



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.2644/2024

1. Nilay Suresh Bhoge,
Aged about 47 years, Occ.-Service (Range Forest Officer),
R/o.-69, Gajanan Housing Society, Behind Veterinary College,
Seminary Hills, Nagpur.
2. Nilesh Rameshrao Gawande,
Aged about 40 years, Occ.-Service (Range Forest Officer),
R/o. Near PWD rest house, Samudrapur,
Tah. Samudrapur, Dist. Wardha.
3. Pravin Nihalsingh Naik,
Aged 49 years, Occ.-Range Forest Officer,
R/o C/o. G.R. Khobragade, Plot No. 1381,
Vidya Nagar, Ganeshpur, Bhandara. Petitioners.

Versus

1. The State of Maharashtra, through its Principal Secretary
Revenue and Forest Department, Mantralaya, Mumbai-32.
2. The Principal Chief Conservator of Forest,
Van Bhavan, Civil Lines, Nagpur.
3. The Additional Chief Conservator of Forest Vanbhan,
Civil Line, Nagpur.
4. Mangesh Madhukar Tate,
Aged 34 years, Occ- Service, R/o.-Dy. Director Pench
Tiger Reserve, Vanbhavan, Nagpur.Respondents.

Mr. Abhay Sambre with Mr. A.B. Patil, Advocates for petitioners.
Mr. C.S. Kaptan Senior Advocate a/b Mr. R.S. Kalangiware, Advocate for
respondent no.4.
Mr. D.V. Chavhan, Government Pleader for respondent nos.1 to 3.

CORAM : Smt. Vibha Kankanwadi & Mrs. Vrushali V. Joshi, JJ

Reserved on : 05-07-2024.

Pronounced on : 02-08-2024.

J u d g m e n t (Per Smt. Vibha Kankanwadi, J.)

. The present petition challenges the judgment and order passed in Original Application No.1228/2023 by learned Maharashtra Administrative Tribunal, Nagpur Bench Nagpur ("MAT", for short) with the civil applications. The petitioners are the original appellants who had filed the said Original Application to set aside the communication dated 06-12-2023 rejecting the objections of the applicants and to quash and set aside the final seniority list dated 04-12-2023 of the Range Forest Officers (hereinafter referred to as "the RFOs"), consequential prayer to declare that all the directly appointed/nominated RFOs seniority will be fixed from the date of successful completion of their training and to direct the respondent Authorities to prepare a fresh seniority list of the RFOs.

2. Before turning to the rival contentions, the facts giving rise to the Original Application are required to be considered. The applicants were initially appointed as 'Forester' which is a feeder cadre for the post of RFO. They were promoted as Ad-hoc RFOs in the year 2014 vide order dated 01-03-2014. Since that date they were working as RFOs. The recruitment and the appointment of the applicants was under Article 309 of the Constitution of India and notified in the year 1998, called as "Range Forest Officer in Maharashtra Forest Services Group-B (Recruitment) Rules, 1997". Those Rules have been called as "the 1998 Rules", in

the Original Application as well as in the judgment of the learned MAT. Rule 3 of the said Rules prescribes two methods of appointment of RFOs. Rule 3(a) prescribes for appointment of RFOs by way of promotion from the post of 'Forester' and under Rule 3(b) the appointment can be by way of nomination/directly appointed RFOs.

3. The applicants contend that the department of Revenue and Forest published a seniority list on 23-10-2023, wherein the date of appointment of nominated/directly appointed RFO was shown from their date of joining training which was contrary to Rule 3(b) of the recruitment Rules for the RFOs. It was without calling any objection as required by the seniority Rules of 1982. However, the applicants had submitted that their detailed objections to the said seniority list, which is not even considered by the Department. In fact the said seniority list was published on 23-10-2023 in respect of RFOs as on 01-01-2019. The applicants have then stated that nominated/directly recruited Assistant Conservator of Forest had filed Original Application No.576/2015 before the learned MAT, Principal Seat at Mumbai, seeking directions to grant date of joining training as date of appointment. That application came to be decided on 03-02-2016, but it was made clear that the State Forest Authority should consider the date of joining training as the date of appointment for the purpose of pay only and it will not affect the other service

conditions. But, thereafter, the State Government filed review petition as well as nominated directly recruited petitioners also filed Original Application, seeking review of the said decision. Both those petitions came to be decided on 14-08-2018, holding that the date of joining training should be the date of appointment for all purposes including the seniority. That decision was then challenged in Writ Petition No.2026/2019 before this Court Bench at Aurangabad. This Court decided the said petition on 23-04-2021, allowing the petition and the provision under Government decision granting date of appointment from the date of joining training was read down. The said decision was then confirmed by the Hon'ble Supreme Court on 15-03-2023. Therefore, as regards the RFOs, a contrary stand cannot be taken when the Rules are almost similar. Taking into consideration those decisions, in fact it is obligatory on the part of the State to prepare a fresh seniority list. However, inspite of the fact that the seniority list finalized in the year 2023 included the names of promotee RFOs initially promoted as Ad-hoc by regularizing their promotion from the availability of posts for promotion quota by order dated 12-05-2023, but still the seniority list is not as per the Rules. The seniority list for the years 2021, 2022 and 2023 was also published on the same day i.e. on 23-10-2023. However, all of them have been addressed as provisional seniority list. Only the seniority list as on 01-01-2019 is said

to be the final list, but it is without calling any objection from the concerned employees.

4. The applicants had made it clear that in the pleadings itself that they were approaching the Tribunal on two grounds viz; (i) the seniority list published on 23-10-2023 as on 01-01-2019 is based on the date of joining training as date of appointment as far as nominated/directly appointed RFOs are concerned. (ii) the date shown in seniority list as date of appointment is actually a date of order recommending the names and allotment to various training colleges/institutions for reappointment training should be as per Rule 3(b) of the 1998 Rules. Therefore, the State ought to have considered as regards the direct recruits that their seniority should be counted from the date after successful completion of training. It appears that during the pendency of the Original Application further events took place and therefore amendment was carried out and they have then challenged the promotion of 147 RFOs to the post of Assistant Conservator of Forest, on the basis of the alleged final list of seniority of RFOs on 04-12-2023.

