombay High Court and/or subject to the outcome of the pending Special Leave Petition No. 28306 of 2017 in the Hon'ble Supreme Court.

2. Learned counsel for the applicant submits that though this is the second round of litigation, it is to be treated as fresh Original Application so far as the reliefs are concerned. Learned counsel for the applicant submitted that the applicant is having the order of this Tribunal dated 7.12.2016 in O.A 742/2016 in his favour giving him promotion on the basis of reservation. The applicant belongs to NT(B) category and is working as Deputy Engineer

[Mechanical] in Water Resources Department. He was due for promotion to the post of Executive Engineer [Mechanical]. However, he was superseded by Mr R.V Mohite, from VJ[A] category. Learned counsel for the applicant submitted that the Respondent-State has wrongly applied the roster while giving the promotion based on the reservation excluding reservation for NT[B] category. The Respondents have been promoting persons from NT[C] and NT[D] categories. Therefore, the applicant has earlier filed O.A 742/2016 challenging the roster while giving the promotion. The said Original Application was decided on 7.12.2016. In the said Original Application, Respondent no. 2, Shri R.V Mohite, who belonged to VJ[A] category was given promotion to the post of Executive Engineer [Mechanical] by order dated 1.7.2016. This Tribunal directed Respondent no. 1 to prepare the 100 point roster within one month from the date of the order.

3. Learned counsel for the applicant submitted that the said order was not implemented by the Respondent-State within one month. However, the promotion granted to Shri Mohite, who belonged to VJ[A] category was cancelled by order dated 3.3.2017 and he was reverted to the post of Deputy Engineer. However, at that time the colleagues of the applicant were given promotion on the basis of reservation, but the name of the applicant was excluded. The Respondents did not implement the order of the Tribunal, though the process of promotion was initiated by the Respondents. Learned counsel for the applicant submitted that however in between the Hon'ble High Court decided the Writ Petition No. 2797/2015 by order dated 4.8.2017 in State of Maharashtra & Ors Vs. Shri Vijay Ghogre & Ors, by which the Hon'ble High Court as per the view expressed by the Hon'ble Supreme Court in the case of M. NAGARAJ & ORS Vs. UNION OF

INDIA & ORS, has held that the promotions cannot be given on the basis of reservation without collecting the quantifiable data. Thus the G.R dated 25.5.2004 of the Respondent-State framing the policy of granting reservation in promotion was set aside. Learned counsel for the applicant further submitted that the Hon'ble High Court stayed its own order by twelve weeks to enable the Respondent-State to take action in respect of the said order. Similarly, the said G.R dated 25.5.2004 was struck down by this Tribunal by order dated 28.11.2014 in T.A 1/2014 (W.P 8452/2004) and T.A 2/2014 (W.P 470/2005). However, the Tribunal has stayed its own order for a period of one year.

4. Learned counsel for the applicant has submitted that thereafter in between the Respondent-State gave promotions on ad hoc/temporary basis to the colleagues of the applicant or persons in the other cadre. Learned counsel for the applicant submitted that nearly 41 persons were given promotion after the decision of the Hon'ble High Court in VIJAY GHOGRE's case within a period of 12 weeks. Learned counsel for the applicant pointed out to the letter dated 18.10.2017 issued by the Under Secretary wherein it is stated that the promotions can be given on temporary/ad hoc basis within the period of stay granted by the Hon'ble High Court, which will be subject to the outcome of the S.L.P 33151/2017 pending before the Hon'ble Supreme Court.

