

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 315 OF 2019  
(Subject – Deemed Date of Promotion)**

**DISTRICT : NANDED**

**Jeevan S/o Govindrao Shinde,** )  
Age : 58 years, Occu. : Librarian, )  
Govt. Polytechnic, Nanded, )  
R/o. Pushnagar, Nanded, Tq. & Dist. Nanded.)

.... **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through The Secretary, )  
Higher and Technical Education )  
Department, Mantralaya, Mumbai -32.)
2. **The Director,** )  
Technical Education Department, )  
Maharashtra State, 3, Mahapalika Road,)  
Post Box No. 1967, Mumbai 400 001. )
3. **The Joint Director / Divisional Director,)**  
Technical Education Department, )  
Divisional Office, Aurangabad. )  
Near to Govt. Polytechnic, Osmanpura,) )  
Post Box No. 516, Aurangabad. )
4. **The Principal,** )  
Government Polytechnic, Nanded, )  
Veer Savarkar Marg, Baba Nagar, Nanded.)
5. **Vilas Rajaram Deshmukh,** )  
Age : 59 years, Occu.: Retired Librarian,) )  
R/o. At present r/o Government )  
Engineering College, Jalgaon (M.S.) )  
At, Post, Tal. & Dist. Jalgaon (M.S.) )

**...RESPONDENTS**

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**APPEARANCE** : Shri S.L. Bhapkar, Advocate for the Applicant.

: Shri V.R. Bhumkar, Presenting Officer for Respondent Nos. 1 to 4.

: Shri M.M. Bhokarikar, Advocate for respondent No. 5, **absent**.

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**CORAM** : **SHRI V.D. DONGRE, MEMBER (J).**

**DATE** : **21.12.2022.**

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**ORDER**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the impugned order / communication dated 29.12.2018 (Annexure-F) issued by the respondent No. 1 i.e. the Desk Officer, State of Maharashtra, Higher and Technical Education Department, Mumbai and consequential communication dated 16.01.2019 (Annexure-G) issued/ passed by the respondent No. 2 i.e. the Director, Technical Education Department, Mumbai, thereby rejecting the claim of the applicant regarding deemed date of promotion for the post of Librarian as of 13.12.1990 and consequently claiming deemed date of promotion and consequential service benefits, as

well as, retirement service benefits by considering the deemed date of 13.12.1990.

2. The facts in brief giving rise to this Original Application can be summarized as follows :-

(i) Undisputedly, the applicant came to be appointed initial as Assistant Librarian in the Government Polytechnic, Latur as per the appointment order dated 07.07.1986 (part of Annexure-A collectively). The applicant joined on the said post on 21.07.1986. Thereafter, the applicant was promoted on the post of Librarian by the promotion order dated 16.10.1997 (part of Annexure-A collectively).

(ii) Further it is an undisputed fact that the respondent No. 5 i.e. Vilas Rajaram Deshmukh was initially appointed as Assistant Librarian on 03.09.1986 (part of Annexure-B Collectively) and was posted at Government Polytechnic, Dhule. The date of appointment of respondent No. 5 is subsequent to the date of appointment of the applicant to the post of Assistant Librarian. The respondent No. 5, however, has been promoted to the post of Librarian by the promotion order dated 13.12.1990 (part of Annexure-B

Collectively). The applicant is seeking deemed date of promotion of 13.12.1990 as that of respondent No. 5 by raising following pleadings :-

(a) The applicant and respondent No. 5 were posted on the post of Assistant Librarian respectively at Government Polytechnic, Latur and Government Polytechnic, Dhule. In view of that, the applicant was not knowing about the promotion given to the respondent No. 5 on 13.12.1990 to the post of Librarian. The respondents published the common State Level Seniority List of Librarian serving with the respondents in various Government Engineering Colleges and Diploma level institutes in the year 2000, whereby the name of respondent No. 5 was appeared being promoted by the order dated 13.12.1990. For the first time the said fact came to the knowledge of the applicant that the respondent No. 5, who is junior to him was promoted on 13.12.1990, whereas the applicant was promoted latter on i.e. by the order dated 16.10.1997 as stated earlier. The applicant got promotion to the post of Librarian after delay of about 6 years and 10 months from the date of promotion of respondent No. 5.

