Below this High Court's final writ D.D./W.P.Nos.2158 to 2160/2009 dated 4/2/2009 in Writ Petition No.7229 of 2005.

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SC/DD/No. 2079/2010
DATE : 18/03/ 2010.

FROM:
Assistant Registrar
High Court of Bombay
Bench at Aurangabad.

TO :
Maharashtra Pollution Control
Board, through Member
Secretary, having its office,at M.P.C.B.Kalpataru Point,
3rd abd 4th Floor,Opposite Cine Plannet,
Siion-Matunga Scheme Road,Sion(E), Mumbai.

महाराष्ट्र प्रदूषण नियंत्रण मंडळ
आवक क्र. 00326 PF 0216
दिनांक 25/3/10

SUBJECT: **SUPREME COURT PETITION FOR SPECIAL LEAVE TO APPEAL CIVIL NO.5335 OF 2009**
(From the Judgment and Order dated 07/10/2008 of the High Court of Judicature of Bombay, Bench at Aurangabad in Writ Petition No.7229 of 2005)

Prakash Prabhakar Munde ...Petitioner
-VERSUS-
State of Maharashtra & others ..Respondents

REFERENCE:Supreme Court letter Nil dated 29/12/2009

Sir,

I am directed to inform you that, the Petition above mentioned filed in the Supreme Court of India, New Delhi was dismissed by the Supreme Court on 20/02/2009.

Yours faithfully,
12/3/10
ASSISTANT REGISTRAR

Copy forwarded with compliments for information and necessary action to :-

1)The State of Maharashtra, through:Secretary, Department of Environment & Forest, Mantralaya, Mumbai-32 through Govt. Pleader, High Court, Bench at Aurangabad.

2)The Chairman, Maharashtra Pollution Control Board, having its office at Kalpataru Point, 3rd and 4th Floor, Opp.Cine Plannet, Sion-Matunga Scheme Road, Sion(E), Mumbai.

sd/-
ASSISTANT REGISTRAR

Miss Smita take copy & put up before office S.C & upload on website. Also communicate to SRO
31-3-10

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.7229 OF 2005

Shri. Prakash Prabhakar Munde,
R/o- Plot No.3 Royal Prestige,
214/A, N-1, Cidco, Aurangabad,
Dist-Aurangabad.
...PETITIONER.

VERSUS

The State of Maharashtra,
Through Secretary,
Department of Environment
& Forest, Mantralaya,
Mumbai and others.
...RESPONDENTS.

...

Shri.S.M. Godsay Advocate for Petitioner.
Shri.D.V. Tele, A.G.P. for Respondent State.
Mrs. Sarika Deshpande Advocate for Respondent Nos. 2 and 3.

...

CORAM: NARESH H. PATIL AND
S.R. DONGAONKAR, JJ.

DATE : 7TH OCTOBER, 2008.

P.C. :

1. Heard.

2. Learned counsel Shri Godsay submits that the Petitioner appeared for the selection process in pursuance to an advertisement issued in the year 1996

but he was not selected. Again in pursuance to an advertisement issued in the year 1997 the Petitioner appeared for the selection process but was not selected. Petitioner approached this Court by filing Writ Petition No.3075 of 1998. On 3/2/1999 the Division Bench of this Court, (Coram: N.P. Chapalgaonkar and B.B. Vagyani, JJ.) passed following order:

> "Petitioner is holding Doctorate in Environment Science. Since petitioner is holding qualifications higher than the minimum qualification prescribed for the post, the requirement of experience of 4 years could have been relaxed as mentioned in Clause 6 of the Advertisement itself. However, the Committee did not do it.
>
> We are told that, there are some vacancies still in the cadre. We direct that, those vacancies be not filled in until further orders of this Court. We adjourn the matter for two weeks to enable the Committee to take stock."

3. Learned counsel Shri Godsay submits that the Petitioner was issued an appointment order on 20/4/1999. By an order dated 26/4/1999, the Division Bench of this Court, (Coram: S.H. Kapadia and B.H. Marlapalle, JJ.) passed following order:

> "Since letter of appointment has been issued, no interference is called for. Hence Writ

Petition is rejected as withdrawn.

All contentions on merits regarding seniority kept open."

4. Learned counsel Shri Godsay submits that the Petitioner was competent, qualified and eligible to be selected and appointed in the year 1996 but he was denied appointment and therefore he lost seniority and juniors to him are now working as seniors. The Petitioner therefore prays that the Respondents be directed to treat the Petitioner as appointed in 1996 pursuant to the advertisement issued in the year 1996.

5. Contesting Respondents have filed reply and opposed the relief.

6. In substance, the Petitioner prays for treating him to have been selected and appointed under the advertisement issued in the year 1996. In fact he was not selected under the advertisement issued in the year 1996. Under the second advertisement issued in the year 1997, after the Division Bench of this Court passed an order on 3/2/1999, appointment order was issued to the Petitioner on 20/4/1999. Whatever may be the reasons for not appointing the Petitioner by the Respondents, it would not be reasonable and proper

to award a deemed date of appointment to the Petitioner with effect from the year 1996. In the facts of this case, we are not inclined to accept the contentions of the Petitioner. The cause of action for raising the issue of seniority would be available to the Petitioner only after the date of appointment order being issued to him. In a given case it may happen that competent and eligible candidate is not selected and appointed, but that would not confer any right on such candidate to seek such a relief by claiming a deemed retrospective date of appointment. The Petition is dismissed.

It is clarified that the observations made by us in this Order shall not affect the normal consideration of Petitioner's case in accordance with law regarding his claim of seniority and promotion.

(S.R. DONGAONKAR)
JUDGE.

(NARESH H. PATIL)
JUDGE.

asb/u/wp7229.05