

(2024) 09 BOM CK 0043
In the Bombay High Court
Case No : Writ Petition No. 2175 Of 2021

Darshika Chandrakant Rakhunde And Others

APPELLANT

Vs

State Of Maharashtra Thr. Principal Secretary, Department Of
Revenue And Forest, Mumbai And Others

RESPONDENT

Date of Decision : 03-09-2024

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2024) 09 BOM CK 0043

Hon'ble Judges : Vibha Kankanwadi, J;Vrushali V. Joshi, J

Bench : Division Bench

Advocate : S.P. Dharmadhikari, Uday Dable, C.S. Dharmadhikari, Aamir Qureshi, Devendra Chauhan, A.S. Jaiswal, N.S. Khubalkar, Rahul Kalangiwale, A.A. Naik

Final Decision : Dismissed

Judgement

Vrushali V. Joshi, J

1. Heard Mr. S.P. Dharmadhikari, Senior Advocate for the petitioners, Mr. Devendra Chauhan, Government Pleader (Senior Advocate) for respondent No.1, Mr. A.S. Jaiswal, Senior Advocate for respondent No.2, Mr. Rahul Kalangiwale, Advocate for respondent Nos.7 to 18 and Mr. A.A. Naik, Advocate for Respondent Nos.19 to 42.

2. Rule.

3. The petitioners have approached this Court being aggrieved by the memorandum dated 4.6.2021 passed by respondent No.2 thereby granting approval for treating the period of training undergone by respondent Nos.7 to 42 as period spent in service.

4. The petitioners are promotees and respondent Nos.7 to 42 are selected R.F.Os. through recruitment process. Controversy is between promotees and direct recruits about their inter se seniority.

5. Initial appointment of petitioners was as Foresters in the year 2006 and 2007, thereafter they were promoted to Range Forest Officer on ad-hoc basis in the year 2013 and by order dated 23.2.2015 they were confirmed.

6. In the year 2006 respondent No.2 revised its Recruitment Rules introducing the appointment of post of Range Forest Officer (for short "R.F.O.") by nomination. Appointment by promotion and nomination to be made in the ratio of 50:50. Again on 29.12.2011 the Recruitment Rules were revised and instead of recruitment through M.P.S.C. the selection was resolved to be made on the basis of recruitment examination conducted by respondent No.2 itself. Rule 4 provides that selected candidates through nomination shall be on probation for a period of three years, out of which one and half year in Forestry Training College and the remaining one and half year in field training and it is a condition that the appointment of the candidate to be made only after successful completion of the training period.

7. Advertisement for direct recruits was issued on 27.3.2013 for 47 posts of R.F.Os. and clause 5.8.1 provided that period of training would cumulatively be of 3 years and after successful completion thereof, the candidate would be appointed on the regular post. The recruitment procedure for appointment of respondent Nos.7 to 42 was under the provisions of Recruitment Rules dated 29.12.2011.

8. On 18.3.2015 Government by resolution granted approval for direct appointment to other 21 posts of R.F.Os. The Board of Directors again revised the Recruitment Rules vide notification dated 5.2.2015. By said notification, it is resolved that the training period shall be treated as service period. Appointments of respondent Nos.7 to 42 were made under the provisions of Recruitment Rules on 29.12.2011 and the Rules contained in notification dated 5.2.2015 were proposed to be adopted only for the purpose of filling remaining 21 vacancies. The purpose of remaining 21 vacancies, therefore, cannot be applied to respondent Nos.7 to 42 as they were selected under the provisions of Recruitment Rules dated 29.12.2011.

9. During that period, respondent No.2 vide order dated 30.4.2016 appointed respondent Nos.7 to 42 on the post of Probationary Range Forest Officer w.e.f. 1.5.2016. Therefore, the date of their entry into service by direct recruitment to the post of Range Forest Officer shall be from 1.5.2016 and the appointments were to be confirmed only after completion of training period. Some of the respondents/employees made representation to respondent No.2 demanding to consider their training period as service period and accordingly place them higher in the seniority list. Respondent No.2 rejected the said representation. In the meantime, Board of Directors took the decision to promote the petitioners to the post of Assistant Manager on ad-hoc basis.

