

(2012) 08 BOM CK 0137

In the Bombay High Court

Case No : Writ Petition No. 1051 of 2012

Ashok Wankar, Pramod Gargilwar, Chhatrapati Pundlik Sonule
and Kishor Lakde

APPELLANT

Vs

The State of Maharashtra and Chief Executive Officer, Zilla
Parishad, Chandrapur

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Citation : (2012) 08 BOM CK 0137

Hon'ble Judges : S.C. Dharmadhikari, J;M.T. Joshi, J

Bench : Division Bench

**Advocate : N.G. Phadnis, for the Appellant; L.N. Bodade, Advocate for
respondent No. 2., for the Respondent**

Final Decision : Allowed

Judgement

S.C. Dharmadhikari, J.—Heard. Rule. With the consent of the parties, rule is made returnable forthwith.

2. The petitioners are aggrieved by the fact that they have been promoted against vacant posts by due process, however, since their promotional posts were reserved, it appears that there was a condition imposed that they must obtain the Caste Validity Certificate from the competent Caste Verification Committee.

3. We do not now go into the question as raised by Mr. Phadnis that the petitioners were promoted against the open post and not reserved vacancies because of the correspondence between the parties proceeded on the basis that the petitioners are appointed against reserved posts and they have to obtain Caste Validity Certificate from the Caste Scrutiny and Verification Committee. The Caste Scrutiny and Verification Committee validated the caste claims of the petitioners on the dates which have been specified in the impugned order. However, for the delay in producing the Caste Validity Certificate, the petitioners are in no way responsible. Therefore, their deemed dates of promotion cannot be

reckoned from the date of the orders of the Caste Scrutiny Committee and the date of validity of the caste certificates but from the date of their promotion by the promotion orders issued in their favour.

4. The learned Counsel appearing on behalf of the Chief Executive Officer, Zilla Parishad, Chandrapur, who is contesting respondent, firstly submits that the Writ Petition is not maintainable because the petitioners have an alternate and equally efficacious remedy of approaching the Divisional Commissioner by filing an appeal. Secondly, he submits that the petitioners have not appeared before the Caste Scrutiny Committee regularly and delayed the matter so as not to comply with the terms and conditions which were imposed while promoting them. In these circumstances, it is submitted that the Writ Petition be dismissed.

5. We have perused the Writ Petition and all annexures thereto so also the affidavits in reply and rejoinder. When detailed affidavits have been filed and submissions on the point of law have been canvassed, it will be futile, at this stage, to relegate the petitioner to the remedy which is allegedly available to them. It is clear that the availability of alternate remedy is not an absolute bar for entertaining the Writ Petition. In such circumstances, the first contention of the second respondent must fail.

6. Equally, on perusal of the affidavit in reply filed by respondent No. 2, we find that no rule or regulation has been pointed out which would enable the Chief Executive Officer, Zilla Parishad to grant deemed date of promotion from the date of the orders of the Caste Scrutiny Committee. In other words, the date of promotion cannot be the date on which the Caste Validity Certificate is validated. The deemed date of promotion must, in the absence of any rules to the contrary, be reckoned from the date on which a promotion order has been issued. In this case the promotion order is dated 23/01/2006. In such circumstances, any subsequent date and that too of issuance of Caste Validity Certificate, cannot be taken to be a deemed date of promotion. There are no rules nor regulations which enable the Chief Executive Officer to fix such a date of promotion. In view of the above discussion, the Writ Petition succeeds and it is allowed. It is declared that the deemed date of promotion of all the petitioners shall be the date on which they have been issued the promotion order, namely 23/01/2006. The petitioners be granted all benefits of the promotional post including pay and other benefits on the basis that they have been promoted on 23/01/2006.