

(2016) 01 BOM CK 0063
In the Bombay High Court
Case No : Writ Petition No. 11 of 2010

Pandurang R. Shet

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Citation : (2016) 01 BOM CK 0063

Hon'ble Judges : F.M. Reis and K.L. Wadane, JJ.

Bench : Division Bench

Advocate : V.A. Lawande, Advocate, for the Appellant; D. Lawande, Government Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

F.M. Reis, J.—1. Heard Mr. V.A. Lawande, learned counsel appearing for the petitioner and Mr. D. Lawande, learned Government Advocate appearing for the respondent nos. 1 to 4.

2. The above Writ Petition inter-alia prays for a writ of mandamus or direction to quash and set aside the impugned orders dated 07.09.2007 and 23.09.2009 and also a direction to the respondent No. 1 to grant regularisation with effect from the initial date of appointment and for other consequential benefits.

3. Briefly, the facts of the case are that the petitioner successfully completed three years of diploma course in Handloom Technology on 30.07.1979 and was appointed as a Master Craftsmen by the respondent No. 2 on 12.09.1979. The sanction was granted by the respondent No. 1 for creating the post of Master Craftsman, Technical Assistant (Design) for the development of the Handloom industry on 21.10.1980. The petitioner and the others had filed a Writ Petition No. 79/1990 before this Court inter - alia seeking for regularisation of their services with consequential benefits. The petitioner on the recommendations of the Departmental Selection Committee was appointed on ad-hoc basis to the post of Instructor, Grade - II (Handloom) w.e.f. 01.07.1991. Thereafter, on

20.09.1991 an order was passed by this Court in Writ Petition No. 79/1990 on the basis of the stand of the respondents that by order dated 01.07.1991, the petitioner along with the others had been appointed on ad-hoc basis and as such the petition was held to be infructuous. It is further contended by the petitioner that a false stand was taken that the post was created for the first time on 10.04.1991 and therefore, the petitioner was not entitled to back wages. It is further the contention of the petitioner that it thereafter revealed that such stand was a false statement. The petitioner has completed 12 years of continuous service in the post of Technical Assistant and, therefore, as per the Rules applicable, the petitioner is entitled to claim T.B.P.S. (now ACP 91 Scale) as per Vth Pay Commission. It is further the contention of the petitioner that the respondent No. 4 acknowledged this fact by a letter dated 10.12.2003. The respondent No. 3 thereafter granted sanction on 07.04.1993 for deputation of the petitioner to Nagpur for four months course in Handloom Cooperative Management. On 04.11.1996 the petitioner was granted one advance increment by the respondents and the post of Instructor, Grade - II (Handloom) was re-designated as Technical Assistant with the approval of the Government on 15.04.1998. The respondent No. 4 entrusted duties to the petitioner as a Technical Assistant of TCP Section on 03.02.1999 and proposed to the respondent No. 1 to upgrade the post of the Technical Officer to that of Assistant Director (TCH) on 28.10.1999. It is further the contention of the petitioner that sanction was accorded for deputation of the petitioner for training of Trainers Course on Rural Entrepreneurship Development for Rural Development at National Institute of Rural Development at Hyderabad. It is further the contention of the petitioner that the respondent No. 1 framed Rules to regulate the recruitment to Grade-B Gazetted Post in the Directorate of Industries & Mines on 01.02.2001 and the respondent No. 1 issued a tentative seniority list of the Technical Assistants (Handloom) as on 31.01.2001 and the petitioner is shown as the senior most. The respondent No. 4 wrote a letter to the respondent No. 2 to consider the repeated representations made by the petitioner and ultimately, the petitioner on 10.04.2002 made his grievance to the respondent No. 1 regarding the post of Technical Officer being kept pending since February, 2002. The petitioner thereafter wrote to the Special Secretary of the respondent No. 2 with a request to regularise the services with retrospective effect. Thereafter, by a letter dated 06.04.2004 the respondent No. 3 informed all concerned including the petitioner that all the matters of Technical Section shall be submitted by the Technical Assistants directly to the Assistant Director (Adm.). The respondent No. 3 recommended the upgradation of Pay Scale from Rs. 5500-9000 to Rs. 6500-10500 on 07.04.2005. The petitioner thereafter made a representation to the respondent No. 1 for regularisation with effect from 21.10.1980, grant of T.B.P.S. Scale of Rs. 6500-10500 w.e.f. 21.10.1992 and to consider the promotion to the post of Gazetted Group- B Technical Officer. The petitioner made representations to the respondent No. 1 and various authorities and ultimately, the Directorate of Industries referred the matter to the respondent No. 2 to consider the representations of the petitioner on 10.12.2005. The