10. Respondent Nos.7 to 42 preferred Writ Petition No.1568/2018 seeking correction in the date of their entry into service at the post of R.F.O. which is now

withdrawn by respondent Nos.7 to 42. In said petition, respondent No.2 opposed the reliefs sought by respondent Nos.7 to 42. Different petitions challenging the reversion, rejection of representations made by some of the petitioners to consider their period of service from the date of their initial ad-hoc appointments, are pending before this Court as the issues are different.

11. Respondent Nos.7 to 42 were appointed to the post of Probationary Range Forest Officer w.e.f. 1.5.2016 and only thereupon they came to be placed in the seniority list. The petitioners were promoted on ad-hoc basis in July 2013 and their services were regularized by the Recruitment Rules 1.1.2015. In view thereof respondent Nos.7 to 42 are junior to the petitioners. Despite this, respondent No.2 vide impugned memorandum dated 4.6.2021 granted approval for treating the training period undergone by respondent Nos.7 to 42 as period spent in service. Hence filed this petition.

12. During the pendency of this petition vide order dated 16. 7.2021 respondent No.2 published final revised seniority list whereby respondent Nos.7 to 42 have been placed higher than the petitioners. The petitioners prayed to quash and set aside the said orders because as per seniority list they were promoted vide order dated 13.8.2021 and respondent Nos.7 to 42 were promoted as the Assistant Manager. Hence by way of amendment prayed to quash and set aside both the orders dated 16.7.2021 and 13. 8.2021.

13. Respondent No.2 filed its say and denied the contents in the petition and supported their action of issuing memorandum dated 4.6.2021. Respondent No.2 has given clarification of appointments by Corporation by stating that decision is taken for putting the different recruits at par with the employees of State Government by granting benefit to count their period of training as service period.

14. By an order of ad-hoc temporary promotion the Foresters were promoted to the post of R.F.Os. in the year 2013. Later on when the direct recruitment was made all the posts which were vacant, were filled from the direct recruitment quota from the Foresters who were promoted on ad-hoc basis as R.F.Os. and were regularized w.e.f. 1.1.2015. Later, as there was vacancies in the next higher post in the cadre of Assistant Manager through departmental nominations who were promoted on ad-hoc basis as R.F.Os. as regularized R.F.Os. from 1.1.2015 were further promoted on ad-hoc basis on the post of Assistant Manager.

15. The directions were given to respondent No.2 by this Court in Writ Petition No.2753/2020 and 1568/2018 to proceed with regular promotions and said promotions would be subject to outcome of the petition. The petition is pending before this Court and only to maintain parity between F.D.C.M. and State Government Forest Department a Memorandum is issued. Respondent No.2 has given consequential reply to amended portion of petition and has taken consistent stand.

16. On 6.7.2023 it has filed comprehensive reply and had taken a complete "U" turn considering the effect of judgment passed in Writ Petition No.2026/2019

which is confirmed by the Hon'ble Apex Court and has stated that the Corporation has wrongly considered the resolutions dated 20.3.2021 and 4.6.2021 as determinative for recognizing the seniority of direct recruits R.F.Os. Said action was neither consistent with the Rules applicable to them nor to the ratio laid down in that regard by Aurangabad Bench and upheld by the Hon'ble Apex Court and submitted that direct recruits R.F.Os. of 2014 would be governed by the Rules of seniority read with other Recruitment Rules applicable to them.

17. Respondent Nos.7 to 18 have also filed counter comprehensive reply. They have stated that the judgment passed by the Aurangabad Bench and confirmed by the Hon'ble Apex Court has no bearing on the facts of the present petition as the facts of the present petition and the Rules are made applicable for recruitment in these matters are entirely different.

18. Assistant Conservator of Forests, State Government through an express provision in rule 2 of Divisional Forest Officers (in Maharashtra Forest Services Class I) Recruitment Rules, 1984 has expressly provided that the period spent on training cannot be treated as a period in service. Insofar as the reliance on judgment of this Court in Writ Petition No.2026/2019 from paras 29 onwards, which was upheld by the Hon'ble Apex Court, is concerned, this Court has taken into consideration the Recruitment Rules of 1998 as applicable to the Assistant Conservator of Forests working with the State Government. It is neither case of the petitioners nor respondent No.2 that the said Rules of 1998 are identical to either the Rules of 2011 or the Rules of 2015. Hence prayed to dismiss the petition.