5. Learned counsel for the applicant submitted that the applicant was entitled to get promotion to the post of Executive Engineer [Mechanical] on the basis of the order dated 7.12.2016 passed in O.A 742/2016 and the Respondent-State was supposed to implement the said order within one month. However, the Respondents did not do so. Due to inordinate delay on the part of the Respondent-State the applicant could not be promoted till

4.8.2017, i.e. the date of the judgment of the Hon'ble Bombay High Court in the case of VIJAY GOGHRE. Learned counsel for the applicant submitted that today the prayer is only for giving promotion to the applicant as per the order of the Tribunal and there is no impediment to the Respondent-State. It is therefore prayed that the Tribunal should direct the Respondent-State to promote the applicant to the post of Executive Engineer [Mechanical] when Respondent no. 2, Mr R.V Mohite was promoted to the post of Executive Engineer on 12.7.2016, as the applicant is having a legal claim of promotion to that post of Executive Engineer [Mechanical]. Learned counsel for the applicant submitted that the order passed by the Hon'ble High Court in VIJAY GOGHRE's case cannot come in the way of the Respondents to give promotion to the applicant as prayed for and directed by the Tribunal by order dated 7.12.2016 in O.A 742/2016.

6. Learned counsel for the applicant submitted that in the affidavit in reply they have stated on oath that in March 2017, all the process regarding promotion of the applicant was done and on 3.8.2017, option was called from the applicant and others for the purpose of allotment of zone as per the Divisional Cadre Allotment Rules, 2015. Accordingly the applicant submitted the said option on 4.8.2017. Under such circumstances, the Respondents are required to issue the order modifying the order of promotion in favour of the applicant in place of Respondent no. 2 Shri R.V Mohite with necessary changes regarding reservation.

7. Learned counsel for the applicant further submits that he has filed Misc Application No. 43/2018 seeking ad hoc promotion to the post of Executive Engineer [Mechanical] and subsequently he has filed M.A 511/2021, to direct the Respondents to forthwith promote the applicant to the post of Executive Engineer

[Mechanical] in compliance of the order dated 7.12.2016 in O.A 742/2016 and by way of interim relief the applicant sought directions to keep one post of Executive Engineer [Mechanical] vacant and the Tribunal by its order dated 1.12.2021, directed that one post of Executive Engineer [Mechanical] should be kept vacant till the decision in the Original Application. Subsequently, though the order was partially modified on 20.12.2021, however, the order directing the Respondents to keep one post vacant was kept intact.

8. Learned C.P.O for the Respondents submitted that the State has taken steps to implement the order of the Tribunal. However, it could not implement the same, in view of the order dated 4.8.2017 passed by the Hon'ble High Court in W.P 2797/2015, State of Maharashtra & Ors Vs. Shri Vijay Ghogre & Ors. Learned C.P.O submitted that whatever promotions granted after the period of stay of 12 weeks granted by the Hon'ble High Court, those orders are withdrawn by the Respondent-State. She submits that this Original Application is not maintainable on the principle of res-judicata. Learned C.P.O further submitted that this particular stand is no taken in the affidavit in reply of the Respondent-State, however, this being a law point, can be raised at any stage of the matter.

9. Learned counsel Mr Lonkar for the applicant in M.A 113/2022, submits that due to the interim relief dated 1.12.2021, granted by this Tribunal, directing the Respondents to keep one post of Executive Engineer [Mechanical] vacant, the applicant is deprived of his right to be considered for promotion and therefore, he has approached this Tribunal by filing the present Misc Application.

10. In O.A 742/2016 by order dated 7.12.2016, the Tribunal directed Respondent no. 1, to prepare 100 point roster starting from 2005 and to consider the case of the applicant if he is eligible for promotion to the post of Executive Engineer [Mechanical] from NT-B category and if found the applicant is to be promoted within one month from the date of the order of the Tribunal.

11. Admittedly, it is a case of promotion based on reservation in the light of the policy of the Government vide G.R dated 25.5.2004, which the applicant in this Original Application seeks the same relief which is differently worded. In fact, the said relief was already granted by deciding the issue in favour of the applicant that the Government has not followed the 100 point roster especially in NT[B] category. Thus, this Original Application and the relief are covered under the principle of res-judicata and the Original Application is not maintainable.