5. In view of the amendment, respondent no.4 came to be added as party respondent and said to be the representative of the direct recruits, as contended by the applicants. Respondent no.4 filed reply and took objection that all the

newly recruited candidates have not been made as party, therefore the application is liable to be dismissed. The seniority of the applicants as well as respondent no.4 and others who are directly recruited, are governed by the new Rules. The applicants came to be promoted to the post of RFO on 01-03-2014. The said promotions were made on the post which were to be filled by way of direct recruitment. Therefore, those promotions were not legal. He disputes the applicability of the Rule of 1998. As per the Rules then prevailing i.e. new Recruitment Rules of 2015, would govern the same when the list of seniority was prepared. Their seniority was shown from the date of appointment which is shown from their date of training which was as per the Rules of 2015. The decisions in Original Application before the MAT at Principal Seat of Mumbai, this Court Bench at Aurangabad and the Hon'ble Supreme Court are not applicable to the facts of the case. It was then submitted that the selection process of RFOs had commenced vide advertisement dated 14-02-2014, and therefore Rules of 2014 would be applicable which came into force in 2015. As per the new Rules, the seniority would be counted from the date of training and not from the date of completion of the training.

6. The Original Application was also opposed by respondent nos.1, 2 and 3. They support their action of

preparation of the seniority list. Taking into consideration the prevailing Rules on the day the seniority list was prepared. They also say that taking into consideration the prayers those have been made all the affected parties should be heard and without them being added as party the matter should not proceed. According to respondent nos.1 to 3, the reliance placed by the applicants only of the Recruitment Rules of 1998 is bad, when those Rules were superseded by the Rules which were published by Notification dated 02-05-2015 and direct recruits who have found their places in the impugned seniority list would be governed by the Recruitment Rules of 2015. When the Rules of 1998 have been superseded, the applicants cannot ask for fixation of seniority as per the overruled Rules.

7. After hearing all the parties concerned, the learned Tribunal dismissed the Original Application by judgment and order dated 04-04-2024 which is under challenge in this petition.

8. Heard learned Advocate for the petitioners, learned Senior Advocate for the respondent no.4 and learned Government Pleader for the respondent nos. 1 to 3.

9. Important point to be noted is that to the writ petition also the replies have been filed by the respondents

which are almost on the same point and therefore we avoid the reproduction of the same.

10. Learned Advocate appearing for the petitioners vehemently submits that the entire approach of the State Government is wrong. Learned Tribunal has not considered the facts as well as the rules in proper perspective. It failed to consider the controversy that was raised before the MAT at Principal Seat of Mumbai, this Court Bench at Aurangabad and then the Hon'ble Supreme Court of India as to whether in view of Rule 3 (b) of the Rules of 1998 the training of period of three years is to be included in the service period and more particularly for the purpose of calculating the seniority was in fact settled. It was confirmed that as per Rule 3 (b) of 1998 Rules the training period cannot be included for calculating the seniority. In fact the said proposition was also accepted by the State Government in its affidavit filed before the learned MAT in the present matter. However, it has been thereafter being twisted. Here the State had forwarded the requisition for filling up of the posts of RFOs on 02-05-2013 and 12-02-2014 with specifically enclosing the Rules of 1998. Then in pursuant to the said requisition as the recruitment was to be made through Maharashtra Public Service Commission the advertisement was published on 12-02-2014. However, thereafter the Rules of 2015 were notified on 05-02-2015, but the main examination was held in

August, 2015 of all those had cleared the preliminary examination held on 27-04-2014. Therefore all those appointed in pursuant to the said advertisement published on 14-02-2014, their recruitment should be held to be governed under the Rules of 1998. Perusal of the Rules 2015 would further clarify that, it is not stated that it would operate retrospectively. It cannot be made applicable retrospectively even by necessary implications. Learned Advocate for the petitioners has taken us through the Rules especially Rule 3 and 3(b) of the 1998 Rules. For the sake of further discussions, we reproduce the same-

“(3) Appointment to the post of Range Forest Officers in the Maharashtra Forest Service, Group B shall be made either -

“Rule 3 (a)- by promotion of a suitable person on the basis of seniority cum merit from amongst the person holding the post of Forester having not less than three years regular service as Forester and possessing qualification as to have passed Secondary School Certificate Examination; or

Rule 3 (b)- by nomination from amongst candidates who are selected for the Range Forest Officers' training course, on the basis of result of the competitive examination held by the commission in accordance with the rules made in this behalf from time to time and have successfully completed the training course”

11. He also points out the difference between 1998 Rules and the Rules 2015. He submits that though the Rules of 2015 came into force yet for the respondent no.4 and other similarly situated candidates the process that was adopted or started was in the year 2014. Their preliminary examination was held earlier and then for the final examination another advertisement through MPSC was issued vide No.60/2015 and it was named as Maharashtra Vansewa (Mukhya) Pariksha-2014 (Maharashtra Forest Service (Main) Examination-2014. It came to be issued in June, 2015 there was no declaration in the same about the new Rule that has come into force from 2015. Therefore it can be seen that there was no intention to implement 2015 Rules though it had been notified. Even when pre-examinations advertisement was given in 2016 by MPSC at that point of time then 5% reservation as per Rules 2015 was provided. That advertisement was on 06-02-2016, therefore for the respondent no.4 and similarly situated employees who were directly recruited as RFOs the Rules those were governing were of 1998 and not of 2015(2014).

12. It has been further submitted that as per Rules 3(b) of the Recruitment Rules of 1998 the appointment order to the nominated/directly recruited RFOs was to be issued after completion of training and the said appointment would be on the basis of result of the competitive examinations held by the

MPSC in accordance with the Rules made in this behalf from time to time. Further Rule 7 of 1998 prescribes that the inter say seniority of the RFOs, appointed by nomination should be determined by adding the marks obtained by the candidates on the basis of merit in the examination held by the Commission and marks obtained by the candidates in the final examination at the training course. One more stipulation was there in Rule no.8 which was for both i.e. for promottee as well as direct recruits that such person should pass the departmental examination and examination in Hindi and Marathi according to the Rules made in that behalf, unless he has already passed, or has been exempted from passing these examinations. Therefore, all these Rules ought to have been followed by the State Government when the seniority list was prepared and therefore once again by relying on the judgment of this Court Bench at Aurangabad in Writ Petition No.2026/2019 as well as Hon'ble Supreme Court in Civil Appeal No.822/2023 which had confirmed the said decision, he submits that even the RFOs are entitled to get appointed after successful completion of the training who are the directly recruited candidates and not from the date of training. He also points out that the petitioners were given Ad-hoc promotion on 01-05-2017 and they were regularized on 23-10-2023. This aspect has not been considered by the Tribunal and therefore the said decision deserves to be set aside.

