

## Urmila Marotrao Gaikwad Vs District Collector Parbhani And Another

**Court:** Bombay High Court (Aurangabad Bench)

**Date of Decision:** Jan. 23, 2025

**Hon'ble Judges:** S.G. Mehare, J; Shailesh P. Brahme, J

**Bench:** Division Bench

**Advocate:** Avinash S. Deshmukh, A.S. Shinde

**Final Decision:** Dismissed

### Judgement

S.G. Mehare, J

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The petitioner has impugned the order of the Collector Parbhani/respondent no.1 dated 21.06.2021 by which the review for the promotion to the

post of Circle Inspector has been rejected on the ground that since she has changed the circle, she could not claim the seniority on the basis of the

date of her appointment. He has referred to the Government Resolution dated 15.05.2019, clause 8(9) while passing the impugned order. He also

clarified that for Talathi cadre, the Sub Divisional Officers are the appointing authorities. Hence, the seniority of Talathis are maintained at the sub

divisional level.

3. Against the said order, the petitioner has preferred Original Application No.408 of 2021 before the Maharashtra Administrative Tribunal Mumbai,

Bench at Aurangabad. The Tribunal also dismissed the same. The petitioner also impugned the said order.

4. Few facts for the reference to decide the dispute were that the petitioner applied for the post of Talathi in pursuance of the advertisement issued by

respondent no.1 in 2009. She was selected on 16.06.2010. The respondent no.1/Collector conducting the selection process selected her as Talathi and

forwarded her name to the Sub Divisional Officer, Selu for issuance of appointment order and posting her. On the basis of the above order, Sub

Divisional Officer, Selu issued an order and posted her at Sajja Wai in Selu Taluka. The petitioner has contended that the order of the Collector was

her appointment letter. Therefore, the Collector is the appointing authority. However, on 29.05.2017 she applied for transfer to Parbhani Sub Division

from Selu Sub Division. Her request was accepted on 31.05.2019. The petitioner contends that since it was a inter-division transfer, she could not be

deprived of the seniority from the date of her joining to Sub Division, Selu. She would submit that it was just an order of transfer. When the seniority

list was to be prepared, the provisional list of seniority was published. She has raised the objection and she was put at Serial No.345 in which the date

for her promotion was fixed as on 19.06.2010. However, the District Promotion Committee erroneously did not follow the seniority list prepared by the

Collector and denied her promotion. The sum and substance of the petitioner is that though she has changed one sub-division to another sub-division, it

does not affect her seniority. The Collector is the appointing authority. Hence, the list maintained at the district level should have been considered for

the promotion based upon the seniority. Therefore, both impugned orders are arbitrary, illegal and perverse.

5. The learned AGP has filed affidavit in reply for the respondents. The respondents have denied the submissions of the petitioner. They have a case

that as per Rule 2(a) of the Revenue and Forest Department (Recruitment) Rules, 1984, the 'Appointing Authority' means Sub Divisional

Officer or the Assistant Collector of respective Revenue Sub Division under the Revenue and Forest Department for the post of Talathi. As per

Government Resolution dated 19.10.2007, the District Selection Committee was formed under the Chairmanship of the Collector. Hence, the selection

was done by the District Selection Committee. After the selection by the said Committee, the appointment and postings were given by the sub-division

within the district. As per the letter addressed to the Sub Divisional Officer, the Sub Divisional Officer issued the appointment and posting to the

candidates selected by the District Selection Committee. They would submit that since the appointing authority for the post of Talathi is Sub Divisional

Officer, bare selection process done by the District Selection Committee under the Chairmanship of the Collector cannot be said to be an appointing

authority. The Sub Divisional Officer, Selu was her appointing authority. On her request, she has been transferred to the Sub Division at Parbhani with

a specific condition that she would not be entitled to the seniority in the sub-division where she has been transferred on the basis of her date of

appointment. While considering the seniority, a specific endorsement was put in the consolidated seniority list by the Collector that her seniority would

be considered for promotion from 14.08.2019. Everything was specific and clear. The petitioner acted upon the conditions imposed in the transfer

order. She has also furnished the undertaking to that effect also. The District Selection Committee considered the amended seniority list for the

promotion to the Circle Inspector. No injustice has been caused to the petitioner. Her seniority was considered as per the provisions of law. She was

well aware of the consequences of transfer she sought from one circle to another. Hence, the petition deserves to be dismissed.

6. The arguments of the learned counsel for the petitioner revolves around the issue that since the selection has been done by the Collector, he is the

appointing authority. Therefore, the order of transfer dated 31.05.2019 is just ordinary transfer and having no effect on her seniority. Therefore, her

contention was accepted and she was shown at Serial No.345 in the seniority list. Therefore, giving promotion to the persons who were below her is

arbitrary and in violation of the provisions of law. He has referred to the documents placed on record. He also referred to the Government Resolution

dated 15.05.2019.

7. The above Government Resolution is about the permanent absorption of the government employee transferred on his request from one division to

another division. He has referred to clause 5 of the said Government Resolution which speaks that if any seniority list is maintained at the district level,

in such a case, except such district, the employee may be absorbed permanently to any of the district in the State. However, by the same appointing

authority, the employee cannot be permanently absorbed by another appointing authority in the same district. In short, he would say that the petitioner

has been transferred from one sub-division to another sub-division in the same district. Hence, she cannot be considered as permanently absorbed in

another sub division. He would refer to clause 9 of the said Government Resolution which is about transfer of employee from one place to another and

the seniority. This clause is very specific that once the employee has been permanently absorbed to another appointing authority, his seniority would be

decided from the date he joined the place where he has been permanently absorbed.

