
(2015) 06 BOM CK 0242
In the Bombay High Court
Case No : Writ Petition No. 6570 of 2014

Moreshwar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Citation : (2015) 06 BOM CK 0242

Hon'ble Judges : V.A. Naik, J;P.B. Varale, J

Bench : Division Bench

Advocate : S.R. Narnaware, for the Appellant; N.R. Rode, Assistant Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

V.A. Naik, J—Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the parties.

2. By this petition, the petitioner challenges the order of the Divisional Commissioner - respondent no.2, dated 21.5.2014 rejecting the representation made by the petitioner for grant of deemed date of promotion in the clerical cadre from the date on which his juniors were promoted. The petitioner seeks a direction to the respondent nos.1 to 3 to grant deemed date of promotion to the petitioner on the post of Superintendent from 27.7.2000, on the post of Section Officer from 25.8.2003 and on the post of Assistant Block Development Officer from 2009.

3. Few facts giving rise to the petition are stated thus :

The petitioner was appointed by the respondent no.3 - Zilla Parishad, Yavatmal on the post of Junior Assistant (Clerk) on 21.11.1981. The appointment of the petitioner was in the clerical cadre. The petitioner was appointed on a post reserved for the Halba, Scheduled Tribe. On 15.7.1995, the petitioner was promoted to the post of Senior Assistant (clerical cadre) in the open category. On 28.7.1995, in view of the switch over option scheme, the petitioner made a

request for switching over from the clerical cadre to the accounts cadre. The said request was granted and the petitioner was permitted to switch over from the clerical cadre to the accounts cadre. In the accounts cadre, the petitioner was appointed on 9.8.1995 as a Senior Assistant (Accounts Cadre). On 22.2.2000, the petitioner was promoted in the accounts cadre to the post of Junior Accounts Officer. On 10.4.2008, the petitioner was informed that the switch over option exercised by the petitioner was not approved by the State Government and hence the petitioner was again placed in the clerical cadre on the post of Senior Assistant. The petitioner has not challenged the order, by which the petitioner was again shifted from the accounts cadre to the clerical cadre by the order dated 10.4.2008. The petitioner has, however, claimed deemed date of promotion from the date his junior i.e. respondent no.4 was promoted on the post of Superintendent on 27.7.2000, on the post of Section Officer on 25.8.2003 and on the post of Assistant Block Development Officer from 2009.

4. According to the petitioner, the petitioner is not at fault in seeking the switch over from clerical cadre to the accounts cadre. It is stated that the respondent no.3 had permitted the petitioner to switch over from the clerical cadre to the accounts cadre. It is submitted that the petitioner was permitted to work in the accounts cadre for the long period of 13 years, when he was again placed in the clerical cadre on the ground that the State Government had not granted approval to his switching over from the clerical cadre to the accounts cadre, under the switching over option scheme. It is stated that the petitioner is doubly at a loss as the petitioner's seniority from the accounts cadre is not considered due to his placement in the clerical cadre by the order dated 10.4.2008 and the petitioner is not given his due seniority in the clerical cadre, though his junior, respondent no.4 is promoted on the post of Superintendent, Section Officer and Assistant Block Development Officer during the period, the petitioner worked in the accounts cadre. It is submitted that the representation made by the petitioner has been wrongly rejected by the Divisional Commissioner. The petitioner has, therefore, sought a direction to the respondent nos.1 to 3 to grant deemed date of promotion to the petitioner from the date his junior i.e. respondent no.4 was promoted on the post of Superintendent on 27.7.2000, on the post of Section Officer on 25.8.2003 and on the post of Assistant Block Development Officer from 2009.

5. Shri Rode, the learned Assistant Government Pleader appearing on behalf of the Divisional Commissioner Respondent no.2, submitted that the petitioner is not entitled to deemed date of promotion, as claimed by him, as he was wrongly permitted to switch over under the switch over option scheme. It is stated that the government has declined to grant approval to the switching over of the petitioner from the clerical cadre to the accounts cadre in the year 1995. It is stated that, in the circumstances of the case, the Divisional Commissioner has rightly rejected the representation made by the petitioner.