petitioner furnished all the correspondences made by the petitioner to various authorities to the respondents in order to consider his case effectively and expeditiously. As a last resort, the petitioner issued a legal notice to the respondent nos. 1, 2 and 4 on 24.04.2006 and the respondent No. 1 revived the post of Technical Officer in the Pay Scale of Rs. 5500-9000 as Gazetted Group B post. The respondent No. 3 forwarded all the information required to the respondent No. 2 on 19.07.2006 but however, the petitioner did not receive any positive response from the respondents and according to the petitioner, he suffered injustice at the hands of the respondents as no Recruitment Rules were framed and as such the petitioner was not regularised. Being aggrieved, the petitioner filed a Writ Petition No. 514 of 2006 before this Court on 11.10.2006. On 28.03.2007 this Court has disposed of the said petition on an undertaking given by the Government Advocate that the petitioner's case will be considered for promotion, regularisation and T.B.P.S. Scale and directing the Government to pass a reasoned order within 12 weeks. The petitioner once again made a detailed representation to the respondent nos. 1 to 3 on 02.05.2007 stating all the relevant facts and ultimately, on 07.09.2007 the respondent No. 5 passed the impugned order holding that the petitioner is not entitled for the benefits prayed for since he was not found qualified and did not have the requisite qualifications and further stated that the regularisation with retrospective date and TBPS Scale cannot be granted. The petitioner thereafter made a representation drawing the attention of the respondent No. 5 to certain material aspects which were not considered while passing such order. Thereafter, on 12.12.2007 the petitioner promoted as a Technical Officer (TCP) Group- B Gazetted w.e.f. 24.12.2008 which ad-hoc promotion has been extended from time to time. The respondent No. 5 refused to reconsider the case and thereafter the Finance Department passed an order on 21.04.2008 stating that the matter has a judicial angle and the representation dated 09.10.2007 may be taken as an appeal and submitted to the Appellate Authority for a decision. Subsequently, on 23.09.2008 the Director opined that the petitioner is better qualified and suitable for the post of Technical Assistant than those actually selected by the DCP and it was further opined that the petitioner's request may be considered. After the preparation of marginal notes, the file was re-submitted to the Finance Department and as per the opinion of the Secretary, the file was ordered to be transferred to the Personal Department on 05.12.2008. The Under Secretary, referred the file to the Secretary (C.T.) on 27.12.2008. The Appellate Authority on 26.03.2009 passed an order holding that the petitioner shall be regularised as a Technical Assistant w.e.f. 01.10.1980 the initial date of appointment in the Scale of Rs. 425-700 and that the petitioner shall be granted Time Bound Promotional Scale after completion of 12 years of continuous service. The next promotional post is Technical Officer in the Scale of Rs. 5500-9000 (in the Vth Pay Commission Recommendation). The Secretary passed an order on 10.06.2009 that the matter is not a fit case of appeal and also observed that if the State Director of Craftsmen Training feels that any point left which was not considered in his order, he can decide the representation of the petitioner. After

making various rounds in various departments, the Assistant Director issued the impugned order on 23.09.2009.

4. The order dated 07.09.2007 inter-alia discloses that from 10.04.1991 the petitioner was appointed as Instructor Grade II (Handloom) on ad-hoc basis till 15.04.1998. After that the post of Instructor Grade II was re-designated as Technical Assistant in the Scale of Rs. 1400-2300 and he was regularised against the post of Technical Assistant w.e.f. 25.02.2000 after finalization of RRs for the said post. It was held that the prayers for regularisation with retrospective effect i.e. 21.10.1980 and his entitlement for TBPS Scale w.e.f. 21.10.1992 cannot be granted in view of the factual position but however, his prayer for promotion to the post of Technical Officer will be considered along with the other eligible candidates. On perusal of the order dated 26.03.2009, we find that it was held therein that the petitioner should be considered for TBPS Scale now ACP 1991 w.e.f. 21.10.1992 in the Pay Scale of Rs. 6500-10500 (Vth Pay Commission recommendation). It was further held that the petitioner had joined in the Union Territory of Goa, Daman and Diu on 01.09.1979 as a Master Craftsman. Thereafter re-designated as Technical Expert (Handloom) and later on Technical Assistant. It was further stated that same Recruitment Rules and Pay Scales were ought to be made applicable to the petitioner from the date of joining in the service i.e. 01.09.1979 which were applicable to the Central Government of India Employees. The State Director of Craftsman Training has noted on 28.08.2009 that the Department is once again of the opinion that injustice has been done to the petitioner and hence injustice required to be undone and therefore, it is of the opinion that the case of regularisation may be considered from 21.10.1980 from the date of his initial appointment and hence the file was sent to the Government for approval which ended in the impugned orders.