13. Learned Advocate for the petitioners has relied on *N.T. Devin Katti and others vs Karnataka Public Service Commission and others*, reported in *(1990) 3 SCC 157*, wherein it was observed "where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that the selection shall be made in accordance with the existing Rules or the Government Orders, and if it further indicates the extent of reservations in favour of the various categories, the selection of candidates in such a case must be made in accordance with the then existing Rules and Government orders. Candidates who apply, and undergo written or viva-voce test acquired vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement unless the advertisement itself indicates a contrary intention."

14. He further relies on *Assam Public Service Commission and others vs Pranjal Kumar Sarma and others*, reported in *(2020) 20 SCC 680*, the three Judge Bench of the Hon'ble Supreme Court has held-

"15. The law with regard to applicability of the Rules which are brought anew during the selection process have been crystalized by this Court. It has been held that the norms existing on the date when the process of selection begins, will control the selection and the alteration to the norms would not affect the ongoing process unless the new Rules are to be given

retrospective effect. (See State of Bihar and others vs. Mithilesh Kumar (2010) 13 SCC 467). Similarly in N.T. Devin Katti and others vs Karnataka Public Service Commission (1990) 3 SCC 157), this Court held that a candidate has a limited right of being considered for selection in accordance with the Rules as they existed on the date of advertisement and he cannot be deprived of that limited right by amendment of the Rules during the pendency of the selection, unless the Rules are to be applied retrospectively.

16. If we proceed with the above enunciation of the law in Mithilesh Kumar (supra) and N.T. Devin Katti (supra), the conclusion is inevitable that for the current recruitment process for which advertisement was issued on 21.12.2018, the 2019 Procedure (which came into effect from 01.04.2019) can have no application, particularly when the first phase of the selection i.e. the screening test was conducted under the 2010 Rules."

15. He further relies on Madan Mohan Sharma and another vs State of Rajasthan and others, reported in (2008) 3 SCC 724, wherein it has been held "once advertisement had been issued on the basis of circular obtaining at that particular time, the effect would be that selection process should continue on the basis of criteria which were laid down and it cannot be on the basis of the criteria which has been made subsequently -- Subsequent amendment of the Rules made during the pendency of the advertisement which was prospective cannot be made

retrospective so as to make the selection on the basis of the Rules which were subsequently amended. If which was to be done, then the only course open was to recall the advertisement and to issue a fresh advertisement according to Rules which had come into force'.

16. He further relies on *A. Janardhana vs Union of India and others*, reported in *(1983) 3 SCC 601*, wherein it has been observed that, 'it is an extremely undesirable, unjust and inequitable situation emerging in service jurisprudence from precedence namely, that a person already rendering service as a promotee has to go down below a person who comes into service decades after the promotee enters the service. The Court clearly initiate a proposition that a direct recruit who comes into service after the promotee was already unconditionally and without reservation promoted and whose promotion is not shown to be invalid or illegal according to the relevant statutory or non statutory rules should not be permitted by any principle of seniority to score a march over a promotee because that itself being arbitrary would be violative of Articles 14 and 16 of the Constitution of India'.

17. Further reliance is on *Postgraduate Institute of Medical Education and Research and another vs A. P. Wasan and others*, reported in *(2003) 5 SCC 321*, wherein reliance was placed on *A.P. Janardhana* (supra).

18. Further reliance is on *Government of Andhra Pradesh and another vs G. Jaya Prasad Rao and others*, reported in *(2007) 11 SCC 528* on the point of non inclusion of the other allegedly affected persons as party respondents. It is held in this that when the validity of the Rules is challenged it is not necessary to implead all persons who are likely to be affected as party -- It is not possible to identify who are likely to be affected and secondly the question of validity of the rule is a matter which is decided on merit and ultimately if the rule is held to be valid or invalid the consequence automatically flows'. Therefore the Original Application filed before the Andhra Pradesh Administrative Tribunal or for that matter before the High Court does not suffer from vice of non joinder of necessary party.

19. Further reliance has been placed on *State of Himachal Pradesh and others vs Rajkumar and others* in companion matter decided by the three Judge Bench of Hon'ble Supreme Court, reported in *(2023) 3 SCC 773*, wherein note of decision in case of *Y.V. Rangaiah vs J Sreenivasa Rao, (1983) 3 SCC 284*) as distinguished earlier and relied in some other cases was taken and for clarity and certainty review of the subject and restating the principle in simple and clear terms was undertaken.' Various authorities have been considered and it is observed that the statement in

case of *Y.V. Rangaiah* (supra) that "the vacancies which occurred prior to the amended Rules would be governed by the old Rules and not by the amended Rules" does not reflect the correct preposition of law governing services under the Union and State under Article 14 of the Constitution of India and to that extent only it was overruled. It is reiterated then that the rights and obligations of the persons serving the Union and the State are to be sourced from the Rules governing the Services, and therefore in this case the 1998 Rules would govern.

20. Further reliance has been placed on the decision in *Union of India vs S.S. Uppal and another*, reported in *(1996) 2 SCC 168*, the respondent was appointed as IAS officer and then he questioned the seniority of others. It was then held that 'seniority of the respondent has to be determined by the seniority Rules in force on the date of his appointment to IAS, the fixation of seniority in the IAS follows appointment to the service. The year of allotment in the IAS will have to be determined according to the provisions of seniority Rules which are in force at the time of his appointment. The date of occurrence of vacancy has really no relevance for the purpose of fixation of seniority in the IAS. The fixation of seniority is done only after an officer is appointed to IAS'. It was then tried to be contended that unless in the present case the respondent no.4 and similarly

situated direct recruits would have cleared the training and upon the completion of the training would itself, they would have been considered in the post of RFOs then they cannot seek seniority with some retrospective effect.

