

GIRISH KUMAR

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v.

STATE OF MAHARASHTRA AND OTHERS

(Civil Appeal No. 4894 of 2019)

MAY 10, 2019

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**[L. NAGESWARA RAO AND M. R. SHAH, JJ.]**

*Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 – Appendix IX – Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 – r.5 – Appellant was promoted to the post of Office Superintendent by order dated 22.10.2007, however, w.e.f 07.10.2005 – Respondent No.3-Junior Assistant was undergoing a departmental enquiry, however he was exonerated in departmental enquiry on 15.06.2006 – Considering r.5 of 1982 rules, he was promoted as Senior Assistant on 06.11.1999 and thereafter, he was promoted as Office Superintendent on 22.10.2007 – Respondent No.3 was granted deemed date of promotion to the post of Office Superintendent w.e.f 07.10.2005 – Respondent No.3 was placed in the higher position in the seniority list above the appellant and was consequently promoted as Section Officer on 01.02.2008 – Writ Petition by the appellant – High Court directed appellant to approach the Additional Divisional Commissioner – Additional Divisional Commissioner allowed the appeal of the appellant and set aside the order of promotion of respondent no.3 – Writ petition by respondent no.3 – High Court set aside the order of the Additional Divisional Commissioner – On appeal, held: Respondent no.3 was granted the deemed date of promotion to the post of Office Superintendent with effect from 07.10.2005 – However, he was actually promoted as Office Superintendent on 22.10.2007 – Therefore, in fact, he has rendered service as Office Superintendent only from 22.10.2007 – As per Appendix IX to the Recruitment rules, 1967, the eligibility for appointment to the promotional post of Section Officer requires three years continuous service – The language used in Appendix IX is unambiguous, simple and plain – Therefore, on a fair reading of Appendix IX of the Recruitment Rules, 1967, to become eligible for the promotional post of Section Officer, a person ought to have rendered continuous service of not less*

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- A *than three years – In the instant case, respondent no.3 had not completed three years of service for a continuous period of not less than three years in the feeder cadre in District Service (Class III) (Ministerial) Grade II, therefore, he was not eligible for promotion to the post of Section Officer – The High Court committed a grave error in holding otherwise – Thus, the Additional Divisional Commissioner, rightly allowed the appeal and set aside the order of promotion of respondent no.3.*
- B *Maharashtra Zilla Parishads District Service (Recruitment) Rules, 1967 – Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 – Distinction between the rules – Discussed.*

C **Allowing the appeal, the Court**

- HELD :** 1. **The Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 and the Maharashtra Zilla Parishads District Service (Recruitment) Rules, 1967 both are different rules and enacted under the different provisions and they operate in different fields. The Recruitment Rules, 1967 are enacted/ framed in exercise of powers conferred by clause xxxix of subsection 2 of Section 274 of the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961. The said Rules shall apply to the recruitment to all posts in District Technical Service (Class III), District Service (Class III) and District Service (Class IV). On the other hand, the Seniority Rules, 1982 are framed/enacted in exercise of powers conferred by proviso to Article 309 of the Constitution of India. As per the Seniority Rules, 1982, the seniority of government servants shall be regulated in accordance with the provisions of the Seniority Rules, 1982. The said Seniority Rules, 1982 are made applicable to the District Service also. Therefore, the Seniority Rules, 1982 shall govern the seniority only and not with respect to the recruitment. The recruitment shall be governed by the Recruitment Rules, 1967 only. [Para 8] [890-H; 891-A-C]**
- G 2. **In the present case, the High Court has considered Rule 5 of the Seniority Rules, 1982 and has not at all considered the Recruitment Rules, 1967. Respondent no.3 might have been granted the deemed date of promotion to the post of Office**

