

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 612 OF 2013

DISTRICT : MUMBAI

- 1 Smt. Vaishali Vasantrya Shinde
- 2 Smt. Prajakta Prakash Chavan
- 3 Smt. Jayashri Harichandra Muluk
- 4 Smt. Pushpagandha Balasaheb Bhagat
- 5 Smt. Vidyatai Madhavrao Wadkute
- 6 Smt. Shaila Vilas Jadhav
- 7 Niraj Hisamoddin Shaikh
- 8 Smt. Vijaya Ishwar Rane
- 9 Smt. Madhuri Dashrath Karajgaonkar
- 10 Smt. Yogita Subhash Thakur
- 11 Shrishail Subhash Vhatte
- 12 Sushilkumar Kashibarao Nayak
- 13 Gopinath Chandrasen Bhakare
- 14 Anil Jyoti Doke
- 15 Santosh Tulshiram Shinde Sutar
- 16 Rohan Udaysinh Kadam
- 17 Ramesh Amrita Budhawant
- 18 Sachin Chandrakant Gaikwad
- 19 Manojkumar Dashrath Bankar
- 20 Dattatraya Bhaguji Bangar
- 21 Jagannath Krishna Nawale
- 22 Dasharath Nathu Wable
- 23 Sudarshan Sudhanwa Chavan
- 24 Abhijit Anant Paralikar
- 25 Rahul Durgaprasad Rasal
- 26 Smt. Vina Baburao Patil
- 27 Smt. Lalita Namadev Gawari
- 28 Abhay Bhanudas Kadlag
- 29 Jamir Akbar Lengarekar
- 30 Prakash Laxman Jagtap
- 31 Sandeep Vasantrya Shinde
- 32 Smt. Swati Shankarrao Sonwalkar
- 33 Smt. Deepali Dattatray Rasane
- 34 Prakash Rabhaji Ghodekar
- 35 Vikas Bapurao Gophane
- 36 Nilesh Yashwant Sonawane
- 37 Smt. Shital Ashok Surve
- 38 Vinit Tanaji Thite
- 39 Arun Janardhan Rode
- 40 Anil Bansi Gawande

- 41 Tushar Ramesh Ambede
- 42 Suhas Surendra Sonawane
- 43 Arun Namdeo Yadav
- 44 Abhijit Sarjerao Bhosale
- 45 Prafulla Sahebrao Borkar
- 46 Ajitsinh Bhimrao Karande- Patil
- 47 Mahesh Madhukar Binawade
- 48 Bajarang Suryaji More
- 49 Smt. Charusheela Deepak Kane
- 50 Smt. Vaishali Ajit Madhale
- 51 Miss Umadevi Laxman Rabade
- 52 Dhanashri Akaram Mane
- 53 Shankar Ramchandra Patil
- 54 Tejaswi Mahesh Kamble
- 55 Swapnali Popatrao Shinde
- 56 Varsha Jotiram Shelar
- 57 Abhijit Sampatrao Shinde
- 58 Santosh Rajaram Salunkhe
- 59 Uday Maruti Mane
- 60 Amar Gopal Jagtap
- 61 Manik Dilip Khot
- 62 Megha Pralhad Doiphode
- 63 Vijay Sadashiv Lohar
- 64 Sandeep Vasant Patil
- 65 Gopal Tukaram Patil
- 66 V.M. Sonawane
- 67 S.P. Patil
- 68 S.M. Fulpagare
- 69 M.M. Bhadage
- 70 K.M. Chatur
- 71 S.R. Pardeshi
- 72 B.A. Shinde
- 73 V.D. Pendharkar
- 74 Anant Vitthalrao Patil
- 75 Nilesh Dnyandeo Pradhan
- 76 Pankaj Pandurang Patil
- 77 Vishal Govinda Shirsath
- 78 Subhash Himatrao Patil
- 79 Vaishali Bharat Chowdhari
- 80 Chaitalee Chandrakant Darade
- 81 Archana Dinkar Lokhande
- 82 Sanjay Parashram Dushing
- 83 Shahaji Subhash Patil
- 84 Sachin Prakash Hire
- 85 Eknath Namdeo Kanade
- 86 Santosh Parashram Suryawanshi
- 87 Yogesh Pravinsing Patil
- 88 Raosaheb Bapu Salve

- 89 Vinayak Mahadeo Borse
- 90 Abhijit S. Bhavsar
- 91 Anna Kisan Kamble
- 92 Vrishali B. Kangane
- 93 Shamal Y. Karande
- 94 B.S. Tambe
- 95 P.D. Await
- 96 Amol R. Amane
- 97 A.G. Khade
- 98 R.B. Shinde
- 99 Swati Shinde
- 100 B.K. Pardeshi
- 101 Santosh Gorakhnath Misal
- 102 Santosh Laxman Patil
- 103 Pravin Hari Pawar
- 104 Waman Sakhahari Dandge
- 105 Vivek Wamanrao Walujkar
- 106 Vijaykumar Manikrao Mahajan
- 107 Banesh Gopinath Ghule
- 108 Ranjeet Rohidas Jadhav
- 109 Avinash Sachidanand Wazal
- 110 Anand Ashokrao Punde
- 111 Adinath Gangadhar Sangale
- 112 Pralhad Pandurang Badhe
- 113 Chandrashekhar Vitthal Borde
- 114 S.N. Akat
- 115 M.B. Jadhav
- 116 S.V. Nalbhe
- 117 Darshana Dinkar Kanase
- 118 Makarand Maruti Khamankar
- 119 Santosh Laxmanrao Kamble
- 120 Manish Nasare
- 121 Gopal T. Bawane
- 122 Kisan M. Dahikar
- 123 Prakash S. Wagh
- 124 Umesh R. Dawkar
- 125 Ranjit G. Ujawane
- 126 Amit B. Shankarwar
- 127 Dhiraj V. Gohad
- 128 Sushant B. Nerkar
- 129 Nilesh N. Deshmukh
- 130 Pradeep J. Jawanjal
- 131 Prafulla S. Gawande
- 132 Vinod R. Ingale
- 133 Ramesh M. Chandekar
- 134 Jayant R. Umak
- 135 Miss Shilpa B. Dhote
- 136 Arati M. Ghulol

137 Shilpa B. Kadu

138 Miss Vaishali S. Dhole

139 Sandeep A. Thakare

140 Sachin Lawale

All Aged Adult, Working as Sales Tax Inspectors
in different offices in Dist. Pune, Kolhapur, Satara,
Mumbai Nashik etc.

