

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 934 OF 2018

DIST. : AURANGABAD

Sulochana wd/o Kamlakar Jadhav,)
Age. 75 years, Occu. Household,)
R/o House No. 379, Avishkar Colony,)
N-6, Cidco, Aurangabad.) -- APPLICANT

VERSUS

1. The State of Maharashtra,)
Through : Secretary,)
Social Justice & Special)
Assistant Department,)
Mantralaya, Mumbai - 32.)

2. The Commissioner,)
Social Welfare Commissionrate,)
Maharashtra State,)
3 Charchpath, Pune 411 001.)

3. The Regional Dy. Commissioner,)
Social Welfare Department,)
Aurangabad.)

4. Assistant Commissioner,)
Social Welfare Department,)
Aurangabad.) -- RESPONDENTS

APPEARANCE :- Shri K.B. Jadhav, learned Advocate for the
applicant.

: Smt. Priya R. Bharaswadkar, learned
Presenting Officer for the respondents.

CORAM : Hon'ble Shri B.P. Patil, Acting Chairman

RESERVED ON : 16th January, 2020

PRONOUNCED ON : 20th January, 2020

ORDER

1. The applicant has challenged the order dated 20.3.2018 issued by the respondent no. 2 thereby rejecting her claim to grant the benefits of time bound promotion scheme to her deceased husband and the communication dtd. 21/25.3.2018 issued by the respondent no. 3 and the communication dtd. 2.5.2018 issued by the respondent no. 4 communicating the said decisions, by filing the present O.A.

2. Deceased Kamlakar K. Jadhav was the husband of the applicant. He was initially appointed as a Peon w.e.f. 17.10.1960 by the order dtd. 13.10.1960. Thereafter he was appointed on the post of Jr. Clerk by the order dtd. 27.3.1968. He was serving on the post of Jr. Clerk with the respondent no. 4 and he retired on 31.8.1996 on attaining the age of superannuation. Thereafter her husband died on 23.11.2013.

3. It is her contention that during his service tenure her husband was transferred at various places. By the order dtd. 20.8.1991 her husband was transferred in the office of the District Social welfare Officer, Aurangabad and accordingly he joined at Aurangabad on 20.8.1991. The respondent no. 2 published the seniority list of the Jr. Clerks as on 1.1.1990 by the order dtd.

29.2.1992 and the name of the husband of the applicant was shown at sr. no. 265 therein. It is her contention that on 10.3.1993 her husband submitted an application to the respondent no. 3 the Divisional Social Welfare Officer for grant of promotion. Respondent no. 3 forwarded his application to the respondent no. 2 the Director of Social Welfare.

4. It is her contention that on 8.6.1995 the Government introduced a scheme of 'Time Bound Promotion'. In view of the said decision the Government has decided to introduce a scheme to overcome the feeling of stagnation that creeps in the mind of the Government servants who do not get promotion and / or the benefits of higher pay scale in spite of working on the same post years after years and further in spite of the fact that they are fully eligible and entitled for getting such promotion and / or higher pay scale. Hence with a view to give a sort of an incentive to such Government servants who continue to work on the same post for number years and who do not get further promotions for want of vacancies in the higher cadre, the State Government had provided that such Government servants who put in 12 years of regular and continuous service on one and the same post and who were otherwise fully eligible and entitled for being promoted to the next higher post shall be granted the benefit of pay scale attached to

the next promotional / higher post. It is her contention that the said scheme was initially made applicable to class-III and Class-IV post i.e. Group C and Group D employees and it was not made applicable to the higher cadres in view of the said G.R. dtd. 8.6.1995. It is her contention that her husband was working on the post of Clerk since 1.4.1968. He had completed 12 years continuous service on the date of issuance of G.R. dtd. 8.6.1995. Therefore her husband submitted an application to the respondent no. 4 i.e. the District Social Welfare Officer and requested to grant him the benefit of time bound promotion scheme as per the G.R. dtd. 8.6.1995. Thereafter her husband had filed another application dtd. 20.6.1995 with a same request to the respondents. But the respondents had not considered the request of the husband of the applicant. It is her contention that her husband visited the office of the respondents from time to time, but his request has not been considered during his life time. Respondents had not taken decision on the applications filed by her husband. It is her contention that her husband retired on 31.8.1996 on attaining the age of superannuation and after his retirement he persuaded the matter by visiting the office of the respondents from time, but no decision had been taken on his applications. Her husband died on 23.11.2013. Thereafter she has not received any communication regarding application filed by