21. Learned Government Pleader for respondent nos.1 to 3 submits that the petitioners have challenged the seniority list and not the appointment of respondent no.4 and similarly situated persons. If we consider the prayers prior to the amendment, then it can be seen that they were praying to restrain the respondent authorities from conducting further procedure for grant of promotion to the post of Assistant Conservator of Forest. Relying on the seniority list published on 23-10-2023, and after the amendment it is stated that all the directly recruited/nominated RFOs seniority should be fixed from the date of successful completion of their training, and accordingly the fresh seniority list be prepared. The process of recruitment is different from process of appointment and therefore when the appointment is not challenged there cannot be partial challenge to the seniority list. Even after the amendment, no declaration has been sought that the appointment of those candidates should be considered as per the Rules of 1998. No doubt, earlier the 1998 Rules were governing the recruitment of RFOs, but when 2015 Rules came into existence, it is specifically stated that they are "in supersession of the Rules of 1998". The State

need not declare at the time of appointment to a particular post as to which Rules would apply. In the Rules of 2015 when the words "in supersession" have been used and there is no savings clause provided, then it will have to be interpreted that the 1998 Rules have been repealed. Now a pursis has been pointed out stating that whatever has been done in respect of respondent no.4 and others was under old Rules cannot be considered here, as it was not the part of the allegation. The internal communication cannot be so relied by the petitioners. He submits that when the earlier Rules have been superseded, the petitioners cannot ask relief to get the implementation of a superseded Rule. There is no challenge to the Rules of 2015 directly. Though the recruitment process had started from 2014 as regards the respondent no.4 and others yet in 2015 the Rules were changed, and as per the new Rules their appointment has been considered from the date of completion of training, as Rule 8 of 2015 Rules clearly say "after completing the prescribed training and probation period successfully, the training period shall be treated as service period". When the training period has been made 'part of the service' then, now going back to 1998 Rules, it cannot be said that it is not the part of the service. He relies on the decision in *Amit Singh vs Ravindra Nath Pandey and others*, reported in *2022 SCC OnLine SC 1559*, wherein two Rules were in conflict. There were Rules of 1991 and thereafter the Rules of 1992 came to be framed which were

made in supersession of all the existing Rules and orders on the subject. It was then observed-

"19. The position is thus clear. The 1992 Rules, which are framed in exercise of the powers conferred by the proviso to [Article 309](#) of the Constitution of India, are in supersession of all existing Rules and Orders on the subject. Insofar as the contention of Mr. S.R. Singh, learned Senior Counsel, on Rule 3 of the 1991 Rules is concerned, the said Rules reads that, "these rules shall have effect notwithstanding anything to the contrary contained in any other service rules made hereto before". As such, the 1991 Rules will have effect only if there is anything inconsistent therein with any of the provisions in the earlier service rules. This submission is without merit inasmuch as the 1992 Rules specifically state that they are in supersession of all existing rules and orders."

22. After taking note of the decision in **Pawan Pratap Singh vs Reevan Singh**, reported in **2011 (3) SCC 267**, in the said case the Hon'ble Supreme Court held that 'the effective date of selection has to be understood in the context of the service Rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be. The *inter se* seniority in a particular service has to be determined as per the service Rules. The date of entry in a particular service or the date of

substantive appointment is the safest criterion for fixing the seniority *inter se* between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory Rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution of India.' Therefore, taking into consideration the 1992 Rules which superseded 1991 Rules, it was held that the *inter se* seniority between the promotees and the direct recruits will have to be determined in accordance with the 1992 Rules.

Further reliance has been placed on three Judge Bench decision in *Prafulla Kumar Swain vs Prakash Chandra Misra and others*, reported in 1993 Suppl. (3) SCC 181, wherein it is observed 'the term 'recruitment' connotes and signifies enlistment, acceptance, selection or approval for appointment. Certainly this is not actual appointment for posting in service. In contradistinction the word 'appointment' means an actual act of posting a person to a particular office.' Under the Rules the period of training is not to be counted as service under the Government. It was submitted that this case is having similar facts to the present case wherein the effect of repeal was also considered. Learned Government Pleader therefore, supports the decision by the learned Tribunal.

23. Learned Senior Counsel Mr. Kaptan instructed by Mr. Kalangiware, Advocate for respondent no.4 in its exhaustive submissions has taken us through the pleadings and submitted that the petitioners are not challenging their placement in the seniority list, but then they are objecting to the placement of the respondents and others. He also points out that the order was passed by the learned Tribunal on 08-11-2023 in Application No.603/2023. An objection was taken regarding the junior persons shown as senior in the seniority list by the petitioners and therefore the learned Tribunal observed that it will be proper to hear the affected persons. Directions were given to add the affected persons who were shown senior to the applicants as party respondents to the Original Application. However, only the respondent no.4 was added and it is said that he is in the representative capacity. How it can be considered as representative capacity when each and every person who has been shown as senior to the petitioners could be termed as affected person. Thereafter the petitioners had filed another application i.e. Civil Application No.61/2024, seeking recall and modification of order dated 08-11-2023. Parawise submissions were made on behalf of respondent no.4 to the said application and objection was taken to the Original Application. The learned Tribunal without giving any order on the application dated 09-04-2024 for recall and modification of order dated 08-11-2023 decided the matter finally and therefore still in this petition the

respondent no.4 can raise the point that he cannot be considered as a representative of all those persons who have been shown senior to the petitioners, and therefore the Original Application as well as the Writ Petition suffers from non joinder of necessary parties.