6. Shri Ghurde, the learned counsel for the respondent no.3 also supported the

order of the Divisional Commissioner. It is submitted that when the petitioner was permitted to switch over from the clerical cadre to the accounts cadre, the petitioner had declined to accept the promotion to the post of Senior Assistant (clerical cadre) in the year 1995 and hence the petitioner cannot seek deemed date of promotion, as prayed for. It is submitted that though the petitioner and the respondent no.4 were appointed from the Scheduled Tribes category, after the invalidation of their caste claim, both of them have produced the caste validity certificate of SBC category and the respondent no.4 has produced the caste validity certificate four months earlier than the petitioner. It is stated that since the petitioner had declined the promotion in the clerical cadre and showed his willingness to work in the accounts cadre, the petition is liable to be dismissed.

7. Ms. Rane, the learned counsel for the respondent no.4, had nothing much to say in the matter as the petitioner has not challenged the promotion of the respondent no.4 and has only sought the deemed date of promotion, as prayed by him in prayer clause (iv).

8. On hearing the learned counsel for the parties and on a perusal of the impugned order, it appears that the Divisional Commissioner was not justified in dismissing the representation of the petitioner. It is apparent from the clear facts of the case that both the petitioner and the respondent no.4 were appointed in the clerical cadre and the petitioner is admittedly senior to the respondent no.4. In view of the switch over option scheme, the petitioner had applied for switch over from the clerical cadre to the accounts cadre in the year 1995 and he was permitted to do so, by the order dated 28.7.1995. On 9.8.1995, the petitioner was posted as Junior Assistant in the accounts cadre. Though the State Government had declined to grant approval to the switch over of the petitioner from the clerical cadre to the accounts cadre as early as on 20.11.1996, the respondent no.3 did not take any action and permitted the petitioner to work in the accounts cadre till he was again placed in the clerical cadre on 10.4.2008. The petitioner has not challenged his placement from the accounts cadre to the clerical cadre. The petitioner has only sought the deemed date of promotion to the post on which the respondent no.4, his junior was promoted, while the petitioner was working in the accounts cadre. It is rightly submitted on behalf of the petitioner that the petitioner was not at fault in working in the accounts cadre for 13 long years. If the State Government had declined approval to the switch over option of the petitioner on 20.11.1996, the respondent no.3 ought to have taken immediate steps to place the petitioner in the clerical cadre, however, this was not done for 13 years. In the meanwhile, the respondent no.4 was promoted to the post of Superintendent on 27.7.2000 and to the post of Section Officer on 25.8.2003. The submission made on behalf of the respondent no.3 that the respondent no.4 had produced the caste validity certificate four months earlier and hence the petitioner has lost the seniority in the clerical cadre is illfounded and is liable to be rejected. The caste validity certificates were produced by both the parties in the year 2005, whereas the respondent no.4 was

promoted on the post of Superintendent and Section Officer in 2000 and 2003 respectively. Also, the submission made on behalf of the respondent no.3, that the petitioner had declined to accept the promotion in the clerical cadre in the year 1995 and, therefore, he cannot claim deemed date of promotion, as claimed in this writ petition, is also equally illfounded and is liable to be rejected. The document produced by the respondent no.3 to substantiate the aforesaid factual aspect falsifies the statement made on behalf of the respondent no.3. It is clear from the said document that the petitioner had temporarily declined promotion in the clerical cadre, as he was permitted to shift to the accounts cadre. This is a case where the petitioner was not at fault. The respondent no.3 ought to have placed the petitioner in the clerical cadre no sooner than the State Government refused to grant approval to the switch over option on 20.11.1996. It is wrongful on the part of the respondent no.3 to deny deemed date of promotion to the petitioner on the three posts. The Divisional Commissioner did not consider the matter in the right perspective while rejecting the representation made by the petitioner.

9. Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order is quashed and set aside. The respondent nos.1 to 3 are directed to grant deemed date of promotion to the petitioner to the post of Superintendent from 27.7.2000, to the post of Section Officer from 25.8.2003 and to the post of Assistant Block Development Officer from 2009.

10. The learned counsel for the petitioner fairly states that the petitioner would not claim the difference in salary in view of the deemed date of promotion to the post of Superintendent from 27.7.2000, to the post of Section Officer from 25.8.2003 and to the post of Assistant Block Development Officer from 2009. The petitioner would, however, be entitled to regular salary of an Assistant Block Development Officer with effect from 10.10.2014 i.e. the date of filing of the writ petition. The arrears of difference of salary from 10.10.2014 should be paid to the petitioner, within a period of four months. It is needless to mention that the petitioner would be entitled to all other benefits flowing from the deemed date of promotion.

11. Rule is made absolute in the aforesaid terms, with no order as to costs.