her deceased husband. Therefore she decided to pursue the matter. She collected the information from the respondent no. 4 under Right to Information Act. Thereafter she submitted the applications dtd. 13.10.2016, 18.10.2016 & 21.12.2016 to the respondent no. 3 & 4 and prayed to grant the benefit of time bound promotional pay scale to her deceased husband as per the G.R. dtd. 8.6.1995. It is her contention that the respondent no. 4 by the letter dtd. 17.5.2017 forwarded her application to the respondent no. 3. The respondent no. 3 submitted a detailed proposal dtd. 30.6.2017 / 4.7.2017 in that regard to the respondent no. 2 and requested to grant time bound promotional pay scale to the deceased husband of the applicant w.e.f. 1.10.1994. The respondent no. 2 raised certain queries by the letter dtd. 28.2.2017 and directed the respondent no. 3 to submit relevant documents regarding the service record of the deceased husband of the applicant. The respondent no. 4 complied with those queries and submitted a detailed proposal dtd. 3.2.2018 to the respondent no. 3. Thereafter the respondent no. 3 forwarded the said proposal to the respondent no. 2 by the letter dtd. 1/3.3.2018. The respondent no. 2 issued a letter dtd. 20.3.2018 addressed to the respondent no. 3 rejecting the proposal of the applicant on the ground that the name of deceased husband of the applicant was not included in the time bound promotion order

dtd. 12.8.1997 as his annual confidential reports were not good. The respondent no. 3 issued a letter dtd. 21/25.3.2018 to the respondent no. 4 and communicated the decision of the respondent no. 2. Thereafter, the respondent no. 4 by the communication dtd. 2.5.2018 informed the applicant regarding the decision taken by the respondent no. 2.

5. It is contention of the applicant that the respondent no. 2 had wrongly rejected the claim of the husband of the applicant. It is her contention that the confidential reports of her deceased husband were not available with the office of the respondent no. 2. No adverse remarks have been communicated to the deceased husband of the applicant during his life time and therefore the impugned order rejecting the claim of the deceased husband of the applicant is illegal. Therefore she approached this Tribunal by the present O.A. and prayed to quash the impugned order and the communications issued to her and prayed to direct the respondents to grant benefits of time bound promotion scheme to her deceased husband in view of the G.R. dtd. 8.6.1995.

6. Respondent nos. 2 to 4 have filed their affidavit in reply and resisted the contentions of the applicant. They have admitted the fact that the deceased husband of the applicant viz. Kamlakar Jadhav was initially appointed as Peon on 17.10.1960 by the

order dtd. 13.10.1960 and thereafter he was appointed on the post of Jr. Clerk by the order dtd. 27.3.1968. It is their contention that the deceased was required to pass the departmental examination for getting promotion to the post of Sr. Clerk within three chances during his service period. But he had not passed the departmental examination within the prescribed period and therefore he was not considered for promotion. In view of order dtd. 18.8.1972 husband of the applicant was exempted from passing the departmental examination on completion of 45 years of age. They have admitted the fact that the deceased filed an application dtd. 25.6.1993 requesting to grant promotion to him and his application was forwarded to the office of the respondent no. 2. It is their contention that the deceased was not eligible for promotion and therefore he was not granted the promotion.

7. It is their contention that as per the G.R. dtd. 8.6.1995 time bound promotion has to be given on the basis of eligibility criteria and not merely on completion of 12 years of continuous service on the same post. Case of the deceased Kamlakar Jadhav was considered in the meeting of the D.P.C. held on 6.8.1994 & 10.8.1994 and it was found that preceding 5 years' confidential reports of deceased Kamlakar Jadhav were not up to the mark.

Therefore he was declared ineligible for the promotion in the year 1994 and hence no benefit under time bound promotion scheme has been extended to him. The deceased husband of the applicant was fully aware about this fact. He was also aware of the fact that his annual confidential reports for last five years were not up to the mark and therefore he was not eligible for promotion. He never challenged the said decision during his service tenure and life time. It is their contention that working of work of the deceased Kamlakar Jadhav was not satisfactory and therefore he was given show cause notice on 6.2.1970. He was transferred on 15 times in his service tenure due to his unsatisfactory work. Because of unsatisfactory work deceased Kamlakar Jadhav was not eligible for promotion.

8. It is their further contention that the deceased Kamlakar Jadhav never challenged the decision of the D.P.C. rejecting his claim for time bound promotion during his service tenure and till his death. It is their contention that the applicant has no locus standi to file the present O.A. Therefore they justified the impugned order & the communications issued by the respondents and prayed to reject the O.A.

9. Applicant filed rejoinder to the affidavit in reply of respondent nos. 2 to 4 and reiterated her contentions raised in the

O.A. It is her contention that the adverse remarks in annual confidential reports mentioned in the communications had never been communicated to her deceased husband. Office of the respondents informed her that the annual confidential reports of her deceased husband were not available and therefore it cannot be said that confidential reports of her deceased husband were adverse and they were communicated to her deceased husband. She has submitted that the respondents have wrongly rejected her claim. Therefore, she prayed to allow the O.A.