12. On our query, whether the applicant has filed Contempt Application, the answer is no, especially when the order was not implemented by the Respondent-State, within the stipulated period fixed by the Tribunal, i.e. up to 7.1.2017. It is not the case of the applicant that the Respondents did not take steps to implement the order. In the affidavit in reply dated 2.6.2018 filed by the Respondents no 1 & 2 through Shri Sunil G. Gangarkar, Under Secretary in the office of the Principal Secretary, Water Resources Department, the Respondents have stated that the Respondents have prepared the 100 point roster considering the reservation for NT[B] category and completed the process and the case of the applicant was also considered for promotion from the reserved category of NT[B] category. He was also given the option for giving the choice for the purpose of allotment of zone as per the Divisional Cadre Allotment Rules, 2015 by letter dated 3.8.2017.

Accordingly the applicant submitted the said option on 4.8.2017. However, on the same day, i.e. on 4.8.2017 the Hon'ble High Court passed the order in W.P 2797/2015 in Vijay Ghogre's case and therefore, the Respondents could not issue the final order of granting promotion to the applicant to the post of Executive Engineer [Mechanical].

13. The learned counsel for the applicant submitted that as the Hon'ble High Court has stayed its order for a period of 12 weeks so it was possible for the Respondent-State to issue the order of promotion by just modifying the minor changes in the order of promotion dated 12.7.2016 which was issued in favour of Shri R.V Mohite, Respondent no. 2. It is a fact that in this period of stay of 12 weeks the Respondent-State issued the orders of promotion on the basis of reservation in favour of some 41 persons. Under such circumstances we can only say that in the case of the applicant such order just remained to be issued. The reason given in the affidavit in reply is that if the applicant is promoted to the post of Executive Engineer [Mechanical], on the basis of G.R dated 25.5.2004, it may amount to contempt of the order dated 4.8.2017 in W.P 2979/2015 of the Hon'ble Bombay High Court.

14. Today we cannot pass such orders of issuance of orders of promotion on the basis of reservation when the judgment of the Hon'ble Bombay High Court dated 4.8.2017 in W.P 2797/2015 is in force when the State of Maharashtra has challenged the said judgment before the Hon'ble Supreme Court and the Hon'ble Supreme Court has not stayed the order of the Hon'ble High Court in the case of VIJAY GHOGRE. Moreover, we rely on the judgment of the Hon'ble Supreme Court dated 28.1.2022 in JARNAIL SINGH & ORS Vs. LACHHMI NARAYAN GUPTA & ORS, Civil Appeal No. 629/2022 arising out of S.L.P (C) No 30621/2011, wherein Three

Judge Bench of the Hon'ble Supreme Court observed that it is explicitly made clear and reiterated that the State has to follow the ratio laid down in the case of M. NAGRAJ & ORS. Vs. UNION OF INDIA & ORS, (2006) 8 SCC 212, that without taking the quantifiable data the policy of reservation in promotion cannot be adopted. Though the applicant is having the order of the Tribunal dated 7.12.2016 in O.A 742/2016 in his favour, the order of promotion was given on the basis of the reservation and the same was issued under challenge and decided against the reservation policy adopted by the Respondent-State which is expressed in the G.R dated 25.5.2004. Hence, it cannot be implemented now as it will amount to breach of the order of the Hon'ble High Court in the case of VIJAY GHOGRE.

15. In view of the above we pass the following order:-

ORDER

- (a) As the matter regarding reservation in promotion in the case of VIJAY GHOGRE is pending before the Hon'ble Supreme Court in S.L.P 33151/2017, as on today for the reasons given above, the Original Application is dismissed.
- (b) As the Original Application is dismissed the Misc Applications Nos 43/2018, 511/2021 and 113/2022 does not survive.
- (c) As the Original Application is dismissed, interim order dated 1.12.2021 passed in M.A 43/2018 stands vacated.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 26.07.2022
Dictation taken by : A.K. Nair.