19. Respondent Nos.9 to 42 have filed their reply and denied the contents in the petition. It is submitted that respondents were put under the probation as R.F.Os. As per the mandate, they were appointed to the said post on their eventual and successful completion of probation period. It is submitted that 2011 Rules do not contain an exclusionary clause providing that the period of probation be excluded from the period of service. It is submitted that the promotion of the petitioners was contrary to Rules 2006 which stipulated continuous service of Foresters. The promotion of petitioners was on ad-hoc post, therefore, no benefit could be claimed by the petitioners. The procedure of appointment of respondents was initiated under the 2011 Rules which, were in force then, however, it is clarified that these Rules were applicable only till they were revised again in 2015 and fresh Rules were brought in force. Hence prayed to dismiss the petition.

20. Learned Senior Advocate for the petitioners submits that the appointments of direct recruits i.e. respondent Nos.7 to 42 are governed by the Recruitment Rules of 29.12.2011 for the post of R.F.Os. Clause 4 of said Rules provides that selected candidates shall be on probation for a period of 5 years, there is condition that candidate should undergo forestry training for 1 and 1/2 year and field training for 1 and 1/2 year. Holistic reading of said Rules would make it clear that the appointments of petitioners were made only after successful completion

of the training period. In another words, their appointment orders are issued only after completion of such training. The terms and conditions in advertisement for direct recruits also reveal that the successful candidate was to submit an undertaking that he/she would complete training by recognized Forestry College and after completion of the training he/she would serve respondent No.2 for a minimum period of 5 years. Conditions of Rules 5.8.2011 categorically provides that the period of training would cumulatively be of 3 years and only after successful completion thereof, a candidate would be appointed on a regular post. Learned Senior Advocate further submitted that after final selection of respondent Nos.7 to 42 for training they were to be appointed to the post of R.F.Os. and as per government resolution which granted approval for direct appointment of other 21 vacant posts, respondent Nos.7 to 42 would occupy the post only after completion of their training. In light of said approval the Board of Directors of respondent No.2 resolved to further revise the Recruitment Rules and procedure in future and also to fill up 21 posts of R.F.Os. of Forest Department. Clause 8 of notification dated 5.2.2015 provides that after completion of the training successfully, the training period shall be treated as service period but on reading said clause, it reveals that the said period can at the most be treated as service period for fixation of pay-scale as the recruitment of candidates i.e. respondent Nos.7 to 42 were made under the provisions of Recruitment Rules dated 29.12.2011 and Recruitment Rules contained in notification dated 5.2.2015 were proposed to be adopted only for the purpose of filling the remaining 21 vacant posts of R.F.Os. In other words, said notification dated 5.2.2015 was proposed to be adopted by respondent No.2 vide Board Resolution dated 29.6.2015 prospectively for direct appointment of 21 vacant posts of R.F.Os which were approved by respondent No.1 vide Government Resolution dated 18.4.2015 and, therefore, same cannot be applied retrospectively to respondent Nos.7 to 42 who were selected for appointment much prior under the provisions of Recruitment Rules dated 29.12.2011 and / or midway in their training.

21. The petitioners relied on the judgment of this Court of Aurangabad Bench in Writ Petition No.2026/2019 which was upheld by the Hon'ble Apex Court in Civil Appeal No.822/2023 holding that R.F.Os. are entitled to get appointment after successful completion of the training who are directly recruited candidates and not from the date of training.

22. Learned Senior Advocate for the petitioners has relied on the following judgments:-

(i) Prafulla Kumar Swain V/s. Prakash Chan dra Misra and others 1993 Supp (3) SCC 181 wherein the Hon'ble Apex Court concluded that recruitment is merely initial process which may eventually lead to recruitment process and selection itself does not amount to appointment.

(ii) Snehal S/o Baburao Kuwar V/s. State of Maharashtra and others 2023 (3) Mh.L.J. 325. wherein this Court has relied on the judgment of Prafulla Kumar

Swain (supra) and has observed that the issuance of an appointment order is the final stage in the entire recruitment process, selection being penultimate stage. Once an order of appointment is issued, the recruitment process ends.

(iii) A.A. Calton V/s. Director of Education and another (1983) 3 SCC 33:-

"5..... It is true that the Legislature may pass laws with retrospective effect subject to the recognised constitutional limitations. But it is equally well settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect. In the instant case admittedly the proceedings for the selection had commenced in the year 1973 and after the Deputy Director had disapproved the recommendations made by the Selection Committee twice the Director acquired the jurisdiction to make an appointment from amongst the qualified candidates who had applied for the vacancy in question. At the instance of the appellant himself in the earlier writ petition filed by him the High Court had directed the Director to exercise that power. Although the Director in the present case exercised that power subsequent to August 18, 1975 on which date the amendment came into force, it cannot be said that the selection made by him was illegal since the amending law had no retrospective effect. It did not have any effect on the proceedings which had commenced prior to August 18, 1975. Such proceedings had to be continued in accordance with the law as it stood at the commencement of the said proceedings. We do not, therefore, find any substance in the contention of the learned counsel for the appellant that the law as amended by the U.P. Act 26 of 1975 should have been followed in the present case."

(iv) P. Mahendran and others V/s. State of Karnataka and others (1990) 1 SCC 411 relevant portion of para 5 as under:-

"5. It is well-settled rule of construction that every statute or statutory Rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rule of 1987 do not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the rule with retrospective effect. Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of

amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter.”

(v) N.T. Devin Katti and others V/s. Karnataka Public Service Commission and others (1990) 3 SCC 157., particularly relevant portion of para 11 as under:-

“11.Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules or government orders, and if it further indicates the extent of reservations in favour of 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 acquire vested right for being considered for selections in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention.....”

(vi) State of Himachal Pradesh and others V/s. Raj Kumar and others (2023) 3 SCC 773 which was a case for retrospective amendment.

(vii) H.S. Vankani and others V/s. State of Gujarat and others (2010) 4 SCC 301, particularly para 34 as under:-

“34. We are of the view that the Government has committed a grave error in unsettling the inter se seniority of the graduates and non-graduates which was settled as early as in the year 1982. The State Government in its Letter dated 12.10.1982 had taken the view that two years' training was imparted to non-graduates of 1979-1981 batch and one years' training was imparted only to graduates of 1980-1981 batch since the candidates with lesser qualification required through training compared to the candidates with higher qualification. Due to this basic difference in the educational qualification between the 1979-1981 and 1980-1981 batches, the Government took a conscious decision that it was not proper to unsettle the settled seniority even if there was a delay in the appointment of non-graduates. Subsequent to that decision, three gradation lists were published, recognizing the seniority of the respondents over the appellants.”

(viii) A. Janardhana V/s. Union of India and others (1983) 3 SCC 601., particularly relevant portion of para 38 as under:-

“38It is therefore, time to 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 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. Mr. Ramamurthi, learned counsel for some of the direct recruits in this connection urged that if at the time when the promotee was recruited by promotion, his appointment/promotion was irregular or illegal and which is required to be

regularised, any subsequent direct recruits coming in at a later date can seek relief and score a march over such irregular and illegal entrant.”

23. Learned Senior Advocate appearing for respondent No.2 has argued that total 5 petitions are pending before this Court involving various issues between direct recruits and promotees. The Recruitment Rules were revised from time to time. The 1998 Rules were revised in 2006. Then 2006 Rules were revised in 2011 and now 2011 Rules are also revised in 2015. Earlier till 2011 the scheme was that the appointment to the post of R.F.Os. was to follow successful completion of training. In rule 2015 the training was to follow the appointment. Earlier the Corporation was of opinion that a candidate is put to probation signifies that he is appointed on a post and successful completion of such probation period would result in confirmation of such appointment.

24. After considering the judgment of this Court in Writ Petition No.2026/2019 as well as the judgment of Hon’ble Apex Court in Civil Appeal No.822/2023 the Forest Development Corporation has changed the opinion and has come to the conclusion that 2015 Rules would not have retrospective operation so as to govern the recruitment process which was taken up in 2014.

25. The legal position that emerges is that at the time of recruitment of 2014 batch of direct recruits what governed the said recruitment process was the revised Recruitment Rules of December 2011, 2006 and 1998. A simple perusal of rules 4 and 5 of 2011 Rules would show that the scheme of the recruitment was first - the selection, then second - training and third -deciding inter se seniority amongst direct recruits on the basis of the sum total of marks obtained in the recruitment examination conducted by F.D.C.M. Limited and the marks obtained in examination by the Forestry Training College at the conclusion of 1 and 1/2 year training course thereafter 1 and 1/2 year field training conducted by F.D.C.M. and this follows appointment order. Thus, the appointment order was to follow successful completion of training.

26. Learned Senior Advocate for respondent No.2 submitted that employees who were before F.D.C.M. for adopting revised Recruitment Rules from 6.4.2011 by the Government as per 6.9.2006 Rules adopted by the F.D.C.M, the respondents submitted that these Rules could be said to be fully applicable even to the direct recruits of R.F.Os. by virtue of the government resolution dated 23.9.2011. A careful perusal of government resolution will show that by the government resolution the Government of Maharashtra sanctioned 125 posts in the cadre of R.F.Os. on certain conditions, and certain criteria applied by M.P.S.C. could be followed.

27. It is further argued that respondent No.2 admitted the wrong committed by it while taking compliance measures in respect of resolution dated 23.3.2021 and consequential communications dated 4.6.2021 wrongly considered them as determinative factor for reckoning seniority of direct recruits R.F.Os. which were neither consistent with the Rules applicable to them nor in accordance with the

ratio laid down in that regard by Aurangabad Bench in its judgment which has been upheld by Hon'ble Apex Court in its order dated 15.3.2023. It is submitted that resolution dated 23.3.2021 and consequential communication dated 14.6.2021 cannot be said to be determinative about the date from which the seniority of the direct recruits is to be recognized.

28. The final seniority list of R.F.Os. as on 1.1.2021 published by respondent No.2 on 16.7.2021 wherein the seniority of direct recruits R.F.Os. of 2014 batch was reckoned from the date of commencement of training stands erroneous, inconsistent with the existing Rules and not in conformity with the ratio laid down in that regard by Aurangabad Bench of this Court. The same needs to be corrected by saying that the seniority of such direct recruited R.F.Os. of 2014 batch from next date of conclusion of successful completion of their 3 years training. However, since the matters are now sub judice before this Court respondent No.2 has not taken any corrective action at their level.

29. Respondent No.2 after changing the stand has relied on the decision in the case of Government of Andhra Pradesh and others V/s. S. Ramamanohara Rao and others 1991 Supp (2) SCC. in which it is observed that "the seniority can be reckoned only on acquiring eligibility to be appointed from front door and not from side door or backdoor." It is submitted that this judgment is very much applicable to the facts of this case because though before completion of 3 years of their training period, the direct recruit RFOs were appointed in the midst of the training period, still they were eligible to be appointed only on successful completion of training period. Therefore from the day after successful completion of their training period their seniority can be reckoned in the cadre of RFOs.

30. Respondent Nos.7 to 18 have argued that the petitioners are appointed to the post of R.F.O. by promotion, however, their promotion is contrary to the prevailing Rules and, therefore, the order dated 23.2.2015 is bad in law. Respondent Nos.7 to 18 are appointed on the post of R.F.O. w.e.f. 1.3.2014 and 1.4.2014 and appointment of petitioners by way of promotion is dated 23.2.2015. Respondents are inducted in service as R.F.O. much prior to the appointment of petitioners. The appointments of petitioners dated 5.7.2013 and 28.10.2013 are on purely ad-hoc basis and, therefore, no benefit could be claimed by the petitioners. Harmonious reading of terms and conditions of the advertisement makes it clear that appointment as probationer is a substantive appointment and it is only subject to successful completion for being confirmed. As per clause 5.8 salary is provided to the candidates during probation period. Though the recruitment procedure for appointment of respondent Nos.7 to 42 was initiated under the Recruitment Rules dated 29.12.2011, subsequent changes in the Rules are equally applicable to respondents. The respondents have argued in detail according to their reply. To avoid repetition, we are not mentioning it in detail.

31. According to Advocate for respondent Nos.19 to 42 the recruitment procedure for appointment of respondents was initiated under 2011 Rules which

were in force then. However, these Rules were applicable only till they were revised again in 2015 and fresh Rules were brought in force. Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 are not applicable to the respondents. It cannot be applicable to employees of respondent No.2 unless expressly adopted by their board resolution, therefore, reliance placed by the petitioners upon rule 4 of the said Rules is highly misplaced. The petitioners have accepted their promotion to the post of R.F.O. w.e.f. 1.1.2015 without any demur and are, therefore, estopped from raising any grievance regarding the same. If the Rules on the date of appointment shall govern the service of officers, then none of the petitioners were eligible to be promoted to the post of R.F.O. on 1.1.2015.

32. It is a case where respondent No.2, who is the Forest Development Corporation, has revised the Recruitment Rules from time to time. By notification dated 29.6.2015 the Recruitment Rules were revised, which raised the cause for filing different petitions before this Court. Initially respondent No.2 denied the contents of petition and supported the decision taken by it dated 4.6.2021 thereby the training period is counted as a period spent in service. Consequential orders were passed as per the directions in Writ Petition Nos.1568/2018 and 2753/2020 and final seniority list was published which is also the subject matter of this petition. After pronouncement of judgment in Writ Petition No.2026/2019 by Aurangabad Bench, which is upheld by the Hon'ble Apex Court, the respondent No.2 has changed its stand and confessed that it has committed mistake and showed the willingness to take corrective action. It therefore requires to first consider the effect of judgment passed by Aurangabad Bench. On careful perusal of the judgment and facts of this case, it appears that it distinguishes from the material facts of this case. In the case before Aurangabad Bench, in the Recruitment Rules of the promotional post, there was a provision which made it clear that a period spent on training could not be counted as service period because no such Rules exists in the Rules applicable to promotional posts of Assistant Managers to the effect that the period spent on training in lower posts of Assistant Managers of R.F.Os. shall not be, (or shall be) counted as service period. Therefore, on this count the said judgment of Aurangabad High Court is distinguishable from the facts and circumstances occurring in this case. Rules 2015 expressly provides that, "the period spent on training shall be treated as a period in service" whereas, the Rules which were subject matter of Writ Petition No.2026/2019 expressly provided that "The period spent on training shall not be counted as a period in service". This very fact makes it clear, with due respect, that the judgments of Hon'ble Supreme Court and this Court are not applicable to the facts of the present case.

33. It is not correct that the Rules would apply only prospectively, it depends on words used. If we read 2011 and 2015 Rules conjointly, it reveals that in former Rules it was implicit that the period of probation be treated as service period and 2015 Rules only explained it further in express terms. The board resolution dated 29.6.2015 does not expressly or otherwise state that the notification dated

5.2.2015 only pertains to 21 vacant posts of R.F.Os. An employer cannot frame Recruitment Rules only for certain employees. If such would be the intention then it should be expressly stipulated since beginning. Resolution dated 29.6.2015 never contemplated two classes of employees in the same cadre, particularly when they are similarly situated. If the interpretation of petitioners is accepted that 2015 Rules are applicable only to subsequent appointments for 21 candidates only then it shall create an anomalous situation where a person appointed prior to the adoption of notification dated 5.2.2015 as a probationary R.F.O. would be junior to the candidates appointed as probationer after adoption of the notification dated 5.2.2015 as the training period of such a candidate would be treated as service period.

34. Respondent No.2 is Government of Maharashtra undertaking. It is governed by its Articles of Association under which all powers regarding management of the company, conduct of business and service conditions of its employees are vested with its Board of Directors. Respondent No.2 itself has framed its own service conditions and Recruitment Rules for its employees and in that regard, it may adopt Rules or Directives of Government by way of a Board Resolution.

35. Article 91 of Memorandum of Association and Articles of Association provides the specific powers of board. Clause 5 of Article 91 is reproduced below:-

91. Without prejudice to the general powers conferred by the last preceding Article, and the other powers conferred by these Articles and subject to the provisions of the Act the Board shall have the following powers, that is to say power:-

(1)

(2)

(3)

(4)

(5) to appoint and at their discretion, remove or suspend such managers, secretaries, officers, clerks, agents, and servants for permanent, temporary or special services as it may from time to time think fit, and to determine its powers and duties and fix their salaries or emoluments and to require security in such instances and to such amount as it thinks fit : provided that no appointment to a post in the company carrying basic pay of or above Rs.5900/-per month shall be made without the prior approval of the Governor."

36. In said capacity respondent No.2 F.D.C.M. has revised the Rules from time to time. Rules were revised in 2006, 2011 and 2015.

37. Pursuant to Board resolution passed under Item No.5 at 159th Board meeting held on 29.12.2011 Revised Recruitment Rules for direct recruitment of Range Forest Officers (only in respect of direct recruits) as per rule 4 of revised Rules "The selected candidates shall be on probation for a period of 3 years, out

of which one and half years period shall pertain to training in a Government of India recognized Forestry Training College and remaining one and half year period shall pertain to field training prescribed by the Managing Director of F.D.C.M." In earlier Rules of 2006 as per rule 3 "The candidate shall be selected through MPSC and appointed upon successful completion of prescribed period." It is specific in 2006 Rules that selected candidate will be appointed on successful completion of prescribed training course.

38. A perusal of the provisions of 2011 Rules thus indicates that said Rules deals exclusively with the matter of recruitments and appointment on the post of R.F.Os.

39. It is, thus, clear that respondent No.2 being Government undertaking can frame Rules and can alter the terms and conditions of its employees. Respondent Nos.19 to 42 placed reliance on the judgment of the Hon'ble Apex Court in the case of The State of Jammu and Kashmir V/s. Shri Triloki Nath Khosa and others (1974) SCC 19. has observed as under:-

"16. It is well-settled that though employment under the Government like that under any other master may have a contractual origin, the Government servant acquires a 'status' on appointment to his office. As a result, his rights and obligations are liable to be determined under statutory or constitutional authority which for, its exercise, requires no reciprocal consent. The Government can alter the terms and conditions of its employees unilaterally and though in modern times consensus in matters relating to public services is often attempted to be achieved, consent is not a pre-condition of the validity of rules of service, the contractual origin of the service notwithstanding.

40. They have also relied on the judgment in Prafulla Kumar Das and others V/s. State of Orissa and others (2003) 11 SCC 614. it is observed in para 33 as under:-

"33. Under Article 309 of the Constitution of India, it is open to the Governor of the State to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the Legislature. As has been rightly pointed out by the Court in the Nityananda Kar case (supra), the Legislature, or the Governor of the State, as the case may be, may, in its discretion, bestow or divest a right of seniority. This is essentially a matter of policy, and the question of a vested right would not arise, as the State may alter or deny any such ostensible right, even by way of retrospective effect, if it so chooses (sic) or in public interest."

41. The respondent No.2 Corporation has power to change the Rules. By notification dated 5.2.2015 new Rules came in existence which starts with wording "No.FST-03/14/C.R.221/ F-4. - In exercise of powers conferred by the proviso to article 309 of Constitution of India and in supersession of the Range Forest Officer 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 Range Forest Officer in the Maharashtra Forest Service, Group 'B' (Gazetted) under the Revenue and Forests Department of Government of Maharashtra....."

42. The Rules clearly show that 2015 Rules came in existence in supersession of the R.F.O. in Maharashtra Group 'B' (Recruitment) Rules 1997, therefore, earlier Rules referred as Rules 1998, ceased to exist after this notification dated 5.2.2015. These Rules do not intend to act retrospectively, it clarifies the rule 4 of Rules 2011 which would govern the appointment of respondent Nos.7 to 42 (direct recruits). The competitive exam for recruitment for the year 2014 was conducted in the year 2013 in pursuance of advertisement dated 27.2.2013. The recruitment was completed in the year 2013 and training commenced in 2014. Order by which the respondents were sent for training is substantive appointment on the post of R.F.O. The petitioners have not challenged new Rules of 2015. There is no question of retrospectivity of Rules dated 5.2.2015. Intention of respondent No.2 was to bring terms and conditions of service and Recruitment Rules of R.F.Os. of F.D.C.M. at par with R.F.Os. of State Government. Therefore, the decision taken in respect of R.F.Os. in State Government should be made applicable to the R.F.Os. of F.D.C.M. When the respondents were put under probation as R.F.Os., it was manifest that they were appointed to the said post and their eventual and successful completion of probation period merely resulted in confirmation of their appointment.

43. This Court in Writ Petition No.2644/2024 (Nilay Suresh Bhoge and others V/ s. The State of Maharashtra and others) delivered on 2.8.2024 in which both of us were party (Coram : Smt. Vibha Kankanwadi & Mrs. Vrushali V. Joshi, JJ) in relevant portion of para 34 we have observed as follows:-

"34. 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.”

44. The respondents have brought to our notice that the promotion of petitioners itself was contrary to the Rules of 2006 which stipulated minimum 8 years of continuous service as Foresters to be eligible for promotion as Range Forest Officer. According to the petitioners, they were appointed as Foresters on 8.1.2007 and 1.8.2008 and they came to be promoted as R.F.Os. vide order dated 23.2.2015 in clear contravention of the Rules of 2006 (8 years would complete after 8 months and the petitioners were promoted before completing 8 years). As the petitioners were on purely ad-hoc basis, no benefit thereof could be claimed by the petitioners.

45. On perusal of order of promotion of petitioners it reveals that R.F.Os. quota of direct recruits was not filled and, therefore, against that quota the petitioners were promoted on ad-hoc basis as R.F.Os. In the meanwhile, prior to ad-hoc promotion, an advertisement for direct recruitment was published on 27.2.2013, however, the vacancies were filled on ad-hoc basis by ad-hoc temporary promotion to the post of R.F.Os. On going through the orders of promotion it appears that said ad-hoc promotion was not intended to confer any right of permanent promotion to the promotees. Moreover, promotion was purely fortuitous and they were not entitled to any seniority on ad-hoc promotion. The conditions are specifically mentioned in promotion orders. After completing the recruitment process i.e. on 1.3.2014 and 1.4.2014 the promotion quota was filled by promotion of departmental promotees w.e.f. 1.1.2015. Respondent No.2 has stated in reply how Corporation was compelled to promote the petitioners on temporary basis as Assistant Manager in exigency of administration. As per the mandate of Recruitment Rules the direct recruits were required to be placed at the top in the order of seniority and only after their 50% quota is achieved, remaining 50% are to be taken from departmental promotees. However, after sending the recruits i.e. respondents for training due to shortage of manpower,

respondent No.2 appointed Foresters by promoting them on temporary basis. The promotees were aware that their promotions were purely stop-gap arrangement which would not entitle them to any claim of seniority.

46. We may consider the decision in the case of R.S. Ajara and others V/s. State of Gujarat and others 1997 SCC (L & S) 851 particularly relevant portion of para 22, wherein it is observed as under:-

"22. The promotee officers cannot, therefore, claim that any right to promotion had accrued to them on the basis of the said select list and the same has been adversely affected as a result of the resolution dated 31-1-1992."

47. Reliance is also placed on the judgment in the case of S.S. Bola and others V/ s B.D. Sardana and others (1997) (8) SCC 522. It is observed by the Hon'ble Apex Court in the case of T. Narasimhulu and others V/s. State of Andhra Pradesh and others (2010) 6 SCC 545. in para 24 as follows:-

"24. It is, thus, clear from the judgment of a larger Bench that in S.S. Bola & Ors. v. B.D. Sardana & Ors. (supra) that seniority of a Government servant is not a vested right and that an Act of the State Legislature or a rule made under Article 309 of the Constitution can retrospectively affect the seniority of a Government servant."

48. To avoid repetition, we would like to rely on the observations made by us in Writ Petition No.2644/2024. We may quote relevant portion of paras 35, 36 and 37 as under:-

"35. 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.

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."

49. Respondent Nos.19 to 42 have placed reliance on the judgment in the case of Jacob M. Puthuparambil and others V/s. Kerala Water Authority and others (1991) 1 SCC 28. in which it is observed that since these Rules were framed in exercise of powers conferred by the proviso to Article 309 of Constitution they are undoubtedly statutory in character. Here respondent No.2 is Corporation and not State. It can have its own Rules. Respondent No.2 has adopted State Rules that does not mean petitioners can be considered as State employees or Article 309 of Constitution of India will be applicable.

50. We have also observed in Writ Petition No.2644/2024 in para 41 as follows:-

"44. 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.”

51. We are also taking note of the decision in the case of State of H.P. V/s. J.L. Sharma and another (1998) 1 SCC 727 where in it is held that the training period of direct recruits shall be counted for determining the seniority in the service provided of course the recruits successfully completes the training and then is absolved in forest service. We are also taking note of the decision in the case of Union of India V/s. S.S. Uppal and another (1996) 2 SCC 168. wherein it is held that fixation of seniority would arise only after the officer is appointed. But here in this case, after Rules, specially rule 8, the training period has been considered as the service period and it is not specifically challenged in the petition.

52. In view of above said observations, there is no substance in the petition. It is devoid of merits and deserves to be dismissed. Accordingly, it is dismissed.