10. I have heard the arguments advanced by Shri K.B. Jadhav, learned Advocate for the applicant and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the respondents. I have also gone through the documents placed on record.

11. Admittedly the deceased Kamlakar Jadhav was husband of the applicant. He died on 23.11.2013. Admittedly, he was initially appointed as a Peon w.e.f. 17.10.1960 by the order dtd. 13.10.1960. Thereafter he was appointed on the post of Jr. Clerk by the order dtd. 27.3.1968. Admittedly, he served at different places and lastly he was transferred in the office of District Social Welfare Officer, Aurangabad by the order dtd. 20.8.1991 and accordingly he joined at Aurangabad on 20.8.1991. There is no dispute about the fact that the respondent no. 2 published the

seniority list of the Jr. Clerks as on 1.1.1990 by the order dtd. 29.2.1992 and name of the husband of the applicant was shown at sr. no. 265 therein. Admittedly the deceased Kamlakar Jadhav served on the post of Jr. Clerk till his retirement. Admittedly he served continuously on the post of Jr. Clerk for more than 12 years. He had not received the promotion. Admittedly the respondents rejected the claim of the applicant to grant the benefit under time bound promotion scheme as per the G.R. dtd. 8.6.1995 to her deceased husband Kamlakar Jadhav by the impugned order and the communications.

12. Learned Advocate for the applicant has submitted that the deceased Kamlakar Jadhav was serving on the post of Jr. Clerk since the year 1968. He served continuously on the post of Jr. Clerk for more than 12 years. He has argued that the service record of the deceased Kamlakar Jadhav was unblemished. He was eligible to get the benefit under time bound promotion scheme in view of the G.R. dtd. 8.6.1995. But the respondents had not granted the benefits under the said scheme to deceased Kamlakar. He has submitted that the deceased Kamlakar Jadhav made an application dtd. 20.6.1995 to the respondents to extend him the benefits of time bound promotion scheme on completion of 12 years continuous service in view of G.R. dtd. 8.6.1995. But his

application had not been decided by the respondents till his retirement and thereafter also. He has submitted that the deceased Kamlakar Jadhav thereafter approached the respondents on various occasions after his retirement till his death, but the respondents have not considered his claim. After his death the applicant persuaded the matter at various authorities. He has submitted that the respondents rejected the claim of the applicant by the impugned order and the communications and denied to extend the benefit of time bound promotion scheme to the deceased Kamlakar in view of the G.R. dtd. 8.6.1995, on the ground that the service record of the deceased Kamlakar Jadhav was not satisfactory. Deceased Kamlakar Jadhav was transferred at 15 times due to his unsatisfactory work. He has argued that the respondents had not communicated the adverse remarks recorded in the annual confidential reports of the deceased Kamlakar Jadhav to him during his service tenure and life time. Deceased Kamlakar Jadhav had no opportunity to challenge the adverse remarks recorded in his annual confidential reports and therefore the annual confidential reports cannot be relied for considering the case of the deceased Kamlakar Jadhav for grant of time bound promotion and therefore he prayed to quash the impugned order and the communications.

13. Learned Advocate for the applicant has submitted that the applicant is the widow of deceased Kamlakar Jadhav and therefore she has locus standi to challenge the impugned decision as she would be the beneficiary in case the benefit under the time bound promotion scheme is granted to the deceased Kamlakar Jadhav.

14. Learned Presenting Officer has submitted that the deceased Kamlakar Jadhav was not eligible to get the promotion and therefore the promotion was not granted to him on the post of Sr. Clerk. She has submitted that the case of deceased Kamlakar Jadhav was placed before the D.P.C. in its meeting dtd. 6.8.1994 & 10.8.1994 for promotion and at that time it was found that his confidential reports were not up to the mark and it was (B-) and therefore he was ineligible for the promotion in the year 1994. Thereafter again his case was placed before the D.P.C. on 27.3.1997 for grant of benefit under time bound promotion scheme as per the G.R. dtd. 8.6.1995. At that time also deceased Kamlakar Jadhav was held ineligible for promotion and consequently held ineligible to get the benefit under time bound promotion scheme as per the G.R. dtd. 8.6.1995 and therefore time bound promotion was not granted to him. She has submitted that the said decision was communicated to the

deceased Kamlakar Jadhav, but he never challenged the said decision before the appropriate authority during his life time. Therefore the applicant, who is widow of deceased Kamlakar Jadhav, cannot claim the same benefit again. She has submitted that the respondent no. 2 has rightly considered the said aspect and rejected the claim of the applicant by the impugned order and communications. There is no illegality therein and therefore she justified the impugned order and communications.