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Superintendent with effect from 07.10.2005. However, he was actually promoted as Office Superintendent on 22.10.2007. Therefore, in fact, he has rendered service as Office Superintendent only from 22.10.2007. As per Appendix IX to the Recruitment rules, 1967, the eligibility for appointment to the promotional post of Section Officer requires three years continuous service. The language used in Appendix IX is unambiguous, simple and plain. Therefore, on a fair reading of Appendix IX of the Recruitment Rules, 1967, to become eligible for the promotional post of Section Officer, a person ought to have rendered continuous service of not less than three years. "Continuous service" might have been defined under the Seniority Rules, 1982. However, the same shall be for the purpose of seniority and the Seniority Rules only. Therefore, if any employee is granted the deemed date of promotion, his seniority shall be considered accordingly from the deemed date of promotion. However, that shall be only for the purpose of *inter se* seniority only and the same shall not be applicable while considering the eligibility criteria under the Recruitment Rules. In the Recruitment Rules, "continuous service" is not defined. Therefore, one has to consider the ordinary dictionary meaning of "continuous" which means "uninterrupted or unbroken". The High Court has added the word "actual" which as such is not there in Appendix IX. While considering the relevant provisions and as per the rule of interpretation, when the language used is unambiguous, plain and simple, the provision is required to be read as it is and nothing is to be added. Therefore, when in Appendix IX, the eligibility criteria is that no person shall be eligible for promotion unless he has completed service for a continuous service of not less than three years means he has to render/complete service for a continuous period of uninterrupted/unbroken three years service. Therefore, when respondent no.3 has not completed three years of service for a continuous period of not less than three years in the feeder cadre in District Service (Class III) (Ministerial) Grade II, he was not eligible for promotion to the post of Section Officer. The High Court has committed a grave error in holding otherwise. Therefore, the Additional Divisional Commissioner, rightly allowed the appeal and rightly

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- A **set aside the order of promotion of respondent no.3 dated 1.2.2008 to the post of Section Officer. [Para 9] [891-D-H; 892-A-C]**

**3. The impugned judgments and orders passed by the Single Judge as well as the Division Bench of the High Court are hereby**

- B **quashed and set aside and the order passed by the Additional Divisional Commissioner is hereby restored and it is held that respondent no.3 is not entitled to be promoted to the post of Section Officer and instead action should be taken to promote the appellant to the post of Section Officer, as directed by the Additional Divisional Commissioner. [Para 10] [892-D-E]**

- C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4894 of 2019.

From the Judgment and Order dated 20.12.2010 of the High Court of Judicature at Bombay, Bench at Aurangabad in L.P.A. No. 209 of 2010 in Writ Petition No. 5437 of 2010.

Arun R. Pedneker, Samrat Shinde, Ms. Chandan Ramamurthi, Advs. for the Appellant.

Vinay Navare, Sr. Adv., Ms. Gwen Karthika, Ms. Abha R. Sharma, Amol Nirmalkumar Suryawanshi, Ms. Rajshri Dubey, Nishant

- E Ramakantrao Katneshwarkar, Advs. for the Respondents.

The Judgment of the Court was delivered by

**M. R. SHAH, J.** 1. Leave granted.

- F 2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 20.12.2010 passed by the High Court of Judicature at Bombay, Bench at Aurangabad passed in L.P.A. No. 209/2010 in Writ Petition No. 5437 of 2010, by which a Division Bench of the High Court has dismissed the said letters patent appeal preferred by the appellant herein and has confirmed the judgment and order passed by the learned Single Judge, the original appellant before the High Court in Letters Patent Appeal has preferred the present appeal.

