

(2011) 11 BOM CK 0036
In the Bombay High Court
Case No : Writ Petition No. 3167 of 1996

Chimanrao Morbaji Patil

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 1 ALLMR 302 : (2012) 1 MhLj 881

Hon'ble Judges : B.P. Dharmadhikari, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : S.W. Sambre, for the Appellant; A. R. Taiwade, Asstt Government Pleader for respondent no.1, Shri Tejas Patil h/f and Shri Anand Parchure Adv for respondent no.2, for the Respondent

Judgement

B.P. Dharmadhikari, J.—Heard advocate Shri Sambre for the petitioner.

2. In this petition filed under article 226 of Constitution of India two challenges are placed before this court. First challenge is to order of reversion dated 24.1.1995 and second challenge is to a subsequent order dated 22.5.1995 by which juniors to petitioner have been promoted as Regional Managers.

3. Shri Sambre has invited our attention to seniority list prepared for the cadre of Field Officers/ Assistant Managers in the year 1983 and thereafter in the year 1985 to show that name of petitioner appears at serial no.1 in said list and other persons who are promoted on 22.5.1995 are placed below him. His contention is, if reply of respondent no.2 is perused, it would reveal that promotion is to be given on the basis of seniority-cum-merit and as there is no dispute of seniority of petitioner, he ought to have been promoted. He points out that in said reply respondent no.2 has come up with defence that confidential reports for the year 1989-90 onwards till 1993-94 were not satisfactory and hence he was not found eligible for promotion. He states that this action is nothing but refusal on the part of respondent no.2 to consider the entitlement of petitioner to be promoted.

4. In so far as challenge to order of reversion is concerned, learned counsel states that though respondent no.2 has pleaded that there is no reversion, the order itself uses word "reversion" and attention is also invited to order of posting dated 2.2.1995 to show that because of said reversion, petitioner has been placed in the office of General Manager, Nagpur as Assistant General Manager and his pay-scale is also shown as Rs.2675/-due to said reversion. Learned counsel states that there is absolutely no justification for such reversion and no reasons are disclosed therefore .Hence that order of reversion must be quashed and set aside.

5. Shri Sambre, has also invited attention to rejoinder filed on 12.7.1991 to demonstrate that confidential reports were never communicated to petitioner and he is relying upon instructions issued by State Government on 1st February 1996 to show that in view of clause no.52 therein, those confidential reports could not have been used against petitioner.

6. Shri Patil at the outset requested for adjournment as advocate Parchure is not available. However, as matter was called out before vacation, and adjournments were sought, we rejected that request. Shri Patil has relied upon reply - affidavit placed on record by respondent no.2 on 28.7.1997. He states that there is nothing on record to show that petitioner has been reverted. Learned counsel has invited attention to position as disclosed in paragraph 13 of said affidavit and urged that promotion given to other respondents is therefore legal and valid. He has further stated that as promotions are valid and there is no reversion proved before this court, petition should be dismissed.

7. Learned Assistant Government Pleader appearing for respondent no.1 has supported arguments of advocate Patil.

8. Nobody has appeared for respondent no.3 to 7 though served.

9. The perusal of seniority lists placed on record by petitioner reveal that petitioner was at serial no.1. The order by which petitioner came to be promoted as District Manager has not been placed on record. Perusal of provisional seniority list circulated on 25.11.1983 reveals that it is for cadre of Field Officers / Assistant Managers. Final seniority list circulated on 30.12.1985 is again for very same cadre. In communication dated 21.5.1992 it has been stated that as per letter of Head Office dated 30.12.1985 a final seniority list of the employees in cadres of Assistant Managers / District Managers was published. It also shows that it was in accordance with date of selection of incumbent in the cadre of District Manager. Then some administrative problems are pointed out and reasons which necessitated preparation of fresh seniority lists of these cadres, are mentioned. Accordingly a provisional seniority list as per the date of joining was circulated. Though this communication says that it is accompanied by a provisional seniority list, copy of said provisional list is not annexed. Reply / objection by petitioner dated 26.6.1992 reveals his grievance that in that list his name was shown at serial no.2, but it should have appeared at serial no.1.