15. Learned Presenting Officer has further submitted that the time bound promotion can be granted to the Government employees on completion of 12 years' continuous service as per the G.R. dtd. 8.6.1995. It is a right of the employee to get the benefit under the said scheme, if he is eligible. Deceased Kamlakar Jadhav never claimed the said benefit after the decision of the D.P.C. The said right cannot be conferred on the widow of the deceased Kamlakar Jadhav as it is not hereditary right. Therefore, applicant has no locus standi to claim the said benefits after the death of her husband and hence she prayed to dismiss the O.A.

16. On perusal of documents on record, it reveals that the deceased Kamlakar Jadhav was serving on the post of Jr. Clerk since 27.3.1968. He retired on 31.8.1996 from the said post on

attaining the age of superannuation. He had not received the promotion and the benefit of time bound scheme during his service tenure.

17. The Government of Maharashtra introduced a scheme namely time bound promotion by the G.R. dtd. 8.6.1995 for extending time bound promotion facility to the Government servants. In view of the said decision the Government has decided to introduce a scheme to overcome the feeling of stagnation that creeps in the mind of the Government servants who do not get promotion and / or the benefits of higher pay scale in spite of working on the same post years after years and further in spite of the fact that they are fully eligible and entitled for getting such promotion and / or higher pay scale. Hence with a view to give a sort of an incentive to such Government servants who continue to work on the same post for number years and who do not get further promotions for want of vacancies in the higher cadre, the State Government had provided that such Government servants who put in 12 years of regular and continuous service on one and the same post and who were otherwise fully eligible and entitled for being promoted to the next higher post shall be granted the benefit of pay scale attached to the next promotional / higher post. The Government laid down certain conditions for

extending such benefit to the employees in view of the said G.R. and on fulfillment of the said conditions the benefit of time bound scheme has to be extended to the eligible Government servants.

18. On perusal of record it reveals that in view of introduction of the said scheme the case of the deceased Kamlakar Jadhav had been considered for promotion in the meeting of the D.P.C. held on 6.8.1994 and 10.8.1994. At that time, it was found that the average of confidential reports of deceased Kamlakar Jadhav for preceding five years i.e. from 1988-89 to 1992-93 were below (B-). Therefore he was considered ineligible for getting the promotion in the year 1994. The said decision was within the knowledge of deceased Kamlakar Jadhav. He had not raised grievance in that regard during his service tenure as well as during his life time.

19. After introduction of the "Time Bound Promotion Scheme" by the G.R. dtd. 8.6.1995 again the case of the deceased Kamlakar Jadhav was placed before the D.P.C. in its meeting held on 27.3.1997. The said D.P.C. considered the confidential reports of the employees who were under the zone of consideration. That time also the confidential reports of the deceased Kamlakar Jadhav for the preceding five years have been considered. His C.Rs. were found below the prescribed norms and therefore he was held ineligible to get the benefit under the said scheme.

Deceased Kamlakar Jadhav was not found eligible to get promotion on the higher post and therefore the benefit under Time Bound Promotion Scheme as per the G.R. dtd. 8.6.1995 had not been extended to him. Deceased Kamlakar Jadhav was also aware about the said fact however he has not challenged the said decision during his service tenure and life time. Since the deceased husband of the applicant was not eligible to get the promotion, he was not eligible to get the benefit under the time bound promotion scheme as per the G.R. dtd. 8.6.1995. In spite of that the applicant made several applications after the death of her husband Kamlakar Jahav. Respondent no. 2 after considering the entire record of the deceased Kamlakar Jadhav rejected the claim of the applicant by the impugned order and the respondent nos. 3 & 4 communicated the said decision to the applicant by the impugned communications. In my opinion, there is no illegality in the impugned order and the communications. Therefore no interference therein is called for.

20. It is material to note that the decision of the D.P.C. was informed to the deceased Kamlakar Jadhav, but he never challenged the said decision before the appropriate authority during his life time. Right to get promotion is vested with the

deceased Kamlakar Jadhav. Therefore, the present O.A. filed by his wife is not maintainable as she has no *locus standi*.

21. In view of the above discussion I find that the respondent no. 2 has rightly rejected the claim of the applicant and refused to extend the benefit of time bound promotion scheme to her deceased husband. There was no illegality in the impugned order & the communications. Therefore no interference is called for in it. There is no merit in the O.A. Consequently the O.A. deserves to be dismissed.

22. In view of the discussion in foregoing paragraphs, the Original Application is dismissed. There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad

Date : 20th January, 2020