G 3. The facts leading to the present appeal in nutshell are as under:

That the appellant herein – Girish Kumar was appointed as Senior Assistant on 26.6.2001. That thereafter he was promoted to the post of Office Superintendent by order dated 12.10.2007, however, with effect

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from 7.10.2005. One Govind Jerale, appointed as Junior Assistant on 8.9.1994, was promoted to the post of Senior Assistant on 6.11.1999. Respondent No.3 herein was appointed as Junior Assistant on 29.8.1994. He was suspended from service sometime in the year 1999. His suspension was revoked and he was reinstated on 17.7.2001. That thereafter he was exonerated in departmental enquiry on 15.6.2006. That thereafter he was promoted as Senior Assistant on 1.7.2006. However, in view of the fact that he was exonerated in departmental enquiry, considering Rule 5 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 (hereinafter referred to as the ‘Seniority Rules, 1982’), Respondent No.3 was granted 6.11.1999 as deemed date of promotion as Senior Assistant, i.e., the date on which his junior Govind Jerale was promoted as Senior Assistant. It appears that thereafter on 22.10.2007, respondent no.3 was promoted as Office Superintendent. The Divisional Commissioner granted to respondent no.3 07.10.2005 as deemed date of promotion as Office Superintendent. As Respondent No.3 was placed in the higher position in the seniority list above the appellant herein, he was consequently promoted as Section Officer by respondent no.2, vide his order dated 1.2.2008.

3.1 Being aggrieved by the aforesaid order of promotion promoting respondent no.3 herein to the post of Section Officer, the appellant initially preferred writ petition before the High Court. However, the said writ petition came to be disposed of by the High Court with liberty to the appellant to approach the Additional Divisional Commissioner, Aurangabad for redressal of his grievance. It appears that thereafter the appellant preferred appeal bearing no. DB/Appeal/Cell/7/2009 before the Additional Divisional Commissioner, Aurangabad on 05.11.2008. It was the case on behalf of the appellant that the eligibility criteria as per the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 (hereinafter referred to as the ‘Recruitment Rules, 1967’) for the post of Section Officer was ‘continuous service of not less than three years’ in the grade of Office Superintendent and respondent no.3 never completed his continuous service of not less than three years on the post of Office Superintendent, he was not eligible for promotion to the post of Section Officer. That vide order dated 20.05.2010, the Additional Divisional Commissioner, Aurangabad allowed the said appeal preferred by the appellant herein and quash and set aside the order of promotion of respondent no.3 to the post of Section Officer.

3.2 Being aggrieved by the order passed by the Additional H

- A Divisional Commissioner, Aurangabad dated 20.05.2010, respondent no.3 preferred Writ Petition No. 5437 of 2010 before the High Court. That by judgment and order dated 29.06.2010, a learned Single Judge of the High Court allowed the said writ petition and set aside the order passed by the Additional Divisional Commissioner, Aurangabad dated 20.05.2010 and consequently confirmed the order of promotion of respondent no.3 dated 1.2.2008.
  - B 3.3 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge, the appellant preferred Letters Patent Appeal No. 209/2010 before the Division Bench of the High Court. By the impugned judgment and order, the Division Bench of the High Court has dismissed the said appeal and has confirmed the judgment and order passed by the learned Single Judge. Hence, the appellant has preferred the present appeal.
  - C 4. Shri Arun R. Pedneker, learned Advocate has appeared for the appellant and Shri Vinay Navare, learned Senior Advocate has appeared for respondent no.3 herein.
- D 4.1 Shri Arun R. Pedneker, learned Advocate appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case both, the learned Single Judge as well as the Division Bench of the High Court have not properly appreciated the distinction between the Seniority Rules, 1982 and the Recruitment Rules, 1967.
- E 4.2 It is vehemently submitted by the learned Advocate appearing on behalf of the appellant that both, the learned Single Judge as well as the Division Bench of the High Court have materially erred in solely relying upon Rule 5 of the Seniority Rules, 1982 and have materially erred in not considering the requirement under the Recruitment Rules, 1967.
- F 4.3 It is further submitted by the learned Advocate appearing on behalf of the appellant that the High Court ought to have appreciated that the Seniority Rules, 1982 shall be applicable with respect to seniority and not with respect to recruitment. It is submitted that when the Recruitment Rules, 1967 provide that for promotion to the post of Section Officer, a person/employee ought to have completed three years of continuous service in District Service (Class III) (Ministerial), Grade II, in that case, the same is required to be adhered to or complied with. It
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is submitted that in the present case, respondent no.3 as such has not completed three years of continuous service in the District Service (Class III) (Ministerial) Grade II and thereafter was not eligible for promotion to the post of Section Officer.