24. Learned Senior Counsel for respondent no.4 submits that recruitment to the post of RFOs can be made by two ways; (1) as a direct recruit and (2) by promotion to the persons from the feeder cadre of Forester. The petitioners are not challenging the Rules of 1998 on any count rather they want the implementation of the same, wherein the Rule (7) as aforesaid gives the procedure for fixation of *inter se* seniority. Thereafter, the Rule of 2015 came into existence by superseding the Rule of 1998. Prior to that on 15-06-2014 there was another advertisement regarding recruitment to the post of RFO (direct recruitment). As per Rule 3(b) of 1998 Rules there was only one examination i.e by way of competitive examination held by the Commission i.e. Maharashtra Public Service Commission. After coming into force of 2015 Rules by notification dated 05-02-2015, the appointment to the post of Range Forest Officer was by way of 3 ways; (1) by promotion from the feeder cadre Forester, (2) by the selection of a suitable person holding the post of Forester on the basis of common merit list by the Commission on the basis of limited competitive examination, and (3) by

nomination i.e. direct recruit held by MPSC, and therefore when it is not challenged that the Rules of 2015 are in supersession of 1998 Rules, the implementation of the old Rules cannot be insisted. The point of appointment will govern the seniority and not the mode of selection. Date of advertisement will not therefore make any change. The appointment would then be governed of the process which even though started in view of advertisement prior to 2015, but after coming into force of 2015 Rules it can only be as per those Rules, wherein the appointment to the post by 3 ways was stated to be made by promotion, selection through limited competitive examination and nomination in the ratio of 25 : 25: 50 respectively. Therefore, now the quota was also fixed as per 2015 Rules which was earlier 50:50 in 1998 Rules for those who were appointed by 2 ways i.e. direct recruit or by way of promotion from feeder cadre. A specific Rule i.e Rule (8) (supra) was introduced which said that the training period would be treated as service period and therefore after the training was completed of the respondent no.4 and others they were considered as appointed and in fact the postings were done as well as their salaries were paid which was not the earlier practice only stipend was given earlier. It is further submitted that the service is "status". Nobody gets right to be appointed and for that purpose selection process is different from the appointment process. Further as regards the probation period is concerned, it depends upon the

prerogative of the employer as to how much period the candidates should undergo as probationary period. As regards respondent no.4 is concerned, he has successfully completed the probation and therefore the seniority was with effect from the first day of his appointment. Now when the selection is not challenged and then the orders regarding treating the successful completion of the probation and the postings have not been challenged, the petition therefore cannot survive only for the sake of seniority. In absence of challenge to the seniority Rules, neither the Original Application has merit nor the petition has any merit. In other words, the petitioners are not challenging the date on which they were brought into the cadre, but then they simply want to challenge the date on which the respondent no.4 was brought into the cadre. As regards the Assistant Conservators of Forest are concerned, the Rules are similar, however, there was exclusion clause for promotion which was not considered in another case. There is no equal rule like Rule (8) and therefore the decision of this Court Bench at Aurangabad was based on different set of Rules. The petitioners have come in writ jurisdiction and seeking writ of certiorari. Therefore, they should show that the MAT which is a *quasi* judicial authority, which has same powers like this Court, had erred in appreciating the Rules. When there is no apparent error on the face of law in the decision by the learned Tribunal then interference cannot be done.

25. Learned Senior Counsel relies on the decision in *Sant Lal Gupta and others vs Modern Cooperative Group Housing Society and others*, reported in (2010) 13 SCC 336, wherein it is held "The High Court ought to have considered that it was a writ of certiorari and it was not dealing with an appeal. The writ of certiorari under [Article 226](#) of the Constitution can be issued only when there is a failure of justice and it cannot be issued merely because it may be legally permissible to do so. There must be an error apparent on the face of record as the High Court acts merely in a supervisory capacity. Such a writ can be issued when there is an error in jurisdiction or authority whose order is to be reviewed has acted without jurisdiction or in excess of its jurisdiction or has failed to act. While issuing the Writ of Certiorari, the order under challenge should not undergo scrutiny of an appellate court. It is obligatory on the part of the petitioner to show that a jurisdictional error has been committed by the Statutory Authorities. There must be the breach of principles of natural justice for resorting to such a course."

26. He relies on the decision in *State of H.P. vs J.L. Sharma and another*, reported in (1998) 1 SCC 727, wherein there were similar facts on the point that the training was treated as part of service. Wherein it is observed-

"The language of the Rule is clear and unambiguous and unequivocally indicates that the period of training shall be treated as "in service". there is nothing in the statutory rules which prohibits "in-service" period being counted for the purpose of seniority. This being the position the Administrative Tribunal committed serious error of law in holding that the training period will be treated "in service" only for the purpose of getting pay and not for the purpose of seniority. No such limited interpretation can be given to the express language of the Rules. On the other hand, giving full effect to the relevant provision, the conclusion is irresistible that the training period will be treated as a period of the service and will necessarily therefore count for the seniority of the direct recruits. It is therefore held that the training period of the direct recruits shall be counted for determining the seniority in the service provided the said direct recruit successfully completes the training and then is absorbed as an officer of Class II Forest Service."

27. He further relies on the three Judge Bench decision in *State of Himachal Pradesh* (supra) which overruled *Y.V. Rangaiah* (supra). He relies on **Deepak Agrawal and another vs State of Uttar Pradesh and others**, reported in **(2011) 6 SCC 725**, wherein there was 'the appellants were supporting the old vacancies have to be filled under the old Rules as a mantra.' After considering *Y.V. Rangaiah* (supra), it is observed-

"26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the 'rule in force' on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V. Rangaih's case (supra) lays down any particular time frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it can not be accepted that any accrued or vested right of the appellants have been taken away by the amendment.

*27. ******

28. In our opinion, the matter is squarely covered by the ratio of the judgment of this Court in the case of Dr. K. Ramulu (supra). In the aforesaid case, this Court considered all the judgments cited by the learned senior counsel for the appellant and held that Y.V. Rangaih's case (supra) would not be applicable in the facts and circumstances of that case. It was observed that for reasons germane to the decision, the Government is entitled to take a decision not to fill up the existing vacancies as on the relevant date. It was also held that when the Government takes a conscious decision and amends the Rules, the promotions have

to be made in accordance with the rules prevalent at the time when the consideration takes place."

28. He further relies on the Constitutional Bench decision in the *State of Jammu and Kashmir vs Shri Triloki Nath Khosa and others*, reported in *(1974) 1 SCC 19*, wherein it is held that 'a educational qualification was considered as a safe criteria for determining validity of a classification. The objective of the classification was to achieve administrative efficiency and therefore it was held that it is not violative of Articles 14 and 16 of the Constitution of India.'

29. Further reliance has been placed on *Jitendra Kumar Singh and another vs State of Uttar Pradesh and others*, reported in *(2010) 3 SCC 119*, wherein standard of selection and appointment was considered separately.