5. An affidavit in reply has been filed by the respondents. The affidavit discloses that the petitioner on his own admits that the petitioner was occupying the post of Instructor Grade II (Handloom) till 15.04.1998 by which date the said post was re-designated as Technical Assistant and as such disputes that the petitioner has completed 12 years of continuous service. The affidavit further discloses that a reasoned order was passed on 07.09.2007 in compliance with the order of this Court dated 28.03.2007 passed in Writ Petition No. 514 of 2006 and the petitioner was thereafter promoted by following due process of law by order dated 07.09.2007. It is further pointed out that the petitioner would be considered along with the other eligible candidates for promotion as the petitioner was coming in the zone of consideration for promotion. It is further stated that by order dated 12.01.2009 the extension of services of the petitioner to the post of Technical Officer was kept in abeyance for want of concurrence from the Goa Public Service Commission which was subsequently obtained and ad-hoc promotion of the petitioner was extended.

6. Affidavit in rejoinder came to be filed by the petitioner inter-alia stating that respondent No. 5 has denied his legitimate right at every step of his service life

and despite of clear recommendation in the year 1991 by DSC to regularise the petitioner to the post of Instructor Grade II, the regular appointment was denied and he was appointed on ad-hoc basis till 2000. He has further stated that despite of the policy decision of the Government to regularise such ad-hoc appointment within three months in the year 2001, the respondent recommended to appoint the petitioner on ad-hoc basis as Technical Officer. He has further stated that the respondents cannot be permitted to deny the eligibility at this stage of the petition as sought to be contended in the affidavit in reply. He has also stated that he has completed 12 years of continuous service as Technical Assistant from 21.12.1992. He has further stated that the respondent nos.1, 2, 4 and 5 had already accepted the grievances of the petitioner and they have admitted that the petitioner had suffered a lot of injustice during his service. He has further stated that he is eligible to get regularise from 21.10.1980 and also TBPS from 21.10.1992.

7. Upon hearing Mr. V.A. Lawande, learned counsel appearing for the petitioner and Mr. D. Lawande, learned Government Advocate appearing for the respondent nos. 1 to 4, the only point for consideration is whether the petitioner has to be regularised from the date of his original appointment in 1979 or 10.04.1991. On perusal of the records of the respondents and notings in the file produced on record, there were specific recommendations to the effect that injustice has been done to the petitioner which has to be undone. Though the Authority had recommended that the petitioner has to be regularised from the year of his original appointment on 01.09.1979 but however, it is not disputed by Mr. D. Lawande, learned Government Advocate appearing for the respondent No. 1 that there was a clear vacancy to the post occupied by the petitioner as on 10.04.1991. Even the DPC had recommended that the petitioner be appointed on regular basis by recommendations referred to herein above. But however, the respondents for reasons best known to them chose to grant ad-hoc appointment to the petitioner. In such circumstances, it is also to be noted that the petitioner has approached this Court on two occasions and his grievance was found to be prima facie genuine and directions were issued based on the admission of the learned Government Advocate that the representation of the petitioner would be examined in accordance with law. Despite of the decision of the Authority referred to herein above, we find that the petitioner has to be regularised from 10.04.1991 from the date when admittedly there was clear vacancy and the petitioner was recommended by the DSC. This fact has not been disputed by the learned Government Advocate appearing for the respondent nos.1 to 4.

8. In this connection, this Court in the judgment dated 01.09.2015 in the case of Shri S. Lekshmanan v. The Chief Electrical Engineer & Anr. in Writ Petition No. 283 of 2010, has observed at para 14 thus :

"14. The contention of Mr. Pangam, learned counsel appearing for the Petitioner to the effect that ad-hoc promotion should not be encouraged as it would affect the period of qualifying service for subsequent promotion would have to be

examined in the context that it is well settled that the promotion takes effect from the date it is granted and not from the date of occurrence of vacancy or creation of post. The ad-hoc services of the promotee in some circumstances cannot be treated as no-est merely because DPC was not consulted in respect of the continuous of ad-hoc services for a long period of time. In such circumstances, such period in specific circumstances can be examined as from the date when there is a clear vacancy to the promotional post and the promotee satisfies the eligibility and suitability criterion. Consequently, in the present case, we find that the Petitioner was working on ad-hoc basis to such post from the year 2005 and in fact, the petitioner satisfies the eligibility and suitability criterion for promotion from the year 2007 and as such, the Petitioner is entitled to be treated as promoted to the regular post as an Executive Engineer as on 2007. To that extent, the petition would succeed."

9. Taking note of the aforesaid observations and the records in the present petition, the petitioner is entitled to be regularised from 10.04.1991 when there was a clear vacancy to the concerned post. In such circumstances, we find that the petition succeeds in part and the impugned orders dated 07.09.2007 and 23.09.2009 deserve to be modified to the aforesaid extent.

10. In view of the above, we pass the following :

ORDER

"(i) The petition is partly allowed.

(ii) The impugned orders dated 07.09.2007 and 23.09.2009 stand modified to the aforesaid extent and the petitioner is regularised from 10.04.1991.

(iii) Needless to say, the petitioner shall be entitled to all the consequential benefits, including TBPS/ACP, if any, in accordance with law.

(iv) Rule is made absolute in the above terms with no order as to costs.

(v) The petition stands disposed of accordingly."