4.4 It is vehemently submitted by the learned Advocate appearing on behalf of the appellant that completion of three years of continuous service/complete service is the *sine qua non* for being eligible for the promotional post of Section Officer as per Appendix IX of the Recruitment Rules, 1967. It is further submitted that the High Court has failed to consider that the Recruitment Rules, 1967 are framed in terms of the powers given under the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961 and reflects the eligibility criteria which is to be fulfilled by a candidate before he be promoted to a particular post. It is submitted that therefore anyone who does not fulfil the said criteria shall not be entitled to be promoted to the post of Section Officer. It is submitted that the language which is used to the Rules (Recruitment Rules, 1967) is plain and simple and gives rise to only one interpretation alone that the candidate must have completed three years continuous service in the feeder cadre, so that he may be well-acquainted and well-versed with the work before he could be promoted to the post of Section Officer. It is submitted therefore when the language which is used under the Rules is plain and simple and unambiguous, the High Court ought not to have considered and/or added the word “actual” service of three years rendered in the feeder cadre.

4.5 Relying upon the definition of “continuous” defined in the Black Law Dictionary, it is submitted that as per the definition “continuous” means “uninterrupted, unbroken etc.”

4.5 It is further submitted by the learned Advocate appearing on behalf of the appellant that in the present case as such the High Court has considered the relevant provisions of the Service Rules, 1982, more particularly Rule 5 of the Service Rules, which pertains to deemed date of promotion and *inter se* seniority, however, does not consider at all the relevant provisions of the Recruitment Rules, 1967 and/or the requirements to be complied with/fulfilled under the Recruitment Rules, 1967.

4.6 Making the above submissions, it is prayed to allow the present appeal and quash and set aside the impugned judgments and orders passed

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- A by the learned Single Judge as well as the Division Bench of the High Court and to restore the order passed by the Additional Divisional Commissioner, Aurangabad dated 20.05.2010.

5. The present appeal is vehemently opposed by Shri Vinay Navare, learned Senior Advocate appearing on behalf of respondent B no.3.

- 5.1 It is vehemently submitted by the learned Senior Advocate appearing on behalf of respondent no.3 that as such respondent no.3 was granted the deemed date of promotion to the post of Office Superintendent with effect from 07.10.2005. It is submitted therefore C once respondent no.3 was granted the deemed date of promotion as per rule 5 of the Seniority Rules, 1982 and consequently respondent no.3 was placed in the seniority list above the appellant, in that case, unless and until the seniority of respondent no.3 above the appellant is challenged, thereafter the appellant cannot make any grievance.

- D 5.2 It is further submitted by the learned Senior Advocate appearing on behalf of respondent no.3 that even otherwise the appellant entered into service on 26.6.2001 as Senior Assistant. However, in the cadre of Senior Assistant, respondent no.3 was granted the deemed date of promotion with effect from 6.11.1999. It is submitted that appellant choose not to challenge the deemed date of promotion 6.11.1999 granted E to respondent no.3 for the post of Senior Assistant. It is submitted that therefore its consequence must follow.

- F 5.3 Now so far as the submission on behalf of the appellant that rules of eligibility for appointment to the promotional post of Section Officer under Appendix IX requires three years continuous service and Seniority Rules, 1982 cannot be read for conferring eligibility prescribed under Appendix IX is concerned, it is vehemently submitted by Shri Vinay Navare, learned Senior Advocate that first of all the term "continuous service" is not defined under the Recruitment Rules, 1967. It is submitted that Rule 8 of the Maharashtra Zilla Parishads District Services Rules, G 1968 makes Maharashtra Civil Services (MCS) Rules applicable to Zilla Parishad employees. It is submitted that the term "continuous service" is essentially a technical term in service jurisprudence. It is submitted that there is nothing wrong or illegal if MCS Rules define and explain what "continuous service" is.

