
(2010) 01 BOM CK 0079
In the Bombay High Court
Case No : Writ Petition No. 678 of 2001

State of Maharashtra and Another

APPELLANT

Vs

Prabhakar Shivaji Wankhede and Others

RESPONDENT

Date of Decision : 04-01-2010

Acts Referred:

Citation : (2010) 2 ALLMR 136 : (2010) 1 BomCR 641

Hon'ble Judges : Naik Vasanti A., J; Bobde S.A., J

Bench : Division Bench

Advocate : B.H. Dangre, A.G.P, for the Appellant; V.M. Moon, Respondent No. 1, for the Respondent

Judgement

Bobde S.A., J.—The State of Maharashtra has challenged the order passed by the Maharashtra Administrative Tribunal, dated 2.11.2000 by which the Tribunal has granted deemed date of promotion to the respondent No. 1. According to the Tribunal, the respondent No. 1 ought to have been promoted as Police Head Constable/Assistant Police Sub Inspector w.e.f. 24.3.21989 and 1.10.1995 respectively, the dates on which, his juniors were promoted.

2. Smt. Dangre, the learned Additional Government Pleader for the petitioner/State submitted that the order of the Tribunal is erroneous in that it grants deemed date of promotions from dates when the petitioner could not have been promoted. Having heard the learned Counsel for the parties and going through the record, we find that there is no doubt that the respondent No. 1 who belongs Scheduled Caste Category has in fact been superseded in promotion to the post of Head Constable and Assistant Police Sub-Inspector, by other persons who were junior to whom and whose names are at Serial Nos. 6, 12, 23, 28, 29, 36, 39, 40 and 41 in the seniority list. This position is not disputed on behalf of the petitioner/State. However, what is seriously disputed by the learned Counsel appearing for the State is that the respondent could not have been granted deemed date of promotion from 24.3.1989 and 1.10.1995, respectively, i.e. the dates on which two other persons namely Ganesh Dalai and Shriram Jivtode,

who were respondent Nos. 3 and 4 before the Tribunal, were promoted. According to the learned Additional Government Pleader the aforesaid persons who were promoted, belonged to the Scheduled Tribe Category and the petitioner who was a Scheduled Caste candidate could not have been granted a deemed date of promotion with effect from the date these two persons were promoted. In other words, since the respondent No. 1 belonged to Scheduled Caste Category, he could not have been promoted on the dates when the aforesaid persons belonging to Scheduled Tribe Category were promoted. This contention on behalf of the petitioner deserves acceptance and we hold that the Tribunal's order is erroneous only to the extent it grants deemed date of promotion to the respondent No. 1, with effect from the date the two persons who belonged to Scheduled Tribe category were granted promotion as Head Constable and Assistant Police Sub-Inspector. That however, does not resolve the dispute between the parties. It is an admitted position that the persons belonging to the Scheduled Caste and junior to the respondent No. 1 have been promoted to the post of Police Head Constable and Assistant Police Sub-Inspector.

3. Shri Moon, the learned Counsel for the respondent No. 1 submitted that such persons who were members of Scheduled Caste category and who were junior to the respondent No. 1, were promoted earlier to him and they are the persons at serial Nos. 6, 12, 23, 28, 29, 36, 39, 40 and 41, in the seniority list. The Tribunal could have granted the deemed date from the date on which these persons superseded the respondent No. 1 as Head Constable and Assistant Police Sub-Inspector.

4. Smt. Dagle, the learned Additional Government Pleader for the petitioner, however, submitted that this was not put in issue by the respondent No. 1 before the Maharashtra Administrative Tribunal, but he claimed relief only as against the respondents No. 2 & 3 herein, who were junior to the respondent No. 1, and who were members of Scheduled Tribe category, though he had alleged super session by member belonging to the Scheduled Caste as well. This submission on behalf of the State appears to be correct. It also appears that the dates of promotions and the roster point at which the persons were promoted, were not before the Tribunal. Since the necessary facts from which super session of the respondent No. 1 by person belonging to the Scheduled Caste could have been inferred before the Tribunal, were not before the Tribunal, it will be in the interest of justice to remand the matter.

5. In these circumstances, we consider it proper to set aside the order of the Tribunal and remand the matter back to the Tribunal for fresh adjudication in accordance with law. The Tribunal shall determine the dates on which such members of the Police Force belonging to Scheduled Caste Category were promoted to the post of Head Constable and Assistant Police Sub Inspector with regards to the roster points. The petitioner/State shall furnish all the necessary material to the Tribunal for such determination. After such determination having regard to the roster, the Tribunal shall grant a deemed date of promotion to the

respondent No. 1 from the date he was superseded in promotion to the post of Head Constable and Assistant Police Sub Inspector by such members of the Scheduled Caste who were juniors to him. The Tribunal shall decide the matter within a period of six months from the date the parties appear before it. Parties are directed to appear before the Tribunal on 14.1.2010. Writ petition stands disposed of.