(b) In view of above the applicant made representations dated 20.09.2001 and 06.12.2001 (part of Annexure-C collectively) to the respondent No. 2 i.e. Director, Technical Education Department, Mumbai through proper channel seeking deemed date of promotion of 31.12.1990 and consequential service benefits. The respondent No. 2 forwarded those representations to the respondent No. 1 for necessary action. Thereafter during the period from July, 2002, he persuaded his said request till 2018 by making various representations during the said period, which are produced under Annexure-C collectively. All those representations were sent by the respondent No. 2 to the respondent No. 1 by making favourable remark of granting deemed date to the applicant as claimed by him. Thereafter, also the applicant said to have sent representation dated 26.09.2018 (Annexure-D) to the respondent Nos. 1 to 3 seeking deemed date of promotion and consequential benefits by RPAD.

(c) The applicant came to know that the respondent No. 2 forwarded his representation dated 29.08.2018 (Annexure -E) to the respondent No. 1 along with proposal for taking decision on the claim of the applicant for grant of deemed

date and consequential benefits by making favourable recommendation. However, thereafter, the respondent No. 1 by the impugned communication / order dated 16.01.2019 (Annexure-G) issued to the respondent No. 2 informed that the deemed date as prayed for by the applicant cannot be granted to him, since the respondent No. 5 was temporarily promoted on the post of Librarian on 13.12.1990 and reference was given of para No. 3 of the G.R. dated 21.08.2015 (Annexure-H) for rejecting the claim.

(d) It is further contention of the applicant that the impugned order / letter dated 16.01.2019 is not tenable in law. Promotion given to the respondent No. 5 on the post of Librarian cannot be said to be temporary promotion. In fact, after his promotion on 13.12.1990, the respondent No. 1 has got higher pay scale on 12.02.2002, advanced higher grade pay scale on 11.11.2011, as well as, revised grade pay scales as per 5<sup>th</sup> Pay Commission w.e.f. 01.01.1996 and higher grade pay scale as per G.R. dated 04.02.2008 w.e.f. 23.10.2008. Not only this, but while extending all these benefits to the respondent No. 5 the General Administration and Finance Department of State of Maharashtra have given sanction. The respondent No. 5

thereafter retired on superannuation in the year 2018 from the post of Librarian and thereafter his pension and all other retirement benefits are computed by considering his post of Librarian at the time of his retirement.

(e) The applicant has produced on record various Circulars, Rules and Regulations, Notification being Government Circular dated 14.09.1982, Maharashtra Civil Services (Regulation of Seniority), Rules, 1982, Government Circular dated 11.06.1993 and Government Circular dated 13.12.1993 (Annexure-I Collectively). Hence, the present Original Application.

3. The present Original Application is resisted by filing affidavit in reply on behalf of respondent Nos. 1 to 4 by one Shri Mahesh Dattopant Shivankar, working as I/c Joint Director Technical Education, Regional Office, Aurangabad, thereby he denied all the adverse contentions raised in the O.A. However, it is not disputed that the respondent No. 5 though junior to the applicant at the entry level of Assistant Librarian, the respondent No. 5 was promoted by the order dated 13.12.1990 on the post of Librarian and the applicant was promoted to that post subsequently by the order dated 16.10.1997. The claim of the

applicant, however, is resisted by contending that though the post of Librarian is of State Cadre post, the respondent No. 5 was wrongly given promotion on divisional level. At the relevant time the respondent No. 5 was working in Government Polytechnic, Dhule, falling under Nashik Division, whereas the applicant was working in Government Polytechnic, Latur, falling under Aurangabad Division. Moreover, it is contended that as per the promotion order dated 13.12.1990, the divisional office, Nashik gave temporary promotion to the respondent No. 5 on trial basis. His said promotion was wrongly continued. Modified Recruitment rules to the post of Librarian are already under consideration of the State Government, as the earlier recruitment rules were framed long back i.e. on 05.12.1970, after which various changes have occurred. The impugned order of rejection of claim of the applicant as per letter dated 16.01.2019 (Annexure-G) is legal and proper in view of the clause No. 3 of the G.R. dated 21.08.2015 (Annexure-H). It is also stated that the time bound promotion benefits are given to the eligible employee as per the Finance Department G.R. dated 08.06.1995. Hence, the present Original Application is liable to be dismissed.