- H 5.4 It is submitted by the learned Senior Advocate appearing on

behalf of respondent no.3 that in the Seniority Rules, 1982 “continuous service” and the “deemed date” are defined. It is submitted that as per proviso to rule 3(c) “continuous service” is where a person is continuously officiating in a post, cadre or service from a deemed date of appointment under the provisions of the seniority rules, such person shall be deemed to have rendered continuous service with effect from such deemed date. It is submitted therefore that when respondent no.3 was granted the deemed date of promotion to the post of Office Superintendent with effect from 7.10.2005, as rightly held by the High Court, it can be said that respondent no.3 has completed three years of continuous service and therefore is entitled to be promoted to the post of Section Officer.

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5.5. It is further submitted that in the Recruitment Rules, 1967, more particularly Appendix IX before the word “continuous service” word “actual service or actual experience” is not used. It is submitted that in Appendix IV at serial no.3, the word used is “experience” as requisite qualification. It is submitted therefore that whenever the authority intended they used the word “experience”. It is submitted that therefore as in Appendix IX before the word “continuous service” neither the word “actual service” is mentioned nor “actual experience” is stated and therefore “continuous service” in Appendix IX need not be “actual experience” under the Recruitment Rules, 1967.

5.6 It is further submitted by the learned Senior Advocate appearing on behalf of respondent no.3 that if the submission/contention on behalf of the appellant is accepted, it will give an absurd result. It is submitted that it will be absurd to say that a person gets benefit of deemed date and continuous service under the Seniority Rules, 1982 but he cannot derive such continuous service for satisfaction of eligibility condition. It is submitted that such interpretation will make the Seniority Rules, 1982 absurd and unworkable. It is submitted therefore that the provision has to be read to make it harmonious.

5.7 It is further submitted by the learned Senior Advocate appearing on behalf of respondent no.3 that if mere grant of a deemed date is not held good enough to consider respondent no.3 eligible for the promotional post, then the very object of granting the same would be otiose.

5.8 It is further submitted by the learned Senior Advocate appearing on behalf of respondent no.3 that in any case the view taken by the learned Single Judge and the Division Bench of the High Court is a

- A possible view and it relates to interpretation of the provisions of State Law, the interference of this Court under Article 136 of the Constitution of India is not called for.

5.9 Making the above submissions, it is prayed to dismiss the present appeal.

- B 6. We have heard the learned Advocates for the respective parties at length.

7. The short question which is posed for consideration before this Court is, whether an employee who has been assigned the deemed date of promotion as per Rule 5 of the Seniority Rules, 1982 and as such has

- C not actually worked at all on the promotional post, can it be said that he has completed service for a continuous period of not less than three years in the feeder cadre, which is the requirement under the relevant Recruitment Rules?

- D 8. As per Appendix IX to the Recruitment Rules, 1967, which are framed in exercise of the powers conferred under Section 274 of the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961 for promotion to the post of Section Officer, no person shall be eligible for promotion unless he has completed service for a continuous period of not less than three years in District Service (Class III) (Ministerial) Grade

- E II. Respondent no.3 was promoted as Office Superintendent on 22.10.2007. However, he was granted deemed date of promotion under Rule 5 of the Seniority Rules, 1982 for promotion as Office Superintendent. He was promoted to the post of Section Officer on 1.2.2008. It was the case on behalf of the appellant that as respondent no.3 was actually promoted as Office Superintendent on 22.10.2007

- F and therefore has not completed service for a continuous period of not less than three years in the District Service (Class III) (Ministerial) Grade II and therefore he was not eligible for promotion considering the relevant provisions of the Recruitment Rules, more particularly Appendix IX. However, it is the case on behalf of respondent no.3 that once he was