....Applicants

Versus

The Special Commissioner of Sales Tax,
Having office at 323, 3rd Floor, Vikrikar Bhavan,
Mazgaon, Mumbai 10

....Respondent

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

Ms Swati Manchekar, learned Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)

Mrs Medha Gadgil (Member) (A)

DATE : 23.12.2021

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicants by the present Original Application seek directions of this Tribunal to quash and set aside the order/Circular dated 6.7.2012 issued by the Respondent under which he has failed to grant the applicants appropriate placement in the seniority list of Sales Tax Inspectors as on 1.1.2011, and accordingly the applicants be granted all the consequential service benefits.

2. Pursuant to our order dated 22.12.2021, today, learned counsel for the applicants has submitted that in paragraphs 31, 32 and 33 the averments in respect of the quota are made. He further

submitted that between the years 1988 to 2008, about 1000 Junior Clerks in the Sales Tax Department became S.T.Is by way of the waiting list. Out of these 1000 S.T.Is, about 700 S.T.Is have been further promoted to the post of Sales Tax Officer, Class-II and during the same period of 10 years, i.e. 1988 to 2008, the Respondents appointed the direct recruits only in the year 1998, 1999 and 2005. In the year 1999, only 59 S.T.Is were appointed as S.T.I and thereafter same thing happened during the next direct recruitment of 480 S.T.Is, when the same took about 4 years to complete the process in 2009. Learned counsel for the applicants further submitted that as on 1.1.2007 the recruitment to the post of S.T.I was as follows:-

Promotee S.T.Is – 693,

In-service candidates having passed the
Limited Departmental Competitive Examination – 698.

Thus, the total number of S.T.Is by promotion comes to 1391 and during that period, i.e. in 2007 only 301 direct recruits S.T.Is came to be appointed, when the total number of such direct recruits as per 40% quota comes to 927 and thus there is a backlog of 626 posts available for direct recruits.

3. Learned C.P.O, while opposing this Original Application has relied on the affidavit in reply dated 25.9.2013, filed by Deputy Commissioner of Sales Tax, Mumbai. Learned C.P.O submitted that it is a very settled principle that seniority is to be reckoned from the date of the appointment. The seniority of direct recruits cannot be antedated, but it is to be counted from the date of continuous officiation. The applicants were appointed during the period January to February, 2009 and onwards. Learned C.P.O has submitted that many litigation were filed and decided by various Judicial For a in respect of the seniority of the S.T.Is. The provisional seniority list

was published on 1.1.2010, which became final on 1.1.2011. The applicants earlier in the provisional seniority list were placed at Serial No. 1294 to 1682. However, in the final seniority list as on 1.1.2010 published on 5.7.2010 the applicants were placed before the promotees promoted on 2.12.2002. Learned C.P.O further submitted that the representations made, objections raised in respect of the provisional seniority list were considered by the Respondents. She further pointed out to the averments made in para 13 of the affidavit in reply wherein it is specifically mentioned that S.T.Is promoted during the year 1983 to 1985 were given seniority in the year 1998 and S.T.I promoted in the year 1990 were given the seniority of the year 2005. Thus, the Respondent-State has very much adhered to the quota of 40%, 30% and 30% prescribed under the Recruitment Rules of S.T.Is.

4. Learned counsel for the applicant Mr Bandiwadekar while meeting the arguments of the learned C.P.O relied on the affidavit in rejoinder of one S.T. Shinde Sutar, dated 6.1.2014. Learned counsel submitted that this pushing down principles should have been properly applied favourably in respect of the direct recruits. He relied on para 12 of the rejoinder and submitted that there was a vacancy in the year 2005 when the advertisement was issued and therefore these applicants should have been pushed down as senior in the year 2005.

5. We have considered the submissions of both sides. From the beginning, we are of the view that the application is vague and made on the basic erroneous principles of law about seniority. A person should be in the service to consider his case for seniority. If a person is not appointed, how he can be given the seniority. The Hon'ble Supreme Court has considered the similar issue in the case of **P. SUDHAKAR RAO & ORS. Vs. U. GOVINDA RAO & ORS,**

(2007) 12 SCC 148, wherein weightage given for years of service rendered by an employee for purposes of seniority in a grade, in respect of Andhra Pradesh Engineering Subordinate Services. In the said case, the Hon'ble Supreme Court has relied on the ratio laid down in the case of ***Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra, (1990) 2 SCC 715***, wherein it was observed as under:-

“iv The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

6. Learned counsel for the applicants was unable to demonstrate how may promotee S.T.Is were appointed as fortuitous and how many percent quota was exceeded from the channel of promote L.D.C.E appointed in the years 2005, 2006, 2007 & 2008. We are unable to appreciate the vague pleadings and submissions which cannot help us to arrive at a correct decision as claimed by the applicants. A person who asserts has to prove the case is the basic rule of law of evidence.

7. In view of the above, we find there is no merit in the Original Application and the same is dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 23.12.2021
Dictation taken by : A.K. Nair.