4. The applicant filed rejoinder affidavit denying all the adverse contentions raised in the affidavit in reply reiterating the contentions raised by him in the O.A.

5. During the course of arguments, it was revealed that the State level seniority list of the post of Assistant Librarian and Librarian were prepared in the year 2000. Those documents, however, were produced by the applicant along with the present O.A. The applicant was allowed to produce those documents along with short affidavit.

6. By amending the present Original Application, the applicant has raised pleadings that the applicant retired on superannuation w.e.f. 31.07.2020. According to him he is also entitled for consequential retirement benefits considering the deemed date of promotion of 13.12.1990 and accordingly he has prayed for said additional relief. The relief claimed by the applicant in detail are as follows :-

*“B) By issuing appropriate order or directions, the impugned order / letter dated 16.01.2019 (Exh. G) issued / passed by Joint Director of respondent No. 2, The Director, Technical Education, Department, Maharashtra State, 3, Mahapalika Road may kindly be quash and set aside.*

C) *By issuing appropriate order of direction, the impugned order / letter dt. 29.12.2018 (Exh.F) issued / passed by Desk Officer, of respondent No. 1, The State of Maharashtra, Through the Secretary, Higher and Technical Education Department, Mantralaya, Mumbai-32 may kindly be quash and set aside.*

D) *By issuing appropriate order or directions, the respondent No. 1 to 4 be directed to grant deemed date of 13.12.1990 to the applicant for his promotional post of librarian and to grant all the consequential benefits to that regards including all monitory benefits of arrears of salary, allowances and increments with all other applicable monitory and consequential benefits within one month from today.*

D-1) *By issuing appropriate order, the respondent No. 1 to 4 be directed to give all consequential service benefits as well as retirement benefits by considering deemed date 13.12.1990 for his promotion forthwith.”*

7. I have heard the arguments advanced by Shri S.L. Bhapkar, learned Advocate for the applicant on one hand and Shri V.R. Bhumkar, learned Presenting Officer for the respondent Nos. 1 to 4 on the other hand. Shri M.M. Bhokariker, learned Advocate for respondent No. 5, **absent**.

8. After having considered the rival pleadings and documents on record, it is evident that undisputedly the applicant initially was appointed to the post of Assistant Librarian by the order dated 07.07.1986 and pursuant to that the applicant joined the Government Polytechnic, Latur on 21.07.1986. The respondent No. 5 was appointed on the post of Assistant Librarian by the order dated 03.09.1986 and hence, this is substantiated by the applicant by producing on record the documents i.e. appointment orders and seniority list of Assistant Librarian. Further it is an admitted position that the respondent No. 5 was junior to the applicant in the cadre of Assistant Librarian. The respondent No. 5 was promoted to the post of Librarian as per the order dated 13.12.1990 (part of Annexure-B collectively). The said order was issued by the office of Deputy Director, Technical Education Office, Nashik. The said promotion order was of temporary nature and that promotion was at divisional level. The applicant was however, promoted to the post of Librarian only by the order 16.10.1997 (Annexure-A collectively), which was issued by the respondent No. 2 i.e. the Director, Technical Education Department, Mumbai, which is at State level.

9. The applicant came to know about the promotion order of respondent No. 5 only after preparation and publication of

seniority list of the Librarian at State Level in the year 2000. This position is not disputed by the respondents. In view of that the applicant said to have made various representations to the respondent No. 2 through proper channel seeking deemed date of promotion as 13.12.1990 as that of respondent No. 5 and consequential benefits. In that regard voluminous copies of documents are produced by the applicant, which are Annexure-C collectively at page Nos. 33 to 96 of the paper book.