30. Further reliance is on *Dr. K. Ramulu and another vs Dr. S. Suryaprakash Rao and others*, reported in *(1997) 3 SCC 59* which was referred "in-service". Wherein it is held that "The language of the Rule is clear and unambiguous and unequivocally indicates that the period of training shall be treated as "in service". there is nothing in the statutory rules which prohibits "in-service" period being counted for the purpose of seniority. This being the position the Administrative Tribunal committed serious error of law in holding that the training period will be treated "in service"

only for the purpose of getting pay and not for the purpose of seniority. No such limited interpretation can be given to the express language of the Rules. On the other hand, giving full effect to the relevant provision, the conclusion is irresistible that the training period will be treated as a period of the service and will necessarily therefore count for the seniority of the direct recruits. It is therefore held that the training period of the direct recruits shall be counted for determining the seniority in the service provided the said direct recruit successfully completes the training and then is absorbed as an officer of Class II Forest Service."

31. Further reliance has been placed on *Ajit Singh and others vs State of Punjab and another*, reported in *(1983) 2 SCC 217*, on the point it is employer's discretion in fixing the period of probation.

32. Further reliance is on *K. Ramchandra s/o Kristacharya vs State of Mysore and another*, reported in *AIR 1960 Mys 65*, wherein the High Court of Mysore considering the probation period observed that 'the natural meaning of an appointment on probation which is well accepted is that during the period of probation a person is on trial. He has to prove his merit or his suitability for the post. In other words, the appointment on probation may be described as a provisional engagement which may or may not result in

absorbing the employee into the permanent employment of the employer.'

33. It was reiterated that Rule empowers the master to extend the period of probation which is a matter of contract. At the end, he submits that the relief asked for by the petitioners cannot be granted when the Rule itself is repealed.

34. Here in the present case the promotees are challenging the seniority list and specially it is against those persons who were directly recruited in the selection process of 2014. As aforesaid, the recruitment Rules of 1998 gives two modes of selection to the post of RFO Rules 3(a) and 3(b) which is in respect of the promotion from the feeder cadre of Forester and another is by direct recruitment. The crucial question that has been posed as to whether the respondent no.4 and others would be governed by the Rules of 1998 or by the Rules of 2015 which appears to have come into existence in between the recruitment process. Taking into consideration the 2015 Rules which start with wordings "in exercise of powers conferred by the proviso to Article 309 of Constitution of India and in supersession of the RFO in the Maharashtra Forest Service, Group B (Recruitment) Rules, 1997, the Governor of Maharashtra is hereby pleased to make the following rules regulating recruitment to the post of RFO in the Maharashtra Forest Service, Group B (Gazetted) under the

Revenue and Forest Department of Government of Maharashtra". The effect of the supersession is that the old rules i.e. Rules of 1997, which were earlier referred to as 1998 Rules, ceased to exist after the Notification dated 05-02-2015. Under this circumstance alone, the petitioners cannot ask the respondent State to fall back on the Rules of 1998. There is no question of operating the Rule of 2015 retrospectively. The Rules of 2015 after its coming into force would be applicable to all those who were in the said cadre or those would come in the said cadre. It appears that the confusion even prevailed with the department, but we are required to go by the Rules and not by any communication which might be the interpretation by an officer. Further the Rules are required to be considered as a whole and not in piecemeal. There was no savings clause in the Rule of 2015 in respect of the earlier Rules and when those Rules are made for the recruitment which not only deals with how the selection process is made, but it also deals with then what would be the period of probation and how the service would be treated. The ratio laid down in *Amit Singh* (supra) is required to be considered here when the Rules are framed in the exercise of powers conferred by the proviso to Article 309 of the Constitution of India and are in suppression of all existing Rules and orders on the subject. Therefore, in fact, we are not even required to go into the aspect of how the selection was made under 1998 Rules and what is the difference now under the Rules of 2015.

Certainly those Rules are different and a 3rd category is also introduced of the limited competitive examination under the new Rules thereby making the promotional post with 25 : 25: 50 quota.

35. When the 2015 Rules are notified in supersession of the earlier Rules then as regards the batch which had come after those Rules, those Rules would be applicable, though the selection had started prior to coming into force of those Rules. We certainly take note of the decision in *Deepak Agrawal* (supra) and *Dr. K. Ramulu* (supra), when in the new Rule there is a specific stipulation in Rule 8 that "after completing the prescribed training and probation period successfully, the training period shall be treated as service period". It is to be noted from the prayer clauses which were before the learned Tribunal prior to amendment as well as after the amendment that the Rules of 2015 were never challenged by the petitioners. When those Rules are not challenged on any count, then the petitioners cannot ask that those rules should not be implemented. Certainly there is force in the say of the respondents that selection process is different for appointment process. If we take the facts into consideration as aforesaid the requisition was given to the MPSC on 02-05-2013 for filling in 76 posts of RFOs by direct selection/nomination. Then second requisition was given to MPSC on 12-02-2014 for the post of 196 posts. Advertisement was published on

12-04-2014. Preliminary examination was held on 27-04-2014. The second advertisement that is for main examination was published for all those who had cleared the preliminary examination on 15-06-2015, but in the meantime the new rules of 2015 were notified on 05-02-2015. Thereafter, the list appears to have been finalized and then orders for training to the selected candidates were issued on 22-08-2016. Thereafter, the orders were issued of RFOs on probation-cum-field training on 13-03-2018. All these events would show that in the midst the Rules have changed on 05-02-2015, by superseding the Rules of 1998. At the cost of repetition we would say that after the Notification of Rules of 2015, the Rules of 1998 were not in existence or came to an end, and therefore its implementation could not have been directed by the learned Tribunal.

36. When the entire Rules were changed, it is then immaterial when the competitive examinations were held and the insistence of the petitioners that no competitive examination was held as per Rule 3(b) of 1998 Rules, would be devoid of merits. It has been brought on record that in respect of orders those were passed at the Principal Seat at MAT, the review application and then the writ petition before this Court Bench at Aurangabad i.e. Writ Petition No.2026/2019 which read down the Rule of 1998 in respect of Assistant Conservator of Forest and then the said judgment

and order was confirmed by the Hon'ble Supreme Court is concerned, it is to be noted that those judgments were in respect of Rules of 1998, wherein it was held that the directly recruited RFOs/Assistant Conservator of Forests are eligible to get appointment order after successful completion of training period and not from the date of training period itself. However, as aforesaid as regards the Rules for RFOs are concerned, which came to be notified on 05-02-2015, specifically states that they are in supersession of the earlier recruitment Rules of 1997 (Rules of 1998).

