
(2002) 12 BOM CK 0044

In the Bombay High Court

Case No : Writ Petition No. 4868 of 1989 with Civil Application No's. 4472 of 1999 and 4469 of 2000

Ramchandra Shankar Jathar and Others

APPELLANT

Vs

Madhukar Patil and Others

RESPONDENT

Date of Decision : 09-12-2002

Acts Referred:

Citation : (2003) 1 ALLMR 694 : (2003) 2 BomCR 25 : (2003) 97 FLR 260 : (2003) 2 MhLj 199

Hon'ble Judges : V.G. Palshikar, J; V.G. Munshi, J

Bench : Division Bench

Advocate : C.S. Sargule, in Writ Petition and in C.A. 4472/1999, D.J. Deshmukh, for G.S. Godbole in C.A. No. 4469/2000, for the Appellant; Nitin Jamdar, S.S. Bendhe, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Palshikar, J.—The petitioners who are employees in the Zilla Parishad, Solapur have filed this petition challenging the action of the Zilla Parishad in reverting them in 1989 for the reason that they did not pass departmental examination in stipulated time as it was pre-condition of their promotion.

2. The petitioners had also agitated against their reversion before the Commissioner, Pune under which Solapur Zilla Parishad functions along with similarly situated employees of various Zilla Parishads and in June, 1989 the Commissioner, Pune issued a circular stating that because of non recognition of equivalent examinations necessary for promotion to the post of Senior Assistant (Accounts) persons promoted to that post should not be reverted only on the ground that they have not passed necessary departmental examination. However, this circular was not immediately available to the petitioners and this petition was filed.

3. In view of the order passed by the Commissioner, Pune in June, 1989 the

condition of passing departmental examination was not imposed or insisted upon and during the pendency of this petition all the petitioners were again promoted to the post of Senior Assistants (Accounts). The only question, therefore remains is whether petitioners are entitled to difference of wages from the date of reversion to the date of second promotion. Learned counsel appearing on behalf of the petitioners submitted that the reversion was wholly illegal and the petitioners have been unnecessarily made to suffer the indignity of reversion and monetary loss and therefore they are entitled to difference in backwages and that being the only relief that can be granted now. This submission was stoutly opposed by the learned Advocate for respondent 1 and he relied upon decision of this Court reported in the case of Satishkunar Gulabchand Jain v. Chief Personal Manager, Western Coal Fields Ltd. and Ors. 1997 (1) Mh.LJ. 45 and submitted that the petitioners having accepted the promotion subject to certain conditions viz. passing of departmental examination cannot after accepting the promotion turn around and say that condition was bad. They cannot approbate and reprobate at the same time. He also contended that the order of June, 1989 passed by Commissioner, Pune was in existence when the petition was filed on 31-7-1989 and therefore the petitioners cannot claim the difference in wages. The arguments of learned Advocate for respondent 1 are liable to be accepted. The petitioners cannot approbate and reprobate at the same time. They also had or should have had the knowledge of the circular/decision given by the Divisional Commissioner, Pune and consequently no error can be found with the order of reversion and their subsequent promotion.

4. Factually today all the petitioners have retired and are enjoying pensionary benefits and for this reason also there is no cause to interfere with the order which came to an end way back in 1991. The petitioners are not entitled to any difference of wages. Petition, therefore, fails and is dismissed. There will be no order as to costs.