10. In the affidavit reply filed on behalf of respondent Nos. 1 to 4 no any comment or explanation have been offered. In view of the same, in order to appreciate the claim of the applicant, perusal of those documents is necessary.

11. Perusal of those documents at Annexure-C collectively would show that the various representations made by the applicant to the respondent No. 2 through proper channel during the period of 2001 to 2018. Receipt of those representations is not disputed by the respondents. Further it reveals that in fact the proposals dated 25.12.2008 (page Nos. 49 & 50 of the paper book) and 07.01.2009 (page No. 51 of the paper book) were sent to the respondent No. 1 recommending deemed date as that of respondent No. 5 being 31.12.1990, on which date the

respondent No. 5 joined on the concerned post of Librarian pursuant to the promotion order dated 13.12.1990 (Annexure-B collectively).

12. Perusal of those documents further disclosed that the respondent No. 1 addressing the letter dated 27.07.2009 (page Nos. 55 to 56 of paper book) to the respondent No. 2 opined that the promotion given to the respondent No. 5 was of temporary nature, but in the seniority list of the post of Librarian published on 26.04.2000 showed the regular date of promotion of respondent No. 5 as 31.12.1990, which has no basis. It was further observed that there were irregularities in showing the respondent No. 5 as regular promotee and information was called for fixing the responsibility of the concerned officers.

13. Further again respondent No. 2 by the letter dated 10.11.2010 (page Nos. 59 and 60 of the paper book) recommended the deemed date of 31.12.1990 to the applicant. In further correspondence dated 14.05.2013 (page Nos. 73 to 74) addressed by the respondent No. 2 to the respondent No. 1 it is admitted that mistake is being committed while showing the respondent No. 5 as regular promotee. Further correspondence was exchange between the respondent No. 2 and respondent No.

1 regarding setting the irregularity. However, ultimately it appears that no any action is being taken against any of the officers and it is also observed that the documents are also not available. This went on till February, 2015.

14. Thereafter, the applicant by making application sought documents under Right to Information Act, those documents are at Annexure-C collectively. He again made representation dated 26.09.2018 (Annexure-D) to the respondent Nos. 1 to 3 seeking deemed date of promotion of 31.12.1990 and consequential service benefits. In that regard, the respondent No. 2 by communication dated 29.08.2018 (Annexure-E) rejected the application of applicant regarding deemed date and consequential benefits. Ultimately, the respondent No. 1 by communication dated 29.12.2018 (Annexure-F) addressed to the respondent No. 2 communicated that the claim of the applicant for claiming deemed date of promotion in the cadre of Librarian w.e.f. 31.12.1990 cannot be granted in view of clause No. 3 of the G.R. dated 21.08.2015 issued by the General Administration Department, which is as follows :-

“३. प्रशासकीय विभागाने या विभागप्रमुखाने सरळसेवेच्या कोट्यातील पदावर अथवा तदर्थ स्वस्यात दिलेल्या पदोन्नीचा दिनांक हा मानीव दिनांक म्हणून देण्यास मान्यता देऊ नये वा असे प्रस्ताव सामान्य प्रशासन व वित्त विभागांच्या मान्यतेसाठी सादर करण्यात येऊ नयेत.”

15. The respondent No. 2 in turn communicated the decision of respondent No. 1 to the respondent No. 3 by the impugned communication dated 16.01.2019 (Annexure-G), which is also served on the applicant, which is impugned in the present Original Application. In effect what is impugned in the present Original Application is above-said letter/ communications dated 29.12.2018(Annexure-F) and 16.01.2019 (Annexure-G).

16. It is true that as per the order dated 13.12.1990 (part of Annexure-B collectively), the respondent No. 5 was promoted to the post of Librarian on temporary and trial basis. However, temporary seniority list of the cadre of Librarian as of 31.12.1999 is produced on record at page Nos. 146 to 151 of the paper book, which would show that name of the respondent No. 5 i.e. Shri Vilas Rajaram Deshmukh, was shown at Sr. No. 27 in the said seniority list. In the column of appointment date in that category it is shown as 31.12.1990, whereas the name of the applicant appears at Sr. No. 33 in the said seniority list showing date of appointment in that category as 23.10.1997. Same position is maintained in subsequent final seniority list as of 01.01.2012, which is at page Nos. 156 to 160 of the paper book.