37. As aforesaid, the Rule 8 of Rules of 2015 makes the training period as part of service and in the present case the chronology of events would clearly show that before the training orders were issued to those selected candidates the Rules of 2015 had come into existence. Therefore, as regards the respondent no.4 and similarly situated persons are concerned, the date of appointment would be the date on which the training order was given provided the training period as well as probation period has been successfully complied with. Definitely the duration of probation period would be the discretion of the employer and the decisions of the Hon'ble Supreme Court on the said point would be applicable here. The petitioners had heavily relied on N.T. Deven Kutti (supra). However, we are of the opinion that the said ratio will not be applicable here, as we are not considering

the selection of respondent no.4 and similarly situated officers as they were not challenged before the Tribunal. Similar is the case in respect of *Assam Public Service Commission* (supra) and *Madan Mohan Sharma* (supra). The observations in *A. Janardhana* (supra), may reflect the true sentiments of a promotee. However, in absence of challenge to the Rules, we cannot hold that the seniority that is derived from those Rules would be violative of Articles of 14 and 16 of the Constitution of India.

38. Another important point that has been raised on behalf of the respondents is that only the respondent no.4 has been added as party respondent, though the directions by the learned Tribunal were to include all the affected candidates. In his subsequent written counter to the arguments of the respondents, the learned Advocate for the petitioners has given the dates as to how the matter proceeded. It is submitted that the respondent no.4 appeared before the MAT for the first time on 14-12-2023, but he had not raised objection, though the matter was listed several times. Then the petitioners filed the Civil Application No.61/2024 seeking modification, but to that also the respondent no.4 sought time to reply. It is then stated that the petitioners had approached this Court by filing Writ Petition No.8417/2023 and this Court directed the learned Tribunal to decide the petitioners prayer for interim relief within a period of one week by order

dated 04-03-2024. Thereafter, the respondent no.4 filed his reply to Original Application and the Civil Application and at no point of time the respondent no.4 had requested that the petition should be dismissed for non-joinder of necessary parties. Reiterating his reliance on *Government of Andhra Pradesh* (supra) on the point of non inclusion of other allegedly affected persons as party respondents, he has submitted that the petition cannot be dismissed on that count. The first and the foremost point is that when the petitioners had filed Civil Application No.61/2024 for seeking modification of the order passed by the Tribunal on 08-11-2023, then without insisting or pressing that application the petitioners themselves ought not to have proceeded with the matter. That application was kept pending and the submissions were advanced on the merits. Now the petitioners cannot say that the respondent no.4 had not insisted the point before the Tribunal. The Tribunal had already passed the order on 08-11-2023, directing the petitioners to include all the affected persons. When it comes to seniority of an employee then without hearing him that seniority cannot be changed to the detriment of his interest. In *Government of Andhra Pradesh* (supra), Hon'ble Supreme Court has stated that when the validity of the Rules are challenged then it is not necessary to implead all the persons who are likely to be affected as a party. Here the Rules of 2015 itself much less its validity are not challenged, and

therefore the petitioners cannot take benefit of the said citation. There is clear non compliance of order dated 08-11-2023 passed by the Tribunal. The respondent no.4 cannot be taken in the representative capacity, and therefore the petition suffers from non joinder of necessary parties and therefore it deserves to be dismissed.

39. Learned Tribunal has relied on *State of Himachal Pradesh* (supra), wherein the decision in *Rangaiah* was overruled to the extent that the principal in *Rangaiah* has no universal application. It is held that the statement in *Rangaiah* "the vacancies which occurred prior to the amended Rules would be governed by the old Rules and not by the amended Rules does not reflect the correct proposition of law governing the services under the Union and the States under part 14 of the Constitution of India". Learned Advocate for the petitioners had tried to submit that in *Rajkumar* (supra) distinction was tried to be made in *N.T. Devin Katti and others* (supra). Both the cases operate in different spheres and spills. One of the distinguishing features in *Rajkumar* (supra) was in respect of consideration for promotion, whereas in *N.T. Devin Katti and others* (supra) it is in respect of selection and appointment. According to him, the ratio in *N.T. Devin Katti and others* (supra) lays down a principle of law that the candidate's right crystallizes on the date of publication of advertisement, however he has no absolute right in the matter.

If the recruitment rules are amended retrospectively during the pendency of the selection, in that events selection must be held in accordance with the amended Rules. If the amended Rules are not retrospective in nature, the selection must be regularized in accordance with the rules and orders which were in force from the date of advertisement. At the cost of repetition, we would say that the selection of the respondent no.4 and similarly situated persons is not in question. Before their selection process is completed the rules had changed in supersession of earlier Rules; and therefore their selection was as per Rules of 2015, but it had no retrospective effect. When the seniority list was prepared and it is stated to be for the first time in 2019, the then position could have be considered. Another fact to be noted is that the present petitioners services appears to have been regularized by order dated 12-05-2023. The petitioners were promoted to the post of RFO in 2014 on ad-hoc basis. Perusal of the said order dated 12-05-2023 would show that as the posts were available for the years 2014-2015, 2015-2016 and 2016-2017 they came to be regularized by the said order. Therefore, it can also be considered that when the respondent no.4 and similarly situated persons training and probation was completed on that day the petitioners were still on ad-hoc promotion and as aforesaid their said ad-hoc promotion got regularized by order dated 12-05-2023. There is no submission on behalf of the petitioners that the effect of order dated 12-05-2023 would

relate back to order dated 01-03-2014. Perusal of order dated 01-03-2014 in respect of the petitioners thereby the promotion was given on adhoc basis to them in the cadre of RFO would show that it was against the quota of direct recruit. It was specifically mentioned that the said promotion is, till the direct recruit/recruits would be available through the MPSC or for 11 months or further orders from the Government, whichever is earlier and beyond that or in the event of one of it the said order of promotion would automatically get cancelled. It is then pointed out on behalf of respondent no.4 that such order of extension was never given to the petitioners. Further the term no.2 quoted in the adhoc promotion order was that on the basis of said adhoc promotion those officers cannot claim seniority and when their promotion is regularized then from that day the seniority would be counted. We would like to reproduce term nos. 1 and 2 from order dated 01-03-2014.