10. The order dated 25.4.1994 needs to be viewed in this background. That order shows that petitioner, a District Manager at Chandrapur was transferred on promotion at Aurangabad and on his request he was then sent as Assistant Regional Manager, Mumbai. At Mumbai he was expected to take charge of the post of Deputy General Manager (Project). The impugned order dated 24.1.1995 mentions designation of petitioner as Assistant General Manager and states that he is being reverted. It also states that orders of his posting would be issued after he joins back after leave.

11. By communication dated 25.1.1995, petitioner has urged that at Nagpur he should be given charge of the post of Assistant Regional Manager so as to enable him to continue with his medical treatment. The order of posting is issued on 2.2.1995 and it again shows that he has been posted in the office of General Manager at Nagpur as Assistant General Manager. It is further stated that as he is reverted, his basic wage would be Rs.2675/-.

12. The petitioner has not produced before us the salary payable to District Manager or then to Assistant Manager. On 28.7.1997 the respondent no.2 has filed reply stating that there is no reversion and petitioner was given his substantive post. Even the order by which the petitioner was promoted in the cadre of Assistant Regional Manager, is also not produced before this court. While narrating events, learned counsel has stated that post of District Manager is next below the post of Assistant Regional Manager. In view of the material which we have noted above, we find it difficult to accept this submission. In short, we do not find any material on record to disbelieve the defence raised by respondent no.2 that there was no reversion and petitioner has been sent back on his substantive post.

13. However, in so far as order of promotion dated 22.5.1995 is concerned, we have already noted that prior to fresh preparation of seniority list i.e. on 21.5.1992, petitioner was appearing at serial no.1 in seniority lists of Field Officers/ Assistant Managers. The representation made by petitioner on 26.6.1992 shows grievance that his name could not have been shown at serial no.2 and he had requested for placing him at serial no.1. Reply - affidavit filed by respondent no.2 shows that out of total 11 posts then available, six posts were filled in by promotion and one post was reserved for Scheduled Caste. In paragraph 13 it is mentioned that in 1989-90, confidential report of petitioner revealed his placement in "B(-)" category, 1990-91 in "B(-)" category, 1991-92 in "C" category, 1992-93 "No Remarks" and 1993-94 in "B" category. Thus on an average petitioner was placed in "B(-)" category. The respondent no.2 states that therefore he would not be eligible for promotion. In paragraph 9 of very same affidavit norm for promotion is disclosed as seniority-cum-merit. The affidavit states that it was decided by promotion committee. We fail to understand that how promotion committee can decide any such norms. We are however, not concluding this issue. Seniority-cum-merit is a well settled concept and merit becomes relevant only when there are two candidates with same seniority or

senior candidate is found unfit. Here that is not a position. It appears that petitioner was promoted and transferred to Aurangabad from Mumbai (on request) in 1994 itself. Shri Sambre has relied upon the government resolution dated 1.2.1996 and clause no.52 therein which shows that adverse comments or criticism or then instructions recorded in confidential reports, should not be used for promotion purposes if the same are not communicated to the employee. Though Shri Patil has contended that the said government resolution dated 1.2.1996 is not applicable to establishment of respondent no.2. Specific assertions of petitioner in paragraph 5 of his rejoinder has not been refuted by respondent no.2. In view of the finding already reached by us above in respect of promotion norms, we leave that issue also open. We therefore, find non-consideration of claim of petitioner for promotion by respondent no.2 unjustified. However, we are not inclined to set aside the promotion given to other respondents only on that count after so many years.

14. We direct respondent no.2 to consider afresh entitlement of petitioner for said promotion in accordance with relevant service conditions requiring communication or otherwise of the adverse remarks in confidential reports. The respondent no.2 shall complete the said exercise within a period of four months from today. If the petitioner is found entitled and eligible for promotion, he shall be given deemed date with consequential benefits and placed just above his junior so as to avoid loss of seniority in promotional cadres. Appropriate orders in this respect shall be issued to him by respondent no.2 within a further period of one month thereafter.

15. Thus we partly allow the petition accordingly. Rule made absolute. No costs.