17. The applicant came out with a case that though the respondent No. 5 in promotion order was shown to be temporarily promoted to the post of Librarian, the said respondent No. 5 got all the service benefits of the post of Librarian from time to time and the respondent No. 5 retired on superannuation from the post of Librarian in the year 2018 and he is getting pension of the retired post of regular Librarian post. This contention raised on behalf of the applicant is not disputed by the respondents. The respondents are only saying that the respondent No. 5 was given promotion wrongly on divisional level and not on the State level and there is nothing on record to show that the promotion of respondent No. 5 was regular promotion.

18. In this regard, it is however pertinent to note here that the respondent No. 2 though opined that laxity, irregularity committed by the certain officers while issuing order of promotion of respondent No. 5 as regular promotee, no any action has been initiated against any such erred officials. The respondent No. 5 admittedly has got all the benefits attached to the post of Librarian even after retirement.

19. It is true that the Clause 3 of the G.R. dated 21.08.2015, which is reproduced earlier is mentioned in the impugned



communication. However, factual position in that regard is that the said respondent No. 5 has been granted all the benefits, as if he is regular promotee. In view of the same, in my considered opinion, there is no substance in the contentions sought to be raised on behalf of respondents that the clause No. 3 of the G.R. dated 21.08.2015 would be applicable in the present case. The record in that respect of respondent No. 5 is otherwise.

20. Learned Advocate for the applicant to fortify the claim of deemed date placed on record the decision of the Co-ordinate Bench of this Tribunal at Mumbai dated 26.4.2022 in O.A. No. 50/2021 in the matter of Shri Arun Narayan Bhalchandra Vs. The Additional Chief Secretary and Anr, that was also the case of entitlement of deemed date of promotion with all consequential service benefits. In para No. 16 is observed as follows :-

*“16. It is well settled that when promotion is granted with retrospective effect, the benefit flowing therefrom including monetary benefits has to be extended to an employee who has been deprived of promotion for no fault on his part and principle of ‘no work no pay’ cannot be applied as a rule of thumb. Where a Government servant was eligible and willing to work on promotional post, he cannot be kept away from promotional post. In the present case, it is explicit that Applicant is kept away from promotional post due to lethargy and inaction on the part of Respondents to take timely steps for promotion of the Applicant to the post of Joint Commissioner of Transport. In other words,*

*fault lies with the Respondents in not utilizing the services of the Applicant of the promotional post and it had caused financial loss to the Applicant for no reason or fault on his part. In this behalf, it would be apposite to refer certain decisions holding the field that the principle of 'no work no pay' cannot be attracted as a rule of thumb.*

*“(i) **AIR 2015 SC 2904 (Ramesh Kumar Vs. Union of India)** wherein the Hon’ble Supreme Court held that in normal circumstances when retrospective promotions are effected, the benefit flowing therefrom including monetary benefits must be extended to an employee who has been denied promotion earlier and the principle ‘no work no pay’ cannot be accepted as a rule of thumb and matter needs to be considered on case to case basis. In Para No.13, the Hon’ble Supreme Court held as follows :*

*“13. We are conscious that even in the absence of statutory provision, normal rule is “no work no pay”. In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of “no work no pay” would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority alongwith his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.”*

*In this case, the Hon’ble Supreme Court also referred to its earlier decision in **AIR 2007 SC 2645 (State of Kerala Vs. E.K. Bhaskaran Pillai)** wherein it was held that the principle of ‘no work no pay’ cannot be accepted as a rule of thumb and the matter will have to be considered on*

case to case basis. In **Bhaskaran Pillai's** case, the Hon'ble Supreme Court in Para No.4 held as follows :-