"१. उपरोक्त अधिका-यांची तदर्थ पदोन्नती ही सरळसेवा कोटयावरील पदावर असून महाराष्ट्र लोकसेवा आयोगाकडून सरळसेवेने उमेदवार उपलब्ध झाल्यानंतर अथवा ११ महिन्यांसाठी किंवा शासनाचे पुढील आदेश होईपर्यंत यापैकी जे अगोदर घडेल तोपर्यंत चालू राहील व या कालावधीनंतर सदर पदोन्नती आदेश आपोआप संपुष्टात येतील.

२. उपरोक्त अधिका-यांची पदोन्नती तदर्थ असल्याने त्यांना सदर पदावरील पदोन्नतीच्या दिनांकापासून सेवा

जेष्ठतेसाठी हक्क सांगता येणार नाही. ज्यावेळी उपरोक्त अधिका-यांच्या पदोन्नत्या नियमित होतील, तेव्हापासून त्यांची सदर पदावरील जेष्ठता निर्धारित करण्यात येईल."

40. Perusal of order dated 12-05-2023 by which regularization of the petitioners have been done on promotional post would show that it was towards the concerned year and the list has been then given. Though the last column of the list says "नियमित पदोन्नतीचा दिनांक" (date of regularization of promotion) and it runs from 01-09-2014 yet the term no. 2 from 01-03-2014 would govern the Rule in respect of seniority list. Here, in this case, the petitioners have not stated as to what procedure was adopted at the time of their adhoc promotion. Whether it was similar that to the regular promotion. That point has also not raised on behalf of respondents in clear words though respondent no.4 certainly said that the said promotion was on the posts which were for the direct recruits. If the procedure that was adopted at the time of adhoc promotion was different, then the regularization at a subsequent date will not allow the petitioners to seek seniority. We may consider the decision in V. Venkata Prasad and others vs High Court of Andhra Pradesh and others, reported in (2016) 11 SCC 656. Though in the said case before the Hon'ble Supreme Court the promotions of the Judicial Officers on adhoc basis and the seniority were in question for which different rules are there, yet the basic

principle would be applicable. In the said case it is observed that "there were six vacancies in the regular cadre. Because of introduction of the Fast Track Court Scheme, the promotional avenues on ad hoc basis became available. The conditions in Brij Mohanlal –I (supra) and [Brij Mohanlal –II \(supra\)](#) make it absolutely clear. The submission of Mr. Rao, learned senior counsel for the appellants is that the appellants were appointed under the 1958 Rules as the letter of appointment would show and whole thing would depend upon the letter of appointment and not the posting orders issued by the High Court. According to the learned senior counsel, if a candidate is appointed on ad hoc basis in respect of a vacancy, he would be regarded as senior to the direct recruit. Both the submissions, as we perceive, are interwoven but the singular answer to the same would be “fundamentally fallacious”. The appellants were promoted because of the introduction of the Fast Track Court Scheme and the 2001 Rules framed by the High Court. They were the beneficiaries of the Scheme. While continuing in the post under the Scheme, the regular posts in the cadre fell vacant and they were regularized but prior to that the respondents were appointed as direct recruits in respect of substantive post in their quota and hence were senior to them."

41. A point was raised on behalf of the respondents that a joint and harmonious reading of Rules 3, 6 and 7 of the

Rules of 1998 would clear that an officer is appointed on probation for three years on first day of appointment itself and not to the training course. It has been countered by the petitioners by saying that the said submission is contrary to the admitted position by the Government. The probation letters were issued after the selection by MPSC which showed that those persons will have to undergo probation after the successful completion of training of 18 months and after completion of the training as well as probation period, he would be considered as appointed to the post and till then the candidate would receive stipend. Again, at the cost of repetition we would consider that when in the midst rules have been changed in supersession then the superseded rules will not be applicable. The new rules would only govern the field.

42. We are also taking note of the decision in *S.S. Uppal* (supra), wherein the point of fixation of seniority has been dealt with. It is held that the fixation of seniority would arise only after the officer is appointed. But herein this case, after coming into force of the new rules especially Rule 8 the training period has been considered as the service period.

43. It has been held in *Sant Lal* (supra), on the point of issuance of writ of certiorari this Court acting in the capacity of supervisory authority can only look at whether any error has

occurred in the impugned order or judgment. Learned Tribunal has given elaborate reasons and there is no error on the face of the record. The petition is devoid of merits, it deserves to be dismissed. Accordingly, it is dismissed.

(Mrs. Vrushali V. Joshi, J.)

(Smt. Vibha Kankanwadi, J.)

Later on

44. After the pronouncement of the judgment, the learned Advocate for the petitioners seeks continuation of order dated 04-03-2024 passed by this Court in Writ Petition No.8417/2023 which has been continued till the disposal today, in view of the fact that the petitioners want to approach the Higher Court. He also submits that the learned Tribunal had continued that order on 05-03-2024 and then again this Court in the present petition had continued the said order on 22-04-2024.

45. Learned Senior Counsel Mr. Kaptan instructed by Mr. Kalangiwale, Advocate as well as learned Government Pleader object to grant any relief after pronouncement of the judgment, in view of the fact that the decision by the Tribunal as well as this Court is in favour of the respondents and the promotions are withheld due to the orders passed by this Court which are large in number. It was also submitted by the

learned Senior Counsel that let the promotions be made and it would then be definitely subject to the outcome of the Special Leave Petition which may be filed by the petitioners.

46. The first and the foremost fact to be noted is that the petitioners were challenging the seniority list. This Court as well as the learned Tribunal has given decision against the petitioners. However, they want to approach the Higher Court. The petitioners cannot be taken in the representative capacity of all the candidates/employees of their batch who were challenging the seniority list, and therefore the entire process cannot be now halted for the purpose of three petitioners. However, since the petitioners want to challenge the same before the Hon'ble Apex Court as against them only, the order passed by this Court on 04-03-2024 and continued on 22-04-2024 is continued for a period of four weeks from today.

(Mrs. Vrushali V. Joshi, J.)

(Smt. Vibha Kankanwadi, J.)