- G granted the deemed date of promotion under Rule 5 of the Seniority Rules, 1982, his date of promotion for all purposes shall be continued/ counted from 7.10.2005, i.e., from the deemed date of promotion. The learned Single Judge and the Division Bench of the High Court have considered and applied the Seniority Rules, 1982 under which respondent no.3 was granted the deemed date of promotion. However, it is required

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to be noted that the Seniority Rules, 1982 and the Recruitment Rules, 1967 both are different rules and enacted under the different provisions and they operate in different fields. The Recruitment Rules, 1967 are enacted/framed in exercise of powers conferred by clause xxxix of sub-section 2 of Section 274 of the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961. The said Rules shall apply to the recruitment to all posts in District Technical Service (Class III), District Service (Class III) and District Service (Class IV). On the other hand, the Seniority Rules, 1982 are framed/enacted in exercise of powers conferred by proviso to Article 309 of the Constitution of India. As per the Seniority Rules, 1982, the seniority of government servants shall be regulated in accordance with the provisions of the Seniority Rules, 1982. The said Seniority Rules, 1982 are made applicable to the District Service also. Therefore, the Seniority Rules, 1982 shall govern the seniority only and not with respect to the recruitment. The recruitment shall be governed by the Recruitment Rules, 1967 only.

9. In the present case, the High Court has considered Rule 5 of the Seniority Rules, 1982 and has not at all considered the Recruitment Rules, 1967. Respondent no.3 might have been granted the deemed date of promotion to the post of Office Superintendent with effect from 07.10.2005. However, he was actually promoted as Office Superintendent on 22.10.2007. Therefore, in fact, he has rendered service as Office Superintendent only from 22.10.2007. As per Appendix IX to the Recruitment rules, 1967, the eligibility for appointment to the promotional post of Section Officer requires three years continuous service. The language used in Appendix IX is unambiguous, simple and plain. Therefore, on a fair reading of Appendix IX of the Recruitment Rules, 1967, to become eligible for the promotional post of Section Officer, a person ought to have rendered continuous service of not less than three years. “Continuous service” might have been defined under the Seniority Rules, 1982. However, the same shall be for the purpose of seniority and the Seniority Rules only. Therefore, if any employee is granted the deemed date of promotion, his seniority shall be considered accordingly from the deemed date of promotion. However, that shall be only for the purpose of *inter se* seniority only and the same shall not be applicable while considering the eligibility criteria under the Recruitment Rules. In the Recruitment Rules, “continuous service” is not defined. Therefore, one has to consider the ordinary dictionary meaning of “continuous” which means “uninterrupted or unbroken”. The High Court

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- A has added the word “actual” which as such is not there in Appendix IX. While considering the relevant provisions and as per the rule of interpretation, when the language used is unambiguous, plain and simple, the provision is required to be read as it is and nothing is to be added. Therefore, when in Appendix IX, the eligibility criteria is that no person shall be eligible for promotion unless he has completed service for a continuous service of not less than three years means he has to render/ complete service for a continuous period of uninterrupted/unbroken three years service. Therefore, when respondent no.3 has not completed three years of service for a continuous period of not less than three years in the feeder cadre in District Service (Class III) (Ministerial)
- B Grade II, he was not eligible for promotion to the post of Section Officer. The High Court has committed a grave error in holding otherwise. Therefore, the Additional Divisional Commissioner, Aurangabad rightly allowed the appeal and rightly set aside the order of promotion of respondent no.3 dated 1.2.2008 to the post of Section Officer.
- C 10. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgments and orders passed by the learned Single Judge as well as the Division Bench of the High Court are hereby quashed and set aside and the order passed by the Additional Divisional Commissioner, Aurangabad dated 20.05.2010 is hereby restored and it is held that respondent no.3 is not entitled to be promoted to the post of Section Officer and instead action should be taken to promote the appellant to the post of Section Officer, as directed by the Additional Divisional Commissioner, Aurangabad. However, in the facts and circumstances of the case, there shall be no order as to costs.

Ankit Gyan

Appeal allowed.