*"4. We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."*

(ii) **(2016) 16 SCC 663 (Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigam Limited)**. In that matter, the order of retirement was challenged. The Hon'ble Punjab and Haryana High Court set aside the retirement order. However, the monetary benefits were refused on the principle of 'no work no pay'. However, when the matter was taken up before Hon'ble Supreme Court, the monetary benefits/back-wages were granted on the ground that the principle of 'no work no pay' cannot be applied where fault lies with the Respondents in not having utilized the services of the Appellants for the period

from 01.01.2003 to 31.12.2005. In Para No.3, the Hon'ble Supreme Court held as follows :-

*“3. Having given our thoughtful consideration to the controversy, we are satisfied, that after the impugned order of retirement dated 31.12.2002 was set aside, the appellant was entitled to all consequential benefits. The fault lies with the respondents in not having utilised the services of the appellant for the period from 1.1.2003 to 31.12.2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1.1.2003 to 31.12.2005, the respondent cannot be allowed to press the self-serving plea of denying him wages for the period in question, on the plea of the principle of “no work no pay”.*

*(iii) (1991) 4 SCC 109 (Union of India and Ors. Vs. K.V. Jankiraman).* Para No.25 of the Judgment is relied upon, which is as follows :

*“25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of “no work no pay” is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.”*

*(iv) Judgment of Hon'ble Bombay High Court in **Writ Petition No.6794/2018 (State of Maharashtra Vs. Smt. Manda Deshmukh) decided on 14th September, 2018.** This Writ Petition was filed challenging the Judgment passed by this Tribunal in O.A.1010/2016 decided on 06.04.2017. In this O.A, the monetary benefits were refused relying upon Rule 32 of ‘Rules 1981’. The Tribunal referred to the decisions in **Jankiraman’s** case and **Ramesh Kumar’s** case (cited supra) and held that*

*the principle 'no work no pay' will not apply where an employee was illegally deprived of the opportunity to work upon such a post. The decision rendered by this Tribunal has been confirmed by Hon'ble High Court in Writ Petition No.6794/2018 with modification to the extent of interest.*

*(v) Same view was taken granting pay and allowances for the period from deemed date of promotion by this Tribunal in **O.A.No.102/2017 (Ashok Khamkar Vs. Commissioner of Police) decided on 17.05.2019.***

*(vi) **AIR 2007 SC 3100 (The Commissioner, Karnataka Housing Board Vs. C. Muddaiah)** wherein the employer had raised the issue of no work no pay, which was turned down by Hon'ble Supreme Court in following words :-*

*“We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a Court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the Authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected.”*

21. In the background of the above-said decision, if the facts of the present case are considered, it can be seen that in the case in hand the applicant is senior to the respondent No. 5 in the cadre

of Librarian. The promotion of the respondent No. 5 was wrongly given by order dated 13.12.1990 on considering the seniority at Divisional level i.e. Nashik Division. The post of Librarian is State level cadre post. In view of that obviously the applicant was entitled to be considered for the post of Librarian, when it fell vacant and the respondent No. 5 was appointed on that post by the order dated 13.12.1990. Nothing is placed on record that the applicant was not eligible for that post, when the respondent No. 5 was promoted by the responder dated 13.12.1990. In view of the same, it is evident that though the applicant was senior to the respondent No. 5 in the cadre of Assistant Librarian, he was not considered for promotion, so promotion was denied to him at that point of time for no fault on the part of the applicant. In fact, it can be said that the promotion was denied to the applicant due to wrong criteria of divisional level applied by the concerned officer, resultantly legitimate promotion was denied to the applicant by the administrative fault and not due to any fault of the applicant.

22. As regards granting deemed date and consequential service benefits, the applicant has placed on record relevant documents. Those documents are the Government Circular dated 14.09.1982 (Annexure-I, page No. 111 of the paper book), in which the

reference of Government Circular dated 25.02.1965 has been given. Relevant portion of the said Circular is as follows :-