8. He would also rely on the regulations of the recruitment of Talathi of Group (C) employees dated 09.08.2024. By this notification, the appointing

authority for the Talathi is the District Collector. He also referred to the Government Resolution dated 18.09.2023 which is for transferring the post of

Talathi at district level. By this resolution, the government has issued the direction to all Sub Divisional Officers that since the recruitment of the

Talathi is done at district level, if their seniority list is maintained at the district level, the Talathi may get an opportunity to work in different Talukas in

the district. Again the term "appointing authority" has been defined as District Collector. This resolution has been brought into operation

prospectively without affecting the seniority list already prepared.

9. Learned counsel for the petitioner relied on the case of Krishna, Rai, (Dead), through, Legal, Representatives, and, Ors, Vs.

Banaras Hindu University and Others, (2022) 8 SCC 713 and argued that there can be no estoppel against law. Therefore, the arguments of the

learned AGP that once the terms of the transfer have been accepted, the petitioner cannot deny such conditions as those are against the law. He

would submit that the promotion list was prepared in a particular manner. Therefore, the department cannot deny the same. However, considering the

facts of the case, we are of the view that this case would not help the petitioner.

10. Learned AGP would submit that there are two findings on the facts at the time of appointment of the petitioner. The Sub Divisional Officer was

her appointing authority. Her selection was done by the District Selection Committee under the Chairmanship of the Collector. Hence, he is not the

appointing authority.

11. The Selection Committee under the Chairmanship of the Collector has just referred the name of the petitioner to the Sub Divisional Officer, Selu

for appointment and accordingly, she has been appointed. The Recruitment Rules were very specific wherein the appointing authority for the Talathi is

Sub Divisional Officer. The law is also well established for transfer from one division to another. The persons seeking transfer from division to another

division, such an employee shall be the last in the seniority list where he or she has been transferred. The petitioner has given an undertaking

specifically that she would not claim the seniority on the basis of her date of appointment in Sub Division, Parbhani. She would be considered in the

seniority list as per the seniority maintained in the Sub Division at Parbhani Division. In other words, she was correctly listed in the seniority list from

the date she joined Sub Division, Parbhani. No illegalities have been committed in not granting her promotion.

12. The learned AGP would rely on the case of L. Vishwanathan Vs. Union of India (UOI) and Ors, 2007 (3) SLJ 245 (CAT a)nd argued that the

petitioner is bound by the terms and conditions of transfer. The petitioner has exercised her right of option. She has obtained the entry on the basis of

election. She cannot be allowed to turn from her undertaking. Similarly, he relied on the case of State of Uttar Pradesh through its Secretary and

Others Vs. Meraj Ahmad, 2017 (9) SCC 322.

13. The recruitment of the petitioner was as per the Selection Committee constituted under the Chairmanship of the District Collector. The Revenue

and Forest Department (Recruitment) Rules, 1984 were admittedly applied to the recruitment to the post of Talathi in which the appointing authority is

the Sub Divisional Officer or the Assistant Collector or respective Sub Division under the Revenue and Forest Department. No doubt, the selection

has been done by the Collector. By the order dated 16.06.2010, the Collector issued an order to the concerned candidates as well as the Sub

Divisional Officer and directed the Sub Divisional Officer, Selu to issue the appointment order on certain terms and conditions mentioned therein. The

petitioner has accepted the same. The Sub Divisional Officer, Selu has issued her an appointment order dated 29.06.2010. Thereafter, she has

discharged her duties there. Reading the term "appointing authority" in the Recruitment Rules above, undoubtedly, the appointing authority for

Talathi is the Sub Divisional Officer. Till the petitioner was transferred, the Sub Divisional Officer was the appointing authority. Therefore, the

subsequent decisions of the government by notification dated 09.08.2024 and Government Resolution dated 18.09.2023 which were prospective would

not assist the petitioner to accept that the Collector was the appointing authority.

14. The next question is, what should be the date of seniority for the promotion. The papers placed on record were clear that the seniority list was

maintained at the district level. However, in the seniority list placed on record, the petitioner has been placed at Serial No.345 in which a specific

endorsement is put that she has been transferred inter-sub-division and joined Parbhani since 14.08.2019. It is apparent that they are promoted as

Circle Inspectors on the basis of the seniority list maintained at sub divisional level. The rules of seniority were very specific that an employee transfer

from one division to another division would be at the bottom in the seniority where such person has been transferred.

15. The order of the Maharashtra Administrative Tribunal reveals that it has discussed the Government Resolution dated 15.05.2019 regarding the

inter-sub-division transfer request. Clause 8 of the said Government Resolution was also referred to which speaks that after the transfer from one

division to another division of such employee, the seniority of such employee shall be determined on the basis of the date of joining the place of

transfer. However, for the purpose of pay fixation, leave and pension, the seniority shall be considered as per rules of the concerned department. The

petitioner unequivocally had admitted the terms of transfer, particularly that she would not claim the seniority on the basis of her appointment and shall

not be considered in the seniority list maintained at the sub division level, Sub Division Office, Parbhani. Since the facts have been perused by both

authorities, we need not to re-appreciate it.

16. The case laws relied upon by the learned AGP appears squarely applied to the case at hand. Since, we have already held that the appointing

authority of the petitioner was the Sub Divisional Officer, there was no mistake in not considering the seniority of the petitioner for promotion from the

date of her appointment. However, it was correctly considered from the date of her joining Sub Division, Parbhani. We do not find that a

discrimination is made while promoting the Talathis to the post of Circle Inspector. At the cost of repetition, we state that the policy decision of the

government by the notification dated 09.08.2024 and the Government Resolution dated 18.09.2023 would not assist the petitioner, as those are

prospective.

17. For the above reasons, the petition stands dismissed.

18. No order as to costs.

19. Rule stand discharged.