**“परिपत्रक झापन**

शासनाच्या सामान्य प्रशासन विभाग, क्र.एसआरव्ही-१०७९/१२, दिनांक २४.१०.७९ च्या परिपत्रक झापनानुसार असे आदेश देण्यात आले आहेत की, एखाद्या प्रकरणी जर कर्मचा-यांच्या पदोन्नतीस प्रशासकीय कारणास्तव विलंब झाला असेल, तर त्याला पदोन्नतीचा त्याच्या निकटच्या कनिष्ठ कर्मचा-यांच्या प्रत्यक्ष पदोन्नतीच्या दिनांकाच्या आधारे मानीव दिनांक देण्यात यावा, आणि त्यास शासन परिपत्रक झापन, सामान्य प्रशासन विभाग, क्रमांक.एसआरव्ही/१०६४-डी, दिनांक २५.२.१९६५ मधील परिच्छेद ३ मधील आदेशानुसार त्या पदाचे देय वेतन व भत्ते थकबाकीसह देण्यात यावे. या आदेशाच्या संदर्भात विस्ताराने स्पष्टीकरण करतांना शासन असे स्पष्ट करते की, जर प्रशासकीय विलंब तीन महिन्यापेक्षा अधिक कालावधीचा असेल तरच परिपत्रकांमध्ये आदेशीत केल्याप्रमाणे संबंधीत कर्मचा-यास पदोन्नतीचा मानीव दिनांक आणि परिणामी देय वेतन व भत्ते यांचा फायदा थकबाकीसह देण्यात यावा.

२. शासन आणखी, असा खुलासा करीत आहे की जर कनिष्ठ कर्मचा-यांना प्रशासकीय कारणास्तव थोड्या कालावधीसाठी आकस्मिक (Fortuitous) पदोन्नती देण्यात आल्या असतील तर अशा प्रकरणी वरील संदर्भाधीन आदेश लागू होणार नाहीत.”

He further placed reliance on Government Circular dated 11.06.1993 (page No. 116 of the paper book), where there is a reference of earlier Government Circular dated 25.02.1993.

Relevant portion of the said Circular is as follows :-

**“शासन परिपत्रक**

शासन सेवेतील कर्मचारी / अधिकारी यांना पदोन्नतीच्या संदर्भात डावलले गेले असल्याचे निश्चित झाले तर त्यांना पदोन्नतीचा मानीव दिनांक देण्याबाबत विचार करण्यात येतो. मानीव दिनांक देण्याबाबतची प्रकरणे वर नमूद केलेल्या परिपत्रकानुसार तपासावयाची असतात. वर नमूद केलेल्या दिनांक १० मार्च, १९६० च्या परिपत्रकातील तरतुदीप्रमाणे जर तात्पुरत्या ज्येष्ठता यादीच्या आधारे पदोन्नती दिली असेल आणि ती ज्येष्ठता यादी अंतिम केल्यानंतर त्या ज्येष्ठतेनुसार जर कनिष्ठ व्यक्तीला अगोदर नियमित स्वरूपाची पदोन्नती दिली असेल तर ज्येष्ठ व्यक्तीला पदोन्नतीचा मानीव दिनांक दिला जातो.

मात्र वेतन निश्चितीच्या फरकांचे लाभ दिले जात नाहीत. दिनांक २५ फेब्रुवारी, १९६५ च्या परिपत्रकातील तरतुदींच्या आधारे ज्येष्ठता यादीमधील ज्येष्ठ व्यक्तीला चुकीने अधिक्रमण करून कनिष्ठ व्यक्तीला नियमित स्वरूपाची पदोन्नती दिली असेल तर मानीव दिनांक दिला जातो. या प्रकरणी ज्या व्यक्तीला मानीव दिनांक दिला असेल त्याला वेतननिश्चितीचे फायदे फरकासहित दिले जातात.

२. मानीव दिनांक देण्याबाबतची प्रकरणे मंत्रालयीन प्रशासकीय विभागांनी, सामान्य प्रशासन विभाग आणि वित्त विभाग यांच्या परामर्शाने निकाली काढणे आवश्यक आहे. कारण अशा प्रकरणी एकाच पदाचे वेतन दोन व्यक्तींना देण्याची शक्यता निर्माण होत असते. तसेच पदोन्नती नियमित स्वरूपाची नसेल तर मानीव दिनांक देण्याबाबतचा निर्णय घेणे अयोग्य असते. यामुळे मानीव दिनांक देण्याबाबतची प्रकरणे सखोल परिक्षणानंतर निकाली काढणे आवश्यक आहे. परंतु या विभागाच्या असे निर्दर्शनास आले आहे की, मानीव दिनांक देण्याबाबतची प्रकरणे विभाग प्रमुख स्तरावर तपासली जावून निर्णय घेतले जातात. हे निर्णय वर नमूद केलेल्या परिपत्रकातील तरतुदींप्रमाणे नसल्याचेही अढळून आले आहे. म्हणून मानीव दिनांक देण्याबाबतच्या प्रकरणी शासन आता असे आदेश देत आहे की, मानीव दिनांक देण्याबाबतचा प्रकरणे मंत्रालयीन विभागांना परस्पर निकाली काढू नयेत, मंत्रालयीन विभागांनी अशा प्रकरणांची प्राथमिक छाननी करावी व याबाबतच्या प्रस्तावांना सामान्य प्रशासन विभाग आणि वित्त विभाग यांनी आवश्यक मंजूरी दिल्यानंतरच या संबंधीचे आदेश निर्गमित करावेत.

३. सर्व मंत्रालयीन विभागांनी शासनाचे सदर आदेश त्यांच्या अखत्यारीतील विभाग प्रमुख आणि कार्यालय प्रमुख यांच्या निदर्शनास आणावेत. तसेच विभाग प्रमुख स्तरावर मानीव दिनांक देण्याबाबत जर यापूर्वी काही आदेश असतील तर ते आदेश या निर्णयानुसार अधिक्रमित ठरतील.

४. शासन अधिसूचना, , सामान्य प्रशासन विभाग, क्रमांक.एसआरव्ही १०७६/१२, दिनांक २१ जून, १९८२ अन्वये ज्येष्ठता विनियम विहित करण्यात आले आहेत. त्यामधील नियम ५(१) मधील सक्षम प्राधिकारी याऐवजी आवश्यक ती दुरुस्ती करण्याची कार्यवाही वेगळी करण्यात येत आहे. तोपर्यंत मानीव दिनांक प्रस्ताव या आदेशानुसार तपासण्यात यावेत.”

He further placed reliance on Government Circular dated 06.06.2002 issued by the G.A.D. State of Maharashtra.

Those Circular would show that in case of fortuitous and / or temporary promotion, deemed date cannot be given to the



senior Government servant, who has claimed it. However, in the case in hand, the said clause is not applicable. Similar clause No. 3 was also there in the G.R. dated 21.08.2015, which stated about the ad-hoc promotion. That is also not applicable to the applicant for the reasons already stated.

23. In totality of circumstances, in my considered opinion, the applicant has established the case for relief of deemed date of promotion of 31.12.1990 as that of his junior i.e. respondent No. 5 in the cadre of Librarian. In the circumstances, the applicant would be entitled for relief of deemed date together with all consequential service benefits including the pension and pensionary benefits. I therefore, proceed to pass the following order :-

**ORDER**

The Original Application is allowed in following terms :-

(i) The impugned order / communication dated 29.12.2018 (Annexure-F) issued by the respondent No. 1 i.e. the Desk Officer, State of Maharashtra, Higher and Technical Education Department, Mumbai and consequential communication dated 16.01.2019 (Annexure-G) issued by the respondent No. 2 i.e. the

Director, Technical Education Department, Mumbai, are hereby quashed and set aside.

(ii) The applicant is declared entitled for deemed date of promotion to the post of Librarian w.e.f. 31.12.1990 with all consequential service benefits.

(iii) The respondents are directed to release consequential service benefits in the terms of monetary benefits within a period of two months from the date of this order, failing which respondents will have to pay interest @ 8% p.a. from the date of order till actual payment.

(iv) There shall be no order as to costs.

**PLACE : AURANGABAD.**  
**DATE : 21.12.2022.**

**(V.D. DONGRE)**  
**MEMBER (J)**

**KPB** S.B. O.A. No. 315 of 2019 